

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 04-079295

Employee: Telitha A. Miller
Employer: Crown Linen Service
Insurer: AIG Claim Service, Inc.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

Date of Accident: Alleged May 12, 2004

Place and County of Accident: Alleged Mexico, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 16, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Vicky Ruth, issued May 16, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24th day of August 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Telitha A. Miller

Injury No. 04-079295

Dependents: N/A
Employer: Crown Linen Service
Add'l Party: Second Injury Fund
Insurer: AIG Claim Service, Inc.
Hearing Date: February 6, 2007

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? No.
4. Date of accident or onset of occupational disease: Alleged – May 12, 2004.
5. State location where accident occurred or occupational disease was contracted: Alleged - Mexico, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? No.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee worked as a napkin presser.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: Alleged – right wrist.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? N/A.
17. Value necessary medical aid not furnished by employer/insurer? N/A.
18. Employee's average weekly wages: \$424.96.
19. Weekly compensation rate: \$283.44.
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.
22. Second Injury Fund liability: Left open.

TOTAL: NONE.

23. Future requirements awarded: N/A.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Telitha A. Miller

Injury No: 04-079295

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: N/A.

Employer: Crown Linen Service

Add'l Party: Second Injury Fund

Insurer: AIG Claim Services, Inc.

On February 6, 2007, the claimant and the employer/insurer appeared for a final award hearing. The claimant, Telitha Miller, appeared in person and with counsel, R.L. Veit. The employer/insurer appeared through counsel, P. Pierre Dominique. The claimant and the employer/insurer submitted briefs on or about February 20, 2007. The parties agreed that the Second Injury Fund liability issues would not be determined at this hearing.

STIPULATIONS

The parties made the following stipulations:

1. On or about May 12, 2004, the claimant was in the employment of the employer. The employee and the employer were both subject to the Missouri workers' compensation law. The parties agree that the Division of Workers' Compensation has jurisdiction and the venue is proper.
2. The employer's liability for workers' compensation was insured by AIG Claim Services, Inc.
3. The claimant notified the employer/insurer of her alleged injuries by accident or occupational disease and filed her claim for compensation within the time allowed by law.

4. The claimant's average weekly wage at the time of the accident was \$424.96, and her compensation rate was \$283.44.
5. The claimant did not receive any compensation for temporary disability benefits for the alleged injury.
6. The employer/insurer did not provide any medical aid for the alleged injury.

ISSUES

The issues to be resolved at hearing are as follows:

1. Medical causation for claimant's problems with her right wrist;
2. Nature and extent of any permanent partial disability;
3. Nature and extent of any temporary total disability; and
4. Liability of the employer/insurer for past medical expenses.

EXHIBITS

On behalf of the claimant, the claimant testified and the following exhibits were entered into evidence without objection:

- Exhibit 1: Letter, dated 10/31/05, to Pierre Dominique.
- Exhibit 2: Notice of Filing of Medical Report Pursuant to Section 287.210, RSMo.
- Exhibit 3: Dr. Raymond Cohen's Curriculum Vitae.
- Exhibit 4: Dr. Cohen's report, dated 4/11/05.
- Exhibit 5: Claim for Compensation, dated 5/12/04.
- Exhibit 6: University Hospital records.
- Exhibit 7: Medical records of Dr. Celso Velazquez.
- Exhibit 8: Mexico Health Systems medical records.
- Exhibit 9: Dr. Daniel Jost's medical records.
- Exhibit 10: Dr. Eddie W. Runde's medical records.
- Exhibit 11: Columbia Orthopaedic Group medical records.
- Exhibit 12: Boone Hospital Center MRI reports, dated 7/12/04 and 8/16/04.
- Exhibit 13: Audrain Medical Center MRI report, dated 5/20/04.
- Exhibit 14: Letter, dated 6/28/06, to Pierre Dominique.
- Exhibit 15: Second Notice of Filing of Medical Report Pursuant to 287.210, RSMo.
- Exhibit 16: Second Curriculum Vitae of Dr. Cohen.
- Exhibit 17: Dr. Cohen's supplemental report, dated 2/20/06.
- Exhibit 18: Dr. Cohen's supplemental report, dated 5/17/06.
- Exhibit 19: Boone Hospital Center medical records.
- Exhibit 20: Medical bills from Boone Hospital Center.
- Exhibit 21: Medical bills from Mexico Health Services.
- Exhibit 22: Medical bills from Boone Clinic.
- Exhibit 23: Medical bills from University Hospital and Clinics.
- Exhibit 24: Medical bills from Columbia Orthopaedic Group.
- Exhibit 25: Medical bills chart.
- Exhibit 26: Wage statement.
- Exhibit 27: Letter, dated 1/03/05, from Dr. Velazquez.

On behalf of the employer/insurer, the following exhibit was admitted without objection:

- Exhibit A: Boone Hospital Clinic records.

FINDINGS OF FACT

Based on the above exhibits and the testimony of the claimant at the hearing, I make the following findings.

The claimant worked for the employer, Crown Linen Service, Inc., as a napkin presser. The claimant had worked for the employer for approximately 16 years. She testified that as a napkin presser, she lifted napkins out of a tray and placed them into a press. In addition to lifting the napkins into the pressing machine, the claimant would touch a switch when a

napkin was not clean and had to be rejected. She was also required to lift baskets and adjust them to the proper height. She stated that she would press approximately 12,000 to 13,000 napkins each day. The claimant testified that she has not worked for the employer since September 14, 2004. Upon cross-examination, the claimant acknowledged that she was recently approved for Social Security disability benefits due to rheumatoid arthritis.

The claimant testified that on June 1, 1998, she had an injury to her left hand; the injury was surgically repaired. The claimant testified that as a result of the injury to her left arm, she became more right arm dominant. She stated that she developed continuous pain in her right arm, and that in May 2004, she requested medical care from her employer. She indicated that the request was denied, and she subsequently filed a claim for compensation.

The claimant sought medical treatment on her own. An MRI report from Audrain Medical Center, dated May 20, 2004, lists the impression as lucent areas of the distal radius and ulna that appear arthritic in nature. The report also includes the question "Any history of rheumatoid arthritis or crystal deposition disease?" There was also a notation that there is some mild sclerosis present of the lunate, which is suspicious for avascular necrosis.

At the request of the employer, the claimant saw Dr. Eddie Runde on May 24, 2004, and July 16, 2004. Dr. Runde is an occupational and environmental physician. Dr. Runde indicated that the claimant has right wrist arthritis that is "not related to her work activities - either from a causal standpoint or from an aggravation standpoint." Dr. Runde recommended that the claimant not return to job activities involving "repetitive use of her right hand and wrist since those activities will worsen her pain and aggravate her arthritis...."

The claimant saw Dr. James Eckenrode for her right wrist several times, beginning with a visit on June 15, 2004. Dr. Eckenrode had seen her previously for her left wrist. Upon examination, he found that she had some swelling and some mild Capet ulnae syndrome. Dr. Eckenrode determined that the claimant had a rheumatologic condition, and he suggested that she see a rheumatologist. Specifically, he "told her the same thing I told her back in 2000. I think she ought to get a medical evaluation for possible rheumatologic disease." He also noted that "I still do not think she believed any of what I am telling her, and I have sort of had a discussion with her about the fact that if she does not believe me then why is she coming in to see me." In addition, he indicated that the claimant is "absolutely 100% sure that this is caused by her job in a factory and not by any sort of medical or rheumatologic problem."

The claimant was seen by Dr. Bruce Pugatch at Mexico Health Services on or about June 24 and June 25, 2004. The claimant brought her lab results to the visit. Dr. Pugatch's records indicate that "all laboratories were unremarkable except for a mildly elevated sed rate which can be suggestive of some inflammatory process but is fairly non-specific." Dr. Pugatch recommended that the claimant follow up with an orthopedist.

On June 25, 2004, Dr. Eckenrode examined the claimant again and told her that the blood tests showed that the rheumatoid factor and anti-nuclear antibody were normal, but her sedimentation rate was elevated. He again advised her that she had an abnormal x-ray of her right wrist, and suggested that she try cortisone injections; she was not interested. The doctor also noted that he felt that there was "something beyond just overuse at work that is going on here." Dr. Eckenrode gave her a note for work indicating that she could not do her regular job because of her wrist symptoms, but that she could perform a one-handed job if one was available. Dr. Eckenrode referred the claimant to Dr. Daniel Jost, a rheumatologist.

