



STATE OF MISSOURI
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

3315 WEST TRUMAN BLVD, P.O. BOX 58, JEFFERSON CITY, MO 65102 (573) 751-4231

FEBRUARY 11, 2010

05-142836

ANDREW H MARTY
5500 MEXICO RD STE 200
ST PETERS, MO 63376

Injury No : 05-142836
Injury Date : 01-31-2005
Insurance No. :

*Employee : WILMA R FRANCE
00890061 3 120 HWY J
WRIGHT CITY, MO 63390
*Employer : BIG BOYS RESTAURANT
00890062 0 6 GATESWOOD DR
ST PETERS, MO 63376
*Insurer Attorney : SUSAN M TURNER
3225A EMERALD LN
JEFFERSON CITY, MO 65109

*Employee Attorney: JAMES LAW GROUP LLC
14 RICHMOND CENTER COURT
ST PETERS, MO 63376
*Insurer : MISSOURI EMPLOYERS MUTUAL INSURAN
00890063 7 663 TRADE CENTER BLVD
CHESTERFIELD, MO 63005

Enclosed is a copy of the Award on Hearing made in the above case.

Under the provisions of the Missouri Workers' Compensation Law, an Application for Review of the decision of the Administrative Law Judge may be made to the Missouri Labor and Industrial Relations Commission within twenty (20) calendar days of the date of the award. If you wish to request a review by the Commission, application may be made by completing an Application for Review Form (MOIC-2567). The Application for Review should be sent directly to the Commission at the following address.

Labor and Industrial Relations Commission
PO Box 599
Jefferson City, MO 65102-0599

If an Application for Review (MOIC-2567) is not postmarked or received within twenty (20) calendar days of the date of the award, the enclosed award becomes final and no appeal may be made to the Commission or to the courts.

Please reference the above Injury Number in any correspondence with the Division or Commission.

DIVISION OF WORKERS' COMPENSATION

Please visit our website at www.labor.mo.gov/wc

WC-142(01-06)
AWARD ON HEARING
NLP

AWARD

Employee: Wilma R. France

Injury No. 05-142836

Dependents: N/A

Employer: Big Boys Restaurant

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: N/A

Insurer: Missouri Employers Mutual Insurance

Hearing Date: November 10, 2009

Checked by: HTH/sb

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: January 31, 2005.
5. State location where accident occurred or occupational disease was contracted: Warren 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? No.
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: Over the years as a cook for the employer/insurer, claimant engaged in cutting, carrying and wrist, hand, and elbow repetitious movements that resulted in her occupational injury.
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: Both wrists, left elbow, hands, and fingers.
14. Nature and extent of any permanent disability: Yes.
15. Compensation paid to-date for temporary disability: - 0 -.
16. Value necessary medical aid paid to date by employer/insurer? - 0 -.

Employee: Wilma France

Injury No. 05-142836

- 17. Value necessary medical aid not furnished by employer/insurer? - 0 -.
- 18. Employee's average weekly wages: \$232.50.
- 19. Weekly compensation rate: \$155.00.
- 20. Method wages computation: By ALJ.

COMPENSATION PAYABLE

21. Amount of compensation payable:	Prior medical bill in the amount of	\$15,253.14
	Temporary Total Disability in the amount of	\$1,284.95
	Permanent Partial Disability	\$45,570.00

- 23. Future requirements awarded: No.

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: Andrew Marty.

Employee: Wilma R. France

Injury No. 05-142836

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Wilma R. France

Injury No. 05-142836

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Big Boys Restaurant

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

Additional Party: N/A

Insurer: Missouri Employers Mutual Insurance

Checked by: HTH/sb

PRELIMINARIES

The parties appeared before the undersigned Administrative Law Judge on November 10, 2009. The Division has jurisdiction to hear this case pursuant to §287.110 RSMo 2000. The parties provided briefs on the relevant issues on approximately December 1, 2009.

STIPULATIONS

1. The employee and the employer were operating under the provisions of the Workers' Compensation Law on or about January 31, 2005;
2. The employer's liability was insured by Missouri Employers Mutual Insurance;
3. The employer had notice of the alleged accident and a claim for compensation was timely filed;
4. The employee's average weekly wage was \$232.50.
5. The rate of compensation for temporary total disability was \$155.00 and \$155.00 for permanent partial disability; and
6. The employer has paid - 0 - in TTD and - 0 - in medical benefits to date.

