

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

Injury No.: 99-183655

Employee: Wilma Bevenue
Employer: 3M Corporation (Minnesota Mining and Manufacturing Company)
Insurer: Old Republic Insurance Company
Date of Accident: Alleged November 10, 1999
Place and County of Accident: Vernon County, Missouri

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 July 6, 2006, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued July 6, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5th day of March 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Dependents: N/A

Employer: Minnesota Mining and 3M Corporation-US-Monv01

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

Insurer: Old Republic Insurance Company

Hearing Date: May 1, 2006

Checked by: LTW

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: November 10, 1999
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? N/A
7. Did employer receive proper notice? N/A
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: N/A
12. Did accident or occupational disease cause death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: None
14. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Wilma Bevenue

Injury No. 99-183655

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$496.36
19. Weekly compensation rate: \$329.07
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: -0-

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning, for Claimant's lifetime

22. Second Injury Fund liability: No

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: -0-

Permanent total disability benefits from Second Injury Fund: None

TOTAL: -0-

23. Future requirements awarded:

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

The above-referenced workers' compensation claim, which involved the combining of four workers' compensation cases for hearing, was heard before the undersigned Administrative Law Judge on May 1, 2006.^[1] The parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about May 22, 2006.

The employee, Wilma Bevenue, appeared personally and through her attorney, Doris House, Esq. The employer, Minnesota Mining and 3M Corporation-US-Monv01 ("3M") and insurer appeared through their attorney, Patrick Platter, Esq. The Second Injury Fund appeared through its attorney, Christina Hammers, Assistant Attorney General. (The Second Injury Fund is an additional party in Injury Nos. 02-154103, 02-154106, and 02-154105; but it is not a party in Injury No. 99-183655.)

The parties entered into a stipulation of facts in Injury No. 99-183655. The stipulation is as follows:

- (1) On or about November 10, 1999 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (2) On the alleged injury date of November 10, 1999 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (4) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (5) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury 99-183655 include:

- (1) Whether the employee sustained an accident or incident of occupational disease on or about November 10, 1999; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (2) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (3) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (4) Whether the employee is entitled to temporary disability benefits?
- (5) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (6) Whether the Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo?

In Injury No. 02-154103 the parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about March 19, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (2) On the alleged injury date of March 19, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (5) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (6) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154103 include:

- (1) Whether the employee sustained an accident or incident of occupational disease on or about March 19, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (2) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (3) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (4) Whether the employee is entitled to temporary disability benefits?
- (5) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (6) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

In Injury No. 02-154106 the parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about April 30, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (2) On the alleged injury date of April 30, 2002 Wilma Bevenue was an employee of the employer, and

was working under and subject to The Missouri Workers' Compensation Law.

- (3) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (5) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (6) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154106 include:

- (1) Whether the employee sustained an accident or incident of occupational disease on or about April 30, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (2) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (3) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (4) Whether the employee is entitled to temporary disability benefits?
- (5) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (6) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

In Injury No. 02-154105 the parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about October 1, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (2) On the alleged injury date of October 1, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (5) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (6) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154105 include:

- (1) Whether the employee sustained an accident or incident of occupational disease on or about October 3, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (2) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (3) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?

- (4) Whether the employee is entitled to temporary disability benefits?
- (5) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (6) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

EVIDENCE PRESENTED

The employee testified at the hearing in support of her claim. Also, the employee presented at the hearing of this case the testimony of Phillip Eldred. In addition, the employee offered for admission the following exhibits:

- Exhibit AMedical records - Nevada Regional Medical Center
- Exhibit B Medical records - Dr. Warren Lovinger
- Exhibit C Medical records - Dr. Brian Ellefsen
- Exhibit D Medical records - McCune Brooks Hospital
- Exhibit E Medical records - Dr. Brian Ellefsen
- Exhibit F Medical records - Nevada Regional Medical Center
- Exhibit G Medical report - Dr. Robert Paul
- Exhibit H Supplemental report - Dr. Robert Paul
- Exhibit I Request for Statements sent by Certified Mail
- Exhibit J Claim for Compensation – Injury No. 99-183655
- Exhibit K Claim for Compensation – Injury No. 02-154103
- Exhibit L Claim for Compensation – Injury No. 02-154105
- Exhibit M Claim for Compensation – Injury No. 02-154106
- Exhibit N Records of Wilkinson Pharmacy
- Exhibit O Report of Phillip Eldred
- Exhibit P Medical records of St. Johns Regional Medical Center – Joplin
- Exhibit Q 2001 W-2 Statement
- Exhibit R Deposition - Dr. Robert Paul
- Exhibit S Job Description
- Exhibit T Curriculum Vitae - Phillip Eldred
- Exhibit U ... Deposition of Wilma Bevenue (Page 28-- Highlighted Portion Only)

The exhibits were received and admitted into evidence.

The employer and insurer presented at the hearing of this case one witness – Lynn DeWeese. Also, the employer and insurer offered for admission the following exhibit:

- Exhibit 1 Deposition of Dr. Allen J. Parmet
- Exhibit 2 Appendix D from the *Dictionary of Occupational Titles*
- Exhibit 3 Physical Demands Assessment

The exhibits were received and admitted into evidence.

The Second Injury Fund did not present any witnesses or offer any additional evidence.

In addition, the parties identified several documents filed with the Division of Workers’ Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include:

Injury No. 99-183655

Division of Workers’ Compensation Minute Entry Dated October 7, 2003 (Record of Deleting Injury No. 00-179704 as a Duplicate File and combining it into Injury No. 99-183655); Notice of Hearing; Request for Hearing – Final Award; Order Sustaining Change of Administrative Law Judge; Objections of Notice of Intent to Submit Supplemental Complete Medical Report; Entry of Appearance; Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Amended Claim for Compensation; and Report of Injury.

Injury No. 02-154102

Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Claim for Amended Claim for Compensation; Answer of Employer and Insurer to Claim for Compensation; Answer of

Second Injury Fund to Amended Claim for Compensation; Report of Injury; and Request for Hearing – Final Award.

Injury No. 02-154106

Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Amended Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; Report of Injury; and Request for Hearing – Final Award.

Injury No. 02-154105

Claim for Compensation; Amended Claim for Compensation; Answer of Employer & Insurer to Claim for Compensation; Answer of Second Injury Fund to Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; and Request for Hearing – Final Award.

DISCUSSION

The employee, Wilma Bevenue, is 53 years of age, having been born on December 25, 1952. Ms. Bevenue is a resident of Nevada, Missouri. Also, she enjoys limited education, as she attended but did not graduate from high school. Several years later, however, Ms. Bevenue obtained her high school equivalency G.E.D. certificate.

Ms. Bevenue seeks permanent partial disability benefits, past temporary total disability compensation, and future medical care relative to four workers' compensation files, alleged to be in the nature of occupational disease relative to her employment with 3M. The claims of injury refer to her both knees and both shoulders.

Injury No. 99-183655

In Injury No. 99-183655 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for eleven years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgeries in June 2000. Initially, Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging an injury date of June 2000. Later, Ms. Bevenue amended the Claim for Compensation, alleging a date of injury of November 1999, as she suffered problems with her knees in 1999, which necessitated surgeries in November and December 1999.

Injury No. 02-154103

In Injury No. 02-154103 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for thirteen years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgery involving her left knee on March 19, 2002. Initially, Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of March 19, 2002. She filed an Amended Claim for Compensation on March 5, 2004, wherein she added the Second Injury Fund as an additional party.

Injury No. 02-154105

In Injury No. 02-154105 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for thirteen years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgery in the nature of a left knee replacement in October 2002. Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of October 2002. She filed an Amended Claim for Compensation on August 26, 2003, wherein she added the Second Injury Fund as an additional party.

Injury No. 02-154106

In Injury No. 02-154106 Ms. Bevenue alleges that, she injured both shoulders while working and engaging in repetitive activity for the employer 3M for thirteen years as a "sheeter"; and as a consequence of these injuries she developed problems in her shoulders, which necessitated surgery involving her right shoulder on April 30, 2002. Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of April 30, 2002. She filed an Amended Claim for Compensation on August 26, 2003, wherein she added the Second Injury Fund as an additional party.

Previous Medical History

Ms. Bevenue was hospitalized from December 29, 1987 until January 23, 1988 at St. Johns Regional Medical Center in Joplin, Missouri. Her attending physician, Dr. Hallaba, diagnosed her with morbid obesity. He performed a vertical banded gastroplasty, sometimes referred to as bariatric surgery or "stomach stapling". Although Ms. Bevenue denies being morbidly obese at the time of the surgery, the purpose of the surgery was to prevent morbid obesity. Her admitting history included the following problems: (a) that she had been overweight for many years; (b) that she had shortness of breath on exertion; (c) that she suffered from pain in her upper and

lower back due to excessive weight; (d) that she suffered from fatigue; and (e) that she had a loss of libido.

Dr. Warren Lovinger of Nevada has been Ms. Bevenue's personal physician since January 1992. The first available chart note reflects that he saw her that day for depression, weight gain, and chronic peptic hyperacidity. Dr. Lovinger noted, in his history, that Ms. Bevenue had a past history of depression and irritability. She stated, according to the note, that her family "hates her", that she argues, is unpleasant, apathetic and listless. She also mentioned that she had difficulty concentrating at her job at the Nevada plant. She stated that she had seen a psychologist twice before seeing Dr. Lovinger. Ms. Bevenue could not remember if she had seen a psychologist, as reflected in the chart note.

Ms. Bevenue admitted that she had been clinically depressed since her high school years. She also stated that she had started taking medication since she gave birth to her two children. A physician named Kemm was her original treating physician for her depression.

Ms. Bevenue would see Dr. Lovinger periodically for depression. She felt that her Prozac was losing its effectiveness on March 3, 1993. She had stress due to a divorce on May 26, 1993, and felt that her Prozac was providing her more relief than her Paxil. On September 17, 2001, she was weepy and withdrawn. She was not going to work. Dr. Lovinger encouraged her to see a psychologist for treatment. She resumed prescriptions on Prozac. She also saw Dr. Lovinger for depression on June 18, 2002.

Ms. Bevenue denied that her depression ever kept her from working, in spite of the Lovinger chart notes of January 24, 1992 and September 17, 2001. Those chart notes indicate that the depression hindered Ms. Bevenue at her work. She contradicted these chart notes by saying that her employment at 3M helped the symptoms of her depression.

Ms. Bevenue underwent a total abdominal hysterectomy in 1980, at the age of 28. According to Ms. Bevenue, following this surgery she began taking hormone replacement therapy then. However, the evidence presented by the parties suggests that she did not always use the prescription medication for her hormone therapy replacement. For example, she did not refill prescriptions for at least six months or more during the following periods: 10 months from January 3, 1997 to November 6, 1997; 6 months from December 16, 1997 to June 15, 1998; one year and nine months from January 22, 2000 to October 12, 2001; and 2 years and one month from October 12, 2001 to November 8, 2003.

Ms. Bevenue underwent a series of diagnostic testing, which extended from August 4, 2000 until early January 2001. During this period, while presenting with pain in her right shoulder and arm, Ms. Bevenue underwent an x-ray of her cervical spine. The x-ray indicated mild anterior osteophyte formation at C5-6 and C6-7, with a straightening of the normal lordotic curvature suggesting muscle spasm and mild degenerative spondylosis of the lower cervical spine. An x-ray of the right shoulder conducted the same date was negative. Later, on November 3, 2000, and in light of left sciatica complaints, Ms. Bevenue underwent an x-ray of the lumbar spine. The x-ray indicated mild vertebral osteophyte formation at multiple levels with mild degenerative spondylosis. She underwent another x-ray of the cervical spine on December 22, 2000, based upon complaints that resembled parasthesia on the right side. This was a normal study. A doppler ultrasound conducted on the same date indicated normal bilateral extracranial arteries. An MRI scan conducted on January 2, 2001, prompted by complaints that Ms. Bevenue had of pain in her right arm and neck. The MRI scan indicated minimal degenerative changes of the intervertebral discs associated with degeneration and dessication. Another physician, reviewing the same MRI scan, found moderate disc degeneration with dessication and mild generalized annular bulging at C5-6 and C6-7. That physician found no disc herniation, central canal stenosis, lesion, or mass.

Employment at 3M

Ms. Bevenue engaged in employment with 3M, working in the Nevada plant, for approximately 13 years. She officially ended her employment with 3M in 2004, when her benefits for long term disability through a 3M-employee benefit plan ended. Notably, during the period of 1997/1998 to April 2002 Ms. Bevenue worked in the converting department.

Employment in the Converting Department from 1997/1998 to 2003

The converting department concerned work in which sheets of product, such as vinyl, plastic or paper, were pulled from rolls, cut into pieces, and then packed into crates. The crates were then sealed and shipped.

Ms. Bevenue claimed that she suffered injuries to her knees because of excessive standing on concrete and crawling on concrete in order to fix a slitting machine. She claims she suffered the injuries to her shoulders because she would pull the product from the rolls through a slitting machine and lifting an air bar.

Ms. Bevenue had at least two positions within the converting department. Those include the positions of “slitter” and “sheeter”. Ms. Bevenue worked as a “sheeter” ninety-five percent of the time, and as a “slitter” five percent of the time. As a sheeter, according to Ms. Bevenue, she spent seventy-five percent of her time working upon a particular machine, commonly referred to as a “72 machine”. The 72 machine was slightly older than two other machines in the plant. In commenting on this machine, Ms. Bevenue testified that the parts were slightly older and did not work quite as well, though the functions were the same as the two newer machines.

Notably, Ms. Bevenue’s work on the “72 machine” involved two basic functions – (1) rolling and spreading the product; and (2) cutting and placing the product in crates for shipping. In performing the first function, Ms. Bevenue would pull the product with both hands, while guiding the product with the right hand. On the “72 machine”, it was necessary to flap the product slightly in order to have enough air underneath in order to pull the product over. The product would then be cut and placed into a crate for shipping. According to Ms. Bevenue, she cut 8 to 10 rolls of product per work shift. Also, Ms. Bevenue testified that, approximately six to seven times per day, she lifted during her work shift an “air bar” that weighed 100 pounds and was about 80 inches long.

Ms. Bevenue asserts that she developed symptoms in her knees from walking on concrete floors and crawling upon it when attempting to repair the “72 machine”. Relative to this issue, “Sheeters” working for 3M, including Ms. Bevenue, enjoyed the use of an ergonomic rubber mat. According to Ms. Bevenue, however, the mat was only two feet by four feet, and she spent 80 percent of her time walking the product off of the mat in order to keep it from kinking. On the other hand, Lynn Deweese, who is a 3M representative and professional in the area of Environmental Safety and Health, testified that additional mats were available for use of the employees. Also, Ms. Bevenue notes that, during her time as a “Sheeter” she was required to fix knives (The knives that would cut the product) on the “72 machine”. And, she claimed that the “72 machine” would encounter other malfunctions, which required her to spend at least 45 minutes out of each workday crawling around the machine in order to repair it. Mr. DeWeese, however, disputed this testimony, stating that 3M employed a maintenance crew, who was available to make repairs that would require any lengthy period of time.

Also, in discussing the nature of Ms. Bevenue’s employment and work with 3M, Mr. DeWeese identified Employer’s Exhibit 3 as an accurate job description of the essential functions of a “Sheeter”. This report was prepared by staff of Freeman Occumed of Joplin, Missouri, and preserved as a business record by the plant. Mr. DeWeese testified that the essential and representative functions of a “Sheeter” were specified in Exhibit 3. Notably, this exhibit indicates that the workday was eight hours per day; and the “Sheeter” would sit up to three hours per day at the machine guiding sheets; the “Sheeter” would stand four to six hours guiding sheeting and performing machine set up; and the “Sheeter” would walk one to two hours, which involved moving pallets and changeovers. In addition, Exhibit 3 indicates that a “Sheeter” would walk and maneuver around machines and perform the following activities:

- Occasionally, the Sheeter would bending/stoop, squat, twist, crawl, climb stairs, crouch and kneel.
- Frequently, the “Sheeter” would be required to balance, while standing, sliding sheets, and setting up machines.

Also, in disputing parts of Ms. Bevenue’s testimony, Mr. DeWeese testified that it would not be necessary to use the air bar six times per work shift; and that the air bar weighed no more than 50 lbs.

Medical Treatment for Knees and Shoulders Beginning in 1999

Ms. Bevenue centers her claim upon both knees and both shoulders. The following is a chronology of surgeries she has undergone for her knees and right shoulder:

- November 10, 1999: The operative diagnosis was Grade III chondromalacia of the right knee. The surgery included a diagnostic and operative arthroscopy, which included a chondroplasty of the patella and injection into the right knee.
- December 8, 1999: The operative diagnosis was Grade III chondromalacia of the patella of the left knee, Grade III chondromalacia of the medial femoral condyle of the left knee, and medial plica of the left knee. The surgery was a diagnostic and operative arthroscopy, which included a chondroplasty of the patella, chondroplasty of the medial femoral condyle, resection of medial plica, and injection into the left knee.
- March 19, 2002: The operative diagnosis was chondromalacia of the patella and medial femoral condyle. The surgery was a chondroplasty upon those areas, with again, an injection of the left knee.
- April 30, 2002: The operative diagnosis included a glenoid labral tear, impingement syndrome, and full thickness rotator cuff repair. Surgery was a resection of the glenoid labral tear, open decompression with release of the coracoacromial ligament, repair of the rotator cuff, and partial ostectomy acromion.
- October 1, 2002: The operative diagnosis was degenerative joint disease of the left knee. The surgery was a total left knee joint replacement.

Ms. Bevenue began experiencing discomfort in her knees in 1994 or 1995, and began taking medication for her knees in 1996. Notably, the medical records of Dr. Lovinger indicate that Ms. Bevenue informed Dr. Lovinger of problems with her knees on January 3, 1996, when she mentioned two years of recurrent knee pain. These symptoms gradually escalated and she began suffering from pain, swelling, and weakness. By 1999, according to Ms. Bevenue, the pain was a "9" on a scale of 1 to 10. Eventually, on August 25, 1999, Dr. Lovinger referred Ms. Bevenue to Dr. Scott Compton, who is an orthopedic surgeon in Nevada, Missouri. Thereafter, Ms. Bevenue underwent the initial surgeries for her knees. At no time do any of the medical records reference or associate her knee pain and discomfort with work at 3M.

Ms. Bevenue claims her knees were "perfect" after the initial surgeries. However, the records indicate that she complained of recurrent pain in her right leg on November 3, 2000.

Also, in addition to treating Ms. Bevenue for her knees, Dr. Lovinger initially evaluated Ms. Bevenue for discomfort associated with her right shoulder. Ms. Bevenue first presented to Dr. Lovinger with a problem concerning the right side of her neck and right shoulder on August 2, 2000. During this visit, Ms. Bevenue stated that she had suffered pain in her right neck and shoulder for one week. She also stated her right arm ached. At the time of this examination Dr. Lovinger noted no obvious injury.

Dr. Compton wrote to Dr. Lovinger on December 26, 2000 with respect to these particular problems. He also mentioned the onset of symptoms to have started in either late July or early August 2000, with no preceding injury or change in activities. It was at this time that Dr. Compton recommended the MRI scan of the neck. He further recommended that Ms. Bevenue see a neurologist if the MRI scan was negative. There is no indication that Ms. Bevenue ever saw a neurologist for her neck and right arm discomfort.

Dr. Brian Ellefsen last saw Ms. Bevenue on April 21, 2003 and June 4, 2003. Ms. Bevenue had complained of pain in her right shoulder. She claimed she was having more sharp pain in using her arm to reach across her body and lifting out of cabinets. Dr. Ellefsen recommended a repeat MRI scan of the right shoulder. This showed no abnormality in the rotator cuff or bony pathology. His diagnosis was a tendonitis of the right shoulder.

Ms. Bevenue, according to deposition testimony, first discussed the potential of job related injuries in the calendar year 2000. Ms. Bevenue needed to complete paperwork with the assistance of the plant nurse, Vicky Dennison, because she had missed time from employment following her knee surgeries. This was shortly after she returned to work following her 1999 knee surgeries. In recounting her discussions with Ms. Dennison Ms. Bevenue provided the following testimony:

She was asked whether her conditions were due to a job related incident, and the paperwork asked for the dates of the incident or injury. She told Ms. Dennison that she did not know what date to put down. According to Ms. Bevenue, she told Ms. Dennison that she didn't know when the injury happened and that it was gradual. Additionally, she told Ms. Dennison that she did not know how to answer the question. Ms. Dennison replied, according to Ms. Bevenue, that if she marked the condition as job related, it would be a "lost time" accident. Such a designation was important because the plant had few lost time accidents. Ms. Dennison, according to Bevenue, stated that she would "take care of it, and that was it". Ms. Bevenue testified that she made this comment to Ms. Dennison because she did not want a job related incident to be recorded. The plant had a good record for absenteeism, and she thought it would be a black mark against both the plant and her. She stated that the 3M "Sheeter" job was the best job she had ever had, and that she enjoyed her work greatly. She decided not to file a claim against 3M until after she knew she would not return to work there.

Dr. Robert Paul

Robert E. Paul, M.D., who is a physician practicing in the specialty of family medicine, and who performs workers' compensation evaluations, testified by deposition on behalf of the employee. Dr. Paul performed an independent medical examination of the employee on October 31, 2003. At the time of this examination, Dr. Paul took a history from Ms. Bevenue, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of the employee, Dr. Paul opined that, as a consequence of her employment with the employer 3M, she sustained a cumulative trauma injury to her right shoulder, left shoulder, right knee, and left knee.

In summarizing his opinion of Ms. Bevenue's medical condition, and its relationship to work, Dr. Paul propounded the following medical summary:

This patient has been exposed to cumulative trauma over the last 14 years while working for 3M. The patient would load Panaflex or Control Tech film on a cutter or sheeter machine and then manually cut or crate up to 6000 pieces of this film a day. Width would vary from 3 – 63 inches and length would vary from 12 – 155 inches. In 1994 the patient began having problems with her right knee. In 1999 she developed bilateral knee problems and underwent right and left knee surgery that same year. The diagnosis was chondromalacia patella. The patient faithfully returned to work following these surgeries. In 2000 the patient began developing pain in her right neck, shoulder and arm. The patient eventually underwent a right shoulder surgery on 04/30/2002. The patient's knee problems still bothered her and she underwent a second knee surgery on 03/19/2002 and finally had a total left knee replacement on 10/01/2002.

In rendering this opinion, Dr. Paul acknowledges that, he did not see Ms. Bevenue's work area at the 3M plant in Nevada, Missouri; he did not see her job description; he did not see the production process at which she works, either by herself or with other people; and he did not see any reenactments of her work activities. Also, Dr. Paul's opinion assumes that Ms. Bevenue was slitting and packaging 6,000 pieces of product per day; and he assumes that Ms. Bevenue did not stand upon a rubber, ergonomic mat. Additionally, the testimony of Dr. Paul does not indicate whether he believed that she had to lift the "iron bar" upon a frequent or constant basis.

During his cross-examination, Dr. Paul admitted that studies could be done to determine the epidemiology of the reasons for Ms. Bevenue's condition. Such studies could either be a prospective cohort study, retrospective study, or case control study. He was not aware of any studies that attempted to explain the onset of physical disabilities for Ms. Bevenue or any other employee. Similarly, he did not know why other employees did not suffer these same conditions as Bevenue.

Also, in examining his opinion, Dr. Paul admits that not all people who walk on concrete floors develop

Grade III chondromalacia in their knees, as he believes developed with Ms. Bevenue. Similarly, Dr. Paul admits that there are hundreds of thousands of surgeries performed for total knee joint replacements, and, in some cases, an idiopathic degenerative condition with no known cause is the reason provided for such surgeries.

Finally, Dr. Paul is of the opinion that, as a consequence of Ms. Bevenue's employment with 3M and the injuries she sustained to her knees and shoulders, she has suffered permanent partial disability to both knees and to both shoulders. In seeking to apportion disability, Dr. Paul propounded the following opinion:

- As a consequence of the October 1, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 50 percent, referable to the left knee, and taking into consideration the total knee replacement.
- As a consequence of the November 1999 and April 30, 2002 injuries, Ms. Bevenue sustained a permanent partial impairment of 15 percent, referable to the left knee, and taking into consideration the surgically treated chondromalacia patella and plicectomy.
- As a consequence of the April 30, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 42 percent, referable to the right shoulder, and taking into consideration the decompression acromioplasty (10 percent); rotator cuff repair, same surgery (5 percent); labral tear repair, same surgery (5 percent); crepitation (10 percent); range of motion loss (7 percent); and weakness (5 percent).
- As a consequence of April 30, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 15 percent, referable to the left shoulder, and taking into consideration crepitation (10 percent); decreased range of motion (2 percent); and chronic pain (3 percent).
- Prior to October 1, 2002, Ms. Bevenue presented with a permanent partial impairment of 20 percent, referable to the right knee, and taking into consideration the arthroscopic surgery to the right knee.

In addition, Dr. Paul opined that the combined effects of all the impairments enhance Ms. Bevenue's overall disability, and have resulted in Ms. Bevenue's disability of 10 percent to the body as a whole. Additionally, Dr. Paul is of the opinion that the combined effects of all injuries and disabilities render Ms. Bevenue permanently and totally disabled.

Dr. Allen Parmet

Allen J. Parmet, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition on behalf of the employer and insurer. Dr. Parmet performed an independent medical examination of Ms. Bevenue on September 8, 2005. At the time of this examination, Dr. Parmet took a history from Ms. Bevenue, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Bevenue, Dr. Parmet opined that Ms. Bevenue suffers from degenerative joint disease of both knees, an impingement syndrome of the right shoulder, pain in the left shoulder, and depression. Dr. Parmet further opined that these conditions, which necessitated several surgeries, are not occupationally related to Ms. Bevenue's employment with 3M.

In explaining his diagnosis of degenerative joint disease, Dr. Parmet testified that degenerative joint disease "is a long-term process, wherein the joint surfaces which are composed of articular cartilage are eroded away and eventually lost." Dr. Parmet further indicated that the cartilage "can be lost to the point that there is no cartilage left at all and the articular surface becomes – the term we sometimes use is bone on bone." Notably, in examining the causal relationship of this medical condition to Ms. Bevenue's employment, Dr. Parmet opined that Ms. Bevenue's employment activities with 3M were not a significant or substantial factor in contributing to the degenerative joint disease in her knees; and, similarly, were not the cause of her need for the surgeries.

Rather, Dr. Parmet is of the opinion that the aging processes, combined with her metabolic state, were the causes of Ms. Bevenue's degenerative joint disease. In this regard, Dr. Parmet noted that a metabolic state is "a condition where people malabsorb certain nutrients. They may excrete nutrients." Additionally, Dr. Parmet noted that, "women who are postmenopausal lose excessive amounts of calcium and bone substrate and develop thinning of the bones.... The basic process of aging simply causes wear and tear of the joints with loss of the joint surfaces over time." And, Dr. Parmet notes, Bevenue, she was post-menopausal.

Further, in discussing the issue of causation, upon being asked why Ms. Bevenue's work with 3M was not a significant or substantial factor in contributing to the degenerative joint disease in her knees and "bone on bone" syndrome, Dr. Parmet propounded the following testimony:

Ms. Bevenue did not describe any specific traumatic injury of any kind and any other onset of knee conditions except gradual as one expect on a chronic degenerative change. Further, after her knees were cleaned up surgically the first time she had a gradual return of the symptoms, which is really what you would expect after removal of some damaged cartilage. But the joint would still not be restored to normal and would continue to degenerate unless whatever caused the original problem was remitted.

In addition, findings on the DEXA scan indicated degenerative processes from a loss of metabolism. It was "pretty widespread" for Ms. Bevenue and "very typical" of post-menopausal females. The DEXA scan is a dual x-ray bone densitometry study that examines the density of the lumbar spine and femur. This study is designed to estimate if thinning of the bones, osteopenia, is present. Ms. Bevenue had significant changes and degenerative findings in the vertebra and the density was below normal. This meant that she was osteopenic, and had thinning of the bones, but not so pathologically thinned to the point that she was risking fractures or collapse.

Similarly, Dr. Parmet opined that Ms. Bevenue's employment at 3M was not the cause of problems associated with her shoulders and need for medical care. In this regard, Dr. Parmet testified that Ms. Bevenue suffered only a gradual onset of pain, and no specific injury to her right shoulder. He believed, for the reasons given relative to the knees, Ms. Bevenue had begun to experience the "same chronic degenerative changes" in her shoulder". Likewise, the pain being experienced by Ms. Bevenue in her left shoulder was not causally related to her work with 3M.

