

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 15-103605

Employee: Alan Nold
Employer: Harley-Davidson
Insurer: Trumbull Insurance Company

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms and adopts the award and decision of the administrative law judge dated December 23, 2016.

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.

The award and decision of Administrative Law Judge Angie Heffner Robyn, issued December 23, 2016, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 13th day of April 2017.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

VACANT

Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY AWARD

Employee: Alan Nold

Injury No: 15-103605

Employer: Harley Davidson

Insurer: Trumbull Insurance

Hearing Date: December 15, 2016

Checked by: AHR/lh

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: November 30, 2015.
5. State location where accident occurred or occupational disease was contracted. Kansas City, 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: While working in the course and scope of employment, Claimant performed repetitive activities including but not limited to gripping, grabbing parts, use of a vibratory sander, taking parts in and out of machines and twisting activities with his wrists resulting in injury.
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: Bi-lateral upper extremities.
14. Compensation paid to-date for temporary disability: None.

15. Value necessary medical aid paid to date by employer/insurer: Employer has paid for evaluation and diagnostic testing but the total cost amount is unknown.

15. Employee's average weekly wages: \$1312.62.

16. Weekly compensation rate: \$875.08./\$464.58.

17. Method wages computation: Parties stipulate.

COMPENSATION PAYABLE

Future medical care as awarded pursuant to the Award.

The compensation awarded to the Claimant shall be subject to a 25 percent lien in the amount of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Steffanie Stracke

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Alan Nold Injury No.: 15-103605

Employer: Harley-Davidson

Insurer: Trumbull Insurance Company c/o Gallagher Bassett.

Hearing Date: December 15, 2016

Checked by: AHR/lh

On December 15, 2016 the Employee and Employer appeared for a temporary hearing for hardship benefits. The Division had jurisdiction to hear this case pursuant to §287.110. The Employee, Mr. Alan Nold (hereinafter Employee or Claimant), appeared in person and with counsel, Mr. Steffanie Stracke. The Employer, Harley Davidson, (hereinafter Employer), appeared through counsel, Mr. Tom Billam.

STIPULATIONS

The parties stipulated to the following:

1. That on or about November 30, 2015, Harley Davidson, was an employer operating subject to Missouri Workers' Compensation law with its liability fully insured by Trumbull Insurance Company c/o Gallagher Bassett.
2. Mr. Nold was its employee working subject to the law in Kansas City, Platte County, Missouri;
3. Mr. Nold notified Employer of his injuries and filed his claim for compensation within the time allowed by law;
4. Mr. Nold earned an average weekly wage of \$1312.62 resulting in a compensation rate of \$875.08 for temporary total disability, and \$464.58 for permanent partial disability.

ISSUES

- 1) Whether Employee sustained an occupational disease arising out of and in the course of his employment;
- 2) Is Employer liable for future medical care to cure and relieve the effects of the Employee's injury.

Claimant testified on his behalf and presented Exhibits A and B which were admitted into evidence without objection.

The Employer presented witnesses Chris Nehrbass and Aaron Fife and Exhibits 1-5 all of which were admitted into evidence without objection.

Based on the entire record, Claimant's credible testimony, medical records and the testimony of the Employer's witnesses, Chris Nehrbass (Nehrbass) and Aaron Fife (Fife), and the applicable law in the state of Missouri, I find Claimant sustained an occupational disease which arose out of and in the course of his employment.

Claimant currently works on the assembly line at Harley-Davidson and has since June 1, 2001. Since 2003, he has worked in the Tank Weld Department. Claimant testified that his normal work shift was forty hours a week. Claimant works the night shift and at present based on the production needs of the plant, he is working overtime resulting in an average of 50-64 hours per week.

The Tank Weld Department assignment includes rotating to approximately 20 different stations over a two to three week period of time. All of the 20 different stations require specific tasks requiring use of both hands in a repetitive manner. Claimant testified that he would work at one station for the entire 10-hour shift. Claimant testified and demonstrated the many repetitive tasks he performed with both hands at several different stations including grabbing, twisting, aligning parts, pinching and gripping. He also uses a vibratory sander that vibrates in his hands when he uses it.

