

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

Injury No.: 08-109416

Employee: Stephanie Patterson
Employer: Aramark Facility Services
Insurer: Indemnity Insurance Company of North America
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find 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 Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Employee, in her Application for Review, argues that the administrative law judge mistakenly identified Dr. Anthony Sudekum as an orthopedic surgeon. We note that the administrative law judge, on page 5 of the Award, identifies Dr. Sudekum as "an orthopedist." Dr. Sudekum identified himself at his deposition as "a hand and upper extremity surgeon." *Transcript*, page 70. Dr. Sudekum's curriculum vitae reveals that Dr. Sudekum is board-certified in both plastic surgery and hand surgery.

In the interest of specificity, and in order to make clear that we understand the qualifications of the medical experts who testified in this matter, we supplement the administrative law judge's findings of fact as follows. We find that Dr. Sudekum is a hand and upper extremity surgeon who is board-certified in both plastic surgery and hand surgery.

Conclusion

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

The award and decision of Administrative Law Judge Margaret D. Landolt, issued November 2, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 11th day of April 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Stephanie Patterson

Injury No.: 08-109416

Dependents: N/A

Employer: Aramark Facility Services

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Indemnity Ins. Co. of North America

Hearing Date: August 13, 2012

Checked by: MDL

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 November 26, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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 alleged she developed radial tunnel syndrome in her right upper extremity as a result of repetitive, arm-intensive work activities.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: 0
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Stephanie Patterson

Injury No.: 08-109416

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$330.00
- 19. Weekly compensation rate: \$220.00/220.00
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable: 0
- 22. Second Injury Fund liability: No
- TOTAL: 0
- 23. Future requirements awarded: None

Said payments to begin and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Stephanie Patterson

Injury No.: 08-109416

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Aramark Facility Services

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

Additional Party: Second Injury Fund

Insurer: Indemnity Ins. Co. of North America

Checked by: MDL

PRELIMINARIES

A hearing was held on August 13, 2012 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Stephanie Patterson ("Claimant") was represented by Mr. D. Andrew Weigley. Aramark Facility Services ("Employer") and its insurer, Indemnity Insurance Company of North America, were represented by Mr. Robert J. Amsler, Jr. Although the Second Injury Fund is a party to this case the parties agreed to leave the claim against the SIF open. Mr. Weigley requested a fee of 25% of Claimant's award.

The parties stipulated that on or about November 26, 2008 Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; the claim was timely filed, Claimant's average weekly wage was \$330.00 which yielded a rate of \$220.00 for both TTD and PPD benefits; and Employer paid \$4,862.54 in medical benefits.

The issues for resolution by hearing are: whether Claimant sustained an accidental injury or occupational disease arising out of and in the course of employment on or about November 26, 2008; medical causation; and whether Employer is liable for future medical treatment for Claimant.

SUMMARY OF EVIDENCE

Claimant is a 47 year old woman who worked for Employer from February 27, 2008 until February 10, 2009. For the first 6 months of her employment Claimant worked as a "floor tech" which involved stripping, waxing, and buffing floors, and cleaning carpet in various campus buildings at Washington University.

In August 2008 Claimant transferred to the housekeeping department where she worked from 11:00 P.M. to 7:00 A.M. Claimant's job was to clean an office building called the Millbrook Building, and a day care center. Claimant worked alone and her job was to pull trash and recycling, mop and vacuum floors, dust, and wipe down doors and walls if needed.

Claimant testified she was assigned to clean the entire Millbrook Building which consists of small office cubicles. Claimant testified she emptied the trash containers into a larger plastic barrel with wheels on the bottom called a brute. Claimant testified she had to leave the Millbrook building to go another building to obtain a brute. According to Claimant, the brute was located in a building across an alley in a different building, and she had to cross a parking lot that had about 14 stairs, and then go through a parking garage and down another set of stairs. After she obtained the brute, Claimant testified she had to carry the brute back to the Millbrook Building by crossing the same parking garage and parking lot, and climbing the stairs while carrying the brute.

Claimant testified once she got back to the Millbrook Building, she used her right arm to lift the waste baskets in each individual office and empty them into the brute. When the bag was full, Claimant testified she took the brute outside, pulled the trash bag out of the brute, and put it into the dumpster. Claimant testified she did that 6 to 7 times a shift. She estimated the bags weighed 25 to 30 pounds.

Claimant testified in November, 2008 she developed a sharp pain in the top part of her right arm which extends from her elbow down to her fingers. She attributes the pain to her job carrying the brute up and down the stairs each night.

Claimant reported the symptoms to Ms. Tate, her supervisor, and Employer referred her to Concentra for medical treatment. Claimant was given light duty work which consisted of cleaning 30 to 40 offices, and she didn't have to carry trash or brutes. Claimant testified she was referred to Dr. Rotman, who ordered nerve conduction studies and an MRI, and she was released to full duty in February 2009. Claimant was terminated 3 days after she was released. Claimant testified her symptoms did not decrease after she was released from treatment.

Claimant testified she currently has pain in her fingers, wrists and the top part of her right arm, and pain from her elbow to her fingers. The pain has become worse since Claimant stopped working.

Ms. Patricia Tate, who is employed by Employer as a supervisor, and supervised Claimant, testified on behalf of Employer. Ms. Tate testified that contrary to Claimant's testimony, there is no need for anyone to carry a brute up or down stairs at Washington University, because there is a brute for Employer's employees to use on every floor, and there are elevators between the floors. Ms. Tate testified Claimant did not have to lift her brute up or down stairs to clean her areas. Ms. Tate evaluated Claimant twice nightly, and she observed Claimant. Claimant never lifted a brute up or down stairs. It was not necessary to lift a brute up or down stairs in order to do her job.

The Day Care Center did not have a brute. Claimant cleaned the various areas in the Day Care Center without a brute. Twice nightly Ms. Tate observed Claimant cleaning the Day Care Center. Ms. Tate described a video tape which was admitted into evidence. The video tape depicts the areas Claimant cleaned in the sequence Claimant was required to clean the building. The video tape depicts the janitor's closet in the Millbrook Building where the brute is stored, and the loading dock area on the back of the building where Claimant took the brute to empty it. The video also depicts the Day Care Center. Ms. Tate testified she never observed Claimant

taking a brute from one building to the next, and Claimant only used the brute in the Millbrook Building, where it was stored in the janitor's closet.

The medical records document that Claimant was referred first to Concentra, where the doctor noted inconsistencies and exaggerated pain reaction. Claimant was then referred to Dr. Rotman, an orthopedist.

Dr. Rotman first saw Claimant on December 29, 2008. Claimant had magnified symptoms. When Claimant came in she would barely move her arm. Claimant was sensitive over the cubital tunnel, but the cubital tunnel tests as well as the carpal tunnel tests were negative. Dr. Rotman did various maneuvers of the wrists looking for common problems such as medial or lateral epicondylitis or radial tunnel, but none of the tests were consistent with any diagnosis. None of the tests he performed were consistent with various areas of pain. Dr. Rotman ordered diagnostic testing.

Claimant returned to Dr. Rotman's office on January 19, 2009 after she had an EMG which was normal. Dr. Rotman then ordered an MRI of her elbow. Claimant returned to Dr. Rotman's office on February 16, for a follow up of her MRI which was completely normal. Claimant had a normal examination and Dr. Rotman discharged Claimant to full duty.

Dr. Anthony Sudekum, an orthopedist, testified on behalf of Claimant. Dr. Sudekum examined Claimant and took a history. Claimant gave a history to Dr. Sudekum that she had to carry brutes up and down 34 stairs two to three times a shift. She told Dr. Sudekum she had to lift the brutes with her hands while going up and down stairs. She also gave a history of carrying trash bags in her hands and carrying them to the dumpster. Based upon his examination of Claimant, Dr. Sudekum felt that her symptoms and history were consistent with a diagnosis of right radial tunnel syndrome and possible right lateral epicondylitis. Dr. Sudekum testified Claimant's work activities carrying brutes for Employer were the primary prevailing cause of her right forearm pain in her diagnosis of radial tunnel syndrome. Dr. Sudekum recommended repeat nerve conduction studies and an EMG. Dr. Sudekum diagnosed her condition as related to repetitive trauma rather than a single incident.

Dr. Rotman testified on behalf of Employer. Dr. Rotman testified he saw Claimant again in October 2011. Dr. Rotman noted that despite the fact Claimant had not been working for a few years she had no relief of pain in her right arm. Dr. Rotman testified Claimant's complaints at that time were pain all the way up to her shoulder, and numbness and tingling in all of her fingers which was not compatible with radial tunnel syndrome. Claimant's pain complaints were inconsistent with the physical findings. Dr. Rotman testified he found no evidence of radial tunnel syndrome. Claimant had normal nerve studies. She had no clinical findings suggestive of radial tunnel syndrome. She did not have the pain complaints or physical findings consistent with radial tunnel syndrome. She had no objective correlation to any of her subjective complaints and especially not radial tunnel. Dr. Rotman testified Claimant does not need any medical treatment at all.

FINDINGS OF FACT AND RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

Claimant failed to meet her burden of proving she sustained an occupational disease arising out of and in the course of employment. Claimant’s assertion that she carried a brute up and down 34 stairs twice a day is not consistent with the evidence in this case. I do not find Claimant’s testimony to be credible, and find the testimony of Ms. Tate to be more credible and consistent with the video tape evidence. Dr. Sudekum based his diagnosis of radial tunnel syndrome on Claimant’s description of her job duties, more particularly of her using her hands to carry the brutes up and down 34 stairs at least twice daily. Because Dr. Sudekum’s opinion is based on Claimant’s description of her job duties, and I do not find her description of her job duties to be credible, I do not find Dr. Sudekum’s opinion to be credible.

I find Dr. Rotman’s opinion to be credible. He did not diagnose a work related injury. Dr. Rotman and the doctor at Concentra both found Claimant’s complaints to be magnified. Claimant’s pain has not subsided, and in fact has worsened since she was discharged from Employer despite the fact that she is no longer working. Objective tests performed failed to reveal any abnormalities.

CONCLUSION

Claimant failed to prove she has a repetitive trauma injury, that the alleged injury arose out of and in the course of employment, or that her work activities are the medical cause of her alleged repetitive trauma injury. Claimant is not entitled to any benefits from Employer. The claim for compensation against Employer, and the Claim against the Second Injury Fund, are denied.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation