

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

Injury No.: 02-157785

Employee: Carl Sullivan, deceased

Claimant: Diane Sullivan, widow

Employer: Holt House Construction

Insurer: Bituminous Casualty

Date of Accident: December 20, 2002

Place and County of Accident: Belton, 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 Administrative Law Judge Lisa Meiners except as to the handwritten date of April 16, 2006 appearing on page 6 of the award. The award and decision was issued April 16, 2007, as reflected on the transmittal letter served with the award. The April 16, 2007, award is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 5th day of October 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Carl Sullivan

Injury No. 02-157785

Dependents: Diane Sullivan

Employers: Holt House Construction

Insurers: Bituminous Casualty

Additional Party: N/A

Hearing Date: March 14, 2007

Checked by: LM/cg

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: December 20, 2002.
5. State location where accident occurred or occupational disease was contracted: Belton, 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: The Employee injured right shoulder pulling out a fence post while in the course and scope of his employment with Holt House Construction.
12. Did accident or occupational disease cause death? No. Date of death? November 16, 2003 from unrelated causes.
13. Part(s) of body injured by accident or occupational disease: right shoulder.
14. Nature and extent of any permanent disability: 25 percent of the right shoulder.
15. Compensation paid to-date for temporary disability: \$3,246.60.
16. Value necessary medical aid paid to date by employer/insurer? \$21,638.27.
17. Value necessary medical aid not furnished by employer/insurer? 0
18. Employee's average weekly wages: Maximum.
19. Weekly compensation rate: \$649.32/\$340.12.
20. Method wages computation: By stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable:
58 weeks for permanent partial disability from employer.

22. Second Injury Fund liability: N/A

TOTAL: \$19,726.96

23. Future requirements awarded: N/A

Said payments to begin upon receipt of Award 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 25 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the Claimant: Mr. Bill Spooner.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Carl Sullivan

Injury No: 02-157785

Dependents: Diane Sullivan

Employers: Holt House Construction

Insurers: Bituminous Casualty

Additional Party: N/A

Hearing Date: March 14, 2007

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The parties appeared for hearing on March 14, 2007. The employee, Carl Sullivan, is deceased and from hereinafter, Diane Sullivan, employee's wife since 1992, is now referred to as Claimant. Diane Sullivan was represented by Bill Spooner. The employer, Holt House Construction, and insurer, Bituminous Casualty Corporation, is represented by Wilson Stafford. The Second Injury Fund and Claimant agreed to bifurcate the hearing.

STIPULATIONS

The parties stipulated that:

- 1) The jurisdiction was Belton, Missouri;
- 2) There was an Employee/Employer relationship;
- 3) The compensation rates were \$649.32/\$340.12;
- 4) The Employer had paid five weeks of temporary total disability benefits from April 14, 2003 to May 18, 2003, for an amount of \$3,246.60;
- 5) The Employer also paid medical benefits in the amount of \$21,638.27.

ISSUES

The issues to resolve by this hearing are:

- 1) Whether an accident occurred on December 20, 2002;
- 2) Medical causation;
- 3) Whether Carl Sullivan sustained any disability, and if so, the nature and extent of that disability.

As noted above, Carl Sullivan died from an unrelated cause on November 16, 2003, after reaching maximum medical improvement of his right shoulder. As a result, the Claimant in this case is Mr. Sullivan's wife, Diane Sullivan.

The Employer raises the issue of whether Carl Sullivan sustained an accident on December 20, 2002, while in the course and scope of his employment with Holt House Construction. Ms. Sullivan, hereinafter referred to as Claimant, credibly testified the deceased called her on December 20, 2002, to inform of a work-related injury he sustained. The deceased described the mechanism of injury by pulling fence posts out of the ground. Claimant testified her husband described how he felt his right shoulder pop immediately after pulling on the fence post. The deceased also told Claimant during this phone call on December 20, 2002, he felt "bad pain" in his right shoulder. As a result of the right shoulder complaints, his Employer sent him to the doctor.

Indeed, a January 2003 letter of loss from Bituminous Casualty Corporation acknowledged receipt of a recently-reported workers' compensation claim. This letter has the description of accident as followed: "Employee injured right shoulder when moving fence posts." (Claimant's Exhibit F.) Additionally, medical records of the authorized treating physician, Dr. Phillip Hagan, made close in time to the alleged accident, indicate the deceased injured his right shoulder "when he pulled up the posts, something tore in the shoulder, in the superior and posterior aspect. This was on December the 20th. Since that time he has had persistent pain in the shoulder with loss of range of motion and weakness." (Claimant's Exhibit G. Medical note of January 24, 2003.)

Based on the evidence presented, I find deceased sustained a work-related injury of his right shoulder, while pulling on a post on December 20, 2002. There was no evidence presented contrary to this finding.

The Employer also raises issue as to whether Claimant's right shoulder complaints/limitations made after December 20, 2002, but prior to his death in November 2003, were causally related to the December 20, 2002 accident.