In providing additional testimony relative to the issue of medical causation, Dr. Parmet testified that he did not believe that Ms. Bevenue's conditions should be viewed as work related, simply because she noticed her symptoms while at work. Dr. Parmet notes, if a patient has degenerative joint disease and the thinning of the bone is apparent, any physical activity will produce cause pain. Yet, merely feeling pain in association with activity does not mean that the activity is the cause, or a substantial factor in the cause, of the medical condition that produces the pain. Rather, the patient is merely identifying the pain with the activity.

In seeking to provide support for his opinion, Dr. Parmet notes that the status of medical research provides verification. Long term studies were started to review whether people who ran long distances, stood for long periods, or carried heavy loads on hard surfaces, suffered an acceleration of arthritis due to these activities. In fact, the opposite occurred. The body instead responds to this continued stress and stimulus by creating a healthier and stronger joint with less arthritis rather than more. Mere physical activity at work is not something that would necessarily injure a cartilage within an orthopedic joint.

In addition, Dr. Parmet believed that the morbid obesity that prompted the bariatric surgery in 1987 would have likewise been a substantial contributing factor to the degenerative joint disease in the knees. Overall, obese people have a 65% increased risk of arthritis, according to the Missouri Department of Health and Human Services publication "*Missouri Obesity Burden Report 2002*". Further research indicates that women who suffer from morbid obesity have an increased risk for total knee joint replacements by 1,905 per cent. Dr. Parmet testified that these scientific publications support the proposition that degenerative arthritis of Bevenue's knees was due to her obesity.

Finally, Dr. Parmet testified that, even if Ms. Bevenue had been crawling on her hands and knees to repair machines such as the "72 machine", she would not have suffered degenerative joint disease. Instead, she would have developed pre-patellar bursitis. This is because the point of contact when one is crawling is actually the front

of the tibia, the shinbone. It sometimes also includes the kneecap. This area is actually covered by the lower part of what is known as tibial tuberosity. This is where the quadriceps tendon inserts into the front of the shinbone. This is a bursitis at the front of the knee, rather than a disease process within the knee itself.

In rendering an assessment of permanent disability, Dr. Parmet opined that, Ms. Bevenue presents with a permanent disability of 50 percent, referable to the left knee; she presents with a permanent disability of 25 percent, referable to the right knee; she presents with a permanent disability of 20 percent, referable to the right shoulder; and she presents with a permanent disability of 10 percent, referable to the left shoulder. Dr. Parmet did not provide an opinion relative to the depression, premised on his belief that he lacked sufficient information render a disability rating for the depression. Additionally, Dr. Parmet opined that Ms. Bevenue is capable of working at the sedentary level of labor, according to the U.S. Department of Labor, *Dictionary of Occupational Titles*.

Phillip Eldred

Phillip Eldred is a vocational consultant whose regular employment is with the Missouri Department of Secondary and Elementary Education. And, in addition to this employment, he is engaged in private practice as a vocational consultant. Mr. Eldred testified that he did not believe Ms. Bevenue to be employable or placeable. Notably, in rendering his vocational opinion, Mr. Eldred presumed that Ms. Bevenue could not perform activities that would qualify as "sedentary labor" as defined by the Dictionary of Occupational Titles, published by the United States Department of Labor. Similarly, he did not Dr. Parmet's medical opinion. And, if he assumed that Ms. Bevenue could work at a sedentary level, then he acknowledge that employment opportunities existed for Ms. Bevenue.

FINDINGS AND CONCLUSIONS

The principal issue before the undersigned is whether the employee, Wilma Bevenue, sustained an occupational injury to her right and left knees as a consequence of her employment with the employer, 3M. The parties offer differing medical opinions, evidence, and arguments relative to this issue.

The employee argues that, in the course of working for 3M and performing her duties as a Sheeter, she suffered cumulative trauma to her knees, as a consequence of standing, walking or crawling on concrete for nearly eight hours every workday for 13 years. In support of her claim, Ms. Bevenue relies upon the medical opinion of Dr. Paul. The employer and insurer, however, argue that, while Ms. Bevenue suffers from degenerative joint disease in her knees, the medical condition is not an occupational disease, but an ordinary disease of life. In the particular case of Ms. Bevenue, the employer and insurer argue, Ms. Bevenue suffers from degenerative joint disease in her knees as a consequence of the effects of aging and obesity. The employer and insurer further note that, only occasionally Ms. Bevenue's duties as a Sheeter required her to crawl, climb or kneel; and she enjoyed in her work station an ergonomic rubber mat, which minimized her standing on a concrete floor.

After consideration and review of the evidence, I resolve the differences in medical opinion in favor of the testimony and opinion of Dr. Parmet, who, in this case, I find to be more credible and persuasive. I am persuaded, and thus find and conclude, that the employee Wilma Bevenue suffers from degenerative joint disease in her right and left knees, but this medical condition is an ordinary disease of life caused by the effects of aging and obesity.

Date: July 6, 2006

Made by: ___/s/ L. Timothy Wilson_____
L. Timothy Wilson
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

___/s/ Patricia "Pat" Secrest_____
Patricia "Pat" Secrest
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION_____

FINAL AWARD DENYING COMPENSATION

(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 02-154103

Employee: Wilma Bevenue
Employer: 3M Corporation (Minnesota Mining and Manufacturing Company)
Insurer: Old Republic Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged March 19, 2002
Place and County of Accident: Vernon County, Missouri

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 July 6, 2006, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued July 6, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5th day of March 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Wilma Bevenue Injury No. 02-154103
Dependents: N/A
Employer: Minnesota Mining and 3M Corporation-US-Monv01

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

Insurer: Old Republic Insurance Company

Hearing Date: May 1, 2006

Checked by: LTW

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: March 19, 2002
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? N/A
9. Did employer receive proper notice? N/A
10. 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: N/A
12. Did accident or occupational disease cause death? N/A
15. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: None
16. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Wilma Bevenue

Injury No. 02-154103

20. Value necessary medical aid not furnished by employer/insurer? -0-
21. Employee's average weekly wages: \$496.36
22. Weekly compensation rate: \$329.07
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: -0-

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning, for Claimant's lifetime

22. Second Injury Fund liability: No

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: -0-

Permanent total disability benefits from Second Injury Fund: None

TOTAL: -0-

23. Future requirements awarded:

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

The above-referenced workers' compensation claim, which involved the combining of four workers' compensation cases for hearing, was heard before the undersigned Administrative Law Judge on May 1, 2006. ^[2] The parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about May 22, 2006.

The employee, Wilma Bevenue, appeared personally and through her attorney, Doris House, Esq. The employer, Minnesota Mining and 3M Corporation-US-Monv01 ("3M") and insurer appeared through their attorney, Patrick Platter, Esq. The Second Injury Fund appeared through its attorney, Christina Hammers, Assistant Attorney General. (The Second Injury Fund is an additional party in Injury Nos. 02-154103, 02-154106, and 02-154105; but it is not a party in Injury No. 99-183655.)

The parties entered into a stipulation of facts in Injury No. 99-183655 stipulation is as follows:

- (6) On or about November 10, 1999 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (7) On the alleged injury date of November 10, 1999 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (8) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (9) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (10) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury 99-183655 include:

- (7) Whether the employee sustained an accident or incident of occupational disease on or about November 10, 1999; and, if so, whether the accident or occupational disease arose out of and in the course of

employment?

- (8) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (9) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (10) Whether the employee is entitled to temporary disability benefits?
- (11) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (12) Whether the Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo?

In Injury No. 02-154103 the parties entered into a stipulation of facts. The stipulation is as follows:

- (7) On or about March 19, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (8) On the alleged injury date of March 19, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (9) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (10) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (11) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (12) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154103 include:

- (7) Whether the employee sustained an accident or incident of occupational disease on or about March 19, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (8) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (9) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (10) Whether the employee is entitled to temporary disability benefits?
- (11) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (12) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

In Injury No. 02-154106 the parties entered into a stipulation of facts. The stipulation is as follows:

- (7) On or about April 30, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (8) On the alleged injury date of April 30, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (9) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.

- (10) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (11) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (12) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154106 include:

- (7) Whether the employee sustained an accident or incident of occupational disease on or about April 30, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (8) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (9) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (10) Whether the employee is entitled to temporary disability benefits?
- (11) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (12) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

In Injury No. 02-154105 the parties entered into a stipulation of facts. The stipulation is as follows:

- (7) On or about October 1, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (8) On the alleged injury date of October 1, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (9) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (10) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (11) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (12) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154105 include:

- (7) Whether the employee sustained an accident or incident of occupational disease on or about October 3, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (8) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (9) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (10) Whether the employee is entitled to temporary disability benefits?
- (11) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?

- (12) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

EVIDENCE PRESENTED

The employee testified at the hearing in support of her claim. Also, the employee presented at the hearing of this case the testimony of Phillip Eldred. In addition, the employee offered for admission the following exhibits:

Exhibit A	Medical records - Nevada Regional Medical Center
Exhibit B	Medical records - Dr. Warren Lovinger
Exhibit C	Medical records - Dr. Brian Ellefsen
Exhibit D	Medical records - McCune Brooks Hospital
Exhibit E	Medical records - Dr. Brian Ellefsen
Exhibit F	Medical records - Nevada Regional Medical Center
Exhibit G	Medical report - Dr. Robert Paul
Exhibit H	Supplemental report - Dr. Robert Paul
Exhibit I	Request for Statements sent by Certified Mail
Exhibit J	Claim for Compensation – Injury No. 99-183655
Exhibit K	Claim for Compensation – Injury No. 02-154103
Exhibit L	Claim for Compensation – Injury No. 02-154105
Exhibit M	Claim for Compensation – Injury No. 02-154106
Exhibit N	Records of Wilkinson Pharmacy
Exhibit O	Report of Phillip Eldred
<u>Exhibit P</u>	<u>Medical records of St. Johns Regional Medical Center – Joplin</u>
Exhibit Q	2001 W-2 Statement
Exhibit R	Deposition - Dr. Robert Paul
Exhibit S	Job Description
Exhibit T	Curriculum Vitae - Phillip Eldred
Exhibit U	Deposition of Wilma Bevenue (Page 28-- Highlighted Portion Only)

The exhibits were received and admitted into evidence.

The employer and insurer presented at the hearing of this case one witness – Lynn DeWeese. Also, the employer and insurer offered for admission the following exhibit:

Exhibit 1	Deposition of Dr. Allen J. Parmet
Exhibit 2	Appendix D from the <i>Dictionary of Occupational Titles</i>
Exhibit 3	Physical Demands Assessment

The exhibits were received and admitted into evidence.

The Second Injury Fund did not present any witnesses or offer any additional evidence.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include:

Injury No. 99-183655

Division of Workers' Compensation Minute Entry Dated October 7, 2003 (Record of Deleting Injury No. 00-179704 as a Duplicate File and combining it into Injury No. 99-183655); Notice of Hearing; Request for Hearing – Final Award; Order Sustaining Change of Administrative Law Judge; Objections of Notice of Intent to Submit Supplemental Complete Medical Report; Entry of Appearance; Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Amended Claim for Compensation; and Report of Injury.

Injury No. 02-154102

Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Claim for Amended Claim for Compensation; Answer of Employer and Insurer to Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; Report of Injury; and Request for Hearing – Final Award.

Injury No. 02-154106

Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Amended

Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; Report of Injury; and Request for Hearing – Final Award.

Injury No. 02-154105

Claim for Compensation; Amended Claim for Compensation; Answer of Employer & Insurer to Claim for Compensation; Answer of Second Injury Fund to Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; and Request for Hearing – Final Award.

DISCUSSION

The employee, Wilma Bevenue, is 53 years of age, having been born on December 25, 1952. Ms. Bevenue is a resident of Nevada, Missouri. Also, she enjoys limited education, as she attended but did not graduate from high school. Several years later, however, Ms. Bevenue obtained her high school equivalency G.E.D. certificate.

Ms. Bevenue seeks permanent partial disability benefits, past temporary total disability compensation, and future medical care relative to four workers' compensation files, alleged to be in the nature of occupational disease relative to her employment with 3M. The claims of injury refer to her both knees and both shoulders.

Injury No. 99-183655

In Injury No. 99-183655 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for eleven years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgeries in June 2000. Initially, Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging an injury date of June 2000. Later, Ms. Bevenue amended the Claim for Compensation, alleging a date of injury of November 1999, as she suffered problems with her knees in 1999, which necessitated surgeries in November and December 1999.

Injury No. 02-154103

In Injury No. 02-154103 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for thirteen years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgery involving her left knee on March 19, 2002. Initially, Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of March 19, 2002. She filed an Amended Claim for Compensation on March 5, 2004, wherein she added the Second Injury Fund as an additional party.

Injury No. 02-154105

In Injury No. 02-154105 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for thirteen years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgery in the nature of a left knee replacement in October 2002. Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of October 2002. She filed an Amended Claim for Compensation on August 26, 2003, wherein she added the Second Injury Fund as an additional party.

Injury No. 02-154106

In Injury No. 02-154106 Ms. Bevenue alleges that, she injured both shoulders while working and engaging in repetitive activity for the employer 3M for thirteen years as a "sheeter"; and as a consequence of these injuries she developed problems in her shoulders, which necessitated surgery involving her right shoulder on April 30, 2002. Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of April 30, 2002. She filed an Amended Claim for Compensation on August 26, 2003, wherein she added the Second Injury Fund as an additional party.

Previous Medical History

Ms. Bevenue was hospitalized from December 29, 1987 until January 23, 1988 at St. Johns Regional Medical Center in Joplin, Missouri. Her attending physician, Dr. Hallaba, diagnosed her with morbid obesity. He performed a vertical banded gastroplasty, sometimes referred to as bariatric surgery or "stomach stapling". Although Ms. Bevenue denies being morbidly obese at the time of the surgery, the purpose of the surgery was to prevent morbid obesity. Her admitting history included the following problems: (a) that she had been overweight for many years; (b) that she had shortness of breath on exertion; (c) that she suffered from pain in her upper and lower back due to excessive weight; (d) that she suffered from fatigue; and (e) that she had a loss of libido.

Dr. Warren Lovinger of Nevada has been Ms. Bevenue's personal physician since January 1992. The first available chart note reflects that he saw her that day for depression, weight gain, and chronic peptic hyperacidity.

Dr. Lovinger noted, in his history, that Ms. Bevenue had a past history of depression and irritability. She stated, according to the note, that her family "hates her", that she argues, is unpleasant, apathetic and listless. She also mentioned that she had difficulty concentrating at her job at the Nevada plant. She stated that she had seen a psychologist twice before seeing Dr. Lovinger. Ms. Bevenue could not remember if she had seen a psychologist, as reflected in the chart note.

Ms. Bevenue admitted that she had been clinically depressed since her high school years. She also stated that she had started taking medication since she gave birth to her two children. A physician named Kemm was her original treating physician for her depression.

Ms. Bevenue would see Dr. Lovinger periodically for depression. She felt that her Prozac was losing its effectiveness on March 3, 1993. She had stress due to a divorce on May 26, 1993, and felt that her Prozac was providing her more relief than her Paxil. On September 17, 2001, she was weepy and withdrawn. She was not going to work. Dr. Lovinger encouraged her to see a psychologist for treatment. She resumed prescriptions on Prozac. She also saw Dr. Lovinger for depression on June 18, 2002.

Ms. Bevenue denied that her depression ever kept her from working, in spite of the Lovinger chart notes of January 24, 1992 and September 17, 2001. Those chart notes indicate that the depression hindered Ms. Bevenue at her work. She contradicted these chart notes by saying that her employment at 3M helped the symptoms of her depression.

Ms. Bevenue underwent a total abdominal hysterectomy in 1980, at the age of 28. According to Ms. Bevenue, following this surgery she began taking hormone replacement therapy then. However, the evidence presented by the parties suggests that she did not always use the prescription medication for her hormone therapy replacement. For example, she did not refill prescriptions for at least six months or more during the following periods: 10 months from January 3, 1997 to November 6, 1997; 6 months from December 16, 1997 to June 15, 1998; one year and nine months from January 22, 2000 to October 12, 2001; and 2 years and one month from October 12, 2001 to November 8, 2003.

Ms. Bevenue underwent a series of diagnostic testing, which extended from August 4, 2000 until early January 2001. During this period, while presenting with pain in her right shoulder and arm, Ms. Bevenue underwent an x-ray of her cervical spine. The x-ray indicated mild anterior osteophyte formation at C5-6 and C6-7, with a straightening of the normal lordotic curvature suggesting muscle spasm and mild degenerative spondylosis of the lower cervical spine. An x-ray of the right shoulder conducted the same date was negative. Later, on November 3, 2000, and in light of left sciatica complaints, Ms. Bevenue underwent an x-ray of the lumbar spine. The x-ray indicated mild vertebral osteophyte formation at multiple levels with mild degenerative spondylosis. She underwent another x-ray of the cervical spine on December 22, 2000, based upon complaints that resembled parasthesia on the right side. This was a normal study. A doppler ultrasound conducted on the same date indicated normal bilateral extracranial arteries. An MRI scan conducted on January 2, 2001, prompted by complaints that Ms. Bevenue had of pain in her right arm and neck. The MRI scan indicated minimal degenerative changes of the intervertebral discs associated with degeneration and dessication. Another physician, reviewing the same MRI scan, found moderate disc degeneration with dessication and mild generalized annular bulging at C5-6 and C6-7. That physician found no disc herniation, central canal stenosis, lesion, or mass.

Employment at 3M

Ms. Bevenue engaged in employment with 3M, working in the Nevada plant, for approximately 13 years. She officially ended her employment with 3M in 2004, when her benefits for long term disability through a 3M-employee benefit plan ended. Notably, during the period of 1997/1998 to April 2002 Ms. Bevenue worked in the converting department.

Employment in the Converting Department from 1997/1998 to 2003

The converting department concerned work in which sheets of product, such as vinyl, plastic or paper, were pulled from rolls, cut into pieces, and then packed into crates. The crates were then sealed and shipped.

Ms. Bevenue claimed that she suffered injuries to her knees because of excessive standing on concrete and crawling on concrete in order to fix a slitting machine. She claims she suffered the injuries to her shoulders because she would pull the product from the rolls through a slitting machine and lifting an air bar.

Ms. Bevenue had at least two positions within the converting department. Those include the positions of “slitter” and “sheeter”. Ms. Bevenue worked as a “sheeter” ninety-five percent of the time, and as a “slitter” five percent of the time. As a sheeter, according to Ms. Bevenue, she spent seventy-five percent of her time working upon a particular machine, commonly referred to as a “72 machine”. The 72 machine was slightly older than two other machines in the plant. In commenting on this machine, Ms. Bevenue testified that the parts were slightly older and did not work quite as well, though the functions were the same as the two newer machines.

Notably, Ms. Bevenue’s work on the “72 machine” involved two basic functions – (1) rolling and spreading the product; and (2) cutting and placing the product in crates for shipping. In performing the first function, Ms. Bevenue would pull the product with both hands, while guiding the product with the right hand. On the “72 machine”, it was necessary to flap the product slightly in order to have enough air underneath in order to pull the product over. The product would then be cut and placed into a crate for shipping. According to Ms. Bevenue, she cut 8 to 10 rolls of product per work shift. Also, Ms. Bevenue testified that, approximately six to seven times per day, she lifted during her work shift an “air bar” that weighed 100 pounds and was about 80 inches long.

Ms. Bevenue asserts that she developed symptoms in her knees from walking on concrete floors and crawling upon it when attempting to repair the “72 machine”. Relative to this issue, “Sheeters” working for 3M, including Ms. Bevenue, enjoyed the use of an ergonomic rubber mat. According to Ms. Bevenue, however, the mat was only two feet by four feet, and she spent 80 percent of her time walking the product off of the mat in order to keep it from kinking. On the other hand, Lynn Deweese, who is a 3M representative and professional in the area of Environmental Safety and Health, testified that additional mats were available for use of the employees. Also, Ms. Bevenue notes that, during her time as a “Sheeter” she was required to fix knives (The knives that would cut the product) on the “72 machine”. And, she claimed that the “72 machine” would encounter other malfunctions, which required her to spend at least 45 minutes out of each workday crawling around the machine in order to repair it. Mr. DeWeese, however, disputed this testimony, stating that 3M employed a maintenance crew, who was available to make repairs that would require any lengthy period of time.

Also, in discussing the nature of Ms. Bevenue’s employment and work with 3M, Mr. DeWeese identified Employer’s Exhibit 3 as an accurate job description of the essential functions of a “Sheeter”. This report was prepared by staff of Freeman Occumed of Joplin, Missouri, and preserved as a business record by the plant. Mr. DeWeese testified that the essential and representative functions of a “Sheeter” were specified in Exhibit 3. Notably, this exhibit indicates that the workday was eight hours per day; and the “Sheeter” would sit up to three hours per day at the machine guiding sheets; the “Sheeter” would stand four to six hours guiding sheeting and performing machine set up; and the “Sheeter” would walk one to two hours, which involved moving pallets and changeovers. In addition, Exhibit 3 indicates that a “Sheeter” would walk and maneuver around machines and perform the following activities:

- Occasionally, the Sheeter would bending/stoop, squat, twist, crawl, climb stairs, crouch and kneel.
- Frequently, the “Sheeter” would be required to balance, while standing, sliding sheets, and setting up machines.

Also, in disputing parts of Ms. Bevenue’s testimony, Mr. DeWeese testified that it would not be necessary to use the air bar six times per work shift; and that the air bar weighed no more than 50 lbs.

Medical Treatment for Knees and Shoulders Beginning in 1999

Ms. Bevenue centers her claim upon both knees and both shoulders. The following is a chronology of surgeries she has undergone for her knees and right shoulder:

- November 10, 1999: The operative diagnosis was Grade III chondromalacia of the right knee. The surgery included a diagnostic and operative arthroscopy, which included a chondroplasty of the patella and injection into the right knee.
- December 8, 1999: The operative diagnosis was Grade III chondromalacia of the patella of the left knee, Grade III chondromalacia of the medial femoral condyle of the left knee, and medial plica of the left knee. The surgery was a diagnostic and operative arthroscopy, which included a chondroplasty of the patella, chondroplasty of the medial femoral condyle, resection of medial plica, and injection into the left knee.
- March 19, 2002: The operative diagnosis was chondromalacia of the patella and medial femoral condyle. The surgery was a chondroplasty upon those areas, with again, an injection of the left knee.
- April 30, 2002: The operative diagnosis included a glenoid labral tear, impingement syndrome, and full thickness rotator cuff repair. Surgery was a resection of the glenoid labral tear, open decompression with release of the coracoacromial ligament, repair of the rotator cuff, and partial ostectomy acromion.
- October 1, 2002: The operative diagnosis was degenerative joint disease of the left knee. The surgery was a total left knee joint replacement.

Ms. Bevenue began experiencing discomfort in her knees in 1994 or 1995, and began taking medication for her knees in 1996. Notably, the medical records of Dr. Lovinger indicate that Ms. Bevenue informed Dr. Lovinger of problems with her knees on January 3, 1996, when she mentioned two years of recurrent knee pain. These symptoms gradually escalated and she began suffering from pain, swelling, and weakness. By 1999, according to Ms. Bevenue, the pain was a "9" on a scale of 1 to 10. Eventually, on August 25, 1999, Dr. Lovinger referred Ms. Bevenue to Dr. Scott Compton, who is an orthopedic surgeon in Nevada, Missouri. Thereafter, Ms. Bevenue underwent the initial surgeries for her knees. At no time do any of the medical records reference or associate her knee pain and discomfort with work at 3M.

Ms. Bevenue claims her knees were "perfect" after the initial surgeries. However, the records indicate that she complained of recurrent pain in her right leg on November 3, 2000.

Also, in addition to treating Ms. Bevenue for her knees, Dr. Lovinger initially evaluated Ms. Bevenue for discomfort associated with her right shoulder. Ms. Bevenue first presented to Dr. Lovinger with a problem concerning the right side of her neck and right shoulder on August 2, 2000. During this visit, Ms. Bevenue stated that she had suffered pain in her right neck and shoulder for one week. She also stated her right arm ached. At the time of this examination Dr. Lovinger noted no obvious injury.

Dr. Compton wrote to Dr. Lovinger on December 26, 2000 with respect to these particular problems. He also mentioned the onset of symptoms to have started in either late July or early August 2000, with no preceding injury or change in activities. It was at this time that Dr. Compton recommended the MRI scan of the neck. He further recommended that Ms. Bevenue see a neurologist if the MRI scan was negative. There is no indication that Ms. Bevenue ever saw a neurologist for her neck and right arm discomfort.

Dr. Brian Ellefsen last saw Ms. Bevenue on April 21, 2003 and June 4, 2003. Ms. Bevenue had complained of pain in her right shoulder. She claimed she was having more sharp pain in using her arm to reach across her body and lifting out of cabinets. Dr. Ellefsen recommended a repeat MRI scan of the right shoulder. This showed no abnormality in the rotator cuff or bony pathology. His diagnosis was a tendonitis of the right shoulder.

Ms. Bevenue, according to deposition testimony, first discussed the potential of job related injuries in the calendar year 2000. Ms. Bevenue needed to complete paperwork with the assistance of the plant nurse, Vicky Dennison, because she had missed time from employment following her knee surgeries. This was shortly after she returned to work following her 1999 knee surgeries. In recounting her discussions with Ms. Dennison Ms. Bevenue provided the following testimony:

She was asked whether her conditions were due to a job related incident, and the paperwork asked for the dates of the incident or injury. She told Ms. Dennison that she did not know what date to put down. According to Ms. Bevenue, she told Ms. Dennison that she didn't know when the injury happened and that it was gradual. Additionally, she told Ms. Dennison that she did not know how to answer the question. Ms. Dennison replied, according to Ms. Bevenue, that if she marked the condition as job related, it would be a "lost time" accident. Such a designation was important because the plant had few lost time accidents. Ms. Dennison, according to Bevenue, stated that she would "take care of it, and that was it". Ms. Bevenue testified that she made this comment to Ms. Dennison because she did not want a job related incident to be recorded. The plant had a good record for absenteeism, and she thought it would be a black mark against both the plant and her. She stated that the 3M "Sheeter" job was the best job she had ever had, and that she enjoyed her work greatly. She decided not to file a claim against 3M until after she knew she would not return to work there.

Dr. Robert Paul

Robert E. Paul, M.D., who is a physician practicing in the specialty of family medicine, and who performs workers' compensation evaluations, testified by deposition on behalf of the employee. Dr. Paul performed an independent medical examination of the employee on October 31, 2003. At the time of this examination, Dr. Paul took a history from Ms. Bevenue, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of the employee, Dr. Paul opined that, as a consequence of her employment with the employer 3M, she sustained a cumulative trauma injury to her right shoulder, left shoulder, right knee, and left knee.

In summarizing his opinion of Ms. Bevenue's medical condition, and its relationship to work, Dr. Paul propounded the following medical summary:

This patient has been exposed to cumulative trauma over the last 14 years while working for 3M. The patient would load Panaflex or Control Tech film on a cutter or sheeter machine and then manually cut or crate up to 6000 pieces of this film a day. Width would vary from 3 – 63 inches and length would vary from 12 – 155 inches. In 1994 the patient began having problems with her right knee. In 1999 she developed bilateral knee problems and underwent right and left knee surgery that same year. The diagnosis was chondromalacia patella. The patient faithfully returned to work following these surgeries. In 2000 the patient began developing pain in her right neck, shoulder and arm. The patient eventually underwent a right shoulder surgery on 04/30/2002. The patient's knee problems still bothered her and she underwent a second knee surgery on 03/19/2002 and finally had a total left knee replacement on 10/01/2002.

In rendering this opinion, Dr. Paul acknowledges that, he did not see Ms. Bevenue's work area at the 3M plant in Nevada, Missouri; he did not see her job description; he did not see the production process at which she works, either by herself or with other people; and he did not see any reenactments of her work activities. Also, Dr. Paul's opinion assumes that Ms. Bevenue was slitting and packaging 6,000 pieces of product per day; and he assumes that Ms. Bevenue did not stand upon a rubber, ergonomic mat. Additionally, the testimony of Dr. Paul does not indicate whether he believed that she had to lift the "iron bar" upon a frequent or constant basis.

During his cross-examination, Dr. Paul admitted that studies could be done to determine the epidemiology of the reasons for Ms. Bevenue's condition. Such studies could either be a prospective cohort study, retrospective study, or case control study. He was not aware of any studies that attempted to explain the onset of physical disabilities for Ms. Bevenue or any other employee. Similarly, he did not know why other employees did not suffer these same conditions as Bevenue.

Also, in examining his opinion, Dr. Paul admits that not all people who walk on concrete floors develop Grade III chondromalacia in their knees, as he believes developed with Ms. Bevenue. Similarly, Dr. Paul admits that there are hundreds of thousands of surgeries performed for total knee joint replacements, and, in some cases, an idiopathic degenerative condition with no known cause is the reason provided for such surgeries.

Finally, Dr. Paul is of the opinion that, as a consequence of Ms. Bevenue's employment with 3M and the

injuries she sustained to her knees and shoulders, she has suffered permanent partial disability to both knees and to both shoulders. In seeking to apportion disability, Dr. Paul propounded the following opinion:

- As a consequence of the October 1, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 50 percent, referable to the left knee, and taking into consideration the total knee replacement.
- As a consequence of the November 1999 and April 30, 2002 injuries, Ms. Bevenue sustained a permanent partial impairment of 15 percent, referable to the left knee, and taking into consideration the surgically treated chondromalacia patella and plicectomy.
- As a consequence of the April 30, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 42 percent, referable to the right shoulder, and taking into consideration the decompression acromioplasty (10 percent); rotator cuff repair, same surgery (5 percent); labral tear repair, same surgery (5 percent); crepitation (10 percent); range of motion loss (7 percent); and weakness (5 percent).
- As a consequence of April 30, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 15 percent, referable to the left shoulder, and taking into consideration crepitation (10 percent); decreased range of motion (2 percent); and chronic pain (3 percent).
- Prior to October 1, 2002, Ms. Bevenue presented with a permanent partial impairment of 20 percent, referable to the right knee, and taking into consideration the arthroscopic surgery to the right knee.

In addition, Dr. Paul opined that the combined effects of all the impairments enhance Ms. Bevenue's overall disability, and have resulted in Ms. Bevenue's disability of 10 percent to the body as a whole. Additionally, Dr. Paul is of the opinion that the combined effects of all injuries and disabilities render Ms. Bevenue permanently and totally disabled.

Dr. Allen Parmet

Allen J. Parmet, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition on behalf of the employer and insurer. Dr. Parmet performed an independent medical examination of Ms. Bevenue on September 8, 2005. At the time of this examination, Dr. Parmet took a history from Ms. Bevenue, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Bevenue, Dr. Parmet opined that Ms. Bevenue suffers from degenerative joint disease of both knees, an impingement syndrome of the right shoulder, pain in the left shoulder, and depression. Dr. Parmet further opined that these conditions, which necessitated several surgeries, are not occupationally related to Ms. Bevenue's employment with 3M.

In explaining his diagnosis of degenerative joint disease, Dr. Parmet testified that degenerative joint disease "is a long-term process, wherein the joint surfaces which are composed of articular cartilage are eroded away and eventually lost." Dr. Parmet further indicated that the cartilage "can be lost to the point that there is no cartilage left at all and the articular surface becomes – the term we sometimes use is bone on bone." Notably, in examining the causal relationship of this medical condition to Ms. Bevenue's employment, Dr. Parmet opined that Ms. Bevenue's employment activities with 3M were not a significant or substantial factor in contributing to the degenerative joint disease in her knees; and, similarly, were not the cause of her need for the surgeries.

Rather, Dr. Partmet is of the opinion that the aging processes, combined with her metabolic state, were the causes of Ms. Bevenue's degenerative joint disease. In this regard, Dr. Parmet noted that a metabolic state is "a condition where people malabsorb certain nutrients. They may excrete nutrients." Additionally, Dr. Parmet noted that, "women who are postmenopausal lose excessive amounts of calcium and bone substrate and develop thinning of the bones.... The basic process of aging simply causes wear and tear of the joints with loss of the joint

surfaces over time." And, Dr. Parmet notes, Bevenue, she was post-menopausal.

Further, in discussing the issue of causation, upon being asked why Ms. Bevenue's work with 3M was not a significant or substantial factor in contributing to the degenerative joint disease in her knees and "bone on bone" syndrome, Dr. Parmet propounded the following testimony:

Ms. Bevenue did not describe any specific traumatic injury of any kind and any other onset of knee conditions except gradual as one expect on a chronic degenerative change. Further, after her knees were cleaned up surgically the first time she had a gradual return of the symptoms, which is really what you would expect after removal of some damaged cartilage. But the joint would still not be restored to normal and would continue to degenerate unless whatever caused the original problem was remitted.

In addition, findings on the DEXA scan indicated degenerative processes from a loss of metabolism. It was "pretty widespread" for Ms. Bevenue and "very typical" of post-menopausal females. The DEXA scan is a dual x-ray bone densitometry study that examines the density of the lumbar spine and femur. This study is designed to estimate if thinning of the bones, osteopenia, is present. Ms. Bevenue had significant changes and degenerative findings in the vertebra and the density was below normal. This meant that she was osteopenic, and had thinning of the bones, but not so pathologically thinned to the point that she was risking fractures or collapse.

Similarly, Dr. Parmet opined that Ms. Bevenue's employment at 3M was not the cause of problems associated with her shoulders and need for medical care. In this regard, Dr. Parmet testified that Ms. Bevenue suffered only a gradual onset of pain, and no specific injury to her right shoulder. He believed, for the reasons given relative to the knees, Ms. Bevenue had begun to experience the "same chronic degenerative changes" in her shoulder". Likewise, the pain being experienced by Ms. Bevenue in her left shoulder was not causally related to her work with 3M.

In providing additional testimony relative to the issue of medical causation, Dr. Parmet testified that he did not believe that Ms. Bevenue's conditions should be viewed as work related, simply because she noticed her symptoms while at work. Dr. Parmet notes, if a patient has degenerative joint disease and the thinning of the bone is apparent, any physical activity will produce cause pain. Yet, merely feeling pain in association with activity does not mean that the activity is the cause, or a substantial factor in the cause, of the medical condition that produces the pain. Rather, the patient is merely identifying the pain with the activity.

In seeking to provide support for his opinion, Dr. Parmet notes that the status of medical research provides verification. Long term studies were started to review whether people who ran long distances, stood for long periods, or carried heavy loads on hard surfaces, suffered an acceleration of arthritis due to these activities. In fact, the opposite occurred. The body instead responds to this continued stress and stimulus by creating a healthier and stronger joint with less arthritis rather than more. Mere physical activity at work is not something that would necessarily injure a cartilage within an orthopedic joint.

In addition, Dr. Parmet believed that the morbid obesity that prompted the bariatric surgery in 1987 would have likewise been a substantial contributing factor to the degenerative joint disease in the knees. Overall, obese people have a 65% increased risk of arthritis, according to the Missouri Department of Health and Human Services publication "*Missouri Obesity Burden Report 2002*". Further research indicates that women who suffer from morbid obesity have an increased risk for total knee joint replacements by 1,905 per cent. Dr. Parmet testified that these scientific publications support the proposition that degenerative arthritis of Bevenue's knees was due to her obesity.

Finally, Dr. Parmet testified that, even if Ms. Bevenue had been crawling on her hands and knees to repair machines such as the "72 machine", she would not have suffered degenerative joint disease. Instead, she would have developed pre-patellar bursitis. This is because the point of contact when one is crawling is actually the front of the tibia, the shinbone. It sometimes also includes the kneecap. This area is actually covered by the lower part of what is known as tibial tuberosity. This is where the quadriceps tendon inserts into the front of the shinbone. This is a bursitis at the front of the knee, rather than a disease process within the knee itself.

In rendering an assessment of permanent disability, Dr. Parmet opined that, Ms. Bevenue presents with a

permanent disability of 50 percent, referable to the left knee; she presents with a permanent disability of 25 percent, referable to the right knee; she presents with a permanent disability of 20 percent, referable to the right shoulder; and she presents with a permanent disability of 10 percent, referable to the left shoulder. Dr. Parmet did not provide an opinion relative to the depression, premised on his belief that he lacked sufficient information render a disability rating for the depression. Additionally, Dr. Parmet opined that Ms. Bevenue is capable of working at the sedentary level of labor, according to the U.S. Department of Labor, *Dictionary of Occupational Titles*.

Phillip Eldred

Phillip Eldred is a vocational consultant whose regular employment is with the Missouri Department of Secondary and Elementary Education. And, in addition to this employment, he is engaged in private practice as a vocational consultant. Mr. Eldred testified that he did not believe Ms. Bevenue to be employable or placeable. Notably, in rendering his vocational opinion, Mr. Eldred presumed that Ms. Bevenue could not perform activities that would qualify as "sedentary labor" as defined by the Dictionary of Occupational Titles, published by the United States Department of Labor. Similarly, he did not Dr. Parmet's medical opinion. And, if he assumed that Ms. Bevenue could work at a sedentary level, then he acknowledge that employment opportunities existed for Ms. Bevenue.

FINDINGS AND CONCLUSIONS

The principal issue before the undersigned is whether the employee, Wilma Bevenue, sustained an occupational injury to her right and left knees as a consequence of her employment with the employer, 3M. The parties offer differing medical opinions, evidence, and arguments relative to this issue.

The employee argues that, in the course of working for 3M and performing her duties as a Sheeter, she suffered cumulative trauma to her knees, as a consequence of standing, walking or crawling on concrete for nearly eight hours every workday for 13 years. In support of her claim, Ms. Bevenue relies upon the medical opinion of Dr. Paul. The employer and insurer, however, argue that, while Ms. Bevenue suffers from degenerative joint disease in her knees, the medical condition is not an occupational disease, but an ordinary disease of life. In the particular case of Ms. Bevenue, the employer and insurer argue, Ms. Bevenue suffers from degenerative joint disease in her knees as a consequence of the effects of aging and obesity. The employer and insurer further note that, only occasionally Ms. Bevenue's duties as a Sheeter required her to crawl, climb or kneel; and she enjoyed in her work station an ergonomic rubber mat, which minimized her standing on a concrete floor.

After consideration and review of the evidence, I resolve the differences in medical opinion in favor of the testimony and opinion of Dr. Parmet, who, in this case, I find to be more credible and persuasive. I am persuaded, and thus find and conclude, that the employee Wilma Bevenue suffers from degenerative joint disease in her right and left knees, but this medical condition is an ordinary disease of life caused by the effects of aging and obesity.

Date: July 6, 2006

Made by: _____/s/ L. Timothy Wilson_____
L. Timothy Wilson
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

_____/s/ Patricia "Pat" Secret_____
Patricia "Pat" Secret
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 02-154105

Employee: Wilma Bevenue

Employer: 3M Corporation (Minnesota Mining and Manufacturing Company)

Insurer: Old Republic Insurance Company

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

Date of Accident: Alleged October 1, 2002

Place and County of Accident: Vernon County, Missouri

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 July 6, 2006, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued July 6, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5th day of March 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Wilma Bevenue

Injury No. 02-154105

Dependents: N/A

Employer: Minnesota Mining and 3M Corporation-US-Monv01

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

Insurer: Old Republic Insurance Company

Hearing Date: May 1, 2006

Checked by: LTW

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: October 1, 2002
- 5. State location where accident occurred or occupational disease was contracted: N/A
- 6. Was above employee in employ of above employer at time of alleged accident or occupational disease? N/A
- 11. Did employer receive proper notice? N/A
- 12. 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: N/A
- 12. Did accident or occupational disease cause death? N/A
- 17. Part(s) of body injured by accident or occupational disease: N/A
- 14. Nature and extent of any permanent disability: None
- 18. Compensation paid to-date for temporary disability: -0-
- 16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Wilma Bevenue Injury No. 02-154105

- 23. Value necessary medical aid not furnished by employer/insurer? -0-
- 24. Employee's average weekly wages: \$496.36
- 25. Weekly compensation rate: \$329.07
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable:
 - Unpaid medical expenses: -0-
 - 0 weeks of temporary total disability (or temporary partial disability)
 - 0 weeks of permanent partial disability from Employer
 - 0 weeks of disfigurement from Employer
 - Permanent total disability benefits from Employer beginning, for Claimant's lifetime
- 22. Second Injury Fund liability: No
 - 0 weeks of permanent partial disability from Second Injury Fund
 - Uninsured medical/death benefits: -0-
 - Permanent total disability benefits from Second Injury Fund: None

TOTAL: -0-

23. Future requirements awarded:

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

The above-referenced workers' compensation claim, which involved the combining of four workers' compensation cases for hearing, was heard before the undersigned Administrative Law Judge on May 1, 2006.^[3] The parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about May 22, 2006.

The employee, Wilma Bevenue, appeared personally and through her attorney, Doris House, Esq. The employer, Minnesota Mining and 3M Corporation-US-Monv01 ("3M") and insurer appeared through their attorney, Patrick Platter, Esq. The Second Injury Fund appeared through its attorney, Christina Hammers, Assistant Attorney General. (The Second Injury Fund is an additional party in Injury Nos. 02-154103, 02-154106, and 02-154105; but it is not a party in Injury No. 99-183655.)

The parties entered into a stipulation of facts in Injury No. 99-183655 stipulation is as follows:

- (11) On or about November 10, 1999 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (12) On the alleged injury date of November 10, 1999 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (13) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (14) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (15) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury 99-183655 include:

- (13) Whether the employee sustained an accident or incident of occupational disease on or about November 10, 1999; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (14) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (15) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?

- (16) Whether the employee is entitled to temporary disability benefits?
- (17) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (18) Whether the Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo?

In Injury No. 02-154103 the parties entered into a stipulation of facts. The stipulation is as follows:

- (13) On or about March 19, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (14) On the alleged injury date of March 19, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (15) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (16) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (17) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (18) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154103 include:

- (13) Whether the employee sustained an accident or incident of occupational disease on or about March 19, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (14) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (15) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (16) Whether the employee is entitled to temporary disability benefits?
- (17) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (18) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

In Injury No. 02-154106 the parties entered into a stipulation of facts. The stipulation is as follows:

- (13) On or about April 30, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (14) On the alleged injury date of April 30, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (15) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (16) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (17) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.

(18) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154106 include:

- (13) Whether the employee sustained an accident or incident of occupational disease on or about April 30, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (14) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (15) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (16) Whether the employee is entitled to temporary disability benefits?
- (17) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (18) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

In Injury No. 02-154105 the parties entered into a stipulation of facts. The stipulation is as follows:

- (13) On or about October 1, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (14) On the alleged injury date of October 1, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (15) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (16) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (17) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (18) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154105 include:

- (13) Whether the employee sustained an accident or incident of occupational disease on or about October 3, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (14) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (15) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (16) Whether the employee is entitled to temporary disability benefits?
- (17) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (18) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

EVIDENCE PRESENTED

The employee testified at the hearing in support of her claim. Also, the employee presented at the hearing of this case the testimony of Phillip Eldred. In addition, the employee offered for admission the following exhibits:

Exhibit A	Medical records - Nevada Regional Medical Center
Exhibit B	Medical records - Dr. Warren Lovinger
Exhibit C	Medical records - Dr. Brian Ellefsen
Exhibit D	Medical records - McCune Brooks Hospital
Exhibit E	Medical records - Dr. Brian Ellefsen
Exhibit F	Medical records - Nevada Regional Medical Center
Exhibit G	Medical report - Dr. Robert Paul
Exhibit H	Supplemental report - Dr. Robert Paul
Exhibit I	Request for Statements sent by Certified Mail
Exhibit J	Claim for Compensation – Injury No. 99-183655
Exhibit K	Claim for Compensation – Injury No. 02-154103
Exhibit L	Claim for Compensation – Injury No. 02-154105
Exhibit M	Claim for Compensation – Injury No. 02-154106
Exhibit N	Records of Wilkinson Pharmacy
Exhibit O	Report of Phillip Eldred
<u>Exhibit P</u>	<u>Medical records of St. Johns Regional Medical Center – Joplin</u>
Exhibit Q	2001 W-2 Statement
Exhibit R	Deposition - Dr. Robert Paul
Exhibit S	Job Description
Exhibit T	Curriculum Vitae - Phillip Eldred
Exhibit U ...	Deposition of Wilma Bevenue (Page 28-- Highlighted Portion Only)

The exhibits were received and admitted into evidence.

The employer and insurer presented at the hearing of this case one witness – Lynn DeWeese. Also, the employer and insurer offered for admission the following exhibit:

Exhibit 1	Deposition of Dr. Allen J. Parmet
Exhibit 2	Appendix D from the <i>Dictionary of Occupational Titles</i>
Exhibit 3	Physical Demands Assessment

The exhibits were received and admitted into evidence.

The Second Injury Fund did not present any witnesses or offer any additional evidence.

In addition, the parties identified several documents filed with the Division of Workers’ Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include:

Injury No. 99-183655

Division of Workers’ Compensation Minute Entry Dated October 7, 2003 (Record of Deleting Injury No. 00-179704 as a Duplicate File and combining it into Injury No. 99-183655); Notice of Hearing; Request for Hearing – Final Award; Order Sustaining Change of Administrative Law Judge; Objections of Notice of Intent to Submit Supplemental Complete Medical Report; Entry of Appearance; Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Amended Claim for Compensation; and Report of Injury.

Injury No. 02-154102

Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Claim for Amended Claim for Compensation; Answer of Employer and Insurer to Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; Report of Injury; and Request for Hearing – Final Award.

Injury No. 02-154106

Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Amended Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; Report of Injury; and Request for Hearing – Final Award.

Injury No. 02-154105

Claim for Compensation; Amended Claim for Compensation; Answer of Employer & Insurer to Claim for Compensation; Answer of Second Injury Fund to Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; and Request for Hearing – Final Award.

DISCUSSION

The employee, Wilma Bevenue, is 53 years of age, having been born on December 25, 1952. Ms. Bevenue is a resident of Nevada, Missouri. Also, she enjoys limited education, as she attended but did not graduate from high school. Several years later, however, Ms. Bevenue obtained her high school equivalency G.E.D. certificate.

Ms. Bevenue seeks permanent partial disability benefits, past temporary total disability compensation, and future medical care relative to four workers' compensation files, alleged to be in the nature of occupational disease relative to her employment with 3M. The claims of injury refer to her both knees and both shoulders.

Injury No. 99-183655

In Injury No. 99-183655 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for eleven years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgeries in June 2000. Initially, Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging an injury date of June 2000. Later, Ms. Bevenue amended the Claim for Compensation, alleging a date of injury of November 1999, as she suffered problems with her knees in 1999, which necessitated surgeries in November and December 1999.

Injury No. 02-154103

In Injury No. 02-154103 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for thirteen years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgery involving her left knee on March 19, 2002. Initially, Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of March 19, 2002. She filed an Amended Claim for Compensation on March 5, 2004, wherein she added the Second Injury Fund as an additional party.

Injury No. 02-154105

In Injury No. 02-154105 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for thirteen years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgery in the nature of a left knee replacement in October 2002. Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of October 2002. She filed an Amended Claim for Compensation on August 26, 2003, wherein she added the Second Injury Fund as an additional party.

Injury No. 02-154106

In Injury No. 02-154106 Ms. Bevenue alleges that, she injured both shoulders while working and engaging in repetitive activity for the employer 3M for thirteen years as a "sheeter"; and as a consequence of these injuries she developed problems in her shoulders, which necessitated surgery involving her right shoulder on April 30, 2002. Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of April 30, 2002. She filed an Amended Claim for Compensation on August 26, 2003, wherein she added the Second Injury Fund as an additional party.

Previous Medical History

Ms. Bevenue was hospitalized from December 29, 1987 until January 23, 1988 at St. Johns Regional Medical Center in Joplin, Missouri. Her attending physician, Dr. Hallaba, diagnosed her with morbid obesity. He performed a vertical banded gastroplasty, sometimes referred to as bariatric surgery or "stomach stapling". Although Ms. Bevenue denies being morbidly obese at the time of the surgery, the purpose of the surgery was to prevent morbid obesity. Her admitting history included the following problems: (a) that she had been overweight for many years; (b) that she had shortness of breath on exertion; (c) that she suffered from pain in her upper and lower back due to excessive weight; (d) that she suffered from fatigue; and (e) that she had a loss of libido.

Dr. Warren Lovinger of Nevada has been Ms. Bevenue's personal physician since January 1992. The first available chart note reflects that he saw her that day for depression, weight gain, and chronic peptic hyperacidity. Dr. Lovinger noted, in his history, that Ms. Bevenue had a past history of depression and irritability. She stated, according to the note, that her family "hates her", that she argues, is unpleasant, apathetic and listless. She also mentioned that she had difficulty concentrating at her job at the Nevada plant. She stated that she had seen a psychologist twice before seeing Dr. Lovinger. Ms. Bevenue could not remember if she had seen a psychologist, as reflected in the chart note.

Ms. Bevenue admitted that she had been clinically depressed since her high school years. She also stated that she had started taking medication since she gave birth to her two children. A physician named Kemm was her original treating physician for her depression.

Ms. Bevenue would see Dr. Lovinger periodically for depression. She felt that her Prozac was losing its effectiveness on March 3, 1993. She had stress due to a divorce on May 26, 1993, and felt that her Prozac was providing her more relief than her Paxil. On September 17, 2001, she was weepy and withdrawn. She was not going to work. Dr. Lovinger encouraged her to see a psychologist for treatment. She resumed prescriptions on Prozac. She also saw Dr. Lovinger for depression on June 18, 2002.

Ms. Bevenue denied that her depression ever kept her from working, in spite of the Lovinger chart notes of January 24, 1992 and September 17, 2001. Those chart notes indicate that the depression hindered Ms. Bevenue at her work. She contradicted these chart notes by saying that her employment at 3M helped the symptoms of her depression.

Ms. Bevenue underwent a total abdominal hysterectomy in 1980, at the age of 28. According to Ms. Bevenue, following this surgery she began taking hormone replacement therapy then. However, the evidence presented by the parties suggests that she did not always use the prescription medication for her hormone therapy replacement. For example, she did not refill prescriptions for at least six months or more during the following periods: 10 months from January 3, 1997 to November 6, 1997; 6 months from December 16, 1997 to June 15, 1998; one year and nine months from January 22, 2000 to October 12, 2001; and 2 years and one month from October 12, 2001 to November 8, 2003.

Ms. Bevenue underwent a series of diagnostic testing, which extended from August 4, 2000 until early January 2001. During this period, while presenting with pain in her right shoulder and arm, Ms. Bevenue underwent an x-ray of her cervical spine. The x-ray indicated mild anterior osteophyte formation at C5-6 and C6-7, with a straightening of the normal lordotic curvature suggesting muscle spasm and mild degenerative spondylosis of the lower cervical spine. An x-ray of the right shoulder conducted the same date was negative. Later, on November 3, 2000, and in light of left sciatica complaints, Ms. Bevenue underwent an x-ray of the lumbar spine. The x-ray indicated mild vertebral osteophyte formation at multiple levels with mild degenerative spondylosis. She underwent another x-ray of the cervical spine on December 22, 2000, based upon complaints that resembled parasthesia on the right side. This was a normal study. A doppler ultrasound conducted on the same date indicated normal bilateral extracranial arteries. An MRI scan conducted on January 2, 2001, prompted by complaints that Ms. Bevenue had of pain in her right arm and neck. The MRI scan indicated minimal degenerative changes of the intervertebral discs associated with degeneration and dessication. Another physician, reviewing the same MRI scan, found moderate disc degeneration with dessication and mild generalized annular bulging at C5-6 and C6-7. That physician found no disc herniation, central canal stenosis, lesion, or mass.

Employment at 3M

Ms. Bevenue engaged in employment with 3M, working in the Nevada plant, for approximately 13 years. She officially ended her employment with 3M in 2004, when her benefits for long term disability through a 3M-employee benefit plan ended. Notably, during the period of 1997/1998 to April 2002 Ms. Bevenue worked in the converting department.

Employment in the Converting Department from 1997/1998 to 2003

The converting department concerned work in which sheets of product, such as vinyl, plastic or paper, were pulled from rolls, cut into pieces, and then packed into crates. The crates were then sealed and shipped.

Ms. Bevenue claimed that she suffered injuries to her knees because of excessive standing on concrete and crawling on concrete in order to fix a slitting machine. She claims she suffered the injuries to her shoulders because she would pull the product from the rolls through a slitting machine and lifting an air bar.

Ms. Bevenue had at least two positions within the converting department. Those include the positions of “slitter” and “sheeter”. Ms. Bevenue worked as a “sheeter” ninety-five percent of the time, and as a “slitter” five percent of the time. As a sheeter, according to Ms. Bevenue, she spent seventy-five percent of her time working upon a particular machine, commonly referred to as a “72 machine”. The 72 machine was slightly older than two other machines in the plant. In commenting on this machine, Ms. Bevenue testified that the parts were slightly older and did not work quite as well, though the functions were the same as the two newer machines.

Notably, Ms. Bevenue’s work on the “72 machine” involved two basic functions – (1) rolling and spreading the product; and (2) cutting and placing the product in crates for shipping. In performing the first function, Ms. Bevenue would pull the product with both hands, while guiding the product with the right hand. On the “72 machine”, it was necessary to flap the product slightly in order to have enough air underneath in order to pull the product over. The product would then be cut and placed into a crate for shipping. According to Ms. Bevenue, she cut 8 to 10 rolls of product per work shift. Also, Ms. Bevenue testified that, approximately six to seven times per day, she lifted during her work shift an “air bar” that weighed 100 pounds and was about 80 inches long.

Ms. Bevenue asserts that she developed symptoms in her knees from walking on concrete floors and crawling upon it when attempting to repair the “72 machine”. Relative to this issue, “Sheeters” working for 3M, including Ms. Bevenue, enjoyed the use of an ergonomic rubber mat. According to Ms. Bevenue, however, the mat was only two feet by four feet, and she spent 80 percent of her time walking the product off of the mat in order to keep it from kinking. On the other hand, Lynn Deweese, who is a 3M representative and professional in the area of Environmental Safety and Health, testified that additional mats were available for use of the employees. Also, Ms. Bevenue notes that, during her time as a “Sheeter” she was required to fix knives (The knives that would cut the product) on the “72 machine”. And, she claimed that the “72 machine” would encounter other malfunctions, which required her to spend at least 45 minutes out of each workday crawling around the machine in order to repair it. Mr. DeWeese, however, disputed this testimony, stating that 3M employed a maintenance crew, who was available to make repairs that would require any lengthy period of time.

Also, in discussing the nature of Ms. Bevenue’s employment and work with 3M, Mr. DeWeese identified Employer’s Exhibit 3 as an accurate job description of the essential functions of a “Sheeter”. This report was prepared by staff of Freeman Occumed of Joplin, Missouri, and preserved as a business record by the plant. Mr. DeWeese testified that the essential and representative functions of a “Sheeter” were specified in Exhibit 3. Notably, this exhibit indicates that the workday was eight hours per day; and the “Sheeter” would sit up to three hours per day at the machine guiding sheets; the “Sheeter” would stand four to six hours guiding sheeting and performing machine set up; and the “Sheeter” would walk one to two hours, which involved moving pallets and changeovers. In addition, Exhibit 3 indicates that a “Sheeter” would walk and maneuver around machines and perform the following activities:

- Occasionally, the Sheeter would bending/stoop, squat, twist, crawl, climb stairs, crouch and kneel.
- Frequently, the “Sheeter” would be required to balance, while standing, sliding sheets, and setting up machines.

Also, in disputing parts of Ms. Bevenue’s testimony, Mr. DeWeese testified that it would not be necessary to use the air bar six times per work shift; and that the air bar weighed no more than 50 lbs.

Medical Treatment for Knees and Shoulders Beginning in 1999

Ms. Bevenue centers her claim upon both knees and both shoulders. The following is a chronology of surgeries she has undergone for her knees and right shoulder:

November 10, 1999:

The operative diagnosis was Grade III chondromalacia of the right knee. The surgery included a diagnostic and operative arthroscopy, which included a chondroplasty of the patella and injection into the right knee.

December 8, 1999: The operative diagnosis was Grade III chondromalacia of the patella of the left knee, Grade III chondromalacia of the medial femoral condyle of the left knee, and medial plica of the left knee. The surgery was a diagnostic and operative arthroscopy, which included a chondroplasty of the patella, chondroplasty of the medial femoral condyle, resection of medial plica, and injection into the left knee.

March 19, 2002: The operative diagnosis was chondromalacia of the patella and medial femoral condyle. The surgery was a chondroplasty upon those areas, with again, an injection of the left knee.

April 30, 2002: The operative diagnosis included a glenoid labral tear, impingement syndrome, and full thickness rotator cuff repair. Surgery was a resection of the glenoid labral tear, open decompression with release of the coracoacromial ligament, repair of the rotator cuff, and partial ostectomy acromion.

October 1, 2002: The operative diagnosis was degenerative joint disease of the left knee. The surgery was a total left knee joint replacement.

Ms. Bevenue began experiencing discomfort in her knees in 1994 or 1995, and began taking medication for her knees in 1996. Notably, the medical records of Dr. Lovinger indicate that Ms. Bevenue informed Dr. Lovinger of problems with her knees on January 3, 1996, when she mentioned two years of recurrent knee pain. These symptoms gradually escalated and she began suffering from pain, swelling, and weakness. By 1999, according to Ms. Bevenue, the pain was a "9" on a scale of 1 to 10. Eventually, on August 25, 1999, Dr. Lovinger referred Ms. Bevenue to Dr. Scott Compton, who is an orthopedic surgeon in Nevada, Missouri. Thereafter, Ms. Bevenue underwent the initial surgeries for her knees. At no time do any of the medical records reference or associate her knee pain and discomfort with work at 3M.

Ms. Bevenue claims her knees were "perfect" after the initial surgeries. However, the records indicate that she complained of recurrent pain in her right leg on November 3, 2000.

Also, in addition to treating Ms. Bevenue for her knees, Dr. Lovinger initially evaluated Ms. Bevenue for discomfort associated with her right shoulder. Ms. Bevenue first presented to Dr. Lovinger with a problem concerning the right side of her neck and right shoulder on August 2, 2000. During this visit, Ms. Bevenue stated that she had suffered pain in her right neck and shoulder for one week. She also stated her right arm ached. At the time of this examination Dr. Lovinger noted no obvious injury.

Dr. Compton wrote to Dr. Lovinger on December 26, 2000 with respect to these particular problems. He also mentioned the onset of symptoms to have started in either late July or early August 2000, with no preceding injury or change in activities. It was at this time that Dr. Compton recommended the MRI scan of the neck. He further recommended that Ms. Bevenue see a neurologist if the MRI scan was negative. There is no indication that Ms. Bevenue ever saw a neurologist for her neck and right arm discomfort.

Dr. Brian Ellefsen last saw Ms. Bevenue on April 21, 2003 and June 4, 2003. Ms. Bevenue had complained of pain in her right shoulder. She claimed she was having more sharp pain in using her arm to reach across her body and lifting out of cabinets. Dr. Ellefsen recommended a repeat MRI scan of the right shoulder. This showed no abnormality in the rotator cuff or bony pathology. His diagnosis was a tendonitis of the right shoulder.

Ms. Bevenue, according to deposition testimony, first discussed the potential of job related injuries in the calendar year 2000. Ms. Bevenue needed to complete paperwork with the assistance of the plant nurse, Vicky Dennison, because she had missed time from employment following her knee surgeries. This was shortly after she returned to work following her 1999 knee surgeries. In recounting her discussions with Ms. Dennison Ms. Bevenue provided the following testimony:

She was asked whether her conditions were due to a job related incident, and the paperwork asked for the dates of the incident or injury. She told Ms. Dennison that she did not know what date to put down. According to Ms. Bevenue, she told Ms. Dennison that she didn't know when the injury happened and that it was gradual. Additionally, she told Ms. Dennison that she did not know how to answer the question. Ms. Dennison replied, according to Ms. Bevenue, that if she marked the condition as job related, it would be a "lost time" accident. Such a designation was important because the plant had few lost time accidents. Ms. Dennison, according to Bevenue, stated that she would "take care of it, and that was it". Ms. Bevenue testified that she made this comment to Ms. Dennison because she did not want a job related incident to be recorded. The plant had a good record for absenteeism, and she thought it would be a black mark against both the plant and her. She stated that the 3M "Sheeter" job was the best job she had ever had, and that she enjoyed her work greatly. She decided not to file a claim against 3M until after she knew she would not return to work there.

Dr. Robert Paul

Robert E. Paul, M.D., who is a physician practicing in the specialty of family medicine, and who performs workers' compensation evaluations, testified by deposition on behalf of the employee. Dr. Paul performed an independent medical examination of the employee on October 31, 2003. At the time of this examination, Dr. Paul took a history from Ms. Bevenue, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of the employee, Dr. Paul opined that, as a consequence of her employment with the employer 3M, she sustained a cumulative trauma injury to her right shoulder, left shoulder, right knee, and left knee.

In summarizing his opinion of Ms. Bevenue's medical condition, and its relationship to work, Dr. Paul propounded the following medical summary:

This patient has been exposed to cumulative trauma over the last 14 years while working for 3M. The patient would load Panaflex or Control Tech film on a cutter or sheeter machine and then manually cut or crate up to 6000 pieces of this film a day. Width would vary from 3 – 63 inches and length would vary from 12 – 155 inches. In 1994 the patient began having problems with her right knee. In 1999 she developed bilateral knee problems and underwent right and left knee surgery that same year. The diagnosis was chondromalacia patella. The patient faithfully returned to work following these surgeries. In 2000 the patient began developing pain in her right neck, shoulder and arm. The patient eventually underwent a right shoulder surgery on 04/30/2002. The patient's knee problems still bothered her and she underwent a second knee surgery on 03/19/2002 and finally had a total left knee replacement on 10/01/2002.

In rendering this opinion, Dr. Paul acknowledges that, he did not see Ms. Bevenue's work area at the 3M plant in Nevada, Missouri; he did not see her job description; he did not see the production process at which she works, either by herself or with other people; and he did not see any reenactments of her work activities. Also, Dr. Paul's opinion assumes that Ms. Bevenue was slitting and packaging 6,000 pieces of product per day; and he assumes that Ms. Bevenue did not stand upon a rubber, ergonomic mat. Additionally, the testimony of Dr. Paul does not indicate whether he believed that she had to lift the "iron bar" upon a frequent or constant basis.

During his cross-examination, Dr. Paul admitted that studies could be done to determine the epidemiology of the reasons for Ms. Bevenue's condition. Such studies could either be a prospective cohort study, retrospective study, or case control study. He was not aware of any studies that attempted to explain the onset of physical disabilities for Ms. Bevenue or any other employee. Similarly, he did not know why other employees did not suffer these same conditions as Bevenue.

Also, in examining his opinion, Dr. Paul admits that not all people who walk on concrete floors develop Grade III chondromalacia in their knees, as he believes developed with Ms. Bevenue. Similarly, Dr. Paul admits that there are hundreds of thousands of surgeries performed for total knee joint replacements, and, in some cases, an idiopathic degenerative condition with no known cause is the reason provided for such surgeries.

Finally, Dr. Paul is of the opinion that, as a consequence of Ms. Bevenue's employment with 3M and the injuries she sustained to her knees and shoulders, she has suffered permanent partial disability to both knees and to both shoulders. In seeking to apportion disability, Dr. Paul propounded the following opinion:

- As a consequence of the October 1, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 50 percent, referable to the left knee, and taking into consideration the total knee replacement.

- As a consequence of the November 1999 and April 30, 2002 injuries, Ms. Bevenue sustained a permanent partial impairment of 15 percent, referable to the left knee, and taking into consideration the surgically treated chondromalacia patella and plicectomy.
- As a consequence of the April 30, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 42 percent, referable to the right shoulder, and taking into consideration the decompression acromioplasty (10 percent); rotator cuff repair, same surgery (5 percent); labral tear repair, same surgery (5 percent); crepitation (10 percent); range of motion loss (7 percent); and weakness (5 percent).
- As a consequence of April 30, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 15 percent, referable to the left shoulder, and taking into consideration crepitation (10 percent); decreased range of motion (2 percent); and chronic pain (3 percent).
- Prior to October 1, 2002, Ms. Bevenue presented with a permanent partial impairment of 20 percent, referable to the right knee, and taking into consideration the arthroscopic surgery to the right knee.

In addition, Dr. Paul opined that the combined effects of all the impairments enhance Ms. Bevenue's overall disability, and have resulted in Ms. Bevenue's disability of 10 percent to the body as a whole. Additionally, Dr. Paul is of the opinion that the combined effects of all injuries and disabilities render Ms. Bevenue permanently and totally disabled.

Dr. Allen Parmet

Allen J. Parmet, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition on behalf of the employer and insurer. Dr. Parmet performed an independent medical examination of Ms. Bevenue on September 8, 2005. At the time of this examination, Dr. Parmet took a history from Ms. Bevenue, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Bevenue, Dr. Parmet opined that Ms. Bevenue suffers from degenerative joint disease of both knees, an impingement syndrome of the right shoulder, pain in the left shoulder, and depression. Dr. Parmet further opined that these conditions, which necessitated several surgeries, are not occupationally related to Ms. Bevenue's employment with 3M.

In explaining his diagnosis of degenerative joint disease, Dr. Parmet testified that degenerative joint disease "is a long-term process, wherein the joint surfaces which are composed of articular cartilage are eroded away and eventually lost." Dr. Parmet further indicated that the cartilage "can be lost to the point that there is no cartilage left at all and the articular surface becomes – the term we sometimes use is bone on bone." Notably, in examining the causal relationship of this medical condition to Ms. Bevenue's employment, Dr. Parmet opined that Ms. Bevenue's employment activities with 3M were not a significant or substantial factor in contributing to the degenerative joint disease in her knees; and, similarly, were not the cause of her need for the surgeries.

Rather, Dr. Parmet is of the opinion that the aging processes, combined with her metabolic state, were the causes of Ms. Bevenue's degenerative joint disease. In this regard, Dr. Parmet noted that a metabolic state is "a condition where people malabsorb certain nutrients. They may excrete nutrients." Additionally, Dr. Parmet noted that, "women who are postmenopausal lose excessive amounts of calcium and bone substrate and develop thinning of the bones.... The basic process of aging simply causes wear and tear of the joints with loss of the joint surfaces over time." And, Dr. Parmet notes, Bevenue, she was post-menopausal.

Further, in discussing the issue of causation, upon being asked why Ms. Bevenue's work with 3M was not a significant or substantial factor in contributing to the degenerative joint disease in her knees and "bone on bone" syndrome, Dr. Parmet propounded the following testimony:

Ms. Bevenue did not describe any specific traumatic injury of any kind and any other onset of knee conditions

except gradual as one expect on a chronic degenerative change. Further, after her knees were cleaned up surgically the first time she had a gradual return of the symptoms, which is really what you would expect after removal of some damaged cartilage. But the joint would still not be restored to normal and would continue to degenerate unless whatever caused the original problem was remitted.

In addition, findings on the DEXA scan indicated degenerative processes from a loss of metabolism. It was "pretty widespread" for Ms. Bevenue and "very typical" of post-menopausal females. The DEXA scan is a dual x-ray bone densitometry study that examines the density of the lumbar spine and femur. This study is designed to estimate if thinning of the bones, osteopenia, is present. Ms. Bevenue had significant changes and degenerative findings in the vertebra and the density was below normal. This meant that she was osteopenic, and had thinning of the bones, but not so pathologically thinned to the point that she was risking fractures or collapse.

Similarly, Dr. Parmet opined that Ms. Bevenue's employment at 3M was not the cause of problems associated with her shoulders and need for medical care. In this regard, Dr. Parmet testified that Ms. Bevenue suffered only a gradual onset of pain, and no specific injury to her right shoulder. He believed, for the reasons given relative to the knees, Ms. Bevenue had begun to experience the "same chronic degenerative changes" in her shoulder". Likewise, the pain being experienced by Ms. Bevenue in her left shoulder was not causally related to her work with 3M.

In providing additional testimony relative to the issue of medical causation, Dr. Parmet testified that he did not believe that Ms. Bevenue's conditions should be viewed as work related, simply because she noticed her symptoms while at work. Dr. Parmet notes, if a patient has degenerative joint disease and the thinning of the bone is apparent, any physical activity will produce cause pain. Yet, merely feeling pain in association with activity does not mean that the activity is the cause, or a substantial factor in the cause, of the medical condition that produces the pain. Rather, the patient is merely identifying the pain with the activity.

In seeking to provide support for his opinion, Dr. Parmet notes that the status of medical research provides verification. Long term studies were started to review whether people who ran long distances, stood for long periods, or carried heavy loads on hard surfaces, suffered an acceleration of arthritis due to these activities. In fact, the opposite occurred. The body instead responds to this continued stress and stimulus by creating a healthier and stronger joint with less arthritis rather than more. Mere physical activity at work is not something that would necessarily injure a cartilage within an orthopedic joint.

In addition, Dr. Parmet believed that the morbid obesity that prompted the bariatric surgery in 1987 would have likewise been a substantial contributing factor to the degenerative joint disease in the knees. Overall, obese people have a 65% increased risk of arthritis, according to the Missouri Department of Health and Human Services publication "*Missouri Obesity Burden Report 2002*". Further research indicates that women who suffer from morbid obesity have an increased risk for total knee joint replacements by 1,905 per cent. Dr. Parmet testified that these scientific publications support the proposition that degenerative arthritis of Bevenue's knees was due to her obesity.

Finally, Dr. Parmet testified that, even if Ms. Bevenue had been crawling on her hands and knees to repair machines such as the "72 machine", she would not have suffered degenerative joint disease. Instead, she would have developed pre-patellar bursitis. This is because the point of contact when one is crawling is actually the front of the tibia, the shinbone. It sometimes also includes the kneecap. This area is actually covered by the lower part of what is known as tibial tuberosity. This is where the quadriceps tendon inserts into the front of the shinbone. This is a bursitis at the front of the knee, rather than a disease process within the knee itself.

In rendering an assessment of permanent disability, Dr. Parmet opined that, Ms. Bevenue presents with a permanent disability of 50 percent, referable to the left knee; she presents with a permanent disability of 25 percent, referable to the right knee; she presents with a permanent disability of 20 percent, referable to the right shoulder; and she presents with a permanent disability of 10 percent, referable to the left shoulder. Dr. Parmet did not provide an opinion relative to the depression, premised on his belief that he lacked sufficient information render a disability rating for the depression. Additionally, Dr. Parmet opined that Ms. Bevenue is capable of working at the sedentary level of labor, according to the U.S. Department of Labor, *Dictionary of Occupational Titles*.

Phillip Eldred

Phillip Eldred is a vocational consultant whose regular employment is with the Missouri Department of Secondary and Elementary Education. And, in addition to this employment, he is engaged in private practice as a vocational consultant. Mr. Eldred testified that he did not believe Ms. Bevenue to be employable or placeable. Notably, in rendering his vocational opinion, Mr. Eldred presumed that Ms. Bevenue could not perform activities that would qualify as "sedentary labor" as defined by the Dictionary of Occupational Titles, published by the United States Department of Labor. Similarly, he did not Dr. Parmet's medical opinion. And, if he assumed that Ms. Bevenue could work at a sedentary level, then he acknowledge that employment opportunities existed for Ms. Bevenue.

FINDINGS AND CONCLUSIONS

The principal issue before the undersigned is whether the employee, Wilma Bevenue, sustained an occupational injury to her right and left knees as a consequence of her employment with the employer, 3M. The parties offer differing medical opinions, evidence, and arguments relative to this issue.

The employee argues that, in the course of working for 3M and performing her duties as a Sheeter, she suffered cumulative trauma to her knees, as a consequence of standing, walking or crawling on concrete for nearly eight hours every workday for 13 years. In support of her claim, Ms. Bevenue relies upon the medical opinion of Dr. Paul. The employer and insurer, however, argue that, while Ms. Bevenue suffers from degenerative joint disease in her knees, the medical condition is not an occupational disease, but an ordinary disease of life. In the particular case of Ms. Bevenue, the employer and insurer argue, Ms. Bevenue suffers from degenerative joint disease in her knees as a consequence of the effects of aging and obesity. The employer and insurer further note that, only occasionally Ms. Bevenue's duties as a Sheeter required her to crawl, climb or kneel; and she enjoyed in her work station an ergonomic rubber mat, which minimized her standing on a concrete floor.

After consideration and review of the evidence, I resolve the differences in medical opinion in favor of the testimony and opinion of Dr. Parmet, who, in this case, I find to be more credible and persuasive. I am persuaded, and thus find and conclude, that the employee Wilma Bevenue suffers from degenerative joint disease in her right and left knees, but this medical condition is an ordinary disease of life caused by the effects of aging and obesity.

Date: July 6, 2006

Made by: /s/ L. Timothy Wilson
L. Timothy Wilson
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

 /s/ Patricia "Pat" Secrest
Patricia "Pat" Secrest
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 02-154106

Employee: Wilma Bevenue
Employer: 3M Corporation (Minnesota Mining and Manufacturing Company)
Insurer: Old Republic Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged April 30, 2002

Place and County of Accident: Vernon County, Missouri

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 July 6, 2006, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued July 6, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5th day of March 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Wilma Bevenue

Injury No. 02-154106

Dependents: N/A

Employer: Minnesota Mining and 3M Corporation-US-Monv01

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

Insurer: Old Republic Insurance Company

Hearing Date: May 1, 2006

Checked by: LTW

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: April 30, 2002

- 5. State location where accident occurred or occupational disease was contracted: N/A
- 6. Was above employee in employ of above employer at time of alleged accident or occupational disease? N/A
- 13. Did employer receive proper notice? N/A
- 14. 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: N/A
- 12. Did accident or occupational disease cause death? N/A
- 19. Part(s) of body injured by accident or occupational disease: N/A
- 14. Nature and extent of any permanent disability: None
- 20. Compensation paid to-date for temporary disability: -0-
- 16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Wilma Bevenue

Injury No. 02-154106

- 26. Value necessary medical aid not furnished by employer/insurer? -0-
- 27. Employee's average weekly wages: \$496.36
- 28. Weekly compensation rate: \$329.07
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable:
 - Unpaid medical expenses: -0-
 - 0 weeks of temporary total disability (or temporary partial disability)
 - 0 weeks of permanent partial disability from Employer
 - 0 weeks of disfigurement from Employer
 - Permanent total disability benefits from Employer beginning, for Claimant's lifetime
 - 22. Second Injury Fund liability: No
 - 0 weeks of permanent partial disability from Second Injury Fund
 - Uninsured medical/death benefits: -0-
 - Permanent total disability benefits from Second Injury Fund: None
- TOTAL: -0-

- 23. Future requirements awarded:

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

The above-referenced workers' compensation claim, which involved the combining of four workers' compensation cases for hearing, was heard before the undersigned Administrative Law Judge on May 1, 2006.^[4] The parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about May 22, 2006.

The employee, Wilma Bevenue, appeared personally and through her attorney, Doris House, Esq. The employer, Minnesota Mining and 3M Corporation-US-Monv01 ("3M") and insurer appeared through their attorney, Patrick Platter, Esq. The Second Injury Fund appeared through its attorney, Christina Hammers, Assistant Attorney General. (The Second Injury Fund is an additional party in Injury Nos. 02-154103, 02-154106, and 02-154105; but it is not a party in Injury No. 99-183655.)

The parties entered into a stipulation of facts in Injury No. 99-183655 stipulation is as follows:

- (16) On or about November 10, 1999 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (17) On the alleged injury date of November 10, 1999 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (18) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (19) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (20) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury 99-183655 include:

- (19) Whether the employee sustained an accident or incident of occupational disease on or about November 10, 1999; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (20) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (21) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (22) Whether the employee is entitled to temporary disability benefits?
- (23) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (24) Whether the Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo?

In Injury No. 02-154103 the parties entered into a stipulation of facts. The stipulation is as follows:

- (19) On or about March 19, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (20) On the alleged injury date of March 19, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (21) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (22) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (23) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (24) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154103 include:

- (19) Whether the employee sustained an accident or incident of occupational disease on or about March 19, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (20) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (21) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (22) Whether the employee is entitled to temporary disability benefits?
- (23) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (24) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

In Injury No. 02-154106 the parties entered into a stipulation of facts. The stipulation is as follows:

- (19) On or about April 30, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (20) On the alleged injury date of April 30, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (21) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (22) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (23) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (24) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154106 include:

- (19) Whether the employee sustained an accident or incident of occupational disease on or about April 30, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (20) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for

which benefits are now being claimed?

- (21) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (22) Whether the employee is entitled to temporary disability benefits?
- (23) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (24) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

In Injury No. 02-154105 the parties entered into a stipulation of facts. The stipulation is as follows:

- (19) On or about October 1, 2002 3M was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Old Republic Insurance Co.
- (20) On the alleged injury date of October 1, 2002 Wilma Bevenue was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (21) The above-referenced employment and alleged incident of occupational disease occurred in Vernon County, Missouri. The parties agree to venue lying in Joplin (Newton County), Missouri. Venue is proper.
- (22) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (23) At the time of the alleged incident of occupational disease the employee's average weekly wage was \$496.36, which is sufficient to allow a compensation rate of \$329.07 for temporary and permanent disability compensation.
- (24) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing in Injury No. 02-154105 include:

- (19) Whether the employee sustained an accident or incident of occupational disease on or about October 3, 2002; and, if so, whether the accident or occupational disease arose out of and in the course of employment?
- (20) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (21) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (22) Whether the employee is entitled to temporary disability benefits?
- (23) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (24) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

EVIDENCE PRESENTED

The employee testified at the hearing in support of her claim. Also, the employee presented at the hearing of this case the testimony of Phillip Eldred. In addition, the employee offered for admission the following exhibits:

- Exhibit AMedical records - Nevada Regional Medical Center
- Exhibit B Medical records - Dr. Warren Lovinger
- Exhibit C Medical records - Dr. Brian Ellefsen
- Exhibit D Medical records - McCune Brooks Hospital
- Exhibit E Medical records - Dr. Brian Ellefsen
- Exhibit F Medical records - Nevada Regional Medical Center
- Exhibit G Medical report - Dr. Robert Paul

Exhibit H	Supplemental report - Dr. Robert Paul
Exhibit I	Request for Statements sent by Certified Mail
Exhibit J	Claim for Compensation – Injury No. 99-183655
Exhibit K	Claim for Compensation – Injury No. 02-154103
Exhibit L	Claim for Compensation – Injury No. 02-154105
Exhibit M	Claim for Compensation – Injury No. 02-154106
Exhibit N	Records of Wilkinson Pharmacy
Exhibit O	Report of Phillip Eldred
<u>Exhibit P</u>	<u>Medical records of St. Johns Regional Medical Center – Joplin</u>
Exhibit Q	2001 W-2 Statement
Exhibit R	Deposition - Dr. Robert Paul
Exhibit S	Job Description
Exhibit T	Curriculum Vitae - Phillip Eldred
Exhibit U ...	Deposition of Wilma Bevenue (Page 28-- Highlighted Portion Only)

The exhibits were received and admitted into evidence.

The employer and insurer presented at the hearing of this case one witness – Lynn DeWeese. Also, the employer and insurer offered for admission the following exhibit:

Exhibit 1	Deposition of Dr. Allen J. Parmet
Exhibit 2	Appendix D from the <i>Dictionary of Occupational Titles</i>
Exhibit 3	Physical Demands Assessment

The exhibits were received and admitted into evidence.

The Second Injury Fund did not present any witnesses or offer any additional evidence.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include:

Injury No. 99-183655

Division of Workers' Compensation Minute Entry Dated October 7, 2003 (Record of Deleting Injury No. 00-179704 as a Duplicate File and combining it into Injury No. 99-183655); Notice of Hearing; Request for Hearing – Final Award; Order Sustaining Change of Administrative Law Judge; Objections of Notice of Intent to Submit Supplemental Complete Medical Report; Entry of Appearance; Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Amended Claim for Compensation; and Report of Injury.

Injury No. 02-154102

Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Claim for Amended Claim for Compensation; Answer of Employer and Insurer to Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; Report of Injury; and Request for Hearing – Final Award.

Injury No. 02-154106

Claim for Compensation; Amended Claim for Compensation; Answer of Employer and Insurer to Amended Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; Report of Injury; and Request for Hearing – Final Award.

Injury No. 02-154105

Claim for Compensation; Amended Claim for Compensation; Answer of Employer & Insurer to Claim for Compensation; Answer of Second Injury Fund to Claim for Compensation; Answer of Second Injury Fund to Amended Claim for Compensation; and Request for Hearing – Final Award.

DISCUSSION

The employee, Wilma Bevenue, is 53 years of age, having been born on December 25, 1952. Ms. Bevenue is a resident of Nevada, Missouri. Also, she enjoys limited education, as she attended but did not graduate from high school. Several years later, however, Ms. Bevenue obtained her high school equivalency G.E.D. certificate.

Ms. Bevenue seeks permanent partial disability benefits, past temporary total disability compensation, and future medical care relative to four workers' compensation files, alleged to be in the nature of occupational disease relative to her employment with 3M. The claims of injury refer to her both knees and both shoulders.

Injury No. 99-183655

In Injury No. 99-183655 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for eleven years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgeries in June 2000. Initially, Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging an injury date of June 2000. Later, Ms. Bevenue amended the Claim for Compensation, alleging a date of injury of November 1999, as she suffered problems with her knees in 1999, which necessitated surgeries in November and December 1999.

Injury No. 02-154103

In Injury No. 02-154103 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for thirteen years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgery involving her left knee on March 19, 2002. Initially, Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of March 19, 2002. She filed an Amended Claim for Compensation on March 5, 2004, wherein she added the Second Injury Fund as an additional party.

Injury No. 02-154105

In Injury No. 02-154105 Ms. Bevenue alleges that, she injured both knees while working for the employer 3M for thirteen years on concrete floors; and as a consequence of these injuries she developed problems, which necessitated surgery in the nature of a left knee replacement in October 2002. Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of October 2002. She filed an Amended Claim for Compensation on August 26, 2003, wherein she added the Second Injury Fund as an additional party.

Injury No. 02-154106

In Injury No. 02-154106 Ms. Bevenue alleges that, she injured both shoulders while working and engaging in repetitive activity for the employer 3M for thirteen years as a "sheeter"; and as a consequence of these injuries she developed problems in her shoulders, which necessitated surgery involving her right shoulder on April 30, 2002. Ms. Bevenue filed her Claim for Compensation on June 12, 2003, alleging a date of injury of April 30, 2002. She filed an Amended Claim for Compensation on August 26, 2003, wherein she added the Second Injury Fund as an additional party.

Previous Medical History

Ms. Bevenue was hospitalized from December 29, 1987 until January 23, 1988 at St. Johns Regional Medical Center in Joplin, Missouri. Her attending physician, Dr. Hallaba, diagnosed her with morbid obesity. He performed a vertical banded gastroplasty, sometimes referred to as bariatric surgery or "stomach stapling". Although Ms. Bevenue denies being morbidly obese at the time of the surgery, the purpose of the surgery was to prevent morbid obesity. Her admitting history included the following problems: (a) that she had been overweight for many years; (b) that she had shortness of breath on exertion; (c) that she suffered from pain in her upper and lower back due to excessive weight; (d) that she suffered from fatigue; and (e) that she had a loss of libido.

Dr. Warren Lovinger of Nevada has been Ms. Bevenue's personal physician since January 1992. The first available chart note reflects that he saw her that day for depression, weight gain, and chronic peptic hyperacidity. Dr. Lovinger noted, in his history, that Ms. Bevenue had a past history of depression and irritability. She stated, according to the note, that her family "hates her", that she argues, is unpleasant, apathetic and listless. She also mentioned that she had difficulty concentrating at her job at the Nevada plant. She stated that she had seen a psychologist twice before seeing Dr. Lovinger. Ms. Bevenue could not remember if she had seen a psychologist, as reflected in the chart note.

Ms. Bevenue admitted that she had been clinically depressed since her high school years. She also stated that she had started taking medication since she gave birth to her two children. A physician named Kemm was her original treating physician for her depression.

Ms. Bevenue would see Dr. Lovinger periodically for depression. She felt that her Prozac was losing its effectiveness on March 3, 1993. She had stress due to a divorce on May 26, 1993, and felt that her Prozac was providing her more relief than her Paxil. On September 17, 2001, she was weepy and withdrawn. She was not going to work. Dr. Lovinger encouraged her to see a psychologist for treatment. She resumed prescriptions on

Prozac. She also saw