DISPUTED ISSUES

1. Whether the claimant incurred injuries to her wrists as an occupational disease?
2. Whether pre-2005 law should be applied and was notice of injury sufficient?

If so:

3. Whether the employer/insurer is liable for claimant's medical care for her occupational disease?
4. The cause and extent of Claimant's permanent partial disability.

EVIDENCE

EMPLOYEE'S EXHIBITS:

- A Deposition of Dr. David Volarich
- B Barnes-Jewish Hospital records
- C Lincoln County Medical Center records
- D Three sets of records from Dr. Polineni's office
- E Two sets of records from the Troy Surgical Clinic
- F St. Joseph Health Center records
- G Medical Bills with summary

EMPLOYER/INSURER'S EXHIBITS:

- 1 Deposition of Dr. David Brown
- 2 Report of Dr. Brown

FINDINGS OF FACTS

Wilma R. France (Claimant) is a 64-year-old woman who worked as a cook at Big Boys Restaurant (Employer/Insurer). From 1992 to 1999 Claimant worked as a full-time employee. Between 1999 and 2005 Claimant worked on a part-time basis. Claimant's part-time work amounted to three and a half days a week and approximately 16 to 30 hours per week. Her duties, whether she worked part-time or full time, were the same. Claimant prepared and

Employee: Wilma R. France

Injury No. 05-142836

transported food items to and from the steam table. For lunch and dinner on a typical day, Claimant prepared two roast beefs, vegetables, mashed potatoes, and corn bread. This preparation required her to use her arms and hands to lift bags of food and cast-iron pans, open large cans of vegetables, stir and knead dough, prepare pies for baking, chop 50 pounds of cabbage for coleslaw, tenderize chicken fillets by beating them with a mallet.

In 2003, Claimant began to notice that both her wrists would tingle and she would have to shake them to restore feeling. She told her boss, Kevin King, that she was having some discomfort in her hands and wrists. Claimant's elbows also started to ache. Claimant began to wear an ace bandage on her wrist and later around her elbows. The bandages stopped her hands from "flopping" while she worked. Claimant's symptoms progressively got worse, her left elbow and wrist causing her greater pain and a loss of sleep at night. Later, Claimant's thumb on her right hand showed some signs of triggering. She told her supervisor why she was wearing the ace bandages.

Claimant's employer closed its business in January of 2005. Claimant's employer denied her treatment under the worker's compensation system. Claimant did not receive treatment until May 2006. Claimant testified that she did not seek treatment because she did not have private health insurance and could not afford to pay for the treatment.

In 2006, Claimant went to Troy Surgical Center complaining of pain in arms and hands which interfered with her ability to sleep. (Cl. Exh. E, pp4-6.) On May 30, 2006, Claimant underwent a nerve conduction study and tested positive for bilateral carpal tunnel and bilateral ulnar nerve neuropathy on both wrists and left elbow. (*Id.* at pp 15-16.) Claimant was referred to Dr. S. Polineni for treatment for her symptoms in her arms and hands. (Cl. Exh. D, p5.) In February 2007, Claimant had surgery on her left wrist and elbow. (*Id.* at pp5-6.) Claimant's right wrist was operated on later in March 2007. (*Id.* at p13.) Later in 2008, she had treatment for "trigger" thumb on her right hand and "trigger" finger on her left hand. (*Id.* at pp21-28.) Claimant filed her workers' compensation claim on September 6, 2006.

At present, Claimant has substantial weakness in her hands. Claimant cannot twist a door knob without the use of two hands. She cannot place her right elbow on a hard surface without severe pain.

Dr. D. Volarich testified by deposition that Claimant was a cook for 30 years and during that time she had symptoms that progressively worsened. (Cl. Exh. A, pp15-20.) He found that Claimant had a substantial disability of 35% of her right wrist, 35% of her right hand, 15% of her right elbow, and 35% of all the parts of her left hand and elbow and 15% of body as a whole. (*Id.* at pp25-26.)

Dr. D. Brown, a hand specialist, testified via deposition that he did not believe that her work as a cook was the primary cause for her carpal tunnel and ulnar nerve symptoms. (Emp./Ins. Exh. 1, pp10-14.)

CONCLUSIONS OF LAW

It is the claimant's burden of proof to prove all the issues that are alleged in the hearing under Chapter 287. As noted by the Court in Cook:

Claimant has the burden of proving all the essential elements of the claim and must establish a causal connection between the accident and injury. Cook v. Sunnen Products Corp., 937 S.W.2d 221, 223 (Mo.App.E.D. 1996) citing: Fischer v. Archdiocese of St. Louis-Cardinal Ritter Institute, 793 S.W.2d 195 (Mo.App.E.D. 1990) overruled on other grounds by Hampton v. Big Boy Steel Erection, 121 S.W.3d 220, 223 (Mo. Banc 2003).

Average Weekly Wage

Although Claimant worked full time as a cook at the Employer/Insurer from 1994 to 1999, at the time of her alleged injury, she was working approximately 17 to 28 hours per week. Since Claimant was not a full-time employee, she is covered by Section 287.250.3 RSMo.

3. If an employee is hired by the employer for less than the number of hours per week needed to be classified as a full-time or regular employee, benefits computed for purposes of this chapter for permanent partial disability, permanent total disability and death benefits shall be based upon the average weekly wage of a full-time or regular employee engaged by the employer to perform work of the same or similar nature and at the number of hours per week required by the employer to classify the employee as full-time or regular employee, but such computation shall not be based on less than thirty hours per week.

Claimant made \$7.75 per hour and using this section, her average weekly wage would be calculated at thirty hours per week. Her average weekly wage is \$232.50 ($\$7.75 \times 30 = \232.50) and her permanent partial disability rate and temporary total disability rate is \$155.00.

Applicable Law

The last day of work for Claimant in this case was January 31, 2005. This is before the enactment of the legislature's amendment of 2005 legislation (effective date of August 28, 2005). The Employer/Insurer argues that since the Claimant was diagnosed with carpal and cubital tunnel syndrome on May 30, 2006, the applicable law would be the amendments made to Chapter 287 effective in 2005. The Employer/Insurer's argument is that since Claimant was diagnosed on May 30, 2006, of repetitive injury, she should be under the amendments of 2005 citing Allcorn v. Tap Enterprises, 277 S.W.3d 823 (Mo.App.S.D. 2009).

In Allcorn, the Court of Appeals for the Southern District ruled that for the purpose of the written notice requirements of Section 287.420 RSMo that the diagnosis of occupational injury is the key event that triggers the "clock" on thirty days' notice. *Id.* at 828-829. In Allcorn, the claimant was diagnosed in February 2004 with a possible work-place injury. *Id.* at p825. In June of 2006, the claimant filed his "original" claim for compensation. *Id.* at p825. Later, in September of 2006, after a diagnosis of repetitive trauma, the claimant filed an amended claim. *Id.* at p826. The Allcorn Court reversed the Commission's determination that June 2006 was the relevant date for employer's notice of injury and determined that the time notice was appropriate when the "repetitive" condition was specifically diagnosed. *Id.* at p829. I believe that the Allcorn case applies only to the procedural notice of injury requirements of Section 287.420 RSMo.

The issue here is whether the 2005 law should be applied retroactively to an injury occurring prior to 2005. As noted by the Court of Appeals for the Eastern District, the legislature did not intend to apply Chapter 287 retroactively. In Lawson v. Ford Motor Company, 217 S.W.3d 345, 349 (Mo.App.E.D. 2007) the Eastern District Court of Appeals opined:

The language in section 287.020.10 merely serves as clarification of the fact that any construction of the previous definitions by the courts was rejected by the amended definitions contained in section 287.020. There is no express language stating that it was the intent of the legislature to apply either section 287.020 or section 287.067 **retroactively**, nor did the legislature state that its rejection of the common law interpretations of the previous definitions applied **retroactively**. Instead, it appears from the plain language of the statute, the legislature merely intended to clarify its intent to amend the definitions and apply those definitions prospectively.

Additionally, the second exception to the presumption of prospective application, where the statute is procedural in nature, does not apply here. Substantive law relates to the rights and duties giving rise to the cause of action. Files, 998 S.W.2d at 97; (citing Wilkes v. Missouri Highway & Transp. Comm'n, 762 S.W.2d 27, 28 (Mo. banc 1988)). Procedural law is simply the mechanism through which the cause of action is carried on. *Id.* Substantive laws set forth the primary rights and remedies of individuals concerning their property or person. *Id.* (citation omitted). *Id.* at 349-350. (Emphasis added.)

The same concerns are present in this case. Claimant's substantive rights may not change under the amendments of the "new" law because the amendment would modify Claimant's substantive rights under Chapter 287. Since Claimant's claim arose in the years before the effective date of the amendments to Chapter 287, her substantive rights in a determination of her injury and remedy should be governed by pre-2005 law.

Notice of Injury

Under pre-2005 law, the notice requirements for a repetitive injury are different from that of the notice of a "traumatic" injury under Section 287.420 RSMo. The notice provision of Section 287.420 did not apply to a repetitive injury. Maxon v. Leggett & Platt, 9 S.W.3d 725, 733 (Mo.App.S.D. 2000).

After the 2005 amendments to Chapter 287.420 RSMo, an employee with a repetitive injury must notify the employer in (1) writing with the (2) time, (3) place, (4) and nature of the injury, (5) the identity of the injured party, and (6) that the notice has to be given to the employer within 30 days of the diagnosis of the injury. Allcorn v. Tap Enterprises, 277 S.W.2d supra at 828.

Unlike the discussion of substantive law in Lawson v. Ford Motor Company, the notice of a repetitive injury claim is procedural and, therefore, could be applied retroactively. Claimant was diagnosed with a repetition injury on May 30, 2006. She then filed her workers' compensation claim on September 6, 2006. The record does not have evidence of any written notice within 30 days of the diagnosis.¹ Without proper notice under Section 287.420 RSMo, the claimant has the burden of proof to prove the employer/insurer was not prejudiced by the lack of notice under the statute.

One way to prove that the Employer/Insurer was not prejudiced is to prove that the Employer/Insurer had actual notice. Seyler v. Sprirtas, 974 S.W.2d 536, 538 (Mo.App.E.D. 1998). In this case, the evidence of an actual and substantial notice of a repetition injury is powerful. Claimant wore ace bandages on both arms for a number of years. The bandages stopped her hands from "flopping." She told her employer that her arms, wrists, and hands hurt without the bandage wraps. The manager of the restaurant had actual notice of Claimant's injury. See Courtney v. Skaggs Community Hospital 2008 WL 415708 (Mo. Lab. Ind. Rel. Comm.). I believe her testimony that her delay in visiting a doctor was due to only financial concerns.

Causation

This is the closest issue of these factual circumstances. The Employer/Insurer argues that Claimant was overweight and smoked. More importantly, Claimant could not have had a repetitive injury because Claimant reduced her work load to 28 or less hours in 2000, she only began to complain of her injuries in 2003, and did not seek medical treatment until 2006. Employer/Insurer also questions the expertise of Claimant's expert, Dr. Volarich, in providing an opinion as to Claimant's upper extremity injuries.

It is undisputed that Claimant began to suffer her symptoms in 2003. She maintained her demanding schedule and effort at work by wrapping her hands and forearms in ace bandages to

¹ For the record it should be noted that the Employer/Insurer was out of business for a year and a half before Claimant saved enough money to pay for a doctor appointment.

get her cooking duties done. The rush to prepare a large meal each day was not tempered by breaks in the routine. Later, as her elbow began to get sore, she continued her ace bandage wrappings to the middle of her upper arm. The bandages stopped her hands from "flopping" while she prepared food.

Claimant's cooking duties included twisting, mixing and kneading various ingredients, and opening over-sized cans. She opened large cans manually and hoisted roast beef and ham roasters to her mixing table. She did this work for 13 years with her employer – eight years of work were full time. Further, Claimant was a cook for most of her adult life and with the same or similar physical stresses.

The restaurant owned by Employer/Insurer went out of business in January of 2005. Claimant first complains of pain in her hand, wrist, and elbow in June of 2003. (Cl. Exh. E, pp14-15; 24-28.) Surgery was performed for transportation of the ulnar nerve on the left elbow and carpal tunnel release of the left wrist in February 2007. (Cl. Exh. D, p4.) She also had carpal tunnel done to her right hand in March 2007. (*Id.* at pp13-14; Cl. Exh. F, p4.)

Finally, in March 2008 she had an injection and other treatment to release a trigger thumb on her right hand and trigger middle finger on her left hand. *Id.* at p28.

It is impossible that the sheer number of related nerve compression injuries could have occurred spontaneously and coincidentally if there was not present a substantial factor of workplace aggravation.

Claimant's expert, Dr. Volarich, opines that the injury is a result of overuse and repetitive physical manipulation. (Cl. Exh. H, pp25-26.) Dr. Volarich also notes that she disclosed to him that when she reduced her hours to three days a week and half days on Sundays, the symptoms were less on days she did not work, which is consistent with severe orbital and carpal tunnel syndromes. *Id.* at pp29-30

As is noted and vigorously argued by Employer/Insurer, Dr. Brown is a noted hand specialist and does not believe that Claimant's symptoms were employment related. (Emp./Ins. Exh. 1, p14.) I initially believed I would find Dr. Brown's opinion persuasive. As Dr. Brown noted, his opinion is "only as good as the description" of Claimant's activities. *Id.* at p21. Dr. Brown did not get a good description of Claimant's duties. He notes that all Claimant's duties are recorded in the second paragraph of his report. *Id.* at pp22-23.

Mr.(sic) France believes her condition is work-related from lifting boxes of food and prep working from cutting up cabbage for cole-slaw. She would help co-workers in the kitchen cut up 3, twenty pound stacks of cabbage every 2-3 days, however one day a week she had to cut up 22 tubs of slaw, each tub weighing approximately 22 pounds. She denies any prior medical care for either extremity. She denies any problems with her neck and has one prior claim for a hernia. She does have a history of arthritis. (Emp./Ins. Exh. 1, depo exh. 1.)

I do not believe that Dr. Brown got an accurate picture of Claimant's duties.

Q. (By Mr. Marty) Do you know if she would use knives or any other cutting tools, hand-held tools in order to cut vegetables or cabbage?

A. Obviously, to cut cabbage she would use a knife.

Q. Do you have any details in regard to that? Let's say the tools she used, the time it took her to do it, the amount of hours she did that in her job, anything like that?

A. No. Not in my report. Like I said, this is the best information I could obtain from the patient regarding her job duties. As you can tell from her written description, she did not provide a lot of details. We were able to get more details in her verbal history, but this was all that I could obtain from her.

Q. Did you have any information in regard to how she would open cans, whether it was an electrical can opener or whether she did it by hand?

A. No.

Id. at p24.

Dr. Brown was also under the mistaken impression that Claimant had worked 16 to 20 hours a week from 1992 to 2005. (*Id.* at p 27.) It is my recollection that she worked full time until 2000 and reduced her work at that time. Further, Dr. Brown did remember that Claimant's symptoms were appearing in 2003. I believe that Dr. Brown in good faith believes Claimant was a part-time employee whose symptoms were unrelated to work. In contrast, I believe that Claimant testified to a difficult and time intensive job which was physically demanding. Her testimony was believable and graphic in her detail and strains that the work put on her elbows, wrist, and hands. Credibility is a particular determinant made by the Commission. Cook v. Sunnen Product Corp., 937 S.W.2d 221, 224 (Mo.App.E.D. 1996) overruled on other grounds Hampton v. Big Boy Steel Erection, 121 S.W.3d 220 (Mo banc 2003.) I believe Claimant and her expert that her work duties caused her injuries.

What is the nature and extent of Claimant's permanent partial disability?

I find that Claimant had substantial injury in her hands, wrists, and elbow. I'm inclined to accept with a mild reduction in the percentage of permanent partial disability (PPD) from the opinions of Dr. Volarich. I find that Claimant suffered 30% PPD of the right wrist, 30% PPD of the right hand at the metacarpal joint of the thumb, 10% of the right elbow, 30% of the left wrist, 30% of the left wrist at the metacarpal phalangeal joint of the long finger, 30% of the left elbow. (see Cl. Exh. A, pp25-27.) I do not believe that 15% PPD for the body as a whole is warranted. Claimant's PPD rate is \$155.00. 30% of the right wrist is 52.5 weeks x \$155.00 = \$8,137.50; 30% of the right hand at metacarpal is 52.5 weeks x \$155.00 = \$8,137.50; 10% of the right elbow is 21 x \$155.00 = \$3,255.00; 30% of the left wrist is 52.5 weeks x \$155.00 = \$8,137.50; 30% of the left hand at metacarpal is 52.5 weeks x \$155.00 = \$8,137.50; 30% of the left elbow is 63 weeks x \$155.00 = \$9,765.00. The total is \$45,570.00.

Whether Employer/Insurer is liable for Claimant's medical care?

