

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

Injury No.: 02-152341

Employee: Sally Barbrow (formerly known as Sally Altick)

Employer: Leonards Metal Inc.

Insurer: Liberty Mutual Insurance Company

Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 December 18, 2008, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Kevin Dinwiddie, issued December 18, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 20th day of May 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Sally Barbrow (formerly known as Sally Altick) Injury No.: 02-152341

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: Leonards Metal Inc.

Additional Party: State Treasurer, as Custodian of the Second Injury
Fund

Insurer: Liberty Mutual Insurance Company

Hearing Date(s): 9/4/08; 10/3/08

Checked by: KD/cmh

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 alleged accident or onset of occupational disease: on or about 2/05/02
5. State location where alleged accident occurred or occupational disease was contracted: St. Charles 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? See award
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 alleged accident occurred or occupational disease contracted:
Employee alleges to have sustained a compensable injury by occupational disease due to exposure to toxic levels of aluminum dust. Employee alleges toxicity due to inhalation or absorption of dust created by the sanding, filing, routing, and drilling of aluminum aircraft parts.
12. Did accident or occupational disease cause death? No Date of death: N/A
13. Part(s) of body alleged to be injured by accident or occupational disease: systemic or body as a whole

- Nature and extent of any permanent disability: N/A

15. Compensation paid to-date for temporary disability: None

16. Value necessary medical aid paid to date by employer/insurer? None

17. Value necessary medical aid not furnished by employer/insurer? See award

18. Employee's average weekly wages: \$390.00

- Weekly compensation rate: \$260.00/ \$260.00

- Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable: None. Issues as to injury by occupational disease and medical causation found in favor of the employer and insurer. The claims as against the employer and insurer and the State Treasurer as custodian of the Second Injury Fund are denied. See award.

Total: N/A

22. Future requirements awarded: N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Sally Barbrow (formerly known as Sally Altick)

Injury No: 02-152341

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

Dependents: N/A
Employer: Leonards Metal Inc.
Additional Party State Treasurer, as Custodian of the Second Injury Fund
Insurer: Liberty Mutual Insurance Company

Checked by: KD/cmh

The claimant, Ms. Sally Barbrow, appeared in person at hearing represented by her counsel, Ellen Morgan, and testified on her own behalf with respect to her request for a temporary or partial award in this claim for compensation. The employer, Leonards Metal Inc., and its insurer, Liberty Mutual Insurance Company, appeared by and through its counsel, Attorney Maureen Cary. The employer and insurer have put in dispute the claim of compensable injury by occupational disease. The employer and insurer elicited the fact witness testimony of Mr. Mark Atkinson and of Mr. Michael Harris; put in evidence the expert opinion testimony by deposition of Dr. Rebecca Tominack and of Terry Tyler Martinez, Ph.D.; and submitted certain of the deposition testimony of the claimant, Ms. Barbrow. The claimant requests that the issue as to Second Injury Fund liability remain open.

The parties have acknowledged that the following issues are to be resolved at hearing:

Injury by occupational disease;
Notice;
Medical causation;
Future medical care; and
Temporary total disability.

The claimant further requests that liability for past medical expense remain an open issue.

Notice is taken as to the claims and answers filed in this matter.

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EXHIBITS
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The following exhibits were received in evidence at the hearing:

Claimant's Exhibits

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- Medical records of Concentra
 - Medical records of Mesquite Community Hospital
 - Certified medical records of Dr. Robyn Haithcock
 - Certified records of ProRehab
 - Certified medical records of Farmersville Medical Clinic
 - Certified physical therapy records of Healthsouth
 - Certified medical records of St. Joseph Health Center
 - Certified medical records of LifePath Systems
 - Certified medical records of Barnescare

- Certified medical records of DePaul Health Center
- Certified records of Cibola Counseling (Valencia Counseling Services, Inc.)
- Medical records of Kanu A. Patel, M.D.
- Certified medical records of Krishna K. Kakani
- Certified medical records of Planned Parenthood of N. Texas
- Certified medical records of Creve Coeur Surgery Center
- Certified medical records of Christian Hospital Northeast-Northwest

- Certified medical records of Dr. Steven Livingstone
- Certified medical records of Parkcrest Orthopedics, by notary dated 3/23/04
- Medical records of Parkcrest Orthopedics. L.L.C.
- Certified medical records of Huntsville Hospital
- Medical records of BJC Corporate Health St. Peters
- Report of Terry Martinez, Ph.D., dated 9/19/2004
- Medical records of Maria Carter, D.O., with attached letter dated 6/19/2006
- Certified medical records of Dr. Victor M. Pace/Elfindale Family Medicine
- Medical records of St. Joseph Health Center
- Medical report of Rebecca L. Tominack, MD, dated 07/19/06, with attachments
- Certified medical records of EHAC (Tipu Sultan, M.D.)
- Certified medical records of St. Joseph Health Center
- Missouri Division of Workers' Compensation records

Employer and Insurer's Exhibits

- Certified records of Liberty Mutual Insurance Company- Industrial Hygiene
- Summary of hours worked
- Deposition of Dr. Rebecca Tominack dated 11/20/2006
- Deposition of Terry Tyler Martinez, Ph.D., dated 8/29/2008
- Withdrawn
- Social Security Administration records
- Pages 16-17 and 49-50 of the Telephone Deposition of Sally Altick

(nka Sally Barbrow)

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FINDINGS OF FACT AND RULINGS OF LAW
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Ms. Barbrow, 45 years old as of the date of hearing in this matter, began her employment with Leonards Metal, Inc. (hereinafter referred to as "employer") on 2/24/00. Employer subcontracts with major aerospace contractors to provide them with airplane parts. Ms. Barbrow worked as an "aerospace assembly mechanic", riveting, routing, hand sanding, orbital sanding, and otherwise finishing airplane parts made of an aluminum alloy. Ms. Barbrow performed such sanding in "Work Center 40", one of the work areas at a facility located in St. Charles, Missouri. The claimant relates that approximately 40% of her time working in assembly was spent performing sanding, and that approximately 75% of the time some other assembler in the work center is performing sanding of parts.

As a part of the process of applying for social security SSI disability benefits (Employer and Insurer's Exhibit No. 6), Ms. Barbrow provided the following work history in order of most recent:

Aerospace Assembly Mechanic;
Shipping Recvng Forklift Operator;
Assistant Manager, Retail;
Produce Prep., Grocery;
Cook;
Attendant, Self & Full Svc Laundry; and
U.S. Army Administrative Specialist.

The claimant quit her employment with the employer on 2/04/02 and moved to Farmersville, Texas to live with her sister. Ms. Barbrow testified that she lived there for 9 months, and thereafter moved to Grants, New Mexico and lived with another sister for approximately a year. The claimant then moved back to Texas and stayed with her parents in Terrell, Texas before marrying her husband, Wayne Barbrow, and in 2005 relocating to Springfield, Missouri.

Medical records indicate that while working for the employer Ms. Barbrow suffered a series of relatively minor injuries that did not cause her to miss time from work, until such time in January of 2001 when the claimant began making complaints as to her right arm at the elbow. On 1/30/01 Ms. Barbrow was provided with a tennis elbow strap for what was diagnosed as a lateral epicondylitis. Thereafter Ms. Barbrow was rotated through jobs at least every four hours, but her complaints worsened, and in April of 2001 in order to calm her symptoms she was provided with injection into the epicondyle of the elbow. In May of that year the claimant began suffering severe complaints in the elbow, leading to a lateral epicondyle release and partial epicondylectomy performed by Dr. Emanuel on 8/31/01. Post-op Ms. Barbrow spent four months or so either off duty or on light duty prior to a full release by Dr. Emanuel on 1/03/02. In a follow up note dated 1/28/02, Dr. Emanuel states that the claimant complained of the employer assigning her heavy work, and of having suffered elbow swelling, crackling, some soreness, and throbbing type of discomfort. Dr. Emanuel recommended restrictions for the next three weeks, and on 2/5/02 documented a telephone conversation in which he was informed that the claimant had quit her employment, and that further work restrictions were no longer an issue.

Ms. Barbrow has not worked since she left her employment in February of 2002. When asked at her deposition on 11/25/03 why she had stopped working, Ms. Barbrow responded "Because I was still having issues with my arm that had been worked on that made me unable to go find another job. I mean, I couldn't find another job because I was still broken." (Employer and Insurer's Exhibit No.7, at pp 16-17).

Ms. Barbrow relates that the act of sanding aluminum parts created an aluminum dust that would settle onto her clothes and on her body, including into her ears and into her nose. Claimant further relates that on certain days the silver dust would cause her to look like a tin man. The only protective clothing provided by the employer was as follows; shoes; face shield and arm sleeve protectors when performing work that causes aluminum chips to fly; ear plugs; and paper face masks for the discretionary use by employees as respiratory protection. Ms. Barbrow acknowledged that she used the face mask at her work. Ms. Barbrow claims to have suffered an aluminum toxicity as a consequence of a work related exposure to aluminum dust particles.

Mark Atkinson, testifying on behalf of the employer, acknowledges that from 1996 to 2007, approximately eleven of the thirty years that he has been employed with the employer, he served as a supervisor and as a manager. Mr. Atkinson confirms that during the course of the employment of Ms. Barbrow from 2000 to 2002, he was the supervisor of those employees, including Ms. Barbrow, in Work Center 40 who performed fabricating and small assembly. Mr. Atkinson notes that entry level assembly workers start out performing deburring and sanding of parts. The witness relates that the routing, drilling, and filing of parts creates aluminum chips; that riveting creates no residuals; and that the sanding of parts creates an aluminum dust. Mr. Atkinson acknowledges that an employee after sanding can look like a tin man from the exposure to the aluminum dust, but suggests that such a scenario is not a weekly event. Mr.

Atkinson recalls an instance where the claimant had been finishing door skins for Lear jet parts, and was covered up and down the front with aluminum dust.

Extensive medical records, Social Security administration records, and the testimony of Ms. Barbrow at hearing document the following medical conditions/health history complained of by Ms. Barbrow that pre-existed her exposure to aluminum dust with the employer;

Temporary depression post the delivery of her two sons;
Major Depressive Disorder;
History of two suicide attempts;
Use of Xanax, Tranxene, Trazodone, Prozac for anxiety;
Removal of gallbladder following acute attack of gallstones;
Minor asthma;
Pack a day smoker, started smoking at age fifteen;
Irritable bowel syndrome (with family history, mother)
Ulcers with use of Zantac;
Metal taste in mouth from use of Zantac;
Gastroenteritis and enteritis;
Sinusitis, bronchitis;
Tubal ligation;
Chronic diarrhea;
Weight fluctuation from 113 to 191 pounds;
Occasional complaint of blurred vision;
Ambien for sleep problems;
Tailbone and low back pain;
Phlebitis;
Dizziness;
Memory loss;
Post-concussive syndrome;
Migraines, Severe Headache and Extreme Fatigue;
Chest pain;

Hiatal Hernia;
Removal of Barthelin gland;
Bilateral hip dysplasia;
Swelling of body, beginning with right leg.

Ms. Barbrow testified that she has suffered the following conditions post her employment with the employer:

1. Operated lateral epicondylitis, right elbow;
2. Weight fluctuation;
3. Worsening headache, onset of migraines;
4. Worsening of depressive problems;
5. Fatigue;
6. Hair loss (alopecia);
7. Generalized bone and body, joint ache and pain;
8. Memory loss;

9. Loss of concentration;
10. Problem with arteries, blood flow;
11. Lymph node swelling;
12. Worsening asthma;
13. Vision complaints;
14. Aluminum toxicity.

Ms. Barbrow believes that the above enumerated complaints, and/or the worsening of the pre-existing conditions, and with the exception of the epicondylitis, are related to an aluminum toxicity suffered at work with the employer.

Claimant became concerned about the constellation of her complaints and sought an evaluation at Farmersville Medical Family Center, Farmersville, Texas, on 4/1/03. Claimant was evaluated by Dr. Gamboa (subsequently married, name change to Parsley prior to visit on 4/22/03), and blood/serum testing at Labcorp on 4/01/03 revealed an aluminum plasma/serum level of 21 micrograms per liter (21 mcg/L). The Labcorp report further noted that the normal environmental exposure to aluminum resulted in a blood serum level of 0-9 mcg/L. Ms. Barbrow testified that this was her first evidence of aluminum toxicity, and she filed her claim for compensation with the Division of Workers' Compensation on 6/18/03; an answer to the claim for compensation was filed by the employer on 7/03/03.

Medical Doctors Tipu Sultan (Claimant's Exhibit AA); Maria Carter (Claimant's Exhibit W); and Dr. Rebecca Tominack (Claimant's Exhibit Z), opined as to diagnosis and medical causation with respect to an aluminum toxicity. Ms. Barbrow met with Dr. Sultan on 9/13/05, and his report was prepared that same date. Dr. Carter began treating the claimant on or about 1/24/06, and continued to treat through 9/17/07, with her causation report prepared on 6/19/06. Dr. Tominack did not meet and evaluate the claimant, but rather prepared a diagnosis and causation report dated 7/19/06 based on a medical records review. Dr. Tominack argued that at the point that she was asked to render an opinion in 2006, a clinical evaluation of Ms. Barbrow in person would not have been informational, given the lapse of time from the exposure to the year 2006. The claimant also sought a toxicology evaluation from Terry Tyler Martinez, Ph.D., prepared on 9/19/04.

Drs. Sultan and Carter concluded that the claimant suffered a work related aluminum toxicity from her employment with the employer. Dr. Carter recommended treatment in the form of Chelation therapy to rid the claimant of aluminum in her body. Dr. Tominack concluded that the lab report, with a serum/blood level of 21 mcg/L, did indicate an increased aluminum level beyond the level of under 10 mcg/L expected in the general population, but denied that the lab results showed or concluded that the claimant suffered an aluminum toxicity; argued that the serum level in the lab report suggested that Ms. Barbrow was in a "free from risk" range; that the claimant did not suffer an aluminum toxicity; and that all of the complaints of Ms. Barbrow were pre-existing conditions that were not caused or exacerbated by her work exposure to an aluminum alloy dust.

Terry Tyler Martinez, Ph.D, offered his expert opinion in toxicology. Dr. Martinez concludes that aluminum toxicity from a work exposure was a significant contributing cause of certain muscle, bone, and nervous condition symptoms suffered by Ms. Barbrow. Dr. Martinez acknowledges that he is not a medical doctor; that he did not meet personally with Ms. Barbrow; and that he can not otherwise recall if he interviewed Ms. Barbrow at any time. He further opines as to the manner in which aluminum dust was transported to the brain, and provides his opinion as to a medical causal relationship between aluminum toxicity transported to the brain and a resultant dysfunction and cognitive defect.

Drs. Sultan and Carter provided expert medical opinions exclusively through their written reports; Dr. Tominack and Dr. Martinez had their expert opinions scrutinized through their depositions taken on 11/20/2006 and 8/29/2008 respectively (Employer and Insurer's Exhibit Nos. 3 & 4). Dr. Tominack offered her direct testimony; Dr. Martinez offered his expert opinion via cross-examination by the employer/insurer.

MEDICAL CAUSATION/INJURY BY OCCUPATIONAL DISEASE

In a nutshell, in order to be found to have suffered a compensable injury by occupational disease arising in 2002, the claimant is obliged to prove an exposure to a hazard at work. The occupational disease must be deemed to arise out of and in the course of the employment, meaning that contracting the disease must be related to a risk or hazard in the employment, and that disease must flow from that risk or hazard as natural consequence. Section 287.067 RSMo. That section further provides that an occupational disease is compensable if it is clearly work related and meets the requirement of compensable injury as provided in subsection 2 and 3 of section 287.020, which states as follows:

2. The word "accident" as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and

(b) It can be seen to have followed as a natural incident of the work; and

(c) It can be fairly traced to the employment as a proximate cause; and

(d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life;

