

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

Injury No.: 07-129592

Employee: Shelli Talbert  
Employer: Lab Corp, Inc.  
Insurer: Ace Fire Underwriters

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms and adopts the award and decision of the administrative law judge dated March 30, 2009.

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 section 287.510 RSMo.

The award and decision of Administrative Law Judge Paula A. McKeon, issued March 30, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 30th day of July 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

# TEMPORARY AWARD

Employee: Shelli Talbert Injury No. 07-129592  
Dependents: N/A  
Employer: Lab Corp, Inc.  
Insurer: Ace Fire Underwriters  
Additional Party: N/A  
Hearing Date: March 9, 2009 Checked by: PAM/pd

## FINDINGS OF FACT AND RULINGS OF LAW

- 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 1, 2007.
- 5. State location where accident occurred or occupational disease was contracted: Jackson 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:  
Shelli Talbert performed repetitive tasks as a customer service representative for Lab Corp, Inc.
- 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 thumb
- 14. Nature and extent of any permanent disability: Not determined.

15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$2,516.51
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: Not determined.
19. Weekly compensation rate: \$384.67
20. Method wages computation: By agreement.

### **COMPENSATION PAYABLE**

21. Amount of compensation payable:
  - A) Unpaid medical expenses: None
  - B) Weeks of temporary total disability (temporary partial disability): None
  - C) Weeks for permanent partial disability from Employer: None
  - D) Weeks of disfigurement: None
  - E) Permanent total disability benefits from Employer: None
22. Second Injury Fund liability: N/A

Future medical benefits: Employer/Insurer is directed to provide medical treatment to Shelli Talbert necessary to cure and relieve the effects of her injury.

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. David Slocum

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

Employee:	Shelli Talbert	Injury No. 07-129592
Dependents:	N/A	
Employer:	Lab Corp, Inc.	
Insurer:	Ace Fire Underwriters	
Additional Party:	N/A	
Hearing Date:	March 9, 2009	Checked by: PAM/pd

On March 9, 2009, the parties appeared for a hardship hearing. The Employee, Shelli Talbert, appeared in person and with counsel, David Slocum. The Employer, Lab Corp, Inc., and Insurer, Ace Fire Underwriters., appeared through their attorney, Mr. Brian Fowler.

## STIPULATIONS

The parties stipulated to the following:

- that both the Employer and Employee were operating under and subject to the Missouri Workers' Compensation Law;
- that Shelli Talbert was an Employee of Lab Corp, Inc., and is entitled to a compensation rate of \$384.67;
- that the Employer had notice and a timely claim for compensation was filed; and
- that no temporary total disability benefits have been provided, but medical expenses of \$2,516.51 have been paid by the Employer.

## ISSUES

The issue to be resolved by this hearing is whether Shelli Talbert sustained an accident or occupational disease in the course and scope of her employment with Lab Corp, Inc., specifically referable to her right thumb.

## FINDINGS AND RULINGS

Shelli Talbert is a customer service representative for Lab Corp, Inc. Her primary job responsibilities are to ascertain, supply and integrate missing data on medical billing sheets. Talbert manually takes a spreadsheet to determine what information is missing. To locate and replace the information, Talbert will use the computer keyboard and mouse. Talbert will also use the telephone to obtain information. She frequently makes handwritten notes but eventually enters missing information into the computer through a keyboard and mouse. Talbert works five eight-hour days with a 30-minute lunch break and two 15-minute breaks. Talbert estimates 96 percent of her day is spent on tasks performed using her keyboard or mouse.

In December 2007, Talbert noticed her thumb would begin to "lock up." Talbert was sent for treatment in December 2007 and was provided conservative care. Talbert's symptoms progressed eventually through her right forearm and into the right shoulder. Talbert was sent to Dr. Rosenthal, a hand specialist, for evaluation. Dr. Rosenthal diagnosed right trigger thumb and recommended surgical release.

