

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

Injury No.: 03-027112

Employee: Mosley Williams, Jr.
Employer: ABBCO Service Corporation
Insurer: Missouri Retailers Insurance Trust
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Dismissed by award)
Date of Accident: Alleged March 18, 2003
Place and County of Accident: Alleged St. Louis City, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 7, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Linda J. Wenman, issued September 7, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 21st day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Mosley Williams, Jr. Injury No.: 03-027112

Dependents: N/A Before the
Division of Workers'
Employer: ABBCO Service Corporation **Compensation**
Department of Labor and Industrial
Additional Party: Second Injury Fund – dismissed by award Relations of Missouri
Jefferson City, Missouri
Insurer: Missouri Retailers Insurance Trust
Hearing Date: June 2, 2005 Checked by: LJW:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
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: Mach 18, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis City, MO
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 occurred or occupational disease contracted: Employee was buffing a floor when an exposed wire sparked, producing a burn on volar side of his left index finger.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Left index finger
14. Nature and extent of any permanent disability: No permanency or disfigurement.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Mosley Williams, Jr. Injury No.: 03-027112

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$300.00
19. Weekly compensation rate: \$200.00 / \$200.00
20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable: None - 0 -

22. Second Injury Fund liability: No

TOTAL: - 0 -

23. Future requirements awarded: None

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Mosley Williams, Jr.	Injury No.: 03-027112
Dependents:	N/A	Before the
Employer:	ABBCO Service Corporation	Division of Workers'
Additional Party:	Second Injury Fund – dismissed by award	Compensation
Insurer:	Missouri Retailers Insurance Trust	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: LJW:tr

PRELIMINARIES

A hearing was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on June 2, 2005. The case was formally submitted on July 5, 2005. Attorney Susan Brown represented Mosley Williams, Jr. (Claimant). ABBCO Service Corp., (Employer) is insured by Missouri Retailers Insurance Trust, and represented by Attorney Amanda Miranda. Attached to the case is an unreleased child support lien.

Prior to the start of the hearing the parties identified the following issues for disposition in this case as: accident; arising out of and in the course and scope of employment; medical causation; liability for past medical expenses; temporary total disability (TTD); and nature and extent of permanent partial disability (PPD). Further, Claimant agreed to dismissal of his Second Injury Fund claim if the award does not meet the statutory threshold necessary to a viable claim. Claimant offered Exhibits A-D, and Employer offered Exhibits 1-3. All exhibits were admitted into the record. Any objections not expressly ruled on in this award are overruled.

SUMMARY OF EVIDENCE

Only testimony necessary to support this award will be reviewed and summarized.

Testimony & Medical Record Review

Claimant: Claimant worked for Employer as a member of a floor crew. The floor crew duties included buffing, cleaning and waxing floors. Claimant was a full-time employee on the night shift. On March 18, 2003, Claimant was buffing a floor when the handle on his buffer broke. Claimant notified his manager, and the manager used tape to try to repair the buffer. When Claimant resumed buffing, the tape came off exposing a wire, the wire sparked, causing an electrical shock, and knocked his left hand off the buffer. The top of his hand hit a wall, and he burned the volar side of his left hand.

Claimant notified his manager, and ice was placed on his left hand. Injury papers were completed, and although Claimant didn't return to his work, he stayed until the end of his shift. When his shift ended, Claimant went to the emergency room of a local hospital because his hand remained swollen.

At the hospital, Claimant told the emergency room staff he had been electrocuted at work. An x-ray of his left hand was obtained, and he was told he had a dislocated bone in his hand. A specialist was consulted, and Claimant was told he might need hand surgery. He agreed to undergo left hand surgery.

Following surgery, Claimant was in a cast for approximately three months. He didn't return to work with Employer because he was terminated two or three weeks following his hospital stay. Claimant couldn't work while the cast was on. Employer denied his claim for benefits. His medical bills have not been paid, and Claimant did not have private health insurance.

At the date of the hearing, Claimant testified he feels fine, and only notices pain when his hand is exposed to cold weather or if he lifts a heavy item. Claimant has started his own janitorial company and is actively working. Claimant's scarring was viewed, demonstrating surgical scars present on the dorsum of his hand, and palm discoloration of approximately two inches long, and of varying widths. No visible scarring was present on his left index finger.

Upon cross-examination by Employer, Claimant verified he has no recollection of his hand hitting anything after the buffer sparked. He testified sparks did land on his hand, although he can't say exactly where the sparks landed. Claimant acknowledged he told Dr. Tung his hand could have hit something. Claimant testified he didn't tell Dr. Schlafly he hit his hand, and he doesn't remember seeing Dr. Ollinger. Claimant denied he had ever received treatment for his left hand prior to this injury. Claimant verified he was injured on the fifth day of his employment, and was terminated on March 27, 2003, due to the discovery of a previous felony conviction that he had not reported on his application for employment.

Barnes-Jewish Hospital: Claimant was seen in the emergency room (ER) on March 19, 2003. His chief complaint was swelling of his left hand, and a bump on the top of his hand with dorsal numbness after an electrical shock. An x-ray was obtained that demonstrated a healed 4th metacarpal fracture, left index finger soft tissue swelling with an osseous abnormality. The ER physician noted Claimant had experienced a powerful shock that flung his left hand back, and the physician noted a small volar blister on Claimant's left index finger. The ER intake drawing indicated two blisters on the volar side of Claimant's left index finger at the 1st proximal joint, and at the 2nd proximal joint. No other blister sites are identified on the intake drawing. Claimant's CPK enzyme level was mildly elevated, and Claimant was admitted for observation and definitive therapy for a boxer's fracture.

On March 21, 2003, Dr. Tung took Claimant to surgery and performed a corrective osteotomy and plate fixation of Claimant's left 4th metacarpal neck fracture. Dr. Tung noted Claimant's left hand fracture by history appeared to be a new injury, but Claimant's physical exam and x-rays supported a mal-union of a previous fracture. Claimant was discharged the day of surgery. Dr. Tung's last progress note dated June 16, 2003, indicated Claimant had full mobility of his left hand and left ring finger. Claimant complained of tenderness with heavy activity and cold weather. Dr. Tung planned to re-evaluate Claimant in three to four months for a final check.

Deposition Testimony

Claimant: Claimant's deposition was obtained on July 7, 2003. Claimant's deposition testimony differs from his sworn testimony in that Claimant testified his hand when shocked flew back, but did not hit anything (Exhibit 3, pgs. 20-21). Claimant described his hand movement as "kind of like somebody punching your hand while you've got your hand up" (Exhibit 3, pg. 20). Claimant also denied that sparks hit his hand (Exhibit 3, pg. 21). Claimant testified his ring and long fingers were burned (Exhibit 3, pg. 25).

Medical Deposition Testimony

Dr. Schlafly: Dr. Schlafly is a board certified hand surgeon. Dr. Schlafly examined Claimant on December 19, 2003.

Claimant told Dr. Schlafly he had never had a prior injury to his left hand, and had never had symptoms in his left hand prior to receiving the electrical shock. Dr. Schlafly testified the presence of blisters on the palmer side of Claimant's hand would be consistent with an electrical shock. Dr. Schlafly opined Claimant's work injury of March 18, 2003, was a substantial factor in Claimant's need for surgery because Claimant was asymptomatic prior to the injury. Further, Dr. Schlafly found the treatment provided to Claimant to be reasonable and necessary to treat his injury.

Upon cross-examination, Dr. Schlafly acknowledged relying on Claimant's version of events when forming his opinion. Dr. Schlafly conceded his opinion would change if he had been presented with a version of events in which Claimant did not strike his hand. Finally, Dr. Schlafly agreed with Dr. Tung's assessment that Claimant's fracture had preexisted the injury.

Dr. Ollinger: Dr. Ollinger is a board certified plastic surgeon. Dr. Ollinger examined Claimant on October 22, 2003. Claimant told Dr. Ollinger he had not struck his left hand when he received the electrical shock. Dr. Ollinger testified it would not be possible for the fracture to have occurred on the date of injury, as fractures of this type take time to heal. Dr. Ollinger pointed to use of a saw during surgery necessary to separate the bone to correct Claimant's deformity, as further evidence that the left hand fracture was old. Upon examination, Dr. Ollinger found Claimant's left hand sensation to be normal. Claimant's left hand, including his fingers, had full extension and flexion. Dr. Ollinger found Claimant to have had an excellent surgical result, and opined the March 18, 2003 injury was not a substantial factor or proximate cause in Claimant's need of treatment. Finally, Dr. Ollinger opined Claimant had no permanent disability from his March 18, 2003 incident.

Upon cross-examination, Dr. Ollinger acknowledged he did not personally review the x-ray films of Claimant's left hand; instead he relied on the radiologist report interrupting the film. Dr. Ollinger further acknowledged Claimant's hospital discharge note indicated an event in which Claimant struck his hand as causing the fracture, but Dr. Ollinger testified the hospital record contained "loose associations" that were not definitive of the events surrounding the injury.

FINDINGS OF FACT & RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to accident and course/scope of employment

Claimant alleges an injury by accident that arose from receiving an electrical shock from a broken floor buffer, and causing his need for surgery to his left hand. Section 287.020 RSMo., defines accident as an unexpected or unforeseen event or series of events that occur suddenly, without fault, and produce objective symptoms of an injury. The injury must be clearly work related, and that term is defined as work being a substantial factor in the resulting medical condition. A causative factor may be substantial even if it is not the primary or most significant factor. *Cahall v. Cahall*, 963 S.W.2d 368, 372 (Mo.App. 1998) (overruled on other grounds). Further, there is no minimum percentage set out in the Workers' Compensation Law defining substantial factor. *Id.* Whether employment is a substantial factor in causing the injury is a question of fact. *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo.App. E.D. 1999) (overruled on other grounds).

Section 287.020.3(1) defines injury as that which has arisen out of and in the course of employment. Section 287.020.3(2) instructs that to arise out of and in the course of employment an injury must meet four requirements; (a) the employment is a substantial factor causing the injury, (b) the injury is a natural incident of the work/employment, (c) the employment was a proximate cause of the injury, and (d) the injury is not from risk unrelated to the employment to which other workers would be equally exposed outside of employment in normal life.

There does not appear to be a dispute as to whether a work related incident occurred on March 18, 2003. Claimant was buffing a floor when he received an electrical shock to his left hand. The ER record supports Claimant's allegation of accident. Employer did not present evidence to refute a finding that the incident occurred. I find Claimant sustained an injury by accident that arose out of and in the course and scope of his employment on March 18, 2003.

Issues relating to medical causation

Medical causation issues normally require the assistance of expert medical testimony. Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds). Section 287.140.1 RSMo., provides that an employer shall provide such medical, surgical, chiropractic, ambulance and hospital treatment as may be necessary to cure and relieve the effects of the workers' injury.

The true issue presented by this case is the relationship of the work accident, and Claimant's need for corrective left hand surgery. The medical experts have differing opinions, and their testimony has previously been summarized.

Complicating the medical causation determination is the inconsistent testimony of Claimant as to how his left hand immediately reacted to the shock. Due to his inconsistent deposition and hearing testimony, I do not find Claimant to be credible, and find his testimony to be of limited value.

Dr. Schlafly opined Claimant had suffered an aggravation of his preexisting healed left hand fracture, and the aggravation necessitated his need for corrective surgery (Exhibit B, pg.8). Dr. Schlafly conceded a different version of how Claimant's left hand reacted to the shock would have altered his opinion (Exhibit B, pg.11). Dr. Ollinger finds no link between Claimant's need for corrective surgery and the accident, and does not find the accident aggravated an underlying condition (Exhibit 1, pg. 8, 13). I find the opinion of Dr. Ollinger to be persuasive, and find Claimant has not met his burden to establish a medical casual link between his work accident of March 18, 2003, and his need for corrective surgery to his left hand.

Issues relating to liability for unpaid medical expenses

Section 287.140.1 RSMo., provides that an employer shall provide such medical, surgical, chiropractic, ambulance and hospital treatment as may be necessary to cure and relieve the effects of the workers' injury. Additionally, §287.140.3 RSMo., provides that all medical fees and charges under this section shall be fair and reasonable. A sufficient factual basis exists to award payment of medical expenses when medical bills and supporting medical records are introduced into evidence supported by testimony that the expenses were incurred in connection with treatment of a compensable injury. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo.banc 1989). Unless waived, Employer has the right to direct medical treatment at no cost to an employee. §287.140.10 RSMo.

Employer has not paid any medical benefits to date. Claimant seeks medical expenses in the amount of \$15,352.63, and produced itemized medical bills in this amount (Exhibit C). Large portions of the itemized bills reflect treatment regarding Claimant's left hand surgery, a surgery found to be unrelated to Claimant's work injury and not compensable.

However, Claimant was involved in a work related accident where he received an electrical shock. It is reasonable to assume Claimant may have needed some medical attention related to the accident, but there is no evidence Claimant made a request of Employer requesting medical care, or of Employer denying Claimant medical care. By Claimant's own admission, Employer offered to call an ambulance when the accident occurred, but Claimant declined (Exhibit 3, pg.25). I find Employer did not waive their right to direct Claimant's medical care.

Section 287.140.1 RSMo., provides an employee's right to direct their own medical treatment, but at their own expense. Without Employer's waiver to direct care, Claimant proceeded at his own peril. I do not find Employer liable for any medical bills incurred by Claimant relating to the March 18, 2003 work related accident.

Issues relating to temporary total disability

Temporary total disability (TTD) benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991)(overruled in part). The only evidence removing Claimant from the ability to work relate to treatment following surgery to his left hand, treatment that is not compensable. There is no evidence Claimant was taken off work solely due to the electrical shock received on March 18, 2003. I find Claimant is not owed any TTD benefits.

Issues relating to permanent partial disability & disfigurement

A permanent partial disability award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App.1991) (overruled in part). Further, Section 287.190.4 RSMo., allows additional compensation, not to exceed forty weeks, to be awarded for disfigurement when an injury produces scarring to the head, neck and arms.

Claimant's injury is limited to the affects of the electrical shock sustained by the March 18, 2003 accident. The ER record recorded two blisters on Claimant's index finger. There are no visible blisters remaining, and there is no disfigurement. There is no evidence of permanency resulting solely from an electrical shock. I find Employer has no liability for disfigurement or PPD benefits.

CONCLUSION

In summary, on March 18, 2003, Claimant sustained an accident arising out of and in the course of his employment with Employer. Employer is not liable for TTD or medical benefits. There is no permanency related to the accident. Claimant's Second Injury Fund claim is dismissed as it will not meet the statutory threshold necessary to trigger Second Injury Fund liability.

Date: _____ Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation