

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

Injury No.: 01-168454

Employee: Annie Treadwell

Employer: Lutheran Home for the Aged

Insurer: Self-Insured c/o Claim Management Incorporated

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, as corrected herein, is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 10, 2009, and awards no compensation in the above-captioned case.

The caption of the administrative law judge's award and decision erroneously designates the injury number of this claim as Injury No. 01-168459. The correct number is Injury No. 01-168454. We also note that the administrative law judge's award and decision is paginated incorrectly.

Except as discussed herein, the award and decision of Administrative Law Judge Maureen Tilley, issued July 10, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 14th day of January 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Annie Treadwell

Injury No. 01-168459

Dependents: N/A

Employer: Lutheran Home for the Aged

Additional Party: N/A

Insurer: Self Insured. Third Party Administrator: Claim Management Incorporated

Checked by: MT/kh

SUMMARY OF FINDINGS

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? N/A
5. State location where accident occurred or occupational disease contracted: N/A
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 happened or occupational disease contracted: N/A

Employee: Annie Treadwell

Injury No: 01-168454

12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to date for temporary total disability: None
16. Value necessary medical aid paid to date by employer-insurer: None
17. Value necessary medical aid not furnished by employer-insurer: None
18. Employee's average weekly wage: \$267.09
19. Weekly compensation rate: \$178.06
20. Method wages computation: By agreement
21. Amount of compensation payable: N/A
22. Second Injury Fund liability: N/A
23. Future requirements awarded: N/A

FINDINGS OF FACT AND RULINGS OF LAW

On May 4, 2009, the employee, Annie Treadwell, appeared in person and with her attorney, John Foley, for a hearing for a final award. The employer was represented at the hearing by its attorney, John Lichtenegger. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS

1. Covered employer: Employer was operating and subject to the provisions of the Missouri Workers' Compensation Act and liability was fully self-insured. The third party administrator is Claim Management Incorporated.
2. Covered Employee: On or about the date of the alleged accident or occupational disease the employee was an employee of The Lutheran Home and was working under the Workers' Compensation Act.
3. Average Weekly Wage and Rate:
 - A. Average Weekly Wage of \$267.09
 - B. Rate for permanent-partial disability: \$178.06
4. Medical Aid Furnished by Employer: None
5. Temporary Disability Paid by Employer/Insurer: None
6. There is no claim for medical, mileage or future medical aid.

ISSUES:

1. Date of occupational disease.
2. Whether the Employee sustained an occupational disease arising out of and in the course of her employment at Lutheran Home for the Aged.
3. Notice: Whether the employer had notice of the employee's occupational disease.
4. Statute of limitations: Whether the employee's claim filed within the time allowed by law.
5. Medical causation: Whether the employee's injury medical causally related to an accident or occupational disease.
6. Nature and extent of disability:
 - A. Employee is requesting additional temporary total disability for the time periods of September 26, 2001 through November 12, 2001. This is for 6 and 5/7 weeks in the amount of \$1,195.56.
 - B. Permanent partial disability
7. There is an issue as to how a settlement with Chateau Girardeau would affect a credit to employer if this case is found to be compensable.

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

A. Deposition of Dr. Bernard Burn

Employer-Insurer's Exhibits

1. Stipulation for Compromise Settlement Injury #99-109585 between Annie Treadwell and Chateau Girardeau
2. Deposition of Dr. Bernard Burns dated February 7, 2003
3. Pages 29, 30, 31, 32 of the deposition of Annie Treadwell
4. Medical Records of Dr. David M. Deisher

FINDINGS OF FACT

Employee's testimony and medical treatment from Orthopaedic Associates

- The employee testified she worked for Chateau Girardeau prior to her work at The Lutheran Home starting her work there in 1998. While working for Chateau Girardeau full-time as a nurse's aide, a resident of Chateau Girardeau grabbed both of her wrists and began squeezing and twisting her wrists causing pain and swelling. She stated this occurred on May 20, 1999. The employee testified this injury was the subject of a workers' compensation claim. In this claim, Chateau Girardeau was the employer and Connecticut Indemnity Co. was the insurer.
- The employee testified that she was employed by the Lutheran Home for the Aged from February 2, 2000 to September 20, 2001. Her job duties consisted of direct patient care, including: lifting patients; bathing patients; clothing patients, feeding patients; and assisting patients with their personal hygiene.
- She testified that from May 20, 1999, her pain in her arms, wrist, hands ranged from very severe to not so bad. She developed chronic wrist pain. She also testified that some of her work at The Lutheran Home made her symptoms worse and that she did better with less activity.
- When the employee began working at The Lutheran Home, she was under the care of Dr. Rickey Lents, an orthopedic surgeon of Orthopedic Associates of Cape Girardeau, Missouri for pain in both wrists. The employee first started seeing Dr. Lents on February 3, 2000.
- On February 3, 2000, Dr. Lents diagnosed the employee with bilateral intersection syndrome and Kiebock's disease.
- The employee continued to receive conservative treatment for her wrists and was found not to be a surgical candidate by Dr. Lentz on February 18, 2000.
- On May 1, 2001, the employee told Dr. Burns that she was doing quite well until she started on Isoniazid for her TB. She told Dr. Burns that she "feels the pain got worse with

that with more intolerance for lifting.”

- On May 12, 2000, Dr. Bernard Burns, who is board certified in physiatry and physical medicine rehabilitation, stated that the employee was at maximum medical improvement for her injury she received while working at Chateau Girardeau. Dr. Burns also works at Orthopedic Associates.
- After the employee was found to be at maximum medical improvement for her injury from Chateau Girardeau, she continued to be a patient at Orthopedic Associates for pain management issues. The employee testified that she had episodes of pain but was able to continue her duties at the Lutheran Home until the spring of 2001.
- The employee stated that she reported her problems with her wrists and right forearm to her supervisor. The employee testified that over the next month her wrist pain became constant and unbearable. She stated that the right wrist was worse than the left wrist.
- On June 5, 2001, the employee was diagnosed by Dr. Burns with chronic wrist sprain, secondary repetitive strain injury and overuse, and DeQuervain’s tenosynovitis. Dr. Burns modified the employee’s work to medium lifting. Dr. Burns put the employee back in splints for work.
- The employee’s wrist pain eventually stabilized; however the DeQuervain’s tenosynovitis became worse.
- Dr. Burns testified that the first dorsal compartment release involves operating on the forearm above the thumb for the thumb abductor tendon.
- Dr. Lentz returned the employee to full duty on November 12, 2001. Dr. Lentz rated the DeQuervain’s injury as a 4% disability to the right upper extremity.
- Dr. Burns opined that the employee’s work at the Lutheran Home was a significant factor in the employee’s development of DeQuervain’s tenosynovitis and the need for treatment. He stated that the employee’s work during that time caused an exacerbation of the employee’s chronic wrist pain.
- The employee testified that her hands and right arm were helped by her medical treatment. She stated that her right hand and arm are now weaker than they used to be. She also stated that her gripping ability and her dexterity is reduced. She stated that she still has occasional pain and stiffness.
- The employee stated that after the injury at Chateau Girardeau her wrist hurt at the forearm. She stated that after working at the Lutheran Home, her thumb area hurt. She also stated she no longer has the flexibility and lifting capacity that she used to have.

Dr. David Deisher

- Dr. David Deisher's medical treatment records show the first office visit by Mrs. Treadwell to Dr. Deisher's office on August 11, 1999. On this first visit Dr. Deisher noted that despite "two rounds of steroids, splints and physical therapy, she still has had some pain on the wrists.
- Dr. Deisher's first assessment at the bottom of the first page of his records diagnosed "wrist tendinitis secondary to trauma and pressure over the area". He also stated "she has a low grade DeQuervain's tenosynovitis".
- The employee testified she was never informed of a diagnosis made by Dr. David Deisher on August 11, 1999 of "DeQuervain's tenosynovitis".

APPLICABLE LAW

- The burden is on the employee to prove all material elements of his claim. *Melvies v Morris*, 422 S.W.2d, 335(Mo.App.1968).
- Under the version of Section 287.020.2 RSMo., Under this section an injury is “clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor”.

RULINGS OF LAW:

Issue 5: Medical causation

When the employee began working at the Lutheran Home she was being treated for an injury to both of her wrists. She sustained this injury when she was working at her previous job. Dr. Burns placed the employee at maximum medical improvement for this injury on May 12, 2000. This was before the employee ever had surgery on her right wrist.

On June 5, 2001, the employee was diagnosed by Dr. Burns, a physiatrist, with chronic wrist sprain, secondary repetitive strain injury and overuse, and DeQuervain’s tenosynovitis.

On September 26, 2001, the employee had surgery performed by Dr. Lents, an orthopedic surgeon. Dr. Lents stated that this was a "right dorsal compartment release" associated with DeQuervain's tenosynovitis.

Dr. Burns, opined that the employee’s work at the Lutheran Home was a significant factor in the employee’s development of DeQuervain’s tenosynovitis and the need for treatment. He stated that the employee’s work during that time caused an exacerbation of the employee’s chronic wrist pain.

The employee claims that Dr. Deisher never told her that he diagnosed her with DeQuervain’s tenosynovitis on August 11, 1999. However, Dr. Deisher’s records from August 11, 1999 state that he diagnosed the employee with "wrist tendinitis secondary to trauma and pressure over the area" and “low grade DeQuervain's tenosynovitis”.

Basically the employee started work at the Lutheran Home with wrist injuries. The employee stated that she had increased problems with her right and left upper extremities after working at the Lutheran Home. However, the employee was still being treated for her wrist injuries when she began working at the Lutheran Home. Furthermore, the employee was already diagnosed with DeQuervain’s tenosynovitis on August 11, 1999. Based on all of the evidence presented, it is clear that the employee already had injuries to both hands and her right upper extremity. Furthermore, based on all of the evidence I find that Dr. Burns’ opinion regarding causation is not credible. I find that the employee did not meet her burden in proving that the employee’s work at the Lutheran Home was a substantial factor in causing the employee to have injuries to

both of her wrists and her upper right extremity. Therefore, I find that the employee's work at the Lutheran Home was not a substantial factor in causing the employee's injuries to both of her wrists and her right upper extremity. I find that the employee's injuries to both of her wrists and her right upper extremity were not medically causally related to the employee's work.

Based on the denial of the employee's claims on the issue of causation, the remaining issues are moot and shall not be ruled upon.

Date: _____

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Person
Division of Workers' Compensation