

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

Injury No.: 04-148655

Employee: Leliah Baxter  
Employer: General Motors Corporation  
Insurer: Self-Insured  
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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 4, 2011. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued February 4, 2011, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 24<sup>th</sup> day of June 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee:	Leliah Baxter	Injury No. 04-148655
Dependents:	N/A	
Employer:	General Motors Corporation	Before the <b>DIVISION OF WORKERS' COMPENSATION</b>
Additional Party:	State Treasurer, as Custodian of the Second Injury Fund	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-insured	
Hearing Date:	Wednesday, February 24, 2010	Checked by: KD/lsn

### 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: October 8, 2004
5. State location where 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? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Repetitive use of the upper extremities while working on the assembly line
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: right and left upper extremities at the level of the wrist
14. Nature and extent of any permanent disability: 30% permanent partial disability of each upper extremity at the wrist, plus a15% for multiplicity of injury and 2 weeks for disfigurement.
15. Compensation paid to-date for temporary disability: \$3,895.92
16. Value necessary medical aid paid to date by employer/insurer? \$17,989.66

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- 17. Value necessary medical aid not furnished by employer/insurer? n/a
- 18. Employee's average weekly wages: \$1,096.09
- 19. Weekly compensation rate: \$649.32/\$340.12
- 20. Method wages computation: stipulation to maximum rates

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

From the employer : 30% ppd of each wrist is 105 weeks, plus 15.75 weeks for 15% multiplicity of injury to the upper extremities, plus 2 weeks disfigurement. The total due from the employer is for 122.75 weeks at the rate of \$340.12, or a total of \$41,749.73

- 22. Second Injury Fund liability: Yes; see award for calculation of benefit

From the Second Injury Fund, 42.90 weeks of permanent partial disability at the rate of \$340.12 per week, or a total of \$14,591.15.

TOTAL: \$56,340.88

- 23. Future requirements awarded: N/A

Said payments to begin as of the date of this award and to be payable and be subject to modification and review as provided by law.

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 J. Gregory

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Leliah Baxter	Injury No: 04-148655
Dependents:	N/A	Before the <b>DIVISION OF WORKERS' COMPENSATION</b>
Employer:	General Motors Corporation	Department of Labor and Industrial Relations of Missouri
Additional Party	State Treasurer, as Custodian of the Second Injury Fund	Jefferson City, Missouri
Insurer:	Self-insured	Checked by: KD/Isn

The claimant, Ms. Leliah Baxter, appeared at hearing in person and by her counsel, Andrew J. Gregory. The employer, General Motors Corporation, is self-insured, and was represented by its counsel, Loretta Simon. The State Treasurer, as Custodian of the Second Injury Fund, was represented by Caroline Bean. Attorney Bean took her leave from the hearing after preliminary matters were discussed, including the stipulation that in the event the involved work related injury met the statutory threshold, the applicable pre-existing permanent disability is 48% of the left shoulder and 30% of the right shoulder, with a load factor of 15%.

The parties further stipulated at hearing that the issues to be resolved at hearing are limited to nature and extent of permanent partial disability from the work injury, disfigurement, and nature and extent of Second Injury Fund liability.

Ms. Baxter provided testimony on her own behalf. The claimant also submitted the deposition testimony of David Volarich, D.O. The employer submitted the deposition testimony of the treating physician, David S. German, M.D.

### EXHIBITS

The following exhibits are in evidence:

#### Claimant's Exhibits

- A. Medical records of David S. German, M.D.
- B. Certified medical records of Douglas Pogue
- C. Stipulations for Compromise Settlement in Injury Number 04-042948 and medical records
- D. Stipulations for Compromise Settlement in Injury Number 02-012327 and medical records
- E. Deposition of David Volarich, D.O., taken on 4/22/2009

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Employer/Insurer's Exhibits

I. Deposition of David S. German, M.D., taken on 4/29/2009

**FINDINGS OF FACT**

The claimant's birth date of 7/26/49 makes her 60 years of age as of the date of hearing in this matter. The claimant is an employee of General Motors, with whom she has been employed since 1985. Claimant last worked at General Motors on August 10, 2009, and testified that she intended to return to that employment.

Claimant worked both at the Hazelwood and Wentzville facilities, with her latest return to the assembly plant in Wentzville occurring in 2004. Claimant recalls that she was an assembler, and floated at first before being placed on the battery plate install job. To do this job the claimant would start 4 or 5 bolts by hand, and then tighten each with a torque gun. Claimant would also install a water bottle and a horn, each installed by shooting a screw with a torque wrench. By August of 2004 the claimant was suffering from various symptoms in her hands, with tightness and pain in the hands. Claimant relates that the hands would become hot, as if with a fever, with numbness, tingling, and swelling of the hands.

Claimant treated at plant medical with pain medication and ice, and when symptoms continued she had a nerve conduction study that was positive for carpal tunnel syndrome. Claimant postponed consideration of further treatment at her wrists because she was dealing with a separate left shoulder condition, for which she had an operation on 1/7/05. Dr. Rotman, the surgeon with respect to the left shoulder, performed extensive debridement of glenoid and humeral cartilage in the shoulder joint, and also performed a biceps tendon release and reattachment to the bone.

This surgery to the left shoulder was a follow up of surgeries had by Ms. Baxter to her right shoulder in 1999 and to her left shoulder in 2002. The right shoulder surgery was for a full thickness tear of the rotator cuff; the surgery to the left shoulder in 2002 was for what was found to be a nickel size tear of the rotator cuff.

The claimant returned to work following her second left shoulder surgery. Her hand complaints continued unabated, leading to a second nerve conduction study and a second finding of carpal tunnel syndrome bilaterally.

Ms. Baxter was referred to Dr. German, who elicited complaints more severe in the right hand, and a carpal tunnel release was performed by Dr. German on 9/08/2006. In his medical note dated October 6, 2006 (See Claimant's Exhibit A), Dr. German notes that after surgery "symptoms have completely resolved", and makes a request to provide the claimant with a left carpal tunnel release in January of 2007.

In his note dated December 11, 2006, claimant is noted to have "some residual swelling in her right carpal tunnel release" with no symptoms and minimal to no discomfort. A surgery to the left carpal tunnel is noted as having been scheduled.

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On 1/19/2007 Dr. German performed a release of the left carpal tunnel. As for the median nerve, Dr. German in his operative note states "The nerve was noted to be hyperemic and flattened but no restriction and with fascicles...".

In his medical note dated 1/26/2007, Dr. German relates that sutures were removed that date and that the claimant had excellent healing. He went so far as to state "A rating may be performed if desired". Temporary total disability benefits were paid for 6 weeks, or into early March of 2007. Ms. Baxter met with Dr. German for a follow up on 2/23/07. The claimant was found to have no numbness or tingling and normal range of motion. Dr. German concluded that the claimant could return to work at any time; was to see the claimant on an as needed basis; and again offered a rating if needed.

Claimant returned to work on the radio install job after her carpal tunnel surgeries. Ms. Baxter testified that she performed the radio install job initially in August of 2005, which means that the radio install job was the job she was performing prior to her right carpal tunnel surgery had just over one year later. On the radio install job the claimant was obliged to shoot eight screws with a torque gun, and would also manually plug in the antenna wire. Claimant would insert a dummy "radio delete" on those jobs that did not require a radio.

The claimant acknowledges that after her carpal tunnel surgeries and upon her return to the radio install job, the use of the torque gun would make her hands go numb, and they would also swell and tingle. Claimant relates that despite these symptoms, the carpal tunnel surgeries helped with her symptoms to the extent that she was able to sleep at night after the surgeries. Claimant continued to self medicate after the surgeries by applying ice packs to her hands after work and during her work breaks, and also sought ice treatment from time to time at the plant dispensary.

Dr. German did not see the claimant from 2/23/07 until approximately one year later, on 1/09/2008, for purposes of a final evaluation. Given the claimant's complaints of numbness and tingling in her hands and her diminished grip strength, Dr. German declined to find the claimant at maximum medical improvement, and proposed the claimant wear a brace for one month at night, with possible repeat nerve conduction study if symptoms did not resolve. Dr. German also posited some other metabolic cause, perhaps some rheumatologic disease as the cause of her complaints.

In his note dated August 8, 2008, Dr. German relates that he had not seen the claimant since January of 2008, despite making numerous attempts to contact the claimant to see if her symptoms had improved. Assuming that the claimant did not want any further treatment, Dr. German then offered a rating of 5% permanent partial disability at the level of the wrists. In his deposition, Dr. German makes it clear by his testimony that by offering a rating of disability he was not basing his rating on a final evaluation, but rather on the presumption that the claimant is doing fine and that there is no reason to consider her at anything other than at maximum medical improvement when she has not come back for follow up. He further makes it clear that 5% is the rating that he generally gives to patients post work related carpal tunnel releases.

Dr. Volarich offered his disability evaluation of Ms. Baxter based on meetings for evaluation purposes held on January 11, 2007, and again on June 12, 2008. Dr. Volarich was able to document losses of motion in the hands; weakness of grip; and tightness in the interphalangeal joints of both hands. A 2.5 centimeter carpal tunnel surgical scar was noted over

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the ventral surface of each wrist.

