

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

Injury No.: 10-044815

Employee: Marilyn Szigeti

Employer: Metropolitan St. Louis Sewer District (MSD)

Insurer: Self-Insured

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 May 19, 2014. The award and decision of Administrative Law Judge Kathleen M. Hart, issued May 19, 2014, 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 16<sup>th</sup> day of September 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Marilyn Szigeti

Injury No.: 10-044815

Dependents: n/a

Employer: Metropolitan St. Louis Sewer District (MSD)

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

Additional Party: none

Insurer: Self c/o CCMI

Hearing Date: March 4, 2014

Checked by: KMH

### 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: June 1, 2010
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? 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 injured her right and left upper extremities in the course and scope of her employment.
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: right and left upper extremities
14. Nature and extent of any permanent disability: 30% of each arm at the elbow
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Marilyn Szigeti

Injury No.: 10-044815

- 17. Value necessary medical aid not furnished by employer/insurer? unknown
- 18. Employee's average weekly wages: \$815.86
- 19. Weekly compensation rate: \$543.92/\$422.97
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Outstanding medical bills	\$ 446.08
TTD benefits	\$ 4,351.36
154.90 weeks of permanency, combination factor and disfigurement from Employer	\$65,518.05

22. Second Injury Fund liability: None

TOTAL: \$70,315.49

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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Mark Cordes

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Marilyn Szigeti

Injury No.: 10-044815

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: MSD

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

Additional Party: none

Insurer: self c/o CCMi

Checked by: KMH

A hearing was held on the above captioned matter March 4, 2014. Marilyn Szigeti (Claimant) was represented by attorney Mark Cordes. MSD (Employer) was represented by attorney Todd Hilliker.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

Claimant alleges she sustained an injury by occupational disease in the course and scope of her employment. Employer denies liability.

## **STIPULATIONS**

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law on the alleged date of injury.
2. Employer's liability was self insured.
3. Employer had notice of the alleged injury and a claim for compensation was timely filed.
4. Claimant's average weekly wage was \$815.86. Her rates for TTD and PPD are \$543.92 and \$422.97 respectively.
5. Employer has paid no benefits to date.
6. If the injury is found compensable, Claimant is entitled to 8 weeks of TTD, or \$4,351.36, which covers the time period of October 27, 2010 through December 21, 2010.

## **ISSUES**

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

1. Occupational disease
2. Medical causation
3. Liability for past medical expenses of \$446.08.
4. TTD
5. PPD

### **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 63 year-old female who worked for Employer from 1996 through her retirement in 2011. She worked as a Central Files Clerk, and Office Assistant. Her duties involved filing and upkeep of engineering records, drawings, and files, as well as maintaining the database that tracked the files. Typically Claimant worked with one other employee in the file room. Claimant worked in a small file room that was equipped with rolling files. The files reached eight to nine feet high, and Claimant used a ladder to get to the top files.
2. Customers and engineers came to the file room and requested information on projects or subdivisions. Claimant used the database to locate the file, or tube of drawings, and retrieved the file or drawings for the customer. When the customers finished with the files or drawings, they placed them in a basket for Claimant to re-file. The drawings were stored in three foot tubes, and Claimant rolled them up to return them to the tube. The file cabinets were very full, and it took a lot of force to pull files out.
3. During the last three to four years Claimant worked for Employer, she also helped transfer information into the new database. When she was not waiting on customers, she manually moved all inappropriately stored information out of the database and put it into the correct spot in the new database. In addition, Claimant worked on the project to scan drawings into a digital format. She slowly fed the drawings into the scanner, similar to copying a piece of paper.
4. In 2006 Claimant started having trouble gripping and opening things at home. She developed numbness and tingling, and went to her primary care physician, Dr. Richardson. He ordered a nerve conduction study, which was consistent with bilateral carpal tunnel syndrome and left ulnar nerve entrapment.
5. Claimant immediately notified her supervisor, and Employer sent her to Dr. Crandall. Dr. Crandall reviewed the records, examined Claimant, and issued a report in June 2010. He opined it was unlikely her job had enough physical activity to be considered the cause of her carpal tunnel syndrome, and Claimant had multiple risk factors, including her gender, age, and weight.

