

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.

Employee: Deborah Vrabel

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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

Employee: Deborah Vrabel

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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

TEMPORARY OR PARTIAL AWARD

Employee: Deborah Vrabel

Injury No.: 08-028373

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Aramark Services

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

Additional Party: Second Injury Fund

Insurer: Ace American

Hearing Date: August 19, 2010

Checked by: MDV

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: March 27, 2008
5. State location where accident occurred or occupational disease contracted: St. Louis City
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?
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:
Clerical work caused carpal tunnel syndrome.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Parts of body injured by accident or occupational disease: Both upper extremities
14. Compensation paid to-date for temporary disability: 0
15. Value necessary medical aid paid to date by employer/insurer? \$1,487.51
16. Value necessary medical aid not furnished by employer/insurer? 0

Employee: Deborah Vrabel

Injury No.: 08-028373

- 17. Employee's average weekly wages: \$486.00
- 18. Weekly compensation rate: \$324.00/\$324.00
- 19. Method wages computation: Agreed

COMPENSATION PAYABLE

20. Amount of compensation payable:

Unpaid medical expenses:	*
Future temporary total disability benefits	**

21. Second Injury Fund liability: Open

(Use of an asterisk (*) denotes uncertain contingent future benefits)

TOTAL: **

22. Future requirements awarded: See award

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 25% 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: Lynn Barnett

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Deborah Vrabel

Injury No.: 08-028373

Dependents: N/A

Employer: Aramark Services

Before the
**Division of Workers'
Compensation**

Additional Party: Second Injury Fund

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

Insurer: Ace American

Checked by: MDV

PRELIMINARY MATTERS

The issues presented for resolution by way of this hearing are occupational disease, medical causation, arising out of and in the course of employment, and the Employee requests medical treatment for carpal tunnel syndrome. Claimant contends she has work-related carpal tunnel syndrome caused by high volume handling of food orders for Employer.

FINDINGS OF FACT

1. Claimant is 55 years old and a resident of Fairmont City, Illinois. On the date of the accident herein March 27, 2008, Claimant worked at One Busch Place in St. Louis as an office assistant for Aramark Services.
2. Aramark Services provides food catering to the Anheuser Busch Company. There were thousands of employees at Anheuser Busch and any employee from a bottler to the president could call and order a meal from Aramark.
3. Claimant's duties consist of arriving at 6 a.m. and checking the voicemail for catering orders coming into the office. She would also take phone orders for catered meals as they came in. She would also take email orders for catered meals. When the orders would come in, she would write them down, then she would fill out special orders to be taken to the kitchen "running the orders". Claimant would then also enter the data into the computer.
4. Claimant's duties also included making multiple copies of carbon copies of the orders and distributing them, and entering them into the computer. She would often do this while simultaneously taking phone orders. She would use one hand to hunt and peck for keys to enter information into the computer while holding the phone with the other hand. The rest of the time she would use two hands to rapidly enter data into the computer.

5. Claimant would have to change dominant hand usage during the day. For example, her left hand would get numb from holding the phone and she would have to switch hands and type with the other hand. Claimant also had to intermittently do filing through the day which would take approximately one hour.
6. The majority of her day was taken up with processing orders. She performed typing a full six hours of the day.
7. Claimant began working in this capacity in 2002. A couple of years ago her hands started getting numb when she was typing and using the phone and she mentioned it to her supervisors as the condition started getting worse. Claimant's hands would go numb at the thumb and the two first fingers. They would interrupt her sleep and wake her up at night and weaken her grip.
8. Dr. Cantrell is the first doctor that was consulted for this condition. Dr. Cantrell sent Claimant to Anderson Hospital at Edwardsville for some EMG tests and diagnosed Claimant with severe carpal tunnel syndrome.
9. Employee told her supervisor at work the diagnosis and Employer sent her to Concentra. Concentra performed some tests, prescribed Tylenol and gave Claimant some wrist splints.
10. Claimant was seen twice at Concentra and then sent to Dr. Rottman for an examination.
11. She saw Dr. Rottman one time and he provided no treatment and determined her condition was not related to her work. Claimant thereafter went to Dr. Brown for an examination and Dr. Brown determined that Claimant's condition was, in fact, work related.
12. The Employer then sent Claimant to another doctor, Dr. Howard, for an examination. He did not provide any treatment and also said the condition was not work related.
13. Claimant continued to work and the problems remained constant, progressing through the day with activity until they would become numb and fairly useless towards the evening. The more she worked the worse the hands became. Claimant was laid off in August of 2008.
14. Employee now works for Southern Illinois Healthcare Foundation and works about 20 hours a week doing some data entry and scanning files which she processes via email.
15. This current work is different in character and degree and has made no impact or difference in her hand condition as it existed while working for Aramark. The hand condition has not changed since Aramark and she has only worked at the new employer for approximately 60 days.

16. Claimant weighed 186 pounds while working for Aramark, but has lost 30 pounds and still has problems with her hands.
17. Since March of 2008 Employee has not been diagnosed with diabetes.
18. She has not had any rubella.
19. She does not have any thyroid disease and has not experienced any pregnancies.
20. Employee has no hand intensive hobbies, no knitting, crocheting or other hand specific work.
21. Currently, Claimant experiences numbness in her two fingers and her thumbs. If she holds something for five minutes, she has to set it down because she loses feeling in her hands. The hand condition often wakes her up at night or prevents her from falling asleep in the first place. The pain shoots up her wrists and feels like needles or burning.
22. All doctors have suggested Claimant undergo surgery.
23. Dr. Howard and Dr. Rottman believe Claimant's condition is not work related because she has other risk factors for carpal tunnel syndrome such as being a woman and middle-aged.
24. Dr. Brown believes Claimant's condition is work related because the work is sufficient in intensity and character to cause pathology and logically appears connected to work activities. The medical causation or work-relatedness of her symptoms is proven by the waxing and waning with work. There is a clear nexus.

RULINGS OF LAW

1. Claimant sustained or contracted an occupational disease while working at Aramark.
2. Claimant suffers from carpal tunnel syndrome in both upper extremities. The condition arose while working at Aramark and as a direct result of her work duties.
3. The work at Aramark medically caused the carpal tunnel syndrome and the work was the substantial factor in the development of the condition.
4. But for Claimant's work at Aramark, she would not have developed carpal tunnel syndrome.
5. Employee is entitled to medical benefits to cure and relieve the effects of the occupational disease.

DISCUSSION

Drs. Rottman and Howard's opinions are not really scientifically based. They are really no more than general statements regarding causation of carpal tunnel syndrome in middle-aged women. They rule out work-related carpal tunnel syndrome because other factors can cause the condition in the general population. Dr. Brown focused on this individual employee and her job specific duties and has a more believable, however, opinion.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation