

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

Injury No.: 10-025613

Employee: Thomas L. Almany  
Employer: Union Electric Company  
Insurer: Self-Insured

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 11, 2014, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Gary L. Robbins, issued February 11, 2014, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 7<sup>th</sup> day of October 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**FINAL AWARD**

Employee: Thomas L. Almany Injury No. 10-025613  
Dependents: N/A  
Employer: Union Electric Company  
Insurer: Self Insured  
Appearances: Jagadeesh B. Mandava, attorney for the employee.  
Susan M. Kelly, attorney for the employer.  
Hearing Date: November 13, 2013 Checked by: GLR/rm

**SUMMARY OF FINDINGS**

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? No.
4. Date of accident or onset of occupational disease? Alleged April 9, 2010.
5. State location where accident occurred or occupational disease contracted: Jefferson 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? No.
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 claims he developed right carpal tunnel syndrome due to repetitious job duties. He was a lube service technician. His basic job was to check and change oil in various types of equipment.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Alleged right arm.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to date for temporary total disability: \$0
16. Value necessary medical aid paid to date by employer-insurer: \$3,307.74.
17. Value necessary medical aid not furnished by employer-insurer: \$0.
18. Employee's average weekly wage: \$1,324.40.
19. Weekly compensation rate: \$807.48 for temporary total and permanent total disability. \$422.97 for permanent partial disability.
20. Method wages computation: By agreement.
21. Amount of compensation payable: None.
22. Second Injury Fund liability: N/A.
23. Future requirements awarded: N/A.

There are no attorney fees in this case.

## **STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW**

On November 13, 2013, the employee, Thomas L. Albany, appeared in person and with his attorney, Jagadeesh B. Mandava for a hearing for a final award. The employer was represented at the hearing by its attorney, Susan M. Kelly. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a statement of the findings of fact and rulings of law, are set forth below as follows:

### **UNDISPUTED FACTS:**

1. Union Electric Company was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and was duly qualified as a self-insured.
2. On April 9, 2010, Thomas L. Albany was an employee of Union Electric Company and was working under the Workers' Compensation Act.
3. The employer had notice of the employee's accident.
4. The employee's claim was filed within the time allowed by law.
5. The employee's average weekly wage was \$1,324.40, resulting in a compensation rate of \$807.48 per week for temporary total disability benefits and \$422.97 per week for permanent partial disability benefits.
6. The employer paid \$3,307.74 in medical aid.
7. The employer paid \$0 in temporary disability benefits.
8. The employee had no claim for previously incurred medical bills.
9. The employee had no claim for mileage.
10. The employee had no claim for future medical care.
11. The employee had no claim for permanent total disability.
12. The parties agreed that if liability is found, the employer would hold the employee harmless for medical bills.

### **ISSUES:**

1. Occupational Disease.
2. Medical Causation.
3. Temporary Total Disability.
4. Permanent Partial Disability.

### **EXHIBITS:**

The following exhibits were offered and admitted into evidence:

Employee Exhibits:

- A. Medical report of David T. Volarich, D.O.
- B. Medical report of Bruce Schlafly, M.D.
- C. Records regarding the primary claim.

- D. Records regarding the pre-existing carpal tunnel claim/June 3, 2005.
- E. Records regarding the pre-existing left knee claim/June 13, 1988.

Employer Exhibits:

- 1. Medical report of R. Evan Crandall, M.D.
- 2. Report from Pro Rehab.
- 3. DVD.
- 4. Job description.

**STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW:**

**STATEMENT OF THE FINDINGS OF FACT:**

The employee, Thomas L. Albany and Mark D. Schmitz personally testified at trial. All other evidence was received in the form of written reports or medical records. No deposition testimony was presented by either party.

Mr. Albany has been employed by Union Electric Company since 1975. He began work as a janitor in the Venice Power Plant. He then switched to the operations department. In 1977, he moved to the Rush Island Power Plant. He held various positions at the Rush Island Power Plant. In 2002, Mr. Albany testified he became a Lube Service Technician, a job he has held ever since. Mr. Albany is 54 years old and resides in Festus, Missouri. He has not had any other employers other than Union Electric since 1975. Generally he worked 40 hours per week with very little over time.

The employee described his job as a lubrication technician in detail. He testified his job duties involved checking equipment oil levels on all of the equipment in the power plant. If the oil levels are low he adds oil. He described his daily responsibilities as the following: he performs setup work three days a week, Monday, Wednesday, and Friday. This involves checking the equipment oil levels and if it is low, adding oil. These duties involve taking the cap off of the oil and putting oil in it and putting the cap back on. The other two days a week involve oil changes and grease jobs. This requires him to drain the oil and put oil into the equipment. When draining the oil, he described the steps as taking the plug out with a wrench, draining the oil into a container. He uses some force with the wrench. Sometimes he has to push on the wrench. The pressure used on the wrench varies. He also uses his hands to twist the plug out. On some machines, some of the plugs are underneath the machinery. Mr. Albany testified that he changes the oil on a variety of equipment. This involves machinery such as pumps and motors. There is no real typical oil change. If you are changing the oil in a 250 pound gear box it can take all day. As far as the greasing goes, there is a battery operated grease gun that does make the job easier. Mr. Albany testified he pushes and holds the button.

Mr. Albany testified he was present and working the day that Pro-Rehab videotaped his job. He testified he did not believe the DVD covered all of the duties. He testified that the DVD only demonstrated a small part of the job. Mr. Albany did admit that the DVD did demonstrate the

Monday, Wednesday, Friday routine of filling the oil. He notes that he did use the wrench, fill the cap, go through the belts, use the hose, and took out the valve or plug in the video. Mr. Almany testified that the other duties not covered were: walking through the entire plant, checking equipment, showing some of the outside big fans where he checks the levels and showing the intake structure which he checks once a week.

The employee testified that he first began having problems in both of his hands in 2005. He had issues with sleep and numbness. This condition was reported to his safety supervisor. Mr. Almany was provided treatment with Dr. Ollinger who provided him an examination, nerve conductions, and surgery on both hands. Mr. Almany testified he returned to work subsequent to that surgery with no restrictions. He did have some problems subsequent to that surgery with some gripping, but testified he had no major problems. He testified that he received a settlement in 2005 for both hands, but could not recall the amount. The Injury Number in that case is 05-049365. The employee was unrepresented and settled the case for 13.5% permanent partial disability of each hand.

In 2010, the employee began to have the same problems in his right hand. He noticed that he was dropping things and had numbness in his right hand. He reported this injury to the safety person and was sent to Dr. Ollinger. Dr. Ollinger provided him with a splint and medication. Dr. Ollinger eventually recommended surgery. Subsequent to that recommendation, the video of Pro-Rehab was taped. The employee then stated he received a letter denying that his condition was work-related.

The employee then received treatment to his right hand on his own from Dr. Schlafly. Dr. Schlafly performed surgery which did relieve some of the pain. That surgery was performed on March 22, 2011. The employee testified he had some occasional pain; however, no longer has any numbness. He does have some problems with grip issues. At times, his right hand does swell. The employee returned to work and is currently working without any restrictions due to the right hand.

The employee testified he also has high blood pressure and type II diabetes. He was diagnosed with type II diabetes approximately four years ago some time in 2008 or 2009. He receives treatment through his primary care physician, Dr. Killian. His medication controls his blood sugar. Mr. Almany testified he did not share his diabetes diagnosis with any other doctors because he does not recall any of the doctors asking about his diabetic condition. He indicated he also did not think it was any of their business.

On cross-examination, the employee admitted that he did not spend the entire eight hours of his day using his hands checking and draining oil. He testified that they would have a meeting for 45 minutes every morning. He would also spend time filling out reports. This could take anywhere from 10-15 minutes to 1 hour with the average being 20-30 minutes. There was also a break in the morning, a lunch break, and a break in the afternoon. Mr. Almany admitted that the only pieces of equipment he works on are motors, gear boxes and fans, conveyor belts and grinders. This is all the equipment that runs the power plant. Mr. Almany testified the equipment is all various sizes, but the valves are all the same size. Mr. Almany did not add any further job duties

other than that were contained in the job descriptions, in Pro-Rehab as well as the DVD. Mr. Albany did admit that he testified in his deposition that what they have on the film is not 1/500 hundredth of what his job is.

The employee on cross-examination again denied that any of the doctors asked him about his diabetic condition. He did not recall Dr. Ollinger asking him that question. He did not recall the Pro-Rehab employees asking that question about diabetes. He did not recall Dr. Peebles asking him about the diabetic condition.

Mr. Albany does admit to filling out the patient questionnaire health form on April 12, 2010. He admits that he checked the box marked no under diabetes condition. He did not have an explanation as to why he checked that box. He also testified that although he was taking his medications, he wrote none under current medications on the health history form. He indicated that this history form was filled out by him and that the form was in his own writing. He had no explanation as to why he did not provide the correct information to any of the doctors or in his own health history provided to the doctor.

Mark Schmitz testified on behalf of the employer. Mr. Schmitz has been with Union Electric for 35 years at the Rush Island Power Plant. He is currently employed as a General Supervisor. Part of his job duties involves overseeing the plant and the employee. He indicated that the employee prepares written reports on a daily basis on his job activities and Mr. Schmitz reviews each one. These reports provide daily details of the job duties performed. He is very familiar with the job duties of the employee and in fact performed some of these similar duties during his employment at Union Electric. Mr. Schmitz previously worked for Union Electric as a coal operator in the Meramec Plant and is very familiar with the job activities as he performed the same activities as the lube technician. Mr. Schmitz does not believe that the lubrication technician job is hand intensive. He does not believe it is repetitive. He testified that there have been company studies and the average use of wrench time for a lube man is 29-30% of the day. From his knowledge of the lubrication tech position the employee would use his hands 20% or less during the day. He is basing this percentage on his knowledge of the job and the review of the daily reports. The use of hands is limited to the checking of oil, removal of the plugs and changing the oil. The hands are not used constantly in this job. The employee is not in a repetitive job and does not use his hands in the same actions all day every day. Mr. Schmitz did review the DVD of the job and agreed that accurately depicts the job duties of a lubrication technician. Mr. Schmitz testified that the tools used were hand wrenches and socket/ratchet sets. There was no impact tools used.

On multiple occasions the Court reviewed the DVD that was provided by the parties.

Pro Rehab report indicated that:

- The employee performed site check duties three days a week and service work two days a week.
- The employee reported his worst pain as 8/10 and his lowest pain at 2-3/10.
- The employee denied any history of diabetes, heart disease and thyroid disorder.

- The employee outlined his physical activities when performing his various job functions. Ex. handling/maneuvering of the 50 gallon oil drum may occur every two to three months, the grease gun requires 2½ to 3 pounds of pressure to activate.
- The DVD/video was taped and activities for August 17, 2010, depict hand tasks in an 11 minute period of work. The report indicated that in the 11 minutes, the employee used his hands for a total of 65 second and the hand work performed consisted of holding a flashlight to view oil levels in site glasses and to raise and wipe a dipstick to check oil levels. This work is performed all day long three days a week.
- The DVD/video was taped and activities for September 1, 2010, depict activities of changing oil filters and performing related work such as wiping down parts, adding oil, and using a grease gun at four locations. The employee indicated that he would perform these functions at an additional six locations and this would take all day. The report indicates that it took 13 minutes and one second for the employee to change four filters and complete all related work shown in the video. The report extrapolated this time frame and indicated that the employee would work for 32 minutes and 35 seconds to change 10 oil filters in a day. “The remaining work time would consist of attending a meeting at the beginning of the shift, time to gather parts required for the job that day, break time, lunch time, returning parts and discarding of waste, waiting for elevators, walking throughout the plant, and documenting work tasks completed on the computer.” Mr. Almany indicated this work is done two days a week.

Mr. Almany was first evaluated by Dr. Ollinger in 2005 and provided with a diagnosis of bilateral carpal tunnel syndrome. Surgery was performed on October 7, 2005, to the right wrist and October 21, 2005, to the left wrist. Dr. Ollinger released the employee on March 23, 2006, and found him to be at maximum medical improvement with no work restrictions. Dr. Ollinger opined that Mr. Almany sustained 2% permanent partial disability to the right wrist and 2% permanent partial disability to the left wrist.

On April 13, 2010, the employee returned to Dr. Ollinger with a history of two months of symptoms in the right hand. He had complaints of swelling, occasionally pain in his proximal palm and glove paresthesias. Dr. Ollinger noted that for the record that the employee’s general medical history had not changed. His work duties have not changed. Dr. Ollinger noted that the employee continues to perform regular work indicating that his right hand is active with wrist gripping and twisting, citing as an example, changing oil filters. Dr. Ollinger noted that the employee was six foot tall and weighed 260 pounds. Dr. Ollinger concluded the history was seductive for recurrent carpal tunnel which is rare, but the incident is not zero. He ordered nerve conduction studies which were performed by Dr. Peebles on April 12, 2010.

Dr. Ollinger diagnosed recurrent right carpal tunnel syndrome. He prescribed nighttime wrist splints and doses of over-the-counter anti-inflammatory. Dr. Ollinger noted that if the employee failed to respond, he would bring him back for repeat nerve conduction studies in four months. Dr. Ollinger continued to provide conservative treatment to the employee. On August 16, 2010, repeat nerve conduction studies were performed. At the same time, Dr. Ollinger noted that the insurance company called indicating the job analysis and medical records would be forthcoming and after the review causation should be discussed.

On September 20, 2010, Dr. Ollinger reported that he received an eight page job analysis for the employee prepared on August 17, 2010 and September 1, 2010, accompanied by a DVD labeled Thomas Albany Rush Island Power Plant Lubrication Service Man August – September, 2010. Dr. Ollinger noted he was also provided with medical reports from 2008 diagnosing the employee with noninsulin dependent diabetes. Dr. Ollinger noted when he first saw Mr. Albany on April 13, 2010; Mr. Albany reported that his general medical history had not changed. Records state otherwise. Dr. Ollinger noted that some time after his 2006 evaluation the employee developed diabetes.

Dr. Ollinger then noted that when all of the above information is put into play for discussion of the prevailing factor for the employee's recurrent right carpal tunnel syndrome, his opinion is that the employee's work exposure in the last 10 years is not the prevailing factor for his recurrent right carpal tunnel syndrome. The prevailing factor for his recurrent right carpal tunnel syndrome, the indirect cause of this recurrent right carpal tunnel syndrome, is his developed innate risk of his newly diagnosed diabetes, new as of sometime before December of 2008.

The employee was evaluated by Dr. Crandall on June 26, 2012. Dr. Crandall noted the history of the prior carpal tunnel surgery in 2005. Dr. Crandall was provided a history of the employee working for Union Electric for 37 years, 40 hours a week as a Lube Service Technician. Dr. Crandall noted the history of changing oil, checking oil levels, moving oil barrels, using a grease gun, typing on a computer and using hand tools and power tools. Dr. Crandall noted that the employee moves pumps, sets up pumps, sets up equipment, empties oil drains, turns valves and fills oil cans with wasted oil and grease disposal. The employee reported to Dr. Crandall that he believes his job is hand intensive. Dr. Crandall noted that the employee is six feet tall and weighed 270 pounds with a body mass index of 36.5. Dr. Crandall reviewed medical records along with the ergonomic job evaluation provided by Pro Rehab describing the position for Lubrication Service Manager.

Dr. Crandall reviewed the records of Drs. Peebles, Ollinger and Volarich and the Pro Rehab report that had the ergonomic evaluation and comments about the video. His opinion was that the employee developed recurrent carpal tunnel syndrome. He further opined that, "Based on this evaluation, it is my opinion that the activities as described in the ergonomic evaluation would not be able to cause or continue to cause or contribute to carpal tunnel syndrome and be the prevailing factor in the cause of the patient's carpal tunnel syndrome". Dr. Crandall also stated that the employee has medical factors of age, diabetes, high body mass and high blood pressure.

On May 29, 2013, Dr. Crandall issued a second report. He had been provided with the report of Dr. Schlafly as well as the video of the employee performing his job duties. Dr. Crandall noted that the report of Dr. Schlafly did not change his opinions in his prior report.

Dr. Crandall provided additional opinions stating, "Upon my analysis of the video and the ergonomic review, I do not believe that the activities described in Mr. Albany's video show sufficient physical activity to be considered a risk factor for primary or secondary carpal tunnel

syndrome. This patient has substantial medical risk factor of diabetes which is a well known cause of carpal tunnel syndrome and an extremely high body mass index of 39. The patient therefore has two major medical risk factors for carpal tunnel syndrome. In addition, Mr. Albany has the risk factors of elevated blood pressure and age. His work level would not be considered hand intensive as discussed in my previous report". "...Mr. Albany's job simply does not, in my opinion, rise to the level which would be considered the prevailing factor in the cause of his condition of recurrent carpal tunnel syndrome". "The consensus of my analysis was that the number of times that he used the tools was so intermittent that it would not be considered a risk factor to be able to injure the hand. Merely using the hands at moderate or low levels of activity does not cause, nor does it increase the risk for carpal tunnel syndrome".

Dr. Crandall opined that based upon his analysis of the video and the ergonomic review, he does not believe that the activities as described in Mr. Albany's video show sufficiently physical activity to be considered a risk factor for primary or secondary carpal tunnel syndrome. Dr. Crandall noted that the patient has a substantial medical risk factor of diabetes, which is a well-known cause of carpal tunnel syndrome and an extremely high body mass index of 39. The patient therefore has two major medical risk factors for carpal tunnel syndrome. In addition, Mr. Albany has the risk factors of elevated blood pressure and age. He indicated that the employee's work level would not be considered hand intensive as discussed in his previous report. Dr. Crandall noted that based upon his experience of evaluating job positions and comparing this patient's job to other occupations, as well as his knowledge of ergonomic standards and the official job evaluation, Mr. Albany's job simply does not, in his opinion, rise to the level which would be considered the underlying prevailing factor in the cause of his condition of recurrent carpal tunnel syndrome. Dr. Crandall addressed the issue as to whether or not diabetic neuropathy or a general peripheral neuropathy and noted that this would not make any difference where making a determination of risk factors between diabetes and carpal tunnel syndrome. Dr. Crandall noted one does not have to have a globalized peripheral neuropathy for diabetes to be considered a primary risk factor for carpal tunnel. Finally, Dr. Crandall noted that Dr. Schlafly mentioned that Mr. Albany used several different kinds of tools. Dr. Crandall noted that a consensus of his analysis was that the number of times that he used the tools was so intermittent that it would not be a considered a risk factor to be able to injure the hand. Mainly using the hands at moderate or low levels of activity does not cause, not does it increase the risk for carpal tunnel syndrome.

Mr. Albany was evaluated by Dr. Volarich on December 23, 2011, at the request of his attorney. Dr. Volarich also had records to review as part of his analysis. Dr. Volarich noted the history of the work for 37 years as a Lube Service Technician. He noted that the employee developed recurrent right wrist pain in April 2010 with a diagnosis of recurrent carpal tunnel syndrome and that the employee had right carpal tunnel surgery in 2011.

Dr. Volarich was provided a history of working as a lube service technician for the past 10 years. This position required the employee to maintain oil levels and grease heavy equipment. Dr. Volarich noted that on a daily basis the employee checked oil levels and two days a week changed oil and greased multiple large vehicles. Dr. Volarich noted the employee was required to use his hands and arms to push, pull, lift, reach, carry, grip, squeeze, rotate and twist with his

wrists and with his fingers, with his palms usually down or awkwardly palm up while he extended his arms when he reached under vehicles. He was also required to reach overhead with his wrists hyper extended. He lifted 55 gallon drums of oil using a dolly to assist and also lifted buckets of oil, pails of grease and pallets of hoses. In a day, he lifted several hundred pounds in addition to the hand intensive work.

Dr. Volarich opined that, "In my opinion the repetitive nature of Mr. Almany's work as described in the history and job activities section of this report leading up to 4/9/10 are the substantial contributing factors as well as the prevailing or primary factors causing the recurrent right wrist carpal tunnel syndrome that required a revision open carpal tunnel release. It is my opinion that his diabetes mellitus is not the cause of the right wrist carpal tunnel syndrome since nerve conduction studies failed to document any evidence of peripheral neuropathy and he has not had recurrent symptoms in the left hand. I would expect symptoms to be about equal in both hands should the diabetes be the cause of his symptoms. Also he has no symptoms of foot paresthesias or loss of vibratory sense".

Apparently at this time Dr. Volarich did not review the DVD or the Pro Rehab information.

Dr. Schlafly provided a report dated April 19, 2013, at the request of Mr. Almany's attorney. Dr. Schlafly noted that he had performed a right carpal tunnel release in 2011. Dr. Schlafly had not seen Mr. Almany since June 13, 2011, when he released him from his care. Dr. Schlafly noted he reviewed the additional medical records along with a job analysis report as well as the DVD along with the information from Dr. Crandall. Dr. Schlafly also reviewed the medical records and opinion of Dr. Ollinger.

Dr. Schlafly opined that Mr. Almany's repetitive work with his right hand at his place of employment is the prevailing factor in the cause of his recurrent right carpal tunnel syndrome and need for treatment including a repeat right carpal tunnel release. Dr. Schlafly further stated that although the diabetes might be one factor contributing to the development of the recurrent right carpal tunnel syndrome, the employee did not have diabetic peripheral neuropathy and the work activities at the power plant are sufficiently hand intensive and repetitive to cause carpal tunnel syndrome and/or recurrent right carpal tunnel syndrome.

## **RULINGS OF LAW:**

### **Issue 1. Occupational Disease and Issue 2. Medical Causation.**

The employer has denied that the employee sustained an occupational disease arising out of and in the course of his employment and denied that the employee's injuries were medically causally related to the alleged occupational disease. The employee claims that he developed his right hand carpal tunnel syndrome due to the occupational and repetitive nature of his work where he changed oil in various equipment and machinery as a lube service technician.

Dr. Ollinger, Dr. Crandall, Dr. Volarich and Dr. Schlafly all agree that the employee had right cubital tunnel syndrome. There was no dispute that the employee needed surgery for this

condition. There is a dispute as to whether the employee's job duties were compensable and are the prevailing factor in his development of right carpal tunnel syndrome.

The burden of proof is on the employee to prove all material elements of his claim. See Marcus v. Steel Constructors, Inc., 434 S.W.2d 475 (Mo. 1968) and Walsh v. Treasurer of the State of Missouri, 953 S.W.2d 632,637 (Mo. App. 1997). The employee has the burden to prove that his injuries arose out of and in the course of employment. See Smith v. Donco Construction, 182 S.W.3d 693, 699 (Mo. App. 2006).

Under Section 287.020.3 (1) and (2) RSMo, "injury" is defined to be an injury which has arisen out of and in the course of employment. An injury shall be deemed to arise out of and in the course of employment only if it is reasonably apparent upon consideration of all the circumstances that the accident is the prevailing factor in causing the injury. An injury by accident is compensable only if the accident 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.

Under Section 287.067.2 and 287.067.3 RSMo, 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. An injury due to repetitive motion is recognized as an occupational disease. An occupational disease due to repetitive motion 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.

Black's Law Dictionary 621 (Abridged Fifth Edition 1983) defines primary as "First; principal; chief, leading." Webster's College Dictionary 1071 (1991) defines primary as "First in rank or importance; chief;"

In order to be a compensable injury for occupational disease, the employee has the burden to prove that the occupational exposure was the prevailing factor in causing the resulting medical condition and disability.

Both the employee and the employer offered expert opinions supporting their given positions as to whether or not the employee's job duties were of such a nature as to trigger liability under Chapter 287. The experts came down on the opposite sides of the issue and documented the reasoning justifying their positions. The Court was required to make a decision regarding occupational disease and compensability with expert evidence on both sides of the issue.

The Court considered the question: If in the past, the employee developed carpal tunnel syndrome from his job duties, which have remained essentially unchanged, then why isn't his 2010 carpal tunnel also derived from the performance of these same duties? The Court found several factors which distinguished this case from the 2005 case. The Court considered these factors in arriving at its decision:

- The passage of time.
- The employer did not challenge occupational injury in the 2005 case as to whether the employee's job duties really caused his carpal tunnel syndrome.
- The very important factor that the status of the law changed in 2005 changing the standard for occupational disease and compensability from a substantial factor to the prevailing factor.
- Intervening medical factors of age, diabetes, high body mass and high blood pressure.
- The DVD depicted the employee's job duties. Evidence stated that the number of times that the employee used his tools was so intermittent that it would not be considered a risk factor to be able to injure the hand. Mainly using the hands at moderate or low levels of activity does not cause, nor does it increase the risk for carpal tunnel.
- Credible expert opinion indicated that the occupational duties claimed by the employee were not the prevailing factor in the development of his right carpal tunnel syndrome.

Based on a thorough review of the evidence, the Court finds that the opinions of Drs. Ollinger and Crandall are more persuasive than the opinions of Drs. Volarich and Schlafly. The Court further finds that the employee's work activities and job duties were not the prevailing factor in causing the resulting medical condition of right carpal tunnel syndrome. The Court also finds that the employee failed to satisfy his burden of proof on the issues of occupational disease and medical causation. The Court further finds that the employee did not sustain a compensable work-related accident, occupational disease, or injury that arose out of and in the course of his employment, and the employee's right carpal tunnel syndrome is not medically causally related to the alleged occupational disease.

Given the employee's failure to prove that he sustained an occupational disease and his failure to prove a medical causal connection between his right carpal condition and the occupational disease, the employee's claim for compensation is denied.

Given the denial of the employee's claim on the issues of occupational disease and medical causation, the remaining issues are moot and will not be ruled upon.

**ATTORNEY'S FEE:**

There are no attorney fees in this case.

**INTEREST:**

There is no interest in this case.

Made by:

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Gary L. Robbins  
*Administrative Law Judge*  
*Division of Workers' Compensation*