In February 2008, Lab Corp, Inc., hired Aon Global, a part of Aon Corporation, an insurance company, to assess Talbert's work duties "to determine the work relatedness of her reported musculoskeletal injury." Jodi Glunz, ergonomic consultant, evaluated Talbert's position through discussions with Talbert and her supervisor and observation of Talbert at her workstation for approximately two-and-a-half hours.

Glunz testified that Talbert's work activities were of little or low risk for development of the deQuervain's disease. This is because there is insufficient evidence of repetition, force, posture, vibration, or a combination thereof in Talbert's work duties to fall within generally recognized ergonomic standards for development of a work-related musculoskeletal disorder. Despite this lack of correlation between Talbert's physical complaints and work duties, Glunz recommended several changes to Talbert's workstation, including keyboard, mouse, chair and document holders. Glunz testified these changes were "comfort" recommendations. Lab Corp, Inc., did provide the changes consistent with Glunz' recommendations.

Michele Kessner, Talbert's supervisor, testified that Talbert reported her condition as work related but added that Talbert also thought it was related to work she performed at home. Kessner, in reviewing Talbert's work duties, acknowledged many of the tasks required using a keyboard and mouse. Kessner does not believe Talbert's work activities are repetitive. Kessner was aware that Talbert's workstation had changed subsequent to the developments of her complaints.

Dr. Lausterer, occupational doctor, documented Talbert's trigger thumb but dismisses work-relatedness based on Aon's ergonomic study. Dr. Rosenthal also addresses the causation issue in her report of April 21, 2000. Dr. Rosenthal

concludes that Talbert's thumb condition is not work related. However, Dr. Rosenthal specifically points out that the diagnosis for the ergonomic summary is deQuervain's and not the diagnosed right trigger thumb. Rosenthal does recommend surgical release of Talbert's trigger thumb condition.

Dr. Ketchum, hand specialist, diagnosed Talbert with deQuervain's disease and trigger thumb. After reviewing Talbert's deposition and the ergonomic study, Dr. Ketchum still concludes that work is the prevailing factor in Talbert's need for trigger thumb release. Dr. Ketchum recommends surgical release for the right trigger thumb.

Section 287.067(3) RSMo 2005 provides for occupational disease due to repetitive motion. "An occupational disease due to repetitive motion is 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 prevailing factor, in relation to any other factor, causing both the resulting medical condition and disability."

Shelli Talbert seeks medical treatment for her right trigger thumb condition. Drs. Lausterer and Rosenthal deny Talbert's thumb condition as related to work based on the ergonomic study provided by the Employer. That study was deficient in that it specifically addresses deQuervain's disease, described Talbert's work activities as low risk, not no risk, and failed to account for changes in Talbert's workstation prior to the ergonomic evaluation. Furthermore, the report attempts to assert a medical causation opinion regarding work-relatedness. Jodi Glunz is not a medical doctor. These factors reduce the weight and credibility of the ergonomic study. Since both Drs. Lausterer and Rosenthal rely on the ergonomic study to deny medical causation, these opinions also lack credibility. Finally, Dr. Ketchum does make a medical causation opinion that Talbert's work activities are the prevailing factor in her need for medical treatment even after considering the findings in the ergonomic study.

The doctors all agree that Talbert's trigger thumb condition requires surgical release. Considering all the evidence presented, including testimony, medical records and reports, I find Shelli Talbert sustained an occupational disease due to repetitive motion, specifically, right trigger thumb, in the course and scope of her employment with Lab Corp, Inc. I find the occupational exposure was the prevailing factor in her resulting medical condition. I find Talbert is in need of medical treatment to cure and relieve the effects of her right trigger thumb condition. Therefore, the Employer/Insurer is to provide medical treatment as necessary to cure and relieve the effects of Shelli Talbert's trigger thumb condition, including but not limited to surgical release as recommended by Drs. Rosenthal and Ketchum.

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

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

Paula A. McKeon

*Chief Administrative Law Judge*

*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Peter Lyskowski

*Acting Director*

*Division of Workers' Compensation*