Dr. Jost examined the claimant on July 12, 2004. His impression was seronegative rheumatoid arthritis. His opinion was that this was not work-related. Dr. Jost examined the claimant again on August 5, 2004. Dr. Jost noted that he agreed with Dr. Eckenrode that the claimant has rheumatoid arthritis. Although the claimant was rheumatoid factor negative, "the anti-CCP antibodies came back high at 176. She was also found to have a hemoglobin of 11.2. Dr. Jost's assessment was that the claimant had "anti-CCP antibody positive rheumatoid arthritis, severe."

Dr. Eckenrode's records from August 13, 2004, indicate that he believes that the claimant has rheumatoid arthritis, and that this is not related to her job activities. Dr. Eckenrode notes that the claimant still believes that this is a work-related injury. Dr. Eckenrode suggested that "the best thing for her would be to find a doctor somewhere else, whose judgement she trusts, and get another opinion because as many times as I have told her what I think is going on she still feels that I am mistaken."

The August 16, 2004 MRI report from Dr. Laura Sievert, radiologist at the Department of Radiology, Boone Hospital Center, lists the impression as "[s]evere, advanced, degenerative changes with marrow edema seen throughout most of the carpal bones as well as the distal ulna. The appearance suggests an inflammatory arthritis and raises the question of rheumatoid arthritis."

On August 19, 2004, the claimant was seen by Dr. Joseph Woods, her family physician. His records indicate that "[s]he still needs to go back to see the orthopaedic wrist specialist that she saw...." Dr. Woods also notes that "it does not look like it is rheumatoid by the blood test, although the MRI of the wrist suggests it could be a possibility. Again, I feel this is something that needs to be handled by an orthopaedist. If he thinks it is definite rheumatoid arthritis she needs to be under the care of a rheumatologist. However, she has no arthritic complains that would suggest rheumatoid."

Dr. Eckenrode examined the claimant on August 26, 2004. He notes that the claimant went to her family doctor, Dr.

Woods, and he ordered an MRI of her wrist. The MRI scan shows that she has an inflammatory arthritis consistent with rheumatoid arthritis.

Medical records from the University Hospital's Orthopaedic Clinic indicate that Parvin Bhrovzi, APRN, saw the claimant on September 3, 2004, for right hand pain. The records indicate that the CT scan shows "severe, advanced degenerative changes with marrow edema seen throughout most of the metacarpal bones as well as the distal ulna." In addition, the CT scan suggests inflammatory arthritis with possible question for rheumatoid arthritis." Dr. Gainor reviewed the x-ray and agreed that it was "possibly some kind of arthritis." He suggested that the claimant see a rheumatologist.

Dr. Woods again saw the claimant on September 9, 2004. His records show that he talked to Dr. Eckenrode, who stated that a biopsy of the claimant's other wrist was positive for rheumatoid. Dr. Woods also noted that Dr. Eckenrode felt that the MRI was "classic for rheumatoid arthritis and that Dr. Jost had sent Dr. Eckenrode letters saying that he believes that the claimant has rheumatoid arthritis. Dr. Woods' impression was "seronegative rheumatoid arthritis with severely diseased right wrist, from rheumatoid and activity at work." His records indicate that "I think what has happened to her is that she has had rheumatoid arthritis and the repetitive motion she was doing at work has caused the right wrist to be inflamed and to be diseased so she cannot do that particular job."

On or about October 6, 2004, the claimant was seen by Deanna Davenport, APRN, and Dr. Celso Velazquez, at the University Hospital's Rheumatology IM Clinic. The report indicates that the claimant has obvious swelling in her right wrist, with warmth across the joint line. The impression included monoarthritis of the right wrist of five months duration. Dr. Velazquez attempted aspiration of the joint without fluid return. He injected 1% lidocaine into the joint. Dr. Velazquez determined that a longer trial with prednisone was indicated and that additional laboratory testing should be completed. The October 20, 2004 record reflects that the MRI for the joint shows "AVN of the lunate as well as synovitis and bone marrow edema commonly seen in rheumatoid arthritis."

The University Hospital records from November 17, 2004, indicate that Dr. Barry Gainor performed an open biopsy of the right wrist. The preoperative diagnosis and the postoperative diagnosis were "inflammatory arthritis of the right wrist."