(3) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

The claimant has the burden of proving all the essential elements of the claim for compensation. Proof as to medical causation need not be by absolute certainty, but rather by a reasonable probability. "Probable" means founded on reason and experience which inclines the mind to believe but leaves room for doubt. Tate v. Southwestern Bell Telephone Co., 715 S.W.2d 326, 329 (Mo.App. 1986). "Medical causation", not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause". Brundige v. Boehringer Ingelheim, 812 S.W. 2d 200, 202 (Mo.App. 1991); McGrath v. Satellite Sprinkler Systems, Inc., 877 S.W.2d 704, 708 (Mo.App. E.D. 1994). The ultimate importance of expert testimony is to be determined from 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, 105 (Mo.App.1991). Medical causation as to an aluminum toxicity at work cannot be considered uncomplicated. The commission may not substitute an administrative law judge's personal opinion on the question of medical causation for the uncontradicted testimony of a qualified medical expert. Wright v Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo banc 1994), citing Merriman v. Ben Gutman Truck Service, Inc., 392 S.W.2d 292, 297 (Mo. 1965). "A medical expert's opinion must have in support of it reasons and facts supported by competent evidence which will give the opinion sufficient probative force to be substantial evidence." (citations omitted) Pippin v. St. Joe Minerals Corp., 799 S.W.2d 898, 904 (Mo.App. 1990).

Injuries caused by repetitive trauma have been treated as occupational diseases. Prater v. Thorngate, Ltd., 761 S.W.2d 226 (Mo. App. 1988); Jackson v. Risby Pallet and Lumber Co., 736 S.W.2d 575 (Mo. App. 1987); Collins v. Neevel Luggage Manufacturing Co., 481 S.W.2d 548 (Mo. App. 1972).

All witnesses providing an expert medical and/or toxicological opinion agree that the claimant suffered a work related risk to an identifiable disease known as aluminum toxicity. They are all aware of the lab results suggesting that the serum/level exposure at the time of testing was 21 mcg/L, above the level of 0 to 9 mcg/L

expected in the general population. Dr. Tominack concludes 1) that the plasma/serum level measured by the one lab report is not necessarily reliable, given the possibility of sampling error and the failure to confirm the finding by repeated testing; 2) that the involved blood/serum level for the presence of aluminum in the blood is not in the range of risk for an aluminum toxicity; 3) that the claimant does not suffer from an aluminum toxicity; and 4) that all of her complaints of physical and mental ill being are pre-existing and have not been caused or exacerbated by an exposure to aluminum at work.

Dr. Martinez offers an expert toxicological opinion that is persuasive on issues such as both general population and industrial/occupational exposure to aluminum; as to organs affected; manner of absorption into the body; nature of the harmful effects to the body; and safety methods to ameliorate or avoid exposure at work. Dr. Martinez admits that he is not a medical doctor, and agrees that the poison control center where he is employed basically is a telephone hotline facility that is used by doctors and the general public to seek advice in poisoning cases as it relates to identification of the problem, diagnosis, and recommendation as to treatment.

The opinion provided by Dr. Martinez is not found credible, nor is it persuasive as to medical causal relationship between a condition of ill being and a work related exposure; nature and extent of an aluminum toxicity; and diagnosis and causation as to pre-existing conditions and exacerbation thereof due to an exposure to aluminum in the workplace. The expert toxicological opinion of Dr. Martinez is not persuasive on those issues to the extent that they disagree with the conclusion of Dr. Tominack, who is a medical doctor board certified in both internal medicine and medical toxicology, with a history of experience in those fields (Note, however, that both Drs. Tominack and Martinez rely heavily on the scientific literature on the subject of aluminum toxicology to support their conclusions). The opinion of Dr. Martinez is further not found credible to the extent that he is not qualified to provide a particular medical diagnosis or to render medical treatment accordingly; did not have the opportunity to meet Ms. Barbrow in person to evaluate her history of complaint; agrees that multiple sampling would be preferable but not necessary in order to offer an expert opinion; and did not personally visit the worksite to determine the nature or extent of an aluminum exposure in the workplace.

Further, the expert medical and toxicological opinion of Dr. Tominack is found more credible and persuasive than that of both Drs. Sultan and Carter. Although Drs. Sultan and Carter had the opportunity to medically evaluate Ms. Barbrow in person, it appears from the records in evidence that the basis for their conclusions as to causation are premised almost exclusively on the history of exposure and of complaint by Ms. Barbrow, and the understanding that Ms. Barbrow had lab testing in 2004 that revealed her blood/serum level to be 21 mcg/L. With respect to the opinion of Dr. Carter as to medical causation, it is not at all clear whether Dr. Carter was aware of the extensive and pre-existing medical history of the claimant, and whether Dr. Carter (or Dr. Sultan, for that matter) had any qualifications or experience in the field of medical toxicology to warrant the conclusion that their expert medical opinion as to an aluminum toxicity was based on any personal knowledge or experience. The testimony of Dr. Tominack is not only supported by her credentials as to medicine and toxicology, but is also based on an accurate awareness and understanding of the entire medical in evidence in this matter. The expert medical testimony of Dr. Tominack is generally worthy of belief as it relates to medical causation and aluminum toxicity.

The medical and toxicological opinion of Dr. Tominack is found more credible than that of Doctors Sultan and Carter in part due to the demonstrated grasp of the complete medical history of Ms. Barbrow held by Dr. Tominack, and given that Dr. Tominack was the only physician to provide a foundation for her expert medical opinion that held up to scrutiny by question and answer at deposition.

Lastly, this fact finder had the opportunity to review the entire medical in evidence, and to observe the claimant deliver several hours of extensive and rigorous testimony at hearing. The level of recall of Ms. Barbrow as to her medical history was impressive, given the extent of the cross examination by the employer and insurer. Also impressive was her ability to understand questions; to concentrate and to provide clear and cogent responses; and to speak clearly and intelligently on all issues related to her testimony. The claimant is further found to have been able to provide over two hours of testimony at a time without significant break or apparent discomfort physically, mentally, or emotionally. Although the claimant did become overtly stressed and near tears at the conclusion of her testimony, her distress at that point was

understandable given the lengthy cross-examination as to her extensive medical history. As a general proposition, the ability of the claimant to provide cogent testimony and to demonstrate an ability to recall over the long haul of an arduous hearing process tends to dispel concerns as to a loss of memory, concentration, or mental confusion as a result of a toxic exposure at work.

From all of the evidence, the claimant has failed to persuade, as a matter of a reasonable probability, that she suffered an injurious exposure to aluminum toxicity at her workplace, or that such a toxicity constitutes an injury by occupational disease within the meaning of section 287.020 and 287.067 RSMo 2000. The issues as to injury by occupational disease, and as to a medical causal relationship between complaints of ill being and a compensable work injury are found in favor of the employer and insurer. The claim for compensation is denied.

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NOTICE/PAST MEDICAL EXPENSE/FUTURE MEDICAL CARE/TEMPORARY TOTAL
DISABILITY

All of the various other matters put in issue by the employee and the employer, including liability for past medical expense, are rendered moot as a result of the finding in favor of the employer and insurer on the issues of medical causation and compensable injury by occupational disease.

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LIABILITY OF THE STATE TREASURER AS CUSTODIAN OF THE
SECOND INJURY FUND

Second Injury Fund liability is premised on a finding or by an agreement of the parties that the underlying injury is work related and compensable under Section 287.220 RSMo. A finding in favor of the employer and insurer on the issues as to compensable injury by occupational disease and medical causal relationship precludes a finding as to Second Injury Fund liability in the matter. The issue as to fund liability is moot, and the claim as against the Second Injury Fund denied.

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FINAL AWARD

This award is a final determination of the issues raised at hearing on this claim for workers' compensation benefits, and is believed by this fact finder to be ripe for appeal under the act.

KEVIN DINWIDDIE
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ JEFFREY W. BUKER
Jeffrey W. Buker
Director
Division of Workers' Compensation