Medical care, conservative, surgical, and post-surgical, are cornerstones of the care to which an injured employee is entitled. As noted by the Southern District Court of Appeals:

Medical aid is one component of the compensation that an injured worker is entitled to receive. Sullivan v. Masters Jackson Paving Co., 35 S.W.3d 879, 888 (Mo.App. 2001); Mathia v. Contract Freighters, Inc., 929 S.W.2d 271, 277 (Mo.App. 1996). In pertinent part, §287.140.1 states that "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." This includes treatment which gives comfort or relief from pain, even though a cure is not possible. Sullivan, 35 S.W.3d at 888; Ford v. Wal-Mart Associates, Inc., 155 S.W.3d 824, 828-29 (Mo.App. 2005). An employer's duty to provide statutorily-required medical aid to an employee is absolute and unqualified. Jennings v. Station Casino St. Charles, 196 S.W.3d 552, 557 (Mo.App. 2006); Wilson v. Emery Bird Thayer Co., 403 S.W.2d 953, 957 (Mo.App. 1966). As a general rule, the employer is given control over the selection of the employee's medical providers. Blackwell v. Puritan-Bennett Corp., 901 S.W.2d 81, 85 (Mo.App. 1995). This principle, however, is subject to an important caveat. If the employer is on notice that the employee needs treatment and fails or refuses to provide it, the employee may select his or her own medical provider and hold the employer liable for the costs thereof. Jones v. Dan D. Services, L.L.C., 91 S.W.3d 214, 220-21 (Mo.App. 2002); Sheehan v. Springfield Seed and Floral, Inc., 733 S.W.2d 795, 798 (Mo.App. 1987); Hawkins v. Emerson Electric Co., 676 S.W. 2d 872, 880 (Mo.App. 1984). Martin v. Town & Country Supermarket, 220 S.W.3d 836, 844 (Mo.App.S.D. 2007).

The Employer/Insurer in this case did not provide any medical benefits to Claimant. Claimant had a work-related injury and was entitled to medical care and surgery. Claimant has offered Exhibit G as evidence of the medical bills. These bills for a total of \$15,253.14. (St. Joe Health Care \$9,569.70; Lincoln Co. Medical Center Patient Account \$1,875.00; Subbarao Polineni, M.D. \$3,808.44; Diversified Collection Services \$495.87 (Dr. Polineni bill.)) I find that Employer/Insurer should pay \$15,253.14 to Claimant.

Whether Claimant is entitled to TTD?

Claimant is entitled to TTD when she is legitimately recovering from a work-related injury. This is a case where the Employer/Insurer denied benefits from the beginning, so there

Employee: Wilma R. France

Injury No. 05-142836

has been no determination of her eligibility. As I have noted above, this was a work-related injury. TTD is available when a claimant is recovering from a workplace injury and is unable to work. As discussed by the Southern District in Birdsong v. Waste Management:

Temporary total disability benefits are intended to cover the claimant's healing period. Boyles v. USA Rebar Placement, Inc., 26 S.W.3d 418, 424 (Mo.App. 2000). "Temporary total disability awards are owed until the claimant can find employment or the condition has reached the point of maximum medical progress." Cooper v. Medical Center of Independence, 955 S.W.2d 570, 575 (Mo.App. 1997). Birdsong v. Waste Management, 147 S.W.3d 132, 140 (Mo.App.S.D. 2004).

Claimant was diagnosed with bilateral carpal tunnel syndrome and bilateral ulnar neuropathy across her left elbow. Surgery was performed on February 9, 2007, and on March 30, 2007, and finally an injection on her trigger fingers on both hands on March 5, 2008. I find that TTD is due from February 9, 2007, to April 17, 2007, for both surgeries. (Cl. Exh. D, p10.) That amounts to \$1,284.95 (8.29 weeks x 155). I do not find TTD necessary for the treatment of Claimant's trigger fingers.

CONCLUSION


In conclusion, I find that Employer/Insurer is liable for Claimant's medical care in the amount of \$15,253.14. The Employer/Insurer is liable for TTD for 8.29 weeks for \$1,284.95. I find that Employer/Insurer is liable for PPD in the amount of \$45,570.00 (30% of the right wrist is 52.5 weeks x \$155.00 = \$8,137.50; 30% of the right hand at metacarpal is 52.5 weeks x \$155.00 = \$8,137.50; 10% of the right elbow is 21 x \$155.00 = \$3,255.00; 30% of the left wrist is 52.5 weeks x \$155.00 = \$8,137.50; 30% of the left hand at metacarpal is 52.5 weeks x \$155.00 = \$8,137.50; 30% of the left elbow is 63 weeks x \$155.00 = \$9,765.00.)

Date: February 11, 2010

Made by: 

Henry T. Herschel
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:


Naomi Pearson
Division of Workers' Compensation