

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

Injury No. 11-107122

Employee: Marilyn Anderson  
Employer: New World Pasta  
Insurer: New Hampshire Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed)

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 June 11, 2014, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Linda J. Wenman, issued June 11, 2014, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5<sup>th</sup> day of November 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:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Marilyn Anderson Injury No.: 11-107122  
Dependents: N/A Before the  
Employer: New World Pasta **Division of Workers'**  
**Compensation**  
Additional Party: Second Injury Fund (dismissed by award) Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Insurer: New Hampshire Insurance Company  
Hearing Date: April 28, 2014 Checked by: LJW

### 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? 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 as December 22, 2011.
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? Not determined.
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 occurred or occupational disease contracted:  
Employee alleges due to the repetitive and heavy lifting of her job duties she injured her right shoulder.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged as right shoulder.
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Marilyn Anderson Injury No.: 11-107122

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$650.79
- 19. Weekly compensation rate: \$433.86 / \$425.19
- 20. Method wages computation: Stipulated

**COMPENSATION PAYABLE**

21. Amount of compensation payable:	- 0 -
22. Second Injury Fund liability: No	- 0 -
<b>TOTAL:</b>	- 0 -

- 23. Future requirements awarded: N/A

**FINDINGS OF FACT and RULINGS OF LAW:**

Employee:	Marilyn Anderson	Injury No.:	11-107122
Dependents:	N/A	Before the	
Employer:	New World Pasta	<b>Division of Workers'</b>	
		<b>Compensation</b>	
Additional Party:	Second Injury Fund (dismissed by award)	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	New Hampshire Insurance Company	Checked by:	LJW

**PRELIMINARIES**

A hearing for a temporary award was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on April 28, 2014.<sup>1</sup> In the event a temporary award was denied, New World Pasta requested a final award issue.<sup>2</sup> Post-trial briefs were received from the parties on May 23, 2014. Attorney Sarah Hale represented Marilyn Anderson (Claimant). New World Pasta (Employer) is insured by New Hampshire Insurance Company and represented by Attorney Robert Hendershot. The Second Injury Fund (SIF) did not participate in the hearing, but the portion of the claim involving SIF is dismissed due to findings made in this award.

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: arising out of and in the course and scope of employment; occupational disease; notice; medical causation; liability of Employer for past medical expenses; liability of Employer for future medical care; and liability of Employer for past temporary total disability (TTD) benefits. Claimant offered Exhibits A-D, and Employer offered Exhibits 1-8. All offered exhibits were admitted into the record. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

**FINDINGS OF FACT**

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be summarized.

1. Claimant is 66 years old and retired from employment. She worked for Employer from September 1991 until January 2012, but for the last 10 years of her employment she worked as a Packing Machine Operator (packer). Claimant worked approximately 48 hours per week.
  
2. During her early years as a packer Claimant operated a machine requiring her to lift 50 to 60 pound rolls of plastic film from the floor to her shoulder level approximately 3-4 times per day. She was also required to load blank boxes from pallets to shoulder level that weighed a few pounds during the day. Approximately 6 years prior to the end of her employment, Employer

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<sup>1</sup> Claimant has an open companion case #10-048656 involving injury to her hands/trigger fingers, but the only case presented for trial is #11-107122 for which Claimant seeks treatment of an alleged occupational disease to her right shoulder.

<sup>2</sup> Claimant did not object to issuance of a final award if she did not prevail on her request for a temporary award.

installed a lift jack on each packing machine and after the installation Claimant rarely had to lift the plastic film rolls, but used her right arm to wind/pump the operating jack. Occasionally, Claimant had to lift partially filled boxes if the packing machine did not fill it properly. This event happened as often as 0-4 times per shift. If the packing machine was running properly, Claimant would stand and observe it. If product fell from the packing line, Claimant would stop the line and repack the box. Claimant also kept the line area clear of debris and would collect and shovel waste into tubs that were emptied as needed. To empty the waste tubs, Claimant lifted the tubs above her shoulders.

3. During June 2010, Claimant developed right long and ring finger triggering (Injury #10-048656). Employer authorized medical treatment for Claimant with Dr. Ollinger, a hand surgeon who had previously performed her carpal tunnel releases. Dr. Ollinger suggested use of an anti-vibratory glove, and administered a cortisone injection into the right ring finger. Claimant responded to treatment and was discharged from care on October 25, 2010.

On February 28, 2011, at Claimant's request, she was examined by Dr. Bruce Schlafly, a hand surgeon. Claimant informed Dr. Schlafly that the administered cortisone injection stopped the right ring finger clicking, but did not relieve her pain. She informed Dr. Schlafly that her work required her to raise heavy film, perform frequent twisting of a roller, and frequently open boxes. Dr. Schlafly diagnosed right long and ring trigger fingers, left long trigger finger, and mild left ring trigger finger. Dr. Schlafly recommended surgical release of the right trigger fingers, and cortisone injections of the left long and ring fingers. Employer returned Claimant to Dr. Ollinger, who following examination agreed with Dr. Schlafly, and Claimant received the suggested treatment during June 2011.

4. On November 21, 2011, Claimant returned to Dr. Schlafly.<sup>3</sup> During the course of the visit, Claimant informed Dr. Schlafly she had been experiencing pain in her right shoulder for the past 6 months. Dr. Schlafly rated Claimant's trigger finger injuries, and suggested she be seen by an "orthopedic shoulder specialist" for further evaluation of her right shoulder complaints. Dr. Schlafly indicated a right shoulder MRI "would be appropriate," and opined Claimant's repetitive work for Employer was the prevailing factor in her need for right shoulder treatment.

5. Upon receiving Dr. Schlafly's report, on December 18, 2012, Employer had Claimant examined by Dr. Rende, an orthopedic surgeon. Claimant provided Dr. Rende with a detailed job description, and was provided a description of Claimant's job duties from Employer. Following his physical examination, Dr. Rende obtained x-rays of Claimant's right shoulder. Dr. Rende indicated the x-rays demonstrated severe degenerative osteoarthritis accompanied by large inferior spurs at the humeral head and marked narrowing of the glenohumeral joint. Dr. Rende opined the arthritic process was of long-standing duration, and had been present for 10-15 years. Dr. Rende further opined Claimant's work was not the prevailing factor in causing the condition. Dr. Rende opined Claimant's aging was the cause of the degenerative process.

6. On April 30, 2013, Claimant obtained the right shoulder MRI at her own expense. The MRI demonstrated the following: severe arthritic changes; severe supraspinatus and infraspinatus tendinopathy with partial thickness tearing of both as well as a full thickness supraspinatus tear; and long head biceps tendinopathy with tearing. Following the MRI, on June 20, 2013, Claimant's attorney contacted Dr. Schlafly who reviewed the MRI scan and report. Dr.

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<sup>3</sup> This visit is presumably for a rating examination post-surgery, but the body of the report does not explicitly state this.

Schlafly's opinion regarding medical causation remained unchanged, and he opined Claimant's repetitive work was the prevailing factor in Claimant's need for right shoulder medical treatment.

7. On September 16, 2013, Dr. Rende reviewed Claimant's right shoulder MRI and Dr. Schlafly's June 20, 2013 report. Following his review, Dr. Rende opined Claimant's MRI demonstrated "cuff tear arthropathy," or "chronic cuff tear arthropathy." Dr. Rende described the arthropathy as follows:

Shoulders are not weightbearing joints thus they wear out in a different fashion than the weightbearing joints such as knees or hips. When a shoulder wears out as a result of the aging process typically the rotator cuffs slowly and steadily tear resulting in loss of normal lubrication to the glenohumeral joint and thus, the development of severe glenohumeral osteoarthritis. The process is not related to an injury but to the normal process of aging. (Exhibit 6)

Dr. Rende reported his original causation opinion remained unchanged and was strengthened by the information contained in the MRI. Dr. Rende noted Claimant's need for treatment was due to the normal aging process and not by her work for Employer.

8. Claimant has a history of preexisting right shoulder complaints. During 1997, Claimant complained of right shoulder pain at the end of her shift. Claimant was given work restrictions from her primary care physician. On September 18, 1998 Claimant settled her claim with employer for 7.5% PPD referable to the right shoulder. During 2006, Claimant complained of bilateral shoulder, forearm, and elbow pain. During 2006, x-rays of Claimant's right shoulder demonstrated degenerative changes of the glenohumeral joint and calcific tendonitis. Claimant was provided conservative medical care. During a February 2007 rating examination, the rating physician diagnosed a right shoulder sprain with exacerbation overuse tendonitis and degenerative joint disease. On November 27, 2007, Claimant settled her case with Employer for 5.7% PPD referable to the right shoulder.

9. On March 18, 2014, Claimant's preexisting right shoulder history was presented to Dr. Rende for review and consideration. Dr. Rende opined the information did not change his previous opinions. Dr. Rende noted as follows:

Please note that in none of the records was a specific diagnosis given to me, only that the patient had complaints of pain in this shoulder during the course of her work. Please note that severe degenerative osteoarthritis, which is frequently referred to as cuff tear arthropathy, would be just as likely aggravated by activities of daily living as the type of work she did for New World Pasta . . . However, all the reports that you provided to me merely indicate that the patient had a condition in her right shoulder that caused pain and was occasionally aggravated temporarily by the type of work she did. . . . (Exhibit 7)

10. As of hearing, Claimant continues to experience sharp throbbing pain in her right shoulder, and weakness of her right arm. She experiences difficulty sleeping due to the pain. Claimant testified she uses her left arm to assist when lifting items with her right arm. Claimant seeks medical treatment from her Employer for her right shoulder.

### **RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS**

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 occupational disease and medical causation**

Claimant bears the burden of proving the essential elements of her claim by producing evidence from which it may be reasonably found that an injury resulted from the cause for which the employer would be liable. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697 (Mo.App. 1973). Section 287.067.2 RSMo. 2005, provides 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,” further, “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.” Section 287.067.3 RSMo., 2005 defines prevailing factor as “the primary factor, in relation to any other factor, causing both the resulting medical condition and disability,” and states “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.” 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).

One orthopedic surgeon and one hand surgeon reports are in evidence in this case.<sup>4</sup> Dr. Schlafly relied entirely on Claimant’s description of her job duties when reaching his opinion during November 2011 that Claimant’s work was the prevailing factor in causing her injury by occupational disease. Dr. Rende took a much more detailed work history from Claimant, and also reviewed a job description provided from Employer. Dr. Rende took that information and his clinical findings by x-ray (and later review of Claimant’s MRI), and determined Claimant’s condition was caused by a normal aging process and “as her arthritis progressed it caused pain intermittently while at work.” (Exhibit 7) Dr. Rende also opined Claimant’s shoulder symptoms “would be just as likely aggravated by activities of daily living as the type of work she did for New World Pasta.” Claimant testified her level of symptoms have increased since she stopped working.

The trier of fact determines whether medical evidence is accepted or rejected, and the trier may disbelieve uncontradicted or unimpeached testimony. *Alexander v. D.L. Sitton Motor Lines*, 851 S.W. 2d 525, 527 (MO banc 1993). Based on the foregoing discussion, I find the opinion of Dr. Rende to be credible and persuasive, and accept his opinion that Claimant’s right shoulder condition was not caused by her work duties. I further find Claimant failed her burden to establish her job duties produced an occupational disease, which arose out of and in the course and scope of her employment. Claimant’s request for a temporary award for treatment is denied.

### **CONCLUSION**

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<sup>4</sup> Neither Dr. Rende nor Dr. Schlafly was deposed.

Claimant's claim is not compensable under §287.067.2 and §287.067.3 RSMo. Employer owes no benefits. The claim against SIF is dismissed. The remaining issues in dispute are moot. Claimant's request for a Temporary Award is denied. This award is a Final Award.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

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