A letter, dated January 3, 2005, from Dr. Velazquez to the claimant's attorney, indicates that the claimant's first visit to his office was in October 7, 2004, when she presented with a "swollen **left** wrist." [Emphasis added. Although the notes reference the left wrist instead of the right one, this is likely due to a typographical error.] His diagnosis was "Kienbock's disease, also known as osteonecrosis of the lunate.... Osteonecrosis is death of bone tissue and in this case is accompanied by inflammation and edema of the surrounding tissues, resulting in wrist swelling and pain." He also noted that Kienbock's disease is "usually caused by trauma or occupationally excessive hand use. I believe her job and its repetitive motions have caused Mrs. Miller's condition." The doctor's January 13, 2005 records reflect that his impression was "[m]onoarthritis of the right wrist secondary to avascular necrosis of the lunate. Technically, this condition is known as Kienbock's disease." He indicated that "[i]t was recommended that she not return to her previous occupation, as repetitive microtrauma is a common causal factor in Kienbock's disease."

Dr. Raymond Cohen, a neurologist, performed an independent medical exam on the claimant. In his April 11, 2005 report, he notes that the claimant has constant pain in the dominant right wrist, and has swelling in the wrist and hand. Dr. Cohen diagnosed the claimant with (1) overuse disorder of the right upper extremity (cumulative trauma disorder); (2) right wrist flexor tenosynovitis; and (3) aggravation of underlying arthritic condition. He also found that the claimant had the following pre-existing conditions or disabilities: (1) Overuse disorder of the left upper extremity; (2) Status-post left wrist surgery for removal of a ganglion; and (3) Chronic left wrist extensor tenosynovitis. Dr. Cohen determined that the claimant has rheumatoid arthritis as a subsequent condition. In Dr. Cohen's opinion, work was a substantial factor in her disability and treatment. He indicated that the treatment she received up to that time was reasonably and medically necessary. He found her to be 35% permanently and partially disabled due to her wrist, with 10% of it being pre-existing. Dr. Cohen's supplemental medical ratings, dated May 17, 2006, and February 20, 2006, indicate that he reviewed some additional medical records and determined that certain specified medical bills were necessary and reasonable for the claimant's work-related conditions.

The claimant was released to work on January 13, 2005. She contends that she is entitled to temporary total disability benefits for the period of September 14, 2004, to January 13, 2005 (17.28 weeks), at a compensation rate of \$283.44 (\$283.44 x 17.28 = \$4,897.84). The claimant also contends that the employer/insurer is liable for the medical bills set forth in Exhibit 25, which total \$12,965.54.

CONCLUSIONS OF LAW

The claimant alleges that she sustained an occupational disease to her right wrist as a result of her years of repetitive work at Crown Lines Services, Inc. The employer/insurer contends that the claimant's right wrist condition is not compensable and is the result of a disease – rheumatoid arthritis.

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim, including the casual connection between the accident and the injury.^[1] Whether

employment is a substantial factor in causing the injury is a question of fact.^[2] Medical causation not within lay understanding or experience requires expert medical evidence.^[3] When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.^[4]

An injury is clearly work related “if work was a substantial factor in the cause of the resulting medial condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.”^[5]

In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.^[6] Where there are conflicting medical opinions, the fact finder may reject all or part of one party’s expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant’s expert.^[7]

Where future medical benefits are at issue, the medical care must flow from the accident before the employer is to be held responsible.^[8] It is sufficient to award future medical benefits if the claimant shows by reasonable probability that he is in need of additional medical treatment by reason of the work accident.^[9]

Based on the credible opinions of Dr. Eckenrode and Dr. Jost, supported in part by the records of Dr. Gainor and Dr. Woods, I find that the claimant’s right wrist complaints are not the result of an occupational disease and are not causally related to her employment. Thus, I find that the claimant has failed to meet her burden of proof to show that there is a compensable accident or occupational disease that arose out of and in the course of her employment with the employer. Therefore, her claim must be denied. Consequently, the remaining issues in this case are moot and will not be addressed.

Any objections not expressly ruled on in this award are overruled.

Date: May 16, 2007

Made by: /s/Vicky Ruth

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/Patricia “Pat” Secret
Patricia “Pat” Secret, Director
Division of Workers' Compensation

^[1] *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).

^[2] *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo. App. 1999).

^[3] *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).

^[4] *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo. App. 1984).

^[5] Section 287.020.2 (RSMo. 2000).

^[6] *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo. App. 1985).

^[7] *Webber b. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo. App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).

^[8] *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 283 (Mo. App. 1997).

^[9] *Id.* See also *Bock v. Broadway Ford Truck Sales*, 55 S.W.3d 427, 437 (Mo. App. 2005).