6. Employer ordered a job analysis by Mr. Zuccarello. He met with Claimant, observed her performing her job, and installed a keystroke counter to evaluate whether Claimant's duties were sufficiently repetitive to cause her condition. He opined the job did have repetition as a risk factor, but he concluded the job did not have sufficient duration or keystrokes to be considered a risk factor.
7. Dr. Crandall reviewed the job analysis and opined Claimant's job was not the prevailing factor in causing her carpal tunnel or ulnar neuropathy.
8. Employer denied further treatment, and Claimant sought treatment on her own through Dr. Howard. He performed bilateral carpal tunnel and cubital tunnel surgeries in the fall of 2010. Dr. Howard took Claimant off work from the date of her first surgery through December 21, 2010. Her group health paid for the surgery and Claimant paid the co-pays. The bills in Exhibits C and E are the bills related to this injury and include the payments Claimant made.
9. Claimant returned to work for about one month after her release from treatment. She had pain in her wrists and elbows and could not continue to grip the files and twist the drawings to roll them up. She retired because she did not want to further injure her arms.
10. Claimant continues to have symptoms in each arm that vary with her activity level. She has reduced strength in her right arm and has difficulty opening packages. She continues to have tingling in her right hand and wears a brace when carrying heavy items. She does not have many problems with her right elbow unless she pushes things. She has continued pain in her left wrist. The numbness and tingling is less frequent because she is not using it as much. She has problems in her left elbow if pushing/pulling. She has difficulties with activities of daily living, opening jars, and other chores around the house due to complaints with both arms. She had no symptoms in her upper extremities prior to this injury.
11. Claimant testified the day Mr. Zuccarello observed her working was not a typical day. Her co-worker was off work that day, and Claimant was the only one waiting on customers. As a result, she did not perform her typical amount of typing or scanning.
12. Claimant's medical expert, Dr. Woiteshek, reviewed the records, examined Claimant, and issued a report in April 2011. He opined Claimant's repetitious work for Employer was the prevailing factor in causing her bilateral carpal tunnel and cubital tunnel syndromes. He opined her treatment and surgeries were reasonable and necessary to cure and relieve the effects of the injury.
13. Dr. Crandall testified Claimant's work activities were not the prevailing factor in causing her carpal tunnel syndrome or ulnar neuropathy. He testified Claimant's body mass index, age and gender are significant and the most common risk factors for the development of overuse syndromes.
14. Claimant is credible.

## 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 sustained an injury by occupational disease in the course and scope of her employment. Her bilateral carpal tunnel and cubital tunnel syndromes are medically and causally related to her work.**

Section 287.067.3 (RSMo 2005) provides an injury due to repetitive motion is recognized as an occupational disease and is compensable 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.”

Claimant credibly testified she had a number of duties as a file clerk, and they all involved repetitive use of her hands and arms. Her medical expert opined the job was repetitive and was the prevailing factor in causing her conditions and disability.

Dr. Crandall opined Claimant’s other risk factors were more significant and her job duties did not cause her conditions.

The law contemplates an injured worker may have other risk factors that contribute to the cause of her disease. Claimant has the burden of establishing her job duties were the “prevailing factor”. I find Claimant has met her burden of proof and established her job duties were the prevailing factor in establishing her bilateral carpal tunnel and cubital tunnel syndromes. Claimant’s conditions arose out of and in the course and scope of her employment and are medically and causally related to her job duties.

- 2. Employer is liable for past medical expenses of \$446.08.**

Claimant testified the majority of her bills were paid through her group insurance, and sought reimbursement of her out-of-pocket expenses of \$446.08. These expenses were incurred in connection with treatment of her compensable occupational disease. Employer is directed to pay Claimant \$446.08 in past medical expenses.

- 3. Claimant is entitled to \$4,351.36 in TTD payments covering the time period of October 27, 2010 through December 21, 2010.**
  
- 4. Claimant sustained 30% PPD to each arm and an additional 5 weeks of disfigurement to each arm, totaling \$65,518.05.**

Based on the medical evidence and Claimant's credible testimony regarding her ongoing symptoms, I find she sustained 30% PPD of each elbow and is entitled to a 15% combination factor and an additional 10 weeks of disfigurement. This equates to 154.90 weeks, or \$65,518.05.

Made by: \_\_\_\_\_  
KATHLEEN M. HART  
*Administrative Law Judge*  
*Division of Workers' Compensation*