

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

Injury No.: 08-028373

Employee: Deborah Vrabel
Employer: Aramark Services
Insurer: ACE American Insurance Company of North America, Inc.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the briefs, heard oral arguments, and considered the entire record. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge (ALJ) dated September 13, 2010, by issuing a separate opinion allowing medical benefits in the above-captioned case.

The ALJ made the following findings of fact and conclusions of law: 1) employee suffers from carpal tunnel syndrome in both upper extremities; 2) employee's carpal tunnel syndrome arose while working for employer and as a direct result of her work duties; 3) employee's work at employer medically caused the carpal tunnel syndrome; and 4) employee is awarded medical benefits to cure and relieve the effects of the occupational disease.

We agree with the aforementioned findings and conclusions. However, we disagree with an additional conclusion the ALJ made under his "Rulings of Law," in which he stated that employee's "work was the **substantial factor** in the development of the condition." The application of the "substantial factor" analysis is misplaced in this case. The onset of employee's occupational disease occurred on March 27, 2008. Therefore, this case falls under the purview of the 2005 amendments to Missouri Workers' Compensation Law. Following the 2005 amendments, § 287.067.2 RSMo provides that "[a]n injury by occupational disease is compensable only if the occupational exposure was the **prevailing factor** in causing both the resulting medical condition and disability."

Therefore, while we still agree with the ALJ's ultimate award of medical benefits, we deem it necessary to issue this separate opinion and find that employee's occupational exposure with employer was the **prevailing factor** in the development of employee's condition.

The award and decision of Administrative Law Judge Matthew D. Vacca, issued September 13, 2010, is affirmed, and is attached and incorporated by this reference.

The Commission further approves and affirms the ALJ's allowance of attorney's fee as being fair and reasonable.

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Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 23rd day of February 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

DISSENTING OPINION FILED
Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

Employee: Deborah Vrabel

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed. I believe the administrative law judge erred in concluding that employee is entitled to medical benefits because I do not believe employee's work was the prevailing factor in the development of her condition.

As the majority points out, in order for the occupational disease to be compensable, the occupational exposure must be the prevailing factor in causing the medical condition and disability. However, the majority did not discuss the definition of "prevailing factor" provided in § 287.067 RSMo. Under § 287.067, "[t]he 'prevailing factor' is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability." I find that employee failed to prove that the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.

First of all, I find that employee is a "hunt and peck" typist and, therefore, her typing did not result in the stresses generally associated with the development of carpal tunnel syndrome. Although employee testified at the Hardship Hearing that she only utilized the hunt and peck typing method when she was on the phone, there is ample evidence in the record to conclude that employee used this method whether she was on the phone or not. Both doctors Gjorgjlevski and Rotman's medical records state that employee is a hunt and peck typist without mentioning anything about her utilizing this method only when she is on the phone.

Dr. Rotman testified that the stress placed on the hands and wrists by a person utilizing the hunt and peck method is much less than the stress when someone is using all of their fingers on both hands for typing. Thus, a hunt and peck typist is experiencing even less stress on their hands and wrists than a normal typist. Dr. Rotman explained that this force cannot cause carpal tunnel syndrome.

With regard to the medical expert opinions, only three doctors provided opinions as to causation and two of the three, Drs. Rotman and Howard, concluded that employee's work was not the prevailing factor in causing her carpal tunnel syndrome. Only Dr. Brown concluded that her condition was caused by her employment. However, Dr. Brown never asked employee how she typed. He just assumed that employee used her hands to type in a normal fashion. For this reason, Dr. Brown's opinion is based upon a faulty understanding of how employee typed and, therefore, is not as credible as the opinions of Drs. Rotman and Howard.

Dr. Howard explained that employee's gender, age, and weight were three risk factors for contracting carpal tunnel syndrome. Dr. Howard and Dr. Rotman noted that patients with these risk factors are more likely to have carpal tunnel syndrome. In fact, even Dr. Brown agreed that employee has these three risk factors.

Because employee has three non-occupational risk factors known to be related to carpal tunnel syndrome and types utilizing the hunt and peck method, I do not believe

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employee's occupational exposure was the prevailing factor in causing the medical condition and disability. When taking into account the three non-occupational risk factors, it cannot be said that her occupational exposure is the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. As such, I would not award employee medical benefits to cure and relieve the effects of her carpal tunnel syndrome.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

Alice A. Bartlett, Member