It is the burden of the Claimant to establish the causal connection between the accident and resulting injury. Landers vs. Crystler Corp. 963 S.W. 2d 275, 279 (MoApp E.D. 1997.) In this case the issue is one of medical causation which must be established by expert opinion. The medical causation must be demonstrated by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. Landers at 279 (MoApp. E.D. 1997.) Additionally, medical expert opinion must be based on reasonable medical certainty that a condition was caused by particular events or circumstance. Carter vs. Jones Truck Lines, Inc. 943 S.W. 2d 821 (MoApp. S.D. 1997.)

The parties have each provided expert opinions as to medical causation in this claim. Gary L. Baker performs reconstructive and hand surgeries. Dr. Baker performed surgery of the right elbow for a bicep tendon repair on the deceased as a result of a prior work-related injury in

2000. Dr. Baker opined Mr. Sullivan's complaints to Dr. Hagan in January of 2003, as well as the physical findings and radiology studies taken in 2003, do not support the allegation of a new right shoulder injury on December 20, 2002. Instead, Dr. Baker finds the complaints made by Mr. Sullivan in January of 2003 are more consistent with chronic complaints and physical findings Mr. Sullivan made earlier in 2001. Indeed, Dr. Baker finds the complaints

Mr. Sullivan made after December 20, 2002 were the same complaints Mr. Sullivan made in 2001.

The other expert, Dr. Brent Koprivica, noted Mr. Sullivan had preexisting, nondisabling conditions of the right shoulder, but that the December 20, 2002 accident exacerbated his right shoulder condition to the point surgical intervention was warranted. Additionally, Dr. Koprivica concluded that the December 20, 2002 accident was a substantial contributing factor to Mr. Sullivan's complaints of right shoulder pain made to Dr. Hagan in January of 2003.

The authorized treating physician, Dr. Hagan, recorded on January 24, 2003, that Mr. Sullivan experienced persistent pain in the right shoulder with loss of range of motion and weakness after a December 20, 2002 accident. Dr. Hagan performed an acromioclavical joint resection, rotator cuff repair and a SLAP repair on April 14, 2003. I interpret Dr. Hagan performed the surgeries as a result of the December 20, 2002 accident. This is based on Dr. Hagan's January 24, 2003 note and those medical records made thereafter by Dr. Hagan.

Indeed, decedent's wife, Diane Sullivan, testified she never observed Mr. Sullivan to have any limitations of the right shoulder until December 20, 2002. At that time, Ms. Sullivan observed the deceased unable to lift a five-gallon container of milk with his right arm. Ms. Sullivan noted the deceased was unable to do things with his right arm that he could perform before December 20, 2002. Ms. Sullivan noted, even after Mr. Sullivan had reached maximum medical improvement from the December 20, 2002 accident, that the deceased continued to have limitations and problems he did not experience before December 20, 2002.

Lastly, the Employer raised issue that Mr. Sullivan sustained a work injury to his elbow in June 2000 and had preexisting complaints of pain to his right shoulder in March of 2001, and as a result, the deceased could not have exacerbated a preexisting condition to his right shoulder. However, I find the facts support Mr. Sullivan experienced pain, non-disabling, of his right shoulder prior to December 20, 2002, but this non-disabling condition was exacerbated on December 20, 2002 to cause a disabling condition, as reflected by Dr. Hagan's medical records and by the testimony of Dr. Koprivica.

Based on the evidence presented, I find Claimant sustained her burden of proof regarding medical causation. Indeed, I find the December 20, 2002 accident was a substantial contributing factor of those complaints and limitations of the right shoulder made to Dr. Hagan on January 24, 2003 and those complaints, and observed limitations made to his wife, Diane Sullivan.

Although the deceased returned to work full duty after reaching maximum medical improvement from the right shoulder surgery, he experienced a lot of pain of the right shoulder after working a full day. Claimant observed the deceased unable to reach his right arm overhead and that the decedent was able to do this prior to December 20, 2002 accident. She testified the deceased did not have the strength of his right arm he had prior to December 20, 2002. For

example, the Claimant recalled the decedent grimacing while pouring a cup of coffee with his right arm just before his death in November of 2003.

I find these limitations as observed by Ms. Sullivan and the complaints made by the deceased to Dr. Hagan are a result of the December 20, 2002 exacerbating work-related injury. Furthermore, I find the deceased sustained disability that he did not have prior to December 20, 2002 of his right shoulder as a result of the work-related accident of December 20, 2002.

Several doctors opined permanent partial disability ratings in this matter. Dr. Koprivica gave a 25 percent permanent partial disability right upper extremity as a result of the December 20, 2002 accident. Likewise, the authorized treating physician, Dr. Hagan, rated 25 percent permanent partial disability right upper extremity. As a result, I find the deceased sustained 25 percent permanent partial disability right upper extremity at the 232 work-week level.

The Employer is liable to the Claimant for 58 weeks, multiplied by \$340.12 or the amount of \$19,726.96. This Award is subject to an attorney's lien for services rendered by Bill Spooner.

Date: _____

Made by: _____

Lisa Meiners
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation