

TEMPORARY OR PARTIAL AWARD ALLOWING COMPENSATION

(Affirming Award and Decision of Administrative Law Judge
with Supplemental Opinion)

Injury No.: 09-072165

Employee: Rose Turner
Employer: Thiel Tool & Engineering Company
Insurer: Chubb Indemnity Insurance
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge by this supplemental opinion.

We offer this supplemental opinion to explain in some detail our agreement with the conclusions of the administrative law judge.

Employer argues that employee's claim is barred by the statute of limitations of § 287.430 RSMo, which states, in relevant part:

... no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death...

Section 287.063.3 RSMo, further, refines the rule enunciated above:

The statute of limitation referred to in section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that an injury has been sustained related to such exposure,

"In Missouri, the statute of limitations in an occupational disease case begins running when: (1) an employee is no longer able to work due to the occupational disease; (2) an employee must seek medical advice and is advised that she can no longer work in the

¹ References are to the Revised Statutes of Missouri 2008, unless otherwise indicated.

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'suspected employment'; or (3) an employee experiences some type of disability that is compensable."²

"A compensable injury occurs when an occupational disease causes an employee to become disabled and unable to work. In cases involving an occupational disease caused by repetitive movement, an employee is disabled and unable to work when the need for surgery is manifested."³

"The standard for beginning the running of the statute of limitations, as developed in the cases, requires (1) a disability or injury, (2) that is compensable. Compensability, as noted, turns on establishing a direct causal connection between the disease or injury and the conditions under when the work is performed. Logically, an employee cannot be expected and certainly cannot be required to institute claim until he has reliable information that his condition is the result of his employment. Just as logically, given that there must be competent and substantial evidence of this link, the claimant is entitled to rely on a physician's diagnosis of his condition rather than his own impressions."⁴

As support for its argument that the statute of limitations has run on employee's claim, employer relies on the holding in *Miller v. U.S. Airways Group, Inc.*⁵ *Miller* is inapposite. The *Miller* court was considering two claims filed by Ms. Miller for her carpal tunnel syndrome. The first claim was filed alleging an injury date in 2004, when employee was first diagnosed with carpal tunnel syndrome and received treatment. The second claim was filed alleging an injury date in 2007, when employee's carpal tunnel syndrome symptoms increased due to employee working overtime. The *Miller* court affirmed our finding that Ms. Miller did not suffer a new injury in 2007, and our conclusion that compensation for Ms. Miller's injury, if any be awarded, was to be awarded on the 2004 claim. The *Miller* court recognized that our ruling was simply that the 2007 claim was duplicative of the 2004 claim. The *Miller* court did not consider whether the 2007 claim would have been timely if the 2004 claim had never been filed.

In the instant case, employee has filed only one claim so the holding in *Miller* is not applicable. We need simply consider when the filing period of § 287.430 began to run in light of § 287.063.3 and existing case authority. Although employee was first diagnosed with carpal tunnel syndrome in the late 1980s or early 1990s, employee never missed work due to the condition until 2009. There is no evidence to suggest that employee's earning capacity was harmed until 2009. Finally, the evidence shows that employee was first apprised by a physician that her carpal tunnel syndrome was work-related in 2009.

² *Rupard v. Kiesendahl*, 114 S.W.3d 389, 394 (Mo. App. 2003), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

³ *Lorenz v. Sweetheart Cup Co.*, 60 S.W.3d 677, 681 (Mo. App. 2001) (citation omitted).

⁴ *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413 (Mo. App. 1988), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

⁵ 316 S.W.3d 462 (Mo. App. 2010).

Employee: Rose Turner

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We conclude the statute of limitations began to run when employee was apprised by a physician that her condition was work-related. Employee's claim was timely filed under the holdings of a long line of cases including *Rupard*, *Lorenz*, and *Sellers*.

We affirm the award of the administrative law judge as supplemented herein.

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.

Given at Jefferson City, State of Missouri, this 2nd 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:	Rose Turner	Injury No.:	09-072165
Dependents:	N/A		Before the
Employer:	Thiel Tool & Engineering Company		Division of Workers'
Additional Party:	N/A		Compensation
Insurer:	Chubb Indemnity Insurance		Department of Labor and Industrial
Hearing Date:	August 25, 2011	Checked by:	CTL

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: July 9, 2009
5. State location where accident occurred or occupational disease contracted: St. Louis 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 happened or occupational disease contracted: Claimant did computer work, janitorial work, stapling, phone and office work.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Parts of body injured by accident or occupational disease: Bilateral wrists
14. Compensation paid to-date for temporary disability: 0
15. Value necessary medical aid paid to date by employer/insurer? 0
16. Value necessary medical aid not furnished by employer/insurer? N/A

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- 17. Employee's average weekly wages: \$692.31
- 18. Weekly compensation rate: \$461.49/\$422.97
- 19. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 20. Amount of compensation payable: N/A
- 21. Second Injury Fund liability: Open

TOTAL:

- 22. Future requirements awarded:
Employer is to provide medical treatment for Claimant's bilateral carpal tunnel syndrome and TTD as needed.

Each of said payments to begin 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 which is awarded above as costs of recovery of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mark Elhoffer

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Rose Turner	Injury No.:	09-072165
Dependents:	N/A		Before the
Employer:	Thiel Tool & Engineering Company		Division of Workers'
Additional Party:	N/A		Compensation
Insurer:	Chubb Indemnity Insurance		Department of Labor and Industrial
			Relations of Missouri
			Jefferson City, Missouri
		Checked by:	CTL

PREFACE

A temporary award hearing was held in the above-mentioned matter on August 25, 2011. The Claimant, Rose Turner, was represented by Attorney Mark Elhoffer. The Employer/Insurer was represented by Attorney Amanda Richert.

STIPULATIONS

The parties stipulated to the following:

1. On or about the date of the alleged accident or occupational disease, Claimant was an Employee of Thiel Tool & Engineering Company and was working under the Workers' Compensation Act.
2. Employer had notice of the Claimant's alleged accident.
3. Employer/Insurer paid no medical benefits.
4. Employer/Insurer paid no temporary total disability benefits.

ISSUES

1. Medical causation of Claimant's occupational disease to her wrists.
2. Is Claimant entitled to future medical treatment.
3. Statute of limitations.

EXHIBITS

Claimant's exhibits are as follows:

- A. Deposition of Dr. Schlafly
 1. IME report of Dr. Schlafly
 2. CV of Dr. Schlafly

- B. Medical records of Dr. Bonsanti
- C. Medical records of Dr. Sherrod

Employer's exhibits are as follows:

1. Deposition of Dr. Ollinger
 - A. CV of Dr. Ollinger
 - B. IME report of Dr. Ollinger
 - C. "The Effects of Hypothyroidism and Thyroid Replacement on the Development of Carpal Tunnel Syndrome." The Journal of Hand Surgery, 2000
2. Claim for Compensation Executed by Claimant

All exhibits were accepted into evidence without objection.

FINDINGS OF FACT

1. At the time of the hearing, Claimant, Rose Turner, was 49 years of age and she worked for the Employer for 17 years and was laid off on August 11, 2009. Claimant testified that she initially worked on a press machine and later moved to the shipping department typing bills of lading. Later, in 1998, Claimant moved to the accounts payable division and then later took on additional duties in the human resources department. As the business for the corporation started going down, she also was made to do janitorial duties.
2. The Claimant while working for the Employer did work in maintaining files, answering the phone, working on a computer, preparation of various sheets and labor tickets and she prepared monthly inquiry reports. Claimant stated that her job entailed a great deal of stapling which caused her problems with her hands. Claimant said about 10 years before she was laid off by the Employer, she had made complaints of her hands hurting when doing work with an electric stapler.
3. Claimant testified with regard to all of her work she did with the accounts payable and human relations departments. Then she started noticing an increase in her problems with her hands because of the janitorial duties she had because she had to do a lot of sweeping, mopping, vacuuming and cleaning of bathrooms. Claimant testified that she had difficulty sleeping at night because of problems in her hands, the right hand more so than the left hand.
4. The Claimant went to see Dr. Bonsanti because of her hand problems and he referred her to the nerve conduction study by Dr. Sherrod in June of 2010. The doctor thought the Claimant should have carpal tunnel release on the right, but the Employer/Insurer did not authorize the treatment.
5. The Claimant feels that she should have medical treatment for both of her wrists.
6. Claimant was seen by Dr. Schlafly at the request of the Claimant's attorney. Dr. Schlafly's testimony by his deposition states that the Claimant gave him a past history of having hand problems, splints to wear and also gave him a history of the type of work that she did while working for the Employer. After Dr. Schlafly's examination of the

Claimant, it was his very credible opinion that Claimant's repetitive work with her hands at the Employer's place of business was a prevailing factor in causing Claimant her bilateral carpal tunnel syndrome.

7. Dr. Ollinger testified by deposition on behalf of the Employer/Insurer and he stated that he took a history of her complaints, did an examination of her and the doctor found no swelling but with some abnormal feeling along the right long and ring fingers and positive Tinel's bilaterally and positive Phalen's. Dr. Ollinger felt that the Claimant should have a right carpal tunnel surgery and NCS on the left, but he was of the opinion that Claimant's bilateral carpal tunnel problems were not as a result of her work for the Employer.
8. The medical records show and Claimant did state that she had pain approximately 10 years before being laid off but her problems were not significant. Claimant testified she had increased problems with dropping things, pain and was told that she had carpal tunnel syndrome and it needed to be released.

RULINGS OF LAW

1. Claimant's bilateral carpal tunnel syndrome was work related and was the prevailing factor in the development of her hand problems bilaterally. I find that the Claimant is entitled to future medical treatment for both of her wrists and the Employer/Insurer shall provide that treatment.

Made by: _____
CORNELIUS T. LANE
Administrative Law Judge
Division of Workers' Compensation