

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

Injury No.: 10-029691

Employee: Candy Suggs
Employer: Grand River Healthcare
Insurer: Missouri Nursing Home Insurance Trust
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 January 4, 2012.

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 Chief Administrative Law Judge Nelson G. Allen, issued January 4, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24th day of May 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Candy Suggs

Injury No: 10-029691

Employer: Grand River Healthcare

Additional Party: Treasurer of the State of Missouri as Custodian
Of the Second Injury Fund

Insurer: Missouri Nursing Home Insurance Trust

Hearing Date: November 14, 2011

Checked by: NGA

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: March 21, 2010.
5. State location where accident occurred or occupational disease was contracted: Livingston 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: Claimant was exposed to repetitive use of both wrists and elbows as a certified Nurse's Aide at a Nursing Home.
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: Both elbows and both wrists.

14. Compensation paid to date for temporary disability: None.
15. Value necessary medical aid paid to date by employer/insurer? None.
16. Value necessary medical aid not furnished by employer/insurer? Not determined at this time.
17. Employee's average weekly wages: N/A
18. Weekly compensation rate: \$200.00/200.00.
19. Method wages computation: By stipulation.

COMPENSATION PAYABLE

20. Amount of compensation payable:

Unpaid medical expenses:

weeks of temporary total disability (or temporary partial disability)

TOTAL:

Each of said payments to begin one day after receipt of this Award and be subject to modification and review as provided by law.

This Award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

The compensation awarded to the claimant shall be subject to a lien in the amount of **25%** of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Zachary Kolich.

The employer and insurer are hereby ordered and directed to provide claimant with such medical treatment by as may be reasonable and necessary to cure her from the effects of her repetitive injury to both her wrists and elbows.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Candy Suggs

Injury No: 10-029691

Dependents:

Employer: Grand River Healthcare

Additional Party: Treasurer of the State of Missouri as Custodian of the
Second Injury Fund.

Insurer: Missouri Nursing Home Insurance Trust

Checked by: NGA

Prior to presenting evidence, the parties stipulated that the issues to be determined by this hearing are:

1. Whether the claimant sustained an accident or occupational disease arising out of and in the course of her employment.
2. Was the Claimant's accident or occupational disease the prevailing factor in causing the resulting medical condition and disability.

The parties also agreed that on March 21, 2010 Candy Suggs was an employee of Grand River Healthcare. The employer was operating under and subject to the provisions of the Missouri Workers' Compensation law and was fully insured by Missouri Nursing Home Insurance Trust.

The parties further agreed that the employer had proper notice of claimant's injury and that a timely Claim for Compensation has been filed.

The parties further agreed that the correct rate of compensation is \$200.00 per week for both temporary total disability and permanent partial disability. No medical aid or compensation has been furnished. The claimant is not asking for past medical aid or compensation at this time.

Exhibits 1 through 5 were marked Joint Exhibits and admitted into evidence.

Candy Suggs testified in person. She is 33-years old. I find her to be a believable witness.

Pursuant to Section 287.067.3 RSMo., injuries due to repetitive motion are recognized as occupational diseases. Such occupational diseases may be found 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.

Ms. Suggs began working for Grand River Healthcare on January 26, 2009. She was hired as a full-time Certified Nurse's Assistant and routinely worked 40 or more hours per week until August of 2009 when she applied to the Nursing Program at North Central Missouri College. Ms. Suggs remained actively employed by Grand River Healthcare as a CNA until approximately March 21, 2010. At that time, Ms. Suggs began receiving the protective benefits of the Family Medical Leave Act until she was ultimately terminated on or about June 26, 2010. Ms. Suggs was employed as and performed the duties of a Certified Nurse's Assistant throughout the entire duration of her employment with Grand River Healthcare.

As a Certified Nurse's Assistant, Ms. Suggs was expected to provide a variety of assistive services for the residents of Grand River Healthcare. Ms. Suggs testified that her job duties on a daily basis required her to arrive early in the morning and begin preparing 15 to 20 residents for their morning breakfast. This included changing soiled bed linens while the resident remained in the hospital bed by physically manipulating the resident's body and removing, and then replacing, the bed linens, one corner at a time. Ms. Suggs was then responsible for changing each resident's clothing, lifting each resident out of bed, and moving each resident into a wheelchair. Each resident was then taken to the dining hall where Ms. Suggs was responsible for distributing meals and helping feed those residents who required such assistance.

After breakfast was completed, Ms. Suggs would return the residents to their rooms, when she would either return each resident to his or her bed or further assist those residents who required a shower. This entailed removing the resident's clothing, moving the resident from the wheelchair to the shower, and bathing the individual. After showering, Ms. Suggs would re-clothe the resident and return him or her to the hospital bed. This entire process would then be repeated over the lunch hour.

Ms. Suggs testified that, although she was not required to provide a shower for every resident after each breakfast and lunch, she was expected to have each resident bathed a minimum of two times per week, which required her to rotate the bathing schedule and forced her to assist with the bathing of at least one individual resident after almost every breakfast and lunch. Ms. Suggs also testified that she employed the use of a Hoyer Lift and a Gait Belt to assist with the movement of residents in and out of their hospital beds when necessary or required. Ms. Suggs testimony clearly establishes a lengthy work history and exposure to extensive repetitive and forceful activities with both of her upper extremities.

Ms. Suggs testimony was also clear and uncontroverted that she has no history of prior problems, symptoms or complaints to her bilateral upper extremities before she began working for Grand River Healthcare. She confirmed that since the onset of her conditions, she has had no other jobs, hobbies or activities that have complicated or caused her symptoms to become permanently worse.

Ms. Suggs was clear and straight forward regarding the unrelated personal injury she sustained to her left forearm following a fall off a step on or about September 19, 2009. Treatment was brief and x-rays revealed no evidence of fracture. This event resulted in nothing more than a contusion that had all but resolved itself by the time she was subsequently seen for follow-up on September 23, 2009. Ms. Suggs testified that she had no residual problems or complaints after she was released for the contusion and her current symptoms, pain and complaints are not related to the September 19, 2009 accident.

Around January, 2010, Ms. Suggs began noticing symptoms in her bilateral upper extremities. Again, this is the first indication of any physical problems, symptoms or complaints to her bilateral upper extremities. She testified that she began noticing pain, numbness, tingling, and swelling in her bilateral hands. She had loss of strength in both upper extremities, along with difficulty gripping and grasping small objects. She also testified that she dropped things more easily. She further testified that her symptoms awakened her at night. Ms. Suggs timely informed her supervisor of her problems and was simply told to keep her employer updated if she sought medical care and how her care was progressing. She was not requested to complete any paperwork, nor was she provided with assistance through the Workers' Compensation system or provided authorized medical attention.

According to the medical records contained in the Exhibits submitted, Ms. Suggs was first treated for her bilateral upper extremities at the Hamilton Medical Clinic by Dorothy Milburn, FNP, on or about January 12, 2010. At that time, Ms. Suggs was complaining of pain in her bilateral wrists, along with an unrelated ear infection. During that initial visit, Ms. Suggs related that she did a lot of lifting with both her hands at work. She also stated that her fingers would go numb, tingle and swell.

On or about February 9, 2010, Ms. Suggs underwent electrodiagnostic studies. An EMG was performed by Dr. Sherma at the Cameron Regional Medical Center. The nerve conduction study showed cubital tunnel syndrome of compressive ulnar nerve neuropathy across both elbows and mild carpal tunnel syndrome of compressive median nerve neuropathy at the left wrist.

Ms. Suggs returned to the Hamilton Medical Clinic on or about February 12, 2010. She was ultimately evaluated by Dr. James Pemberton at the Hedrick Medical Center on February 24, 2010, for a surgical consultation. Dr. Pemberton noted the positive electrodiagnostic study findings and the fact that Ms. Suggs does a lot of repetitive lifting of residents. Dr. Pemberton diagnosed Ms. Suggs as suffering from bilateral carpal tunnel syndrome and bilateral tardy ulnar nerve syndrome. She was instructed to continue using volar splints and was given a prescription for bilateral elbow pads. No further treatment was issued or prescribed at that time.

Ms. Suggs again saw Dr. Pemberton on or about April 7, 2010, where he noted that, "although she has been wearing her splints, her hands have gotten progressively worse." He further noted that she cannot hold anything for a prolonged period of time and that she was worried about dropping residents. Dr. Pemberton again diagnosed Ms. Suggs as suffering from bilateral carpal tunnel syndrome and recommended that she undergo surgical release of the right carpal tunnel as

soon as possible. No further treatment was issued or prescribed at that time. Ms. Suggs has not returned to see Dr. Pemberton since this appointment.

Instead, Grand River Healthcare and its Workers' Compensation insurance carrier authorized Ms. Suggs for an independent medical examination with Dr. Thomas DiStefano. This took place on or about May 21, 2010. After noting the positive electrodiagnostic study and eliciting various and multiple positive clinical studies bilaterally, Dr. DiStefano acknowledged the previous diagnosis of bilateral carpal tunnel and cubital tunnel syndrome. Dr. DiStefano said he did not believe Ms. Suggs' work at Grand River Healthcare as a CNA was the prevailing cause of her current condition.

Of note is the fact that Dr. DiStefano based his opinion on the mistaken understanding that Ms. Suggs was working in the capacity of a CNA for eight or nine months. In fact, Ms. Suggs had worked for Grand River Healthcare for approximately one and one-half years. More specifically, she had worked for this employer as a CNA for approximately one year before she even began noticing symptoms in her bilateral upper extremities. However, based on Dr. DiStefano's findings, Ms. Suggs Workers' Compensation claim was denied and she was not provided any further medical treatment.

Ms. Suggs' condition did not improve. She was evaluated by Dr. James A. Stuckmeyer on or about June 29, 2011. Dr. Stuckmeyer confirmed the diagnosis of bilateral carpal tunnel and bilateral cubital tunnel. He also opined that Ms. Suggs has developed bilateral Guyon's canal entrapment of the ulnar nerve as well as bilateral medial epicondylitis. Additionally, Dr. Stuckmeyer believes that the repetitive nature of Ms. Suggs' occupational duties at Grand River Healthcare was the prevailing factor in her development of these diseases. Dr. Stuckmeyer recommended repeating the electrodiagnostic studies with special attention to be paid to the ulnar nerve at the cubital tunnel and Guyon's canal bilaterally, as well as to further address the median nerve entrapment at the bilateral wrists. Dr. Stuckmeyer indicates that Ms. Suggs would benefit from a referral to an upper extremity specialist for consideration of surgical intervention and a local steroid injection to address the medial epicondylar symptoms and tennis elbow straps.

I believe Dr. Stuckmeyer. I find that the claimant has suffered an injury to her wrists and elbows. The prevailing factor is the cause of her injury was her exposure to repetitive use of both her wrists and elbows at her employment at Grand River Healthcare.

I order and direct the employer to provide the claimant with such medical treatment as may be reasonable and necessary to cure her from the effects of her repetitive injury to both her wrists and elbows.

Made by: /s/ Nelson G. Allen
Nelson G. Allen,
Chief Administrative Law Judge
Division of Workers' Compensation