

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

Injury No.: 09-111705

Employee: Lorrain Wibbenmeyer
Employer: Citizens Electric Corporation
Insurer: Missouri Electric Cooperatives
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. Having read the briefs, reviewed the evidence, heard the parties' arguments, and considered the whole record, we find that the award of the administrative law judge 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 with this supplemental opinion.

Discussion

Employer's argument that a "general release" bars this claim

The record contains a document entitled "General Release" that employee signed on October 22, 2009, in connection with employer's laying her off as part of a downsizing effort. Employer argues that employee's signing this document constitutes either a valid settlement of her workers' compensation claim, or a waiver of her rights under Chapter 287 barring her from bringing such a claim.

First, we note that the issue whether the general release bars employee's claim may not properly be before this Commission, because it appears from the transcript that employer failed to make it an issue at the hearing. The courts have held that defenses that employer does not identify at the hearing before the administrative law judge are waived. See *Lawson v. Emerson Electric Co.*, 809 S.W.2d 121, 125 (Mo. App. 1991). At oral argument in this matter, counsel for employer stated that the employer attempted to put the matter in issue, and that the administrative law judge made an off-the-record ruling that the general release was not a valid settlement. In any event, it would seem that such off-the-record discussions would not have prevented employer's counsel from making an affirmative statement, on the record, that employer wished to dispute the issue (even if only for purposes of appeal) whether employee's claim is barred by the general release.

Because the courts have held that our authority is limited to those issues that the parties specifically identify as in dispute at the hearing before the administrative law judge, the importance of securing a complete and unambiguous statement of those issues on the record cannot be overstated. See, e.g., *Boyer v. Nat'l Express Co.*, 49 S.W.3d 700, 706 (Mo. App. 2001). We will briefly address the general release, however, because we wish to make clear our position with respect to employer's argument.

Employee: Lorrain Wibbenmeyer

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We believe that employer's argument fails because it asks us to subvert the plain language of Chapter 287 dealing with settlements. Section 287.390 RSMo requires the parties to obtain approval from an administrative law judge or this Commission before any agreement to settle workers' compensation benefits can be given effect:

1. Parties to claims hereunder may enter into voluntary agreements in settlement thereof, but no agreement by an employee or his or her dependents to waive his or her rights under this chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by an administrative law judge or the commission, nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter.

(emphasis added).

At oral argument in this matter, employer's counsel conceded that the general release has never been approved as required under the foregoing section. It follows that the general release cannot be considered a valid settlement of any dispute or claim for compensation under Chapter 287. Similarly, the plain language of the foregoing statute makes clear that employee cannot be deemed to have waived her rights under Chapter 287 by signing the document.

To the extent employer asks us, at this time, to approve the terms of the general release as a settlement of employee's workers' compensation claim, we deny that request, because there has been no showing that the terms of the agreement are in accordance with employee's rights under Chapter 287. We note that the rules of the Division of Workers' Compensation (Division) regarding compromise settlements require, among other things, that:

(A) The compromise settlement agreement shall set forth the workers' compensation issues compromised, the total amount of medical costs incurred and previously paid, the total amount of medical costs paid under the agreement, the total amount of temporary benefits previously paid, the total amount of temporary benefits paid under the agreement, the total amount of any permanency benefits previously paid, the total amount of permanency benefits paid under the agreement, the total amount of all benefits paid under the agreement, the total amount or the percentage of the employee's attorney's fees and expenses, and the total compensation paid in the case. A provision which prorates the amount of settlement over the life expectancy of the injured employee may be included.

8 CSR 50-2.010(18)(A)

The general release makes no mention whatsoever of the workers' compensation issues purportedly compromised, nor does it specify the amount of employee's medical costs, temporary benefits, permanency benefits, or the total compensation paid to employee. Instead, it appears to be merely a generalized severance agreement seeking a release of employer's civil liability in exchange for a monetary payment to the employee.

Employee: Lorrain Wibbenmeyer

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For all of the foregoing reasons, we conclude that the general release employee signed when employer laid her off has no effect whatsoever in this workers' compensation proceeding. Employer is referred to the above-cited and relevant Division rules, as well as the requirements of § 287.390 for guidance as to how to properly approach a settlement in the workers' compensation context.

Medical causation – carpal tunnel syndrome

We note that the administrative law judge found that employee credibly testified about her job duties. *Award*, page 8. We note also that employer's evaluating expert, Dr. David Brown, initially opined that employee's work was the likely prevailing factor causing her to suffer left carpal tunnel syndrome. Dr. Brown reached this opinion on the basis of a description of employee's work duties that, in all material respects, matched her hearing testimony. It was only after employer provided Dr. Brown with a modified description of employee's job duties that Dr. Brown changed his opinion and opined that employee's work was not the prevailing factor causing her to suffer carpal tunnel syndrome.

We adopt the finding of the administrative law judge that employee provided credible testimony about her work duties at the hearing. It follows that Dr. Brown's initial opinion, which was based on employee's description of her job duties, is the relevant opinion for purposes of our analysis. Faced with the essentially unanimous opinions from Drs. Brown and Poetz that employee's work for employer is the prevailing factor causing her to suffer left carpal tunnel syndrome, we are persuaded that employee prevails on the issue of medical causation of this injury.

Conclusion

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

The award and decision of Administrative Law Judge Maureen Tilley, issued January 7, 2013 is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fees herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 12th day of August 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Lorrain Wibbenmeyer

Injury No. 09-111705

Dependents: N/A

Employer: Citizens Electric Corp

Additional Party: N/A

Insurer: Missouri Electric Cooperatives c/o Cannon Cochran Management Services

Hearing Date: September 18, 2012

Checked by: MT/rmm

SUMMARY OF FINDINGS

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? October 1, 2009.
5. State location where accident occurred or occupational disease contracted: Perry 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: The employee's repetitive work activities were the prevailing factor in causing injury to the employee's left upper extremity at the level of the wrist and elbow.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Left wrist and left elbow.
14. Compensation paid to date for temporary total disability: \$0.00.
15. Value necessary medical aid paid to date by employer-insurer? \$0.00.
16. Value necessary medical aid not furnished by employer-insurer? \$9,363.00.
17. Employee's average weekly wage: \$760.00.
18. Weekly compensation rate: \$506.69 (TTD/PTD) and \$422.97 (PPD).
19. Method wages computation: Stipulation.
20. Amount of compensation payable:

Previously Incurred Medical:	\$ 9,363.00
Permanent Partial Disability and Disfigurement:	<u>\$ 33,837.60</u>
Total:	\$ 43,200.60
21. Second Injury Fund liability: Left Open.
22. Future requirements awarded: None.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The Compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Joseph Webb.

FINDINGS OF FACT AND RULINGS OF LAW

On September 18, 2012, the employee, Lorrain Wibbenmeyer, appeared in person and by her attorney, Joseph Webb, for hearing for final award. The employer/insurer was represented at the hearing by their attorney, Joseph Page. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed fact stipulations and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

STIPULATIONS:

The parties stipulated to the following:

1. Employer, Citizens Electric Corp., was operating under and subject to the provisions of the Missouri Workers' Compensation Act and liability was fully insured by Missouri Electric Cooperatives.
2. The employee's claim was filed within the time allowed by law.
3. The employer did not furnish any medical aid.
4. The employer did not pay any temporary total disability benefits.

ISSUES:

1. Covered employee.
2. Accident or occupational disease.
3. Notice.
4. Average weekly wage and rate.
5. Medical causation.
6. Previously incurred medical aid.
7. Nature and extent of disability.
8. Disfigurement.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits:

- A. Email between Employee and Employer/Insurer (1/25/10).
- B. Report of Injury (filed 1-29-10).
- C. Medical Records – Orthopaedic Associates, Dr. Rickey Lents (1-25-10 to 4-7-11).
- D. Medical Bills – Orthopaedic Associates (\$3,499.00).
- E. Medical Records – Physicians Alliance Surgery Center (3-4-11).
- F. Medical Bills – Physicians Alliance Surgery Center (\$5,090.00) and S & R Anesthesia Services Inc. (\$640.00).
- G. Medical Records – Therapy Solutions (3-14-11).

- H. Medical Bills – Therapy Solutions (\$134.00).
- I. Lien Letter from Accent (8-30-12).
- J. Medical Report – Dr. David Brown (5-25-10).
- K. Addendum – Dr. David Brown (10-18-10).
- L. Denial Letter from Employer/Insurer (12-2-10).
- M. Medical Report – Dr. Robert Poetz (1-6-11).
- N. Medical Report – Dr. Robert Poetz (12-22-11).
- O. Old Payment Notice.
- P. New Payment Notice.

Employer/Insurer's Exhibits:

- 1. Medical Records - Dr. Rickey L. Lents 11/13/1997 - 04/26/1999.
- 2. Claim 08-123487; Date of injury: 8/2008; Filing date 1/29/2010.
- 3. Report of Injury.
- 4. Claim 10-065958; Date of injury: 03/24/2010; Filing date 08/23/2010.
- 5. Claim 10-066043; Date of injury: 01/27/2010; Filing date 08/23/2010.
- 6. Medical Report - Dr. Robert Poetz - Dated 05/24/2011.
- 7. Claim 09-111705; Date of injury: 10/01/09; Filing date 3/25/2011.
- 8. Medical Report - Dr. Robert Poetz - Dated 2/24/2012.
- 9. Medical Records - Dr. Rickey L. Lents 01/25/2010 - 01/07/2011.
- 10. Medical Report - Dr. David M. Brown, Dated 05/25/2010.
- 11. Medical Report Addendum - Dr. David M. Brown, Dated 10/18/2010.
- 12. Daily Work Activities.
- 13. Deposition of Ruth Miesner and Lynda Wahler, September 4, 2012.
- 14. General Release.

FINDINGS OF FACT:

Based on the above exhibits and the testimony presented at the hearing, I make the following findings:

The employee, Ms. Lorrain Wibbenmeyer, started working for the employer, Citizens Electric Corp., Inc., in 1985. She was a Customer Service Representative for approximately the first 10 years of her employment. Then she became a Senior Billing Clerk for approximately 14 years. Her employment ended on October 16, 2009, when she was laid off due to downsizing.

The employee's primary duty was entering information provided by the customers and service crew into the computer system by keyboard. Customer information was initiated by phone call or in person at the office. Service crew information was delivered to the employee by an electronic device or paper copy.

The employee's job duties changed in 2007 when her employer implemented a new billing system. The employee testified that there may have been as many as 500-600 meter readings each day to be entered by keyboard on the old system. After the new system was

implemented in 2007 there was less data entry but more programming tasks required. The employee testified that her non-data entry tasks would probably average an hour each day, but that this was not a consistent hour due to interruptions.

The employee testified that in her last year of work at Citizens Electric Corp. her left hand became more symptomatic. She testified that she had trouble holding onto things, trouble gripping, and increased pain with increased hand intensive activities.

The employee testified that after she was laid off she thought her left hand and elbow symptoms would get better, but she continued to have pain, difficulty with gripping activities and problems sleeping due to the symptoms.

The employee testified that she saw Dr. Rickey Lents on January 25, 2010, and was diagnosed with left carpal tunnel syndrome and a surgical release was recommended.

The employee testified that she did not schedule the surgery immediately because she believed the injury was work-related and she wanted to make a workers' compensation claim.

The employee testified that she corresponded with Linda at her employer's office on January 25, 2010, and was referred to Tammy Ludwig with the workers' compensation insurance company. The employee reported the diagnosis to Ms. Ludwig and requested treatment. In addition, the employee went to the Division of Workers' Compensation and filled out a claim form on January 27, 2010.

The employee returned to Dr. Lents's office on March 24, 2010, for her left elbow symptoms. Dr. Lents diagnosed significant lateral epicondylitis and recommended a surgical release in addition to and at the time of the carpal tunnel release. Dr. Lents also stated that the employee's lateral epicondylitis was almost certainly due to her employment.

The employer/insurer scheduled the employee for an IME with Dr. Brown which took place on May 25, 2010. Dr. Brown opined that the employee's symptoms and findings were consistent with the diagnosis of left carpal tunnel syndrome and recommended she undergo detailed electrodiagnostic testing of the left upper extremity. With regard to the elbow, Dr. Brown recommended an MRI. Dr. Brown stated that the need for further evaluation and treatment for the diagnosis of carpal tunnel syndrome would be related to her work at Citizens Electric with her work being the likely prevailing factor.

On October 18, 2010, Dr. Brown issued an addendum to his earlier report. The four-page addendum incorporates and discusses a chart of daily work activities prepared by the employer/insurer. Dr. Brown opined that if this job description was accurate and if the employee's data entry was intermittent, varied, and less than four hours a day, it was unlikely that her work activities would be considered the prevailing causative factor of her carpal tunnel syndrome and the need for treatment.

On December 2, 2010, the employer/insurer notified the employee that they would not be providing any further treatment or testing for her.

On January 6, 2011, the employee was examined by Dr. Poetz, an IME scheduled by her attorney. Dr. Poetz opined that she needed diagnostic studies and that surgical intervention of the left carpal tunnel and left elbow may be indicated.

The employee used her health insurance to continue her medical treatment with Dr. Lents. Dr. Lents performed a left carpal tunnel release and a left tennis elbow release on March 4, 2011. She received instruction on a home exercise program from Therapy Solutions on March 14, 2011. She was released at maximum medical improvement by Dr. Lents on April 7, 2011.

The cost of the above medical care was \$9,363.00. The employee's health insurance company is seeking reimbursement.

On December 22, 2011, the employee was re-evaluated by Dr. Poetz at the request of her attorney. Dr. Poetz opined that the surgery and medical care were medically necessary and that the medical bills were reasonable and customary. Dr. Poetz further opined that the injuries which occurred on October 1, 2009, were the substantial and prevailing factors to the following disabilities:

1. There is a 25% permanent partial disability to the upper left extremity as measured at the left hand and wrist directly resulted from the October 1, 2009 work related injury.
2. There is a 20% permanent partial disability to the upper left extremity as measured at the left elbow directly resulted from the October 1, 2009 work related injury.

APPLICABLE LAW:

- §287.067.1 defines "occupational disease" as 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 defined in this section. The disease need not 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.
- §287.067.2 states that an injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.
- §287.420 states that no proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time,

place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice.

- Under §287.140.1 the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance, and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.
- The employer waives the right to select the treating physician by failing or neglecting to provide necessary medical aid. *See Herring v. Yellow Freight System Inc.*, 914 S.W.2d 816 (Mo. App. W.D. 1995) and *Banks v. Springfield Park Care Center*, 981 S.W.2d 161 (Mo. App. S.D. 1998).
- An employer is charged with the duty of providing the injured employee with medical care, but the employer is given control over the selection of the medical provider. It is only when the employer fails to do so that the employee is free to pick his own provider and assess those costs against his employer. Therefore, the employer is held liable for medical treatment procured by the employee only when the employer has notice that the employee needs treatment, or a demand is made on the employer to furnish medical treatment, and the employer refuses or fails to provide the needed treatment. *Blackwell v. Puritan-Bennett Corp.*, 901 S.W.2d 81, 85 (Mo. App. E.D. 1995).
- The employer will be liable for medical expenses incurred by the employee when the employer has unsuccessfully denied compensability of the claim. Denial of compensability is tantamount to a denial of liability for medical treatment. *Beatty v. Chandeysson Elec. Co.*, 190 S.W.2d 648 (Mo. App. 1945). *See also* I Mo. Workers' Compensation Law § 7.2 (Mo. Bar 3rd ed. 2004).
- If the employee remains personally liable for any of the reductions, she is entitled to recover them as "fees and charges" pursuant to §287.140. If any of the reductions resulted from collateral sources independent of the employer, they are not to be considered pursuant to §287.270 and the employee shall recover those amounts. However, if the employer establishes by a preponderance of the evidence that the healthcare providers allowed write-offs and reductions for their own purposes and the employee is not legally subject to further liability, the employee is not entitled to any windfall recovery. *Farmer-Cummings v. Pers. Pool of Platte County*, 110 S.W.3d 818, 823 (Mo. banc 2003).
- It is the employee's burden to detail her past medical expenses and testify to the relationship of such expenses to her compensable workplace injury. Once that is accomplished, the party wishing to challenge the amount being sought by the employee has the burden to establish by a preponderance of the evidence that the employee is not required to pay the billed amounts. *Ellis v. Missouri State Treasurer*, 302 S.W.3d 217, 225 (Mo. App. S.D. 2009).

- When the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is the most credible. *Gordon v. City of Ellisville*, 268 S.W.3d 454, 460 (Mo. App. E.D. 2008); see also *Townser v. First Data Corp.*, 215 S.W.3d 237, 242 (Mo. App. E.D. 2007).

