

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

Injury No.: 02-148306

Employee: Mark Serati
Employer: Associated Equipment Corporation
Insurer: Virginia Surety Company
Date of Accident: Alleged December 23, 2002
Place and County of Accident: Alleged City of St. Louis, 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 April 4, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued April 4, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 8th day of September 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Dependents: N/A
Employer: Associated Equipment Corporation
Additional Party: N/A
Insurer: Virginia Surety Company
Hearing Date: February 9, 15, 2006

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

Checked by: EJK

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: December 23, 2002 (alleged)
5. State location where accident occurred or occupational disease was contracted: City of 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:
The employee alleged that his work as a quality control manager exposed him to toxic levels of benzene and xylene compounds.
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: Brain, lungs, GI tract, and psychiatric (alleged)
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: Mark Serati

Injury No.: 02-148306

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$768.65
19. Weekly compensation rate: \$512.50/\$340.12
20. Method wages computation: By agreement

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 N/A 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:	Mark Serati	Injury No.:	02-148306
Dependents:	N/A		
Employer:	Associated Equipment Corporation		
Additional Party:	N/A		
Insurer:	Virginia Surety Company		

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

Checked by: EJK

This workers' compensation case raises several issues arising out of an alleged work related injury in which the claimant, a quality control manager, alleged that his employment exposed him to toxic levels of benzene and xylene compounds. The issues for determination are (1) Accident or occupational disease arising out of and in the course of employment, (2) Medical causation, (3) Liability for Past Medical Expenses, (4) Future medical care, (5) Temporary Disability, and (6) Permanent disability. The evidence compels an award for the defense. At the hearing, the claimant, Ronnie R. Tate, Kevin E. Tate, Wayne Copeland, and William C. Cottle, Jr., the employer's chairman and Chief Operating Officer, testified in person. Jurisdiction in the forum is authorized under Sections 287.110, 287.450, and 287.460, RSMo 2000, because the claimant alleged that he suffered an exposure to toxic chemicals from his work in Missouri.

SUMMARY OF FACTS

The claimant testified that he suffered from toxic exposure to benzene and xylene compounds during his work as a quality control manager for this employer. A varnish used by the employer contained the chemicals. He testified that the ventilation in the working area was slowly manipulated over the years between 1996 and 2003 by adding fans and relocating and closing doors, back drafting the chemicals in controlled levels. The claimant also testified that the atmospheric conditions in the area contain the same chemicals also in a toxic dosage. He testified that spectrometers, gas chromatography, and testimony of biomedical scientists are required to prove the presence of the chemicals and the extent of the dosage. The claimant also testified that he smokes tobacco products, which contain benzene.

The claimant testified that the Social Security Administration awarded him disability benefits as of October 15, 2004, but the claimant did not know the reason the Social Security Administration awarded him disability benefits. He testified that he did not know his health conditions except that he claimed that he suffered from damage to his digestive track, kidneys, liver, sleep apnea, diabetes, diverticulosis, and post-traumatic stress disorder. He also testified that his appendix is mysteriously missing. In his brief, he stated:

I have complex PTSD, the intended result of this harassment and attempted murder, and as such am not fully functional. I live in subconscious fear every minute of the day. ...

My physical ailments such as steatohepatitis (NASH), blood disorders, bleeding rectum, respiratory disorders (sleep apnea, lung granuloma, Barrett's esophagus, Shotky's ring, stomach polyps, bladder tumor – all before smoking), missing appendix, abdominal cramps and a four month period of irritable bowel syndrome, eye twitching, bone pain, a one year period of severe back pain (lesions, bone marrow depression, or kidneys), unexplained conjunctivitis while working there (xylene), bleeding toxic rash for six years (left after six months of leaving exposure), chemical pneumonia, etc. ... are all primary and secondary to this chemical exposure. ... To this day, I do not know the extent of injury or reasons for my symptoms. See claimant's brief.

He testified that his medical records were unobtainable and that no medical providers would treat him for his various conditions. He declined medical care from the employer. The employer discharged the claimant from employment as part of a reduction in force on April 2, 2003. Thereafter, the claimant did telephone soliciting for two months beginning in August 2003, but stopped working after he developed diabetes. He testified that he received a better job offer from Lear Corporation and worked for three months as a quality control supervisor when a union representative assaulted him. His employer terminated his contract and instructed him not to return. In the Fall of 2004, the claimant worked as a caseworker for the Missouri Division of Family Services. He testified that his employer discharged him after he was framed for inappropriate behavior. He testified that he is now afraid to work and that the government will not allow him to work, because he would be killed or harassed if he worked. He testified that he did not know if an employer would hire him, that he is currently disabled, but does not know why. He testified that he suffered posttraumatic stress disorder in February 2003, when he discovered "what was going on" at work.

He requested a "Court appointed physician's examination and history review," a continuance until his medical symptoms and medical history are diagnosed, lifetime medical, both mental and physical, relating to any questionable aspect of intentional poisoning, medical reimbursement since 1996, and full pay and back pay.

Mr. Cottle, the employer's chairman and Chief Operating Officer, denied the claimant's allegations.

OCCUPATIONAL DISEASE

An informative legal analysis of occupational diseases pursuant to Missouri law is found in Kelley v. Banta and Stude Const. Co., Inc., 1 S.W.3d 43 (Mo. App. E.D. 1999), from which the following legal principles are cited:

In order to support a finding of occupational disease, employee must provide substantial and competent evidence that he/she has contracted an occupationally induced disease rather than an ordinary disease of life. The inquiry 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.

Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. Claimant must prove "a direct causal connection between the conditions under which the work is performed and the occupational disease." However, such conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. 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 doctor's written report alone. Where the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is the most credible. Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does

not consider credible and accept as true the contrary testimony given by the other litigant's expert.

In addition, the claimant bears the burden of proving that not only did an accident occur, but it resulted in injury to him. Thorsen v. Sachs Electric Co., 52 S.W.3d 611, 621 (Mo.App. W.D. 2001); Silman v. William Montgomery & Associates, 891 S.W.2d 173, 175 (Mo.App. E.D. 1995); McGrath v. Satellite Sprinkler Systems, 877 S.W.2d 704, 708 (Mo.App. E.D. 1994). For an injury to be compensable, the evidence must establish a causal connection between the accident and the injury. Silman, supra. The testimony of a claimant or other lay witness can constitute substantial evidence of the nature, cause, and extent of disability when the facts fall within the realm of lay understanding. Id. Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. McGrath, supra. Where the condition presented is a sophisticated injury that requires surgical intervention or other highly scientific technique for diagnosis, and particularly where there is a serious question of preexisting disability and its extent, the proof of causation is not within the realm of lay understanding nor -- in the absence of expert opinion -- is the finding of causation within the competency of the administrative tribunal. Silman, supra at 175, 176. This requires claimant's medical expert to establish the probability claimant's injuries were caused by the work accident. McGrath, supra. The ultimate importance of the expert testimony is to be determined from the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. Id.

In this case, the claimant testified that he suffered from toxic exposure to benzene and xylene compounds during his work as a quality control manager for this employer. . Where the condition presented is a sophisticated injury that requires surgical intervention or other highly scientific technique for diagnosis, and particularly where there is a serious question of preexisting disability and its extent, the proof of causation is not within the realm of lay understanding nor -- in the absence of expert opinion -- is the finding of causation within the competency of the administrative tribunal. Silman, supra at 175, 176. The claimant delineated a complicated and complex series of disorders that afflict him. Given the complicated and complex nature of the conditions described by the claimant, the law compels expert opinion evidence to establish a prima facie case.

Unfortunately, the claimant testified that his medical records were unobtainable and that no medical providers would treat him for his various conditions. He declined medical care from the employer. He also testified that the Social Security Administration awarded him disability benefits as of October 15, 2004, but the claimant did not know the reason the Social Security Administration awarded him disability benefits. Since the claimant's medical records are not available and the conditions alleged by the claimant are not susceptible of lay determination, the claimant did not establish a prima facie case without the medical records and expert medical opinion evidence to prove the relationship between the chemical exposure and the complex and complicated disorders described by the claimant. The usual method of proof is to offer medical records and expert medical opinions. In essence, the claimant testified that he has the conditions based on his own opinion and hearsay from unknown medical providers. Therefore, the claimant has not established "a direct causal connection between the conditions under which the work is performed and the occupational disease."

The claimant offered extensive testimony regarding other actions that may be involved in the facts presented, such as criminal actions, tort actions, and government corruption. However, the evidence presented does not present a prima facie case for recovery under the Missouri Workers' Compensation statute. Therefore, the claimant's claim is denied.

LIABILITY FOR PAST MEDICAL EXPENSES

The statutory duty for the employer is to provide such medical, surgical, chiropractic, and hospital treatment ... as may be reasonably required after the injury. Section 287.140.1, RSMo 1994.

The intent of the statute is obvious. An employer is charged with the duty of providing the injured employee with medical care, but the employer is given control over the selection of a medical provider. It is only when the employer fails to do so that the employee is free to pick his own provider and assess those against his employer. However, the employer is held liable for medical treatment procured by the employee only when the employer has notice that the employee needs treatment, or a demand is made on the employer to furnish medical treatment, and the employer refuses or fails to provide the needed treatment. Blackwell v. Puritan-Bennett Corp., 901 S.W.2d 81, 85 (Mo.App. E.D. 1995).

The method of proving medical bills was set forth in Martin v. Mid-America Farmland, Inc., 769 S.W.2d 105 (Mo. banc 1989). In that case, the Missouri Supreme Court ordered that unpaid medical bills incurred by the claimant be paid by the employer where the claimant testified that her visits to the hospital and various doctors were the product of her fall and

that the bills she received were the result of those visits.

We believe that when such testimony accompanies the bills, which the employee identifies as being related to and are the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records and evidence, a sufficient, factual basis exists for the Commission to award compensation. The employer, may, of course, challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question. *Id.* at 111, 112.

The claimant offered no medical bills or other evidence that he incurred any medical expenses as a result of the alleged occurrence and no reimbursement for medical expenses is awarded.

FUTURE MEDICAL CARE

Awards may and often do include an allowance for the expense of reasonable future medical care and treatment. *Rana v. Landstar TLC*, 46 S.W.3d 614, 622 (Mo. App. W.D. 2001). Future medical care and treatment are provided for in Section 287.140.1, which states:

In addition to all other compensation, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

This statute has been interpreted to mean that a claimant is entitled to compensation for care and treatment "which gives comfort [relieves] even though restoration to soundness [cure] is beyond avail." *Id.* To merit an award for future medical care, there must be evidence of a "subsistent condition of injury and a need of treatment proven beyond speculation by competent and substantial evidence...and a causal flow between the original and compensable injury and the subsistent condition." *Williams v. A.B. Chance Company*, 676 S.W.2d 1, 4 (Mo.App. 1984). The mere possibility of need of future care does not constitute substantial evidence to support an award of future care. See *Modlin v. Sun Mark, Inc.*, 699 S.W.2d 5, 7 (Mo.App. 1985).

In his brief the claimant requested ...

... all future medical costs for life for treatment in Canada, psychological and physical, starting with full medical and diagnostic exams. I am requesting all travel expenses for psychological, counseling to and from Canada as may be required. Minor illnesses may be treated in the United States, at my discretion. See claimant's brief.

However, the claimant did not offer medical records or expert opinion evidence proving that he has a subsistent condition of injury and a need of treatment proven beyond speculation by competent and substantial evidence...and a causal flow between the original and compensable injury and the subsistent condition. The only medical record in evidence is dated March 3, 2003, and suggests that the claimant's condition is good. See Exhibit C. The record shows no recommendation for additional medical treatment, beyond a diagnostic computer tomography test, or that the recommended test was related to the claimant's work.

TEMPORARY DISABILITY

Compensation must be paid to the injured employee during the continuance of temporary disability but not more than 400 weeks. Section 287.170, RSMo 1994. Temporary total disability benefits are intended to cover healing periods and are unwarranted beyond the point at which the employee is capable of returning to work. *Brookman v. Henry Transp.*, 924 S.W.2d 286, 291 (Mo.App. E.D. 1996). Temporary awards are not intended to compensate the Employee after the condition has reached the point where further progress is not expected. *Id.*

In this case, the employer discharged the claimant from employment as part of a reduction in force on April 2, 2003. Thereafter, the claimant did telephone soliciting for two months beginning in August 2003, but stopped working after he developed diabetes. He testified that he received a better job offer from Lear Corporation and worked for three months as a quality control supervisor when a union representative assaulted him. His employer terminated his contract and instructed him not to return. In the Fall of 2004, the claimant worked as a caseworker for the Missouri Division of Family Services. He testified that his employer discharged him after he was framed for inappropriate behavior. He testified that he is now afraid to work and that the government will not allow him to work, because he would be killed or harassed if he worked. He testified that he did not know if an employer would hire him, that he is currently disabled, but does not know why. He testified that he suffered posttraumatic stress disorder in February 2003, when he discovered "what was going on" at work.

The claimant has not produced evidence to prove that he is unemployable in the open labor market, that he is or was undergoing a healing period, which of his numerous medical conditions allegedly made him unemployable in the open labor market, or which of his numerous medical conditions resulted from his work for this employer. Therefore, the claim for temporary disability benefits is denied.

PERMANENT DISABILITY

Workers' compensation awards for permanent partial disability are authorized pursuant to section 287.190. "The reason for [an] award of permanent partial disability benefits is to compensate an injured party for lost earnings." Rana v. Landstar TLC, 46 S.W.3d 614, 626 (Mo. App. W.D. 2001). The amount of compensation to be awarded for a PPD is determined pursuant to the "SCHEDULE OF LOSSES" found in section 287.190.1. "Permanent partial disability" is defined in section 287.190.6 as being permanent in nature and partial in degree.

In a workers' compensation case, in which the employee is seeking benefits for PPD, the employee has the burden of proving, inter alia, that his or her work-related injury caused the disability claimed. Rana, 46 S.W.3d at 629. Missouri courts have routinely required that the permanent nature of an injury be shown to a reasonable certainty, and that such proof may not rest on surmise and speculation. Sanders v. St. Clair Corp., 943 S.W.2d 12, 16 (Mo.App. S.D. 1997). A disability is "permanent" if "shown to be of indefinite duration in recovery or substantial improvement is not expected." Tiller v. 166 Auto Auction, 941 S.W.2d 863, 865 (Mo.App. S.D. 1997).

The claimant testified that he did not know why he was disabled and that he did not know if his disabilities were permanent. The claimant did not offer proof by way of medical records or expert opinion evidence of the nature of the nature or extent of any of the disabilities that he claims resulted from the alleged occurrence to a reasonable medical certainty. Therefore, the claim is denied.

Date: _____

Made by: _____

EDWIN J. KOHNER
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation

Employee: Mark Serati

Injury No.: 02-148306