

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

Injury No.: 05-041965

Employee: Tanji L. Vance
Employer: The Laker Company
Insurer: Argonaut Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: On or about March 25, 2005
Place and County of Accident: Camden County, Missouri

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 July 1, 2008.

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 Chief Administrative Law Judge Hannelore D. Fischer, issued July 1, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 10th day of December 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: John J. Hickey, Member

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Tanji L. Vance

Injury No. 05-041965

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: The Laker Company

Additional Party:

Insurer: Argonaut Insurance Company

Hearing Date: June 5, 2008

Checked by: HDF/tmh

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: On or about March 25, 2005.
5. State location where accident occurred or occupational disease contracted: Camden 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:
See award.
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 hands.
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: \$1,383.00.

Employee: Tanji L. Vance

Injury No. 05-041965

17. Employee's average weekly wages: -

18. Weekly compensation rate: \$155.37.

19. Method wages computation: By agreement.

COMPENSATION PAYABLE

Amount of compensation payable:

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Tanji L. Vance

Injury No: 05-041965

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**DIVISION OF WORKERS'
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Jefferson City, Missouri

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Additional Party:

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PRELIMINARIES

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on June 5, 2008. Memoranda were due by June 27, 2008.

The parties stipulated that the claimant, Tanji Vance, was in the employment of the Laker Company (Laker) on or about March 25, 2005. Laker was operating under the provisions of Missouri's workers' compensation law and was insured for workers' compensation liability by Argonaut Insurance Company. The employer was timely notified of the injury and a claim was timely filed. The agreed upon rate of compensation is \$155.37 per week. No temporary disability benefits have been provided to the claimant to date; no medical aid has been provided.

The issues to be resolved by hearing include 1) the occurrence of an occupational disease, 2) the medical causation of the injuries alleged, 3) the liability of the employer/insurer for past medical treatment, 4) the liability of the employer/insurer for further medical treatment, and 5) the liability of the employer for future temporary disability benefits.

A temporary award is sought.

FINDINGS OF FACT

The claimant, Tanji Vance, was 46 years old as of the date of the hearing. Ms. Vance completed her formal education with the 11th grade. Immediately prior to her employment at Laker, Ms. Vance was not employed for several years. Ms. Vance's work history prior to Laker includes several years of work in a deli.

Ms. Vance worked at Laker from December 6, 2004, through March 11, 2005. Ms. Vance's regular work schedule was four ten-hour days with minimal overtime work. Work at Laker revolved around shipping fishing equipment around the world. Ms. Vance's job duties included assembling fishing equipment, sorting fishing lures, and assembling boxes for packing. Ms. Vance described the work in detail, all of it very hand intensive and fast-paced, from quickly sorting lures by size, shape, and color, to taping boxes and wrapping pallets.

Ms. Vance's last actual day on the job was Friday, March 11, 2005. Ms. Vance had already worked a 40-hour plus week on Monday through Thursday and worked an additional 8.58 hours that Friday. The following Monday, Ms. Vance went to the emergency room complaining of pain in her hands. Ms. Vance was kept off work on that Monday and for the following four days; thereafter, Ms. Vance saw Dr. Cortez who referred her to Dr. Mutchler's office. At Dr. Mutchler's office, Ms. Vance saw the nurse practitioner who authorized a nerve conduction study. The nerve conduction study was performed on April 15, 2005, and cost \$1,383.00; the bill remains unpaid and payment for this bill is sought by Ms. Vance. Dr. Ling Li interpreted the results of the nerve conduction study as "mild median nerve neuropathy on both sides." According to Dr. Mutchler's office notes for May 10, 2005, Dr. Mutchler rechecked Ms. Vance for her "bilateral hands carpal tunnel symptoms" and Ms. Vance reported "intermittent" hand pain. At that point in time, "active release techniques" were proposed and if "problems" continued after a month a surgical release would be considered.

Dr. Cortez apparently kept Ms. Vance off work and "Chili", Ms. Vance's supervisor at Laker, told Ms. Vance that they had no job for her at Laker.

Ms. Vance testified with regard to her current complaints of numbness, pain, tingling, lack of grip strength, pain awakening her after two hours of sleep, and her need for pain medication.

Ms. Vance also testified with regard to her attempt to work as a housekeeper for one day in May of 2005 and her inability to perform her job duties because of hand pain. Ms. Vance does not believe that she is capable of working at any job because of the pain in her hands.

Ms. Vance also testified to a prior left wrist surgery following a motor vehicle accident followed by a reinjury to the left wrist when a 50 pound box of frozen meat fell on her wrist while she was working in a deli.

Ms. Vance admitted to a prior (1997) diagnosis of rheumatoid arthritis in her low back radiating into her legs, as well as a 25-year-pack-a-day smoking history and a history of hypertension.

The deposition of Dr. Bruce Schlafly, a hand surgeon, was taken on July 11, 2007. Dr. Schlafly evaluated Ms. Vance on October 17, 2006. Dr. Schlafly opined that Ms. Vance has bilateral carpal tunnel syndrome, that Ms. Vance's work at Laker is the substantial and prevailing factor in the cause of her bilateral carpal tunnel syndrome and the need for treatment. Dr. Schlafly defined the needed treatment as bilateral carpal tunnel releases. Dr. Schlafly found no evidence of rheumatoid arthritis in Ms. Vance's hands, which he described as typically involving swollen MCP joints of the fingers; Dr. Schlafly did admit that rheumatoid arthritis can cause carpal tunnel syndrome. Dr. Schlafly said that once carpal tunnel syndrome has become established, in many cases it will not improve with rest alone and requires surgical treatment. Dr. Schlafly testified that a wrist fracture can cause carpal tunnel syndrome, but that the acute swelling and trauma produces symptoms within three to six months of the fracture. Ms. Vance's age and gender put her at an increased risk of carpal tunnel syndrome, according to Dr. Schlafly, who said that the most common patient population for the development of carpal tunnel syndrome is females in their 40's to 60's.

The deposition of Dr. David Brown, also a hand surgeon, was taken on October 31, 2007. Dr. Brown saw Ms. Vance on March 14, 2007, to evaluate her hands. Dr. Brown found Ms. Vance to have symptoms and findings consistent with bilateral carpal tunnel syndrome. In determining the role of Ms. Vance's employment at Laker in causing these symptoms, Dr. Brown reviewed Ms. Vance's occupational and nonoccupational risk factors. Dr. Brown identified rheumatoid arthritis, a history of a fractured left wrist, a 25-year-pack-a-day smoking history, her status as a female in her 40's, arthritis at the base of the thumb and the repetitive nature of her job. Dr. Brown felt that if Ms. Vance's job were an important factor in the development of her carpal tunnel syndrome, her symptoms should have improved or dissipated after she quit working at her job. Dr. Brown admitted that smoking is only anecdotally a potential risk factor for carpal tunnel syndrome, that Ms. Vance did not develop carpal tunnel syndrome from the time of her wrist fracture until she began working at Laker, that Ms. Vance was in her early 40's when she began work at Laker and that she had not developed carpal tunnel syndrome prior to her work at Laker. Dr. Brown felt that of all the risk factors present in Ms. Vance's development of carpal tunnel syndrome, that Ms. Vance most likely had a nonoccupational carpal tunnel syndrome.

APPLICABLE LAW

RSMo Section 287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor.

AWARD

The claimant, Tanji Vance, has sustained her burden of proof that she sustained the occupational disease of carpal tunnel syndrome as the result of her work at Laker. Dr. Schlafly testified most credibly regarding the causation of carpal tunnel syndrome by analyzing and explaining the development and role of different risk factors in reaching his conclusion that Ms. Vance's work at Laker caused her bilateral carpal tunnel syndrome.

Similarly, Ms. Vance has established the liability of the employer/insurer for the \$1,383.00 bill for the nerve conduction study authorized by Dr. Mutchler and used in diagnosing her bilateral carpal tunnel syndrome.

Finally, the employer/insurer are liable for further medical treatment as recommended by Dr. Schlafly and Dr. Mutchler and attendant benefits for time during which Ms. Vance is unable to be gainfully employed.

Date: _____

Made by: _____

HANNELORE D. FISCHER
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Jeffrey Buker
Director
Division of Workers' Compensation