

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

Injury No.: 08-054336

Employee: Robert Scola

Employer: Miller Multi Plex

Insurer: Travelers Indemnity Company of America

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 21, 2013, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued October 21, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25<sup>th</sup> day of April 2014.

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

## AWARD

Employee: Robert Scola

Injury No.: 08-054336

Dependents: N/A

Employer: Miller Multi Plex

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

Additional Party: None

Insurer: Travelers Indemnity Co

Hearing Date: July 18, 2013

Checked by: CTL

### 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 June 30, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis
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: Claimant alleges he injured his neck due to repetitive flipping of his welding helmet.
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 neck and body as a whole
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? None

Employee: Robert Scola

Injury No.: 08-054336

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: n/a
- 19. Weekly compensation rate: n/a
- 20. Method wages computation: n/a

**COMPENSATION PAYABLE**

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: NONE

23. Future requirements awarded: None

Said payments to begin immediately 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: Robert Scola

Injury No.: 08-054336

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Miller Multi Plex

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

Additional Party: None

Insurer: Travelers

Checked by: CTL

A hearing was held on the above captioned matter July 18, 2013. Robert Scola (Claimant) was represented by attorney Jennifer Finley. Miller Multi Plex (Employer) was represented by attorney Rob Frayne.

Claimant alleges he sustained an injury by occupational disease on or about June 30, 2008. Employer denies liability and Claimant seeks an award for medical treatment and TTD benefits.

### **STIPULATIONS**

The parties stipulated to the following:

1. Claimant and Employer were operating under the provisions of the Missouri Workers' Compensation law on the alleged date of injury.
2. The Claim for Compensation was timely filed and Employer received proper notice.
3. Venue is proper in St. Louis.
4. Employer's liability was fully insured by Travelers.

### **ISSUES**

The parties stipulated the issues to be resolved are as follows:

1. Occupational disease
2. Medical causation
3. Future medical treatment
4. Rate
5. TTD

## FINDINGS OF FACT

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 52 year-old male who earned a certificate in welding after high school graduation. He worked as a professional welder for approximately 24 years. He began working as a welder for Employer in 2004. His duties included welding, grinding, polishing, lifting, supervising, and maintaining machines. He wore a welding helmet, leather pants, Kevlar gloves, safety glasses, hearing protection, and steel toe boots. He used a variety of tools, and often held them overhead or up and away from his body. Claimant testified he averaged 10-20 hours of overtime each week, and his wages fluctuated between \$886.66 and \$1,128.40 per week.
2. Claimant testified his hands were always full with either tools or metal objects, so he forcefully nodded his head to shut the eye-shield of his welding helmet. He flexed his head in this manner between 25 to 500 times a day, depending on his tasks each day. As he welded, he continuously changed the position of his head. When he finished welding, he either flexed his head backwards or used his hand to open the shield covering his face.
3. Claimant testified he had no neck or upper extremity pain or injuries prior to 2008. In early 2008, he developed left hand pain and numbness, and reported this to Employer. In June 2008, he developed left elbow pain and tingling, and went to St. Anthony's Urgent Care. The records indicate he complained of left elbow pain on and off for several years, but worse over the last three days, with no history of injury or trauma. He was given a cortisone injection and diagnosed with bilateral carpal tunnel syndrome. The doctor recommended Claimant follow up with a neurologist.
4. In September 2008, Employer sent Claimant to Dr. Hagan. Claimant had complaints of numbness in his hands, and Dr. Hagan diagnosed work-related bilateral carpal tunnel syndrome.
5. Claimant treated next with Dr. Howard. Based on Claimant's symptoms, Dr. Howard diagnosed work-related bilateral carpal and cubital tunnel syndromes. He sent Claimant for nerve conduction studies, which showed borderline cubital tunnel syndrome and no carpal tunnel syndrome. Dr. Howard saw Claimant again after the studies, and noted Claimant had significant pain radiating up his arm. He ordered cervical x-rays in December 2008, which showed Claimant had significant degenerative disc disease at C5-6. Dr. Howard opined Claimant had non-work related cervical radiculopathy and cervical degenerative disc disease. He opined Claimant had reached MMI for his wrist complaints, and recommended Claimant see his private doctor for his neck condition.
6. Claimant returned to St. Anthony's Urgent Care for neck complaints with no specific injury. X-rays showed osteophytes and hypertrophic changes.

7. Claimant continued to work until December 23, 2008. He was terminated in January 2009, and was awarded Social Security Disability benefits in September 2011.
8. Claimant began seeing Dr. Garcia for neck and left arm pain in January 2009. Dr. Garcia ordered a CT scan which showed degenerative disc disease at C6-7 with spurring, annular expansion and mild encroachment of the left neural foramen, as well as disc expansion at C5-6. Dr. Garcia ordered an MRI to further evaluate Claimant's cervical spine. This showed mild degenerative disc disease at C2-3, C3-4, and C4-5; bulging at C5-6; and a protrusion at C6-7. He diagnosed Claimant with osteoarthritis of the neck, spondylosis, degenerative disc disease, and disc expansion. He opined part of this may be work related, is likely because of wear and tear, but there is no way to know for sure. After physical therapy did not relieve his symptoms, Dr. Garcia referred Claimant to Dr. Levy.
9. Claimant began seeing Dr. Levy in early 2009, and in June 2009 he performed an anterior discectomy and fusion at C5-6 and C6-7. Claimant's symptoms improved and Dr. Levy noted Claimant had some residual left arm radiation that was not constant. He released Claimant to return to work in January 2010 with a follow-up appointment in January 2011.
10. Claimant continued to see Dr. Garcia for pain medications throughout 2010. His neck and left arm complaints continued. A January 2011 CT Scan showed possible incomplete fusion, and Dr. Garcia recommended Claimant return to Dr. Levy.
11. In early 2013, Dr. Sprich reviewed recent diagnostic studies and opined the instrumentation or hardware from the 2009 fusion was intact, but Claimant may need a posterior stabilization and fixation.
12. Claimant continues to have daily neck pain which increases with activity. The pain radiates into his arms. He is only able to walk one block, and wakes up frequently at night due to pain. He can do some household chores, but cannot push a vacuum or lawn mower. Claimant typically reads magazines and watches television throughout most of the day.
13. Claimant's expert, Dr. Volarich, examined Claimant a number of times and issued multiple reports. He diagnosed cervical left arm radiculopathy secondary to aggravation of disc bulging at C6-7 and C5-6, as well as aggravation of underlying cervical spondylosis. He opined Claimant's repetitive flipping of his helmet and other work activities was the prevailing factor in causing the neck condition, and opined Claimant needs additional treatment.
14. Dr. Volarich testified the hardware did not fail, but the fusion was not solid, and Claimant needed a posterior fusion. He testified Claimant could not work as a heavy laborer, but he did not evaluate whether Claimant could perform lighter work. Dr. Volarich testified in his deposition that the work activities caused the bulge at C5-6, but it was next to impossible to say whether the C6-7 disc problem was caused by the work and it was more likely aggravated by the work activities. He agreed the degenerative disc disease and

spondylosis were not caused by the work. He also testified Claimant is a smoker, and if he continues to smoke, Dr. Volarich is not sure a surgeon would want to operate again.

15. Employer's expert, Dr. Howard, originally diagnosed work related bilateral carpal and cubital tunnel syndromes. He testified the C6 pattern numbness often overlaps carpal tunnel symptoms, so it is not uncommon to confuse the two diagnoses. The studies did not show carpal tunnel syndrome, and other diagnostic studies done in 2008 showed Claimant had significant degenerative disc disease in the cervical spine. This caused a collapse of the disc space and nerve root encroachment. He noted there is no history of an injury, and this condition is a common part of aging. He concluded Claimant's neck problems were caused by a degenerative condition. The work and flipping of his helmet may have aggravated his symptoms, but they did not cause them. He opined Claimant had no permanent partial disability.

## **RULINGS OF LAW**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

### **1. Claimant did not sustain a compensable occupational disease.**

The medical experts agree the employment aggravated Claimant's underlying degenerative disc disease. Claimant's expert, Dr. Volarich, opined Claimant has cervical radiculopathy secondary to aggravation of a bulging disc and aggravation of underlying spondylosis. Employer's expert, Dr. Howard diagnosed non-work related cervical radiculopathy and cervical degenerative disc disease. He testified this degenerative condition is a natural part of aging and caused Claimant's symptoms.

Prior to the 2005 amendments to Chapter 287, case law established aggravations of pre-existing medical conditions were generally compensable.

Section 287.067 was amended in 2005 and provides for the compensability of occupational diseases and occupational diseases due to repetitive motion "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."

While flipping his helmet and other repetitive work duties may have contributed to his symptoms, I find it was not the prevailing factor in causing his condition. I find the overwhelming weight of the medical evidence establishes the prevailing factor in causing his medical condition and disability was the degenerative condition in his neck.

**CONCLUSION**

Claimant did not sustain a compensable occupational disease. All remaining issues are moot.

Date: \_\_\_\_\_

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

CORNELIUS T. LANE  
*Administrative Law Judge*  
*Division of Workers' Compensation*