RULINGS OF LAW:

Issue 1: Covered Employee

The employee testified that she began working for Citizens Electric Corp. in 1985 and worked there until her layoff on October 16, 2009. There is no evidence to the contrary; therefore, I find that Ms. Wibbenmeyer was a covered employee working under the Workers' Compensation Act for Employer Citizens Electric Corp. on or about October 1, 2009.

Issue 2: Accident or Occupational Disease AND Issue 5: Medical Causation

During her 24 years of employment at Citizens Electric, a majority of the employee's job duties required data entry. The employee's credible testimony explained and demonstrated some of those job duties in great detail. The employee also testified that although the manual data entry for daily meter readings was much less after a new computer system was installed in 2007, there was more data entry required for programming. The employee estimated her total time for non-data entry tasks at about one hour each workday.

The employer/insurer offered the deposition testimony of Ruth Miesner and Lynda Wahlers, both employees of Citizens Electric Corp. Ms. Miesner testified that she worked at the Perryville office for three years with the employee, as her supervisor. Ms. Miesner further testified that the employee's position consisted of three to four hours of continuous data entry. On cross-examination, Ms. Miesner stated that although she did not know the details of some of the employee's tasks, she believed an accurate amount of time dedicated to data input would be three to four hours a day.

Dr. Brown's first opinion that the employee's work at Citizens Electric was the "likely prevailing factor" was based on 1) a job description from Citizens Electric that did not quantify the amount of data entry performed, and 2) information from the employee that her job duties included six to eight hours a day of data entry. Dr. Brown later changed his opinion in an addendum report which was based on 1) a Daily Work Activities chart provided by the employer/insurer, and 2) a summary letter stating the opinion of the employer/insurer. Dr. Brown concluded that "if this job description is accurate and if Ms. Wibbenmeyer's data entry was intermittent, varied, and was less than four hours a day, it is unlikely in my opinion, that her work activities would be considered the prevailing causative factor of her carpal tunnel syndrome and the need for treatment."

Dr. Poetz opined in his February 24, 2012 report that the injuries which occurred on October 1, 2009, were the substantial and prevailing factors to the employee's resulting medical conditions and disabilities.

Based on all of the evidence presented, I find that Dr. Poetz decision on the issues of occupational disease and medical causation are more credible than Dr. Brown's opinion on those issues.

Based on a review of the evidence and my observations at the hearing, I find that the employee's work activities, which included substantial data entry, were the prevailing factor to her left carpal tunnel syndrome and her left lateral epicondylitis.

Issue 3: Notice

As set out above §287.420 requires written notice of occupational diseases no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice.

Here, the evidence indicates that the employee was diagnosed with carpal tunnel syndrome on January 25, 2010, and lateral epicondylitis on March 24, 2010. The evidence further indicates that the employee contacted her employer the very same day to report the diagnosis and request medical treatment. The employee testified that because she was not satisfied that her report of the injury and her request for medical treatment would be addressed, she made a trip to the Division of Workers' Compensation office in Cape Girardeau. At that visit on January 27, 2010, the employee filed a claim for compensation listing her injuries as "right & left hands, wrists & elbows"; she listed the date of accident as "8/2008".

The claim form filled out by the employee on January 27, 2010, and stamped by the Division of Workers' Compensation on January 29, 2010, meets the statutory requirement set out above in §287.420 which requires written notice no later than thirty days after the diagnosis. Because the statutory requirements for notice are met in this case, an analysis of whether or not the employer was prejudiced is not necessary.

Issue 4: Average Weekly Wage and Rate

The parties have agreed that the employee's average weekly wage is \$760.00. The employee asserts that her permanent partial disability rate is \$422.97, the maximum rate for the period of July 1, 2009 to June 30, 2010. The employer/insurer disputes this rate and asserts that the employee's permanent partial disability rate should be \$404.66, the maximum rate for the period of July 1, 2008 to June 30, 2009. The employer/insurer bases this assertion on the claim filed by the employee on January 27, 2010, wherein the employee listed her date of injury as "8/2008". However, the case on the hearing docket for which the court heard evidence was Injury Number 09-111705. The employee filed this claim on May 25, 2011, asserting left wrist and left elbow injuries with a date of accident listed as "October 1, 2009". Because the employee filed a claim describing the injuries at issue in this case and alleging a date of injury of October 1,

2009, and because all of the above evidence was heard on this injury, I find that the employee's date of injury was October 1, 2009, consequently setting her permanent partial disability rate at \$422.97.

Issue 6: Previously incurred medical aid

The employee testified that she has past medical expenses in the amount of \$9,363.00. The employer/insurer disputes this claim as to authorization and causal relationship. The statute is clear that the employer must provide medical treatment as reasonably required to cure and relieve the effects of the injury. Therefore, the first issue is whether the treatment in dispute was causally related to the employee's injuries of October 2009 and, consequently, that the employer/insurer should be assessed with those costs.

Here, the evidence supports the conclusion that the employee's medical treatment was causally related to her injuries of October 2009. First, Dr. Lents, the treating physician and surgeon, opined that the employee's lateral epicondylitis was "almost certainly due to her employment due to overuse of keyboard and should be considered a work related injury." Dr. Lents recommended and performed simultaneous carpal tunnel and tennis elbow releases. Second, Dr. Brown, who provided an IME at the request of the employer/insurer, opined in his first report that "the need for further evaluation and treatment for the diagnosis of carpal tunnel syndrome would be related to her work at Citizens Electric with her work being the likely prevailing factor." Finally, Dr. Poetz, who provided an IME at the request of the employee, opined that "the surgery and medical care referenced above were medically necessary in the treatment of this patient."

The only evidence that the employee's medical treatment was not causally related to her injuries of October 2009 was the addendum prepared by Dr. Brown on October 18, 2010. In that addendum Dr. Brown, changing his earlier opinion, makes the qualified statement that "if [the] job description is accurate and if Ms. Wibbenmeyer's data entry was intermittent, varied, and was less than four hours a day, it is unlikely in my opinion, that her work activities would be consider the prevailing causative factor for her carpal tunnel syndrome and the need for treatment."

Based on my previous finding of medical causation, I find that the employee's medical treatment was causally related to her October 2009 work injuries.

The second issue is whether the employer/insurer can be held liable for causally related medical treatment necessary to cure and relieve the effects of a compensable work injury if the employer/insurer did not authorize the treatment.

In the instant case, the employee put the employer on notice that she needed medical treatment by both her personal requests for treatment and her claim for benefits filed with Division on January 27, 2010. Furthermore, the employer made it clear that they were aware the employee had requested treatment by their response in their letter of December 2, 2010, stating that no treatment would be provided through its workers' compensation program. Therefore, the

Blackwell requirements of notice or a demand for treatment and a subsequent refusal have been met.

Based on the above analysis, I find that the employee's past medical expenses in the amount of \$9,363.00 were reasonably necessary to cure and relieve the effects of the employee's injury. Furthermore, I find that the employer failed to provide medical care after having notice of the employee's injuries and requests for treatment and, consequently, the cost of the employee's treatment in the amount of \$9,363.00 shall be assessed to the employer. The employer/insurer is directed to pay the employee \$9,363.00.

Issue 7: Nature and Extent of Disability AND Issue 8: Disfigurement

The only permanent partial disability ratings after treatment were submitted by the employee via Dr. Poetz's medical report February 24, 2012. Dr. Poetz rated the employee's left hand and wrist at 25%; Dr. Poetz rated the employee's left elbow at 20%. In addition, the employee testified that she has weakness, lack of strength and difficulty with certain tasks such as opening two-liter bottles, activities such as driving and positions where the elbow is flexed. The employee has two surgical scars: a one-inch scar on the left elbow and a less-than-one-inch scar on the left hand.

Based on the evidence presented, I find that the employee has sustained a 20% permanent partial disability (35 weeks), referable to the left hand and wrist and a 20% permanent partial disability (42 weeks), referable to the left elbow caused by her October 2009 injuries. The employee also has 3 weeks of disfigurement. The employee's permanent partial disability rate is \$422.97; therefore, the employer/insurer is directed to pay the employee \$33,837.60.

ATTORNEY'S FEE

Joseph Webb, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST

Interest on all sums awarded hereunder shall be paid as provided by law.

Employee: Lorrain Wibbenmeyer

Injury No. 09-111705

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation