

**TEMPORARY AWARD**

(Affirming Award and Decision of Administrative Law Judge  
with Correction)

Injury No.: 12-053570

Employee: Alan Mortimer

Employer: Harley-Davidson

Insurer: American Casualty Company of Reading

This workers' compensation case is pending before the Labor and Industrial Relations Commission on employer/insurer's application for review of the administrative law judge's Temporary or Partial Award. We have read the briefs, reviewed the evidence, and considered the whole record. We find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo,<sup>1</sup> we affirm the award and decision of the administrative law judge by this supplemental opinion.

There is a typographical error on page 5 of the administrative law judge's award. The first sentence of the paragraph beginning at the bottom of page 4 of the award and concluding at the top of page 5 is corrected to read: "Doctors at the on-site facility diagnosed Claimant with mild right carpal tunnel syndrome and early cubital tunnel syndrome based on an EMG that was obtained on March 22, 2012."

As to the merits, Dr. Poppa's report is not a model of clarity or precision. Still, the overall weight of the medical evidence, including the authorized medical treatment record and the opinions expressed by Dr. Lingenfelter, coupled with the personal observations of the administrative law judge, support a finding that employee has sustained a compensable injury for which additional medical care is required.

The objective medical evidence developed through multiple physical examinations and an EMG establishes that employee has overuse conditions of his elbow and wrist. The medical staff at Take Care Health Systems, an authorized provider, identified repetitive assembly work as the cause of employee's injury. When asked about employee's outside activities, employer's own medical expert (Dr. Lingenfelter) testified that employee's "outside activities," cited as the basis for denying additional authorized care are not activities that would contribute to employee's overuse conditions.

**Award**

We affirm and adopt the temporary award of the administrative law judge, as corrected and supplemented herein.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2011, unless otherwise indicated.

Employee: Alan Mortimer

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The award and decision of Administrative Law Judge Lisa Meiners, issued July 8 2013, is attached and incorporated by this reference, to the extent it is not inconsistent with our findings and conclusions herein.

Given at Jefferson City, State of Missouri, this 23<sup>rd</sup> day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## TEMPORARY AWARD

Employee: Alan Mortimer Injury No. 12-053570  
Dependents: N/A  
Employer: Harley-Davidson  
Insurer: American Casualty Company of Reading, PA/Gallagher Bassett Services, Inc.  
Additional Party: N/A  
Hearing Date: June 3, 2013 Checked by: LM/pd

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: January 3, 2012
5. State location where accident occurred or occupational disease was contracted: Platte County, 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? Yes
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 was exposed to repetitive motion of his right elbow while working in the fabrication department from 1/3/12 and each day thereafter.
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: Right elbow

14. Nature and extent of any permanent disability: Unknown
15. Compensation paid to date for temporary disability: Unknown
16. Value necessary medical aid paid to date by employer/insurer? Unknown
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$658.93/\$425.19
20. Method wages computation: By agreement

**COMPENSATION PAYABLE**

21. Amount of compensation payable: 0

**TOTAL: None**

22. Additional requirements award: The Employer is liable to Employee for additional medical care in order to cure and relieve effects of his right elbow condition.

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of Stephanie Stracke, Employee's attorney, for necessary legal services rendered.

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Alan Mortimer Injury No. 12-053570  
Dependents: N/A  
Employer: Harley-Davidson  
Insurer: American Casualty Company of Reading, PA/Gallagher Bassett Services, Inc.  
Additional Party: N/A  
Hearing Date: June 3, 2013 Checked by: LM/pd

On June 3, 2013, the parties appeared for hearing. The Employee, Alan Mortimer, appeared in person and with counsel, Steffanie Strackie. The Employer, Harley-Davidson, through its insurer, American Casualty Company of Reading, Pennsylvania, was represented by Samantha Benjamin-House.

### **STIPULATIONS**

The parties stipulated to the following:

- 1) that the Employer and the Employee were operating under and subject to the provisions of Missouri Workers' Compensation Law on January 3, 2012;
- 2) that Mr. Mortimer was its employee;
- 3) that he worked in Platte County, Missouri;
- 4) that notice was properly given and the claim was filed within the time allowed by law;
- 5) that the Employer had provided medical care at the on-site medical center; and
- 6) that the rates are \$658.93 for temporary total disability benefits and \$425.19 for permanent partial disability benefits.

### **ISSUES**

The issues to be resolved by this hearing are:

- 1) whether the right upper extremity at the elbow level is causally related to his work activities on or about January 3, 2012 and continuing to the present; and
- 2) whether the Employer is liable to Employee for additional medical care.

## FINDINGS OF FACT AND RULINGS OF LAW

Claimant has worked for Harley-Davidson for 16 years. In January of 2012, Claimant's primary job was in the Quality section which involved data entry and some desk work. Claimant, who I find credibly testified, had no prior symptoms of right elbow pain until January 3, 2012. Around that time period, Claimant was pulled from the Quality Department and filling in the Fabrication Department at the beginning of the year through most of the second half of 2012. On January 3, 2012, he filled in Fabrication a full day. He filled various positions in the Fabrication Department depending on staffing, who was working and who was on vacation. At times, he would go weekly, sometimes multiple times a week during the time period of January 3, 2012 to the present.

The various jobs in Fabrication consisted of repetitive use of upper extremities from knee to shoulder between 39 and 50 inches while obtaining parts and components. It also involved using upper extremities to place components on the welding fixture and transferring the completed item to the assembly line. It was noted in the Ergonomic Job Measurement System (*Exhibit B, p. 32-53*) that there is a moderate amount of elbow and arm flexion as well as finger and hand motion performing the various duties in Fabrication. The Ergonomic Job Measurement System presented into evidence reveals that this type of repetitive motion regarding arm and elbow flexion/extension was required in frames, the Dyna tanks department, and sanding Dyna tanks as well as many other positions Claimant performed while in Fabrication. (*Exhibit B, p. 32-53*)

Claimant, when he worked in the Dyna fuel tank area, would at times have to load tanks into a weld fixture, begin the weld cycle, pin-stamp, and push and pull carts, all using his upper extremities. When he polished the tanks, he used his arm and elbow in a flexion/extension motion to polish the machinery while moving the tanks. Indeed, the Ergonomic Job Measurement System (*Exhibit B, p. 32-53*) indicated that there was a moderate amount of repetitive arm motion in a sustained awkward position when performing these job duties in Fabrication. I find those positions in Fabrication that Claimant performed from January 3, 2012 and continuing each and every day thereafter were repetitive. This finding is based on Claimant's testimony and evidence presented at hearing.

The issue to be addressed by this hearing is whether those repetitive job tasks as outlined in Exhibit B were causally related to Claimant's diagnosis of right lateral epicondylitis and radial synovitis. In this case, Claimant received treatment from doctors working in the medical facilities located at the Harley-Davidson plant. Records generated close in time reveal right elbow symptoms started "since the inception of the four 10-hour days he has been out on the line." Records of January 24, 2012 indicate complaints of tenderness around the right forearm and elbow. On January 25, medical records show right elbow pain since changing job duties on January 3, 2012. These records corroborate Claimant's testimony that the majority of his job in January consisted of performing repetitive motion of his upper extremity by filling in on the line.

Doctors at the on-site facility diagnosed Claimant with mild right carpal tunnel syndrome

and early cubital tunnel syndrome based on an EMG that was obtained on March 22, 2002. On May 1, 2012, records reveal further treatment of his right elbow was denied due to outside activities. The medical record stated that Claimant had been bow and gun hunting and, as such, no further treatment would be provided. At that time, a formal claim was filed.

The parties presented two experts. Both experts agree Claimant has right lateral epicondylitis and radial synovitis. Dr. Poppa found based on Claimant's job description, medical records and physical examination that Claimant had not reached maximum medical improvement, that Claimant's diagnosis of the right elbow is related to the repetitive activities that occurred around January 3, 2012 and continuing each and every day thereafter. Dr. Poppa found the lifting and working in the Dyna tank department with his arms extended for long periods of time involved overuse of his right upper extremity to cause the lateral epicondylitis of the right elbow. Dr. Poppa found that the work-related injury was the prevailing factor causing the medical condition. Dr. Poppa recommended a series of cortisone injections involving the right elbow, physical therapy and, if the conservative treatment should fail, then surgical intervention of the right elbow.

The Employer's expert, Dr. Lingenfelter, found that Claimant had right lateral epicondylitis and radial synovitis. Dr. Lingenfelter stated the outside activities of hunting would not cause right lateral epicondylitis and radial synovitis. It appears from Dr. Lingenfelter's testimony that he received information regarding the quality manager position and the job Claimant performed on January 3, 2012. Dr. Lingenfelter stated, based on the quality manager position which was the desk job and the fabrication duties he performed on January 3, 2012, that Claimant did not perform repetitive tasks long enough to develop the right lateral epicondylitis and radial synovitis. Instead, Dr. Lingenfelter felt that Claimant needed to be exposed on a sustained period of time, such as three or four weeks in order for the job duties in Fabrication to be the prevailing factor of right epicondylitis and radial synovitis. (*Exhibit C, p. 43*)

In this case with these particular set of facts, I do not rely on Dr. Lingenfelter's opinion because I do not find Dr. Lingenfelter had all the facts surrounding the job duties Claimant performed and the length of time he performed them. For example, Dr. Lingenfelter admitted he would need to see how the Dyna tank job was performed in order to determine whether or not that job was a repetitive job. (*Exhibit C, p. 9-10*) Indeed, Dr. Lingenfelter did not recall seeing a description of the tank welding scale that showed a three regarding hazards severity and risk probability for developing repetitive motion injuries when the scale is one to three with three the highest. (*Exhibit C, Deposition Ex. 2*) Therefore, I do not find Dr. Lingenfelter had all of the facts and information needed in order to derive his opinion.

As such, I find based on the evidence presented that Claimant sustained his burden of proof. I find that the work activities that Claimant performed on or about January 3, 2012 and continuing thereafter consisted of repetitive exposure of his upper extremities and was the prevailing factor of Claimant's right elbow condition. Claimant specifically when working in the fabrication line on the Dyna tanks, but not limited to the Dyna tanks position, was exposed to repetitive extension and flexion of his elbow that caused right lateral epicondylitis and radial

synovitis. This is based on the medical evidence as well as the testimony of Claimant and the descriptions of the risk assessment that are contained in Lingenfelter's Deposition Exhibit No. 2.

I also find the Employer is liable to the Employee for medical care that is stemming from the repetitive exposure that occurred on January 3, 2012. The Employer is liable to Claimant for the medical care as outlined by Dr. Poppa but not limited to that treatment should the treating physician find other treatment reasonable and necessary to cure and relieve the effects of the right lateral epicondylitis and radial synovitis.

This award is subject to an attorney's lien for services by Steffanie Stracke in the amount of 25 percent.

Made by: \_\_\_\_\_

**Lisa Meiners**  
*Administrative Law Judge*  
*Division of Workers' Compensation*