Employer witness Fife also testified that the Claimant works at approximately 20 different stations over a two to three week period. Employer/Insurer admitted a DVD/Video of Claimant into evidence, performing the duties required in two of the stations where he routinely works. Claimant pointed out and Fife admitted that the DVD depicted only two of the 20 work stations Claimant regularly works in. I watched the video and observed that Claimant used both hands in order to accomplish his work demands. (Ex. 2)

Since the video only depicted two of Claimant's job tasks, I relied on his testimony regarding the other duties of his job. Claimant testified at length regarding those various job duties and the motions that were required of his wrists and arms in order to accomplish those job tasks all of which I find to be repetitive in nature. Claimant's entire job involves the repetitive use of his bilateral upper extremities. He is required to grip, twist, grab and grasp tools, parts and machines on a frequent basis.

In addition, I personally observed in the video everything Claimant testified to in detail regarding that portion of the multi-step process required of an employee in the Weld Tank Department of the assembly line. Each of these tasks requires the repetitive use of both of the worker's hands.

Claimant stated that he told his supervisor on November 30, 2015 that his hands were numb to a point they hurt. He reported an injury on December 16, 2015. He testified that he did not feel comfortable making the report until December 16, 2015 because he was worried that he would get fired if he reported the injury. However, his hands got to a point he could not take the constant pain and numbness anymore. Claimant filled out an accident report (Ex. 3) wherein he referenced some of the repetitive motions his job required.

Employer immediately sent Employee for treatment in their in-house health clinic. Claimant participated in a four-week early intervention program. He testified that he first met with a therapist on December 22, 2015. The early intervention program did not provide Claimant any relief and he was then referred to Dr. Brett A. Miller. Dr. Miller examined Claimant at the Harley Davidson plant and then ordered an EMG of both of his hands. Dr. Miller's February 11, 2016 report states that he was going to walk through the plant and observe Claimant's job duties. Claimant testified that this did not happen. The March 15, 2016 EMG found Claimant to have severe bi-lateral carpal tunnel syndrome. (Ex. 3)

Employer contracted with Blankenheim Services to perform a risk assessment analysis of the Tank Weld Department. On March 1, 2016 Chris Nehrbass an Engineering Manager from Blankenheim Services visited the Harley Davidson facility where Claimant worked. Nehrbass observed and videotaped Claimant performing his job duties in two stations in the Tank Weld Department. He observed Claimant performing his job duties in a third station as well. Nehrbass testified that he was informed that the Claimant's position required him to work in approximately 20 stations over a two-three week time period. Nehrbass testified that he was not going to be in the facility long enough to observe Claimant perform his job duties in all 20 stations so he focused on three of the stations that Claimant mentioned in his injury report dated December 16, 2015. In his report, he includes that Claimant told him that all or most stations within his work rotation either contribute or exacerbate his symptoms and that he could not identify a specific task as the primary contributor to his injuries.

Claimant is requesting medical treatment as recommended by Dr. Anne Rosenthal. Dr. Rosenthal diagnosed Claimant with bilateral carpal tunnel syndrome. Dr. Rosenthal physically examined Claimant, reviewed his medical treatment that was provided by the Employer up to the date of her examination including the causation assessment provided by Dr. Miller. I do not find Dr. Miller's opinion to be credible.

RULINGS OF LAW

Claimant asserts that he developed bilateral carpal tunnel syndrome from all the various repetitive work activities he testified to having performed over his past 15 years of employment with Employer. Employer contends that Claimant's work is not the prevailing factor and disputes medical causation.

Having given careful consideration to the entire record, based upon the competent and substantial evidence presented during the hearing, and the applicable law of the State of Missouri, I make the following rulings of law: Claimant sustained an occupational disease which arose out of and in the course of his employment.

Claimant has the burden to prove all essential elements of a claim, including causation. *Decker v. Square D Co.*, 974 S.W.2d 667, 670 (Mo.App. 1998). When a worker seeks compensation for carpal tunnel syndrome, she must submit a medical expert who can establish the probability that working conditions caused the disease. *Id.* A claimant's medical expert in an occupational disease case must establish within a "reasonable probability" that the disease was

caused by conditions in the work place. *Pippin v. St. Joe Minerals Corp.*, 799 S.W.2d 898, 902 (Mo.App. 1999) (Citations omitted). 'Probable means founded on reason and experience which inclines the mind to believe but leaves room for doubt.' *Thorsen v. Sachs Elec. Co.* 52 S.W.3d 611, 620 (Mo.App. 2001) (*Citations omitted*). Such proof is made only by competent and substantial evidence. It may not rest on speculation. *Griggs v. A. B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. 1974). (*Citations omitted*).

Section 287.067.1 and 3 state:

- 1) **“Occupational disease”** is defined as... an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.
- 3) An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The 'prevailing factor' is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

Carpal tunnel syndrome is an occupational disease. *Townser v. First Data Corp.*, 215 S.W.3d 237, (Mo. App. 2007). To prove an occupationally induced disease rather than an ordinary disease of life involves two considerations: (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. *Id* at 241-242. “[T]he claimant must establish, generally through expert testimony, the probability that the occupational disease was caused by conditions in the work place. . . . A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. The opinion may be based on a written report alone.” *Id.* at 242.

Manipulations and flexions, iterated and reiterated within a concentrated time, are unusual conditions, and if they inhere in an employment task being performed by an employee, they expose the employee who performs them to a risk not shared by the public generally and to which the employee would not have been exposed outside of employment, and thus qualify for compensation pursuant to The Law. *Collins v. Neevel Luggage Manufacturing Company*, 481 S.W. 2d 548, 555 (Mo.App. 1972). I find Claimant's job duties as employee in the Tank Weld Department exposed him to a greater risk than the general public in that he performs far more repetitive motions and movements with his wrists than those outside his occupation.

In this case, both doctors agree Claimant has severe carpal tunnel syndrome and recommend surgery to address his symptoms and complaints however, they disagree on causation. I find Dr. Rosenthal's opinion is more credible than Dr. Miller's opinion. While both Dr. Rosenthal and Dr. Miller are qualified orthopedic specialists and both examined and discussed Employee's job demands with him, I find Dr. Rosenthal's opinion to be more credible. I disagree with Dr. Miller's conclusion that the prevailing factor of Claimant's medical condition is not his work duties. Dr. Miller relied on the opinion of an ergonomics report to form his

medical causation opinion. Employer's witnesses Nehrbass and Fife both testified that the Claimant was required to work in approximately 20 different stations over a two to three week period. Nehrbass testified that the report reflected and was based on three of the stations Claimant worked in. I do not find that the ergonomics report fairly and accurately reflects all of Claimant's job duties in the Tank Weld Department. Therefore, I do not find the ergonomics report to be credible. Based on my understanding of the complete job duties required of Claimant, all of which I find to be of a repetitive nature, I find and agree with Dr. Rosenthal's conclusion that work is the prevailing factor to cause Claimant's bilateral carpal tunnel condition.

Based on Claimant's credible testimony that his job duties were repetitive in nature and the medical reports of Dr. Rosenthal, I find Claimant met his burden of proof to show his repetitive work duties were the prevailing factor to cause his bilateral carpal tunnel condition and current need for treatment on all those conditions.

I find that Claimant sustained an occupational disease which arose out of an in the course of his employment and is medically causally related to his work activities. Employer shall provide future medical treatment for his bilateral upper extremity complaints.

This is a temporary award addressing limited issues. Other issues are deferred. The Division of Workers' Compensation retains jurisdiction over the matter until all issues are fully resolved by way of final award or settlement.

Made by: _____
Angie Heffner Robyn
Administrative Law Judge
Division of Workers' Compensation