Ms. Baxter complains of numbness, tingling, and pain that are constant, located in the fingertips to half the way down the fingers, and also in the wrist at the palm. Claimant relates that she no longer has swelling in her hands now that she is not currently working at General Motors. Claimant relates that she has pain when lifting objects, for example a gallon of milk, which she is obliged to pick up with both hands due to her symptoms. She further relates that she has given up gardening and sewing due to her complaints post her surgeries, and that she has left the lion's share of the cleaning chores at home to her husband, again due to her pain symptoms following her carpal tunnel releases. Despite the chronic nature of her complaints, Ms. Baxter notes that she is not interested in further surgery, given that the first surgeries were supposed to relieve her of her complaints but failed to do so. Ms. Baxter appears skeptical that surgery would have the desired result of relieving her of pain, numbness, and tingling.

Dr. Volarich did not find Ms. Baxter at maximum medical improvement, but provided his rating of disability under the understanding that Ms. Baxter did not choose to undergo any further care for her hands. Dr. Volarich concludes that the claimant suffers a 50% permanent partial disability of each the right and left upper extremities at the wrist, and also suggests a 15% permanent partial disability due to multiplicity from the combination of injuries to both upper extremities. Dr. Volarich is unaware of any prior conditions that would have caused the claimant's carpal tunnel and found the carpal tunnel to be work related due to overuse. He did acknowledge on cross examination that it was possible that follow up studies like a rheumatologic workup could show additional problems in the hands were from some other non-work related cause.

Claimant's Exhibit B is the medical record of Dr. Pogue, including a rheumatoid arthritis diagnostic panel that Dr. Pogue interpreted as claimant having absolutely no evidence of medical arthritis. He goes on to note "It is just wear and tear". The Quest Diagnostics report is dated 3/22/09, which means it was generated just one month prior to the deposition of Dr. Volarich having been taken. It is apparent from the failure of Dr. Volarich to reference the document that he was unaware that such test results had been achieved.

## **RULINGS OF LAW**

### **PERMANENT PARTIAL DISABILITY AND DISFIGUREMENT**

It has been stipulated that Ms. Baxter suffered from bilateral carpal tunnel syndrome, that it was a work related overuse condition, and that the subsequent surgery and follow up treatment was reasonable and necessary to cure and relieve of the effects of the condition. At issue is the nature and extent of any permanent partial disability and disfigurement compensable as a result of this bilateral carpal tunnel syndrome.

Section 287.190.6(2) RSMO provides as follows:

2) Permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

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The claimant is found to be a generally credible witness, and no stranger to the world of surgical repair of medical conditions involving her extremities, having undergone three surgeries to her shoulders prior to having her carpal tunnel addressed surgically. There is nothing by way of expert medical opinion to suggest that the claimant's decision to forego further medical treatment is arbitrary or unreasonable.

As a result of her carpal tunnel syndrome, the claimant is no longer able to sew or garden. She further limits her activity in the home that involves cooking, vacuuming, sweeping, mopping, and doing laundry. Dr. Volarich has performed measurements that show restriction in range of motion of the hands, as well as loss of grip strength. The findings of Dr. Volarich on physical examination, and the complaints of Ms. Baxter persuade that as a result of her work injury from overuse the claimant has sustained a 30% permanent partial disability to each the left and right upper extremities at the 175 week level, or a total of 105 weeks. Claimant is further found to have an additional 15.75 weeks of permanent partial disability as a result of suffering a greater disability due to the multiplicity of her injuries by a factor of 15%. Lastly, the claimant is found to have suffered 2 weeks of disfigurement as a result of her surgical scarring to her wrists. The total due from the employer for permanent partial disability and disfigurement is 122.75 weeks at the rate of \$340.12, for a total of \$41,749.73.

### **SECOND INJURY FUND LIABILITY**

The employee and the Second Injury Fund have stipulated to a 15% load factor in the event the underlying work injury met the statutory threshold. The parties have further stipulated to pre-existing permanent partial disability to the right and left shoulders as showing in the previous STIPULATIONS FOR COMPROMISE SETTLEMENT that have been submitted in evidence. The pre-existing permanent partial disability is 48% of the left shoulder and 30% of the right shoulder. Those prior injuries to the left and right shoulders constitute a hindrance or obstacle to employment. Inasmuch as the statutory threshold has been met by this work injury, there is a total of 180.96 weeks of pre-existing permanent partial disability. 180.96 weeks plus 105 weeks at the 175 week level equals 285.96 weeks. Using a load factor of 15%, the synergistic effect of the injuries results in a total of 42.90 weeks of disability benefits due from the Second Injury Fund. At the rate of \$340.12 per week, the total due from the Second Injury Fund is \$14,591.15.

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**FINAL AWARD**

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

**ATTORNEY'S FEES**

This award is subject to a lien in favor of Andrew J. Gregory, Attorney at Law, in the amount of 25% thereof for necessary legal services rendered.

Made by: /s/ KEVIN DINWIDDIE  
KEVIN DINWIDDIE  
Administrative Law Judge  
Division of Workers' Compensation

This award is dated and attested to this 4<sup>th</sup> day of February, 2011.

/s/ Naomi L. Pearson  
*Naomi L. Pearson*  
*Division of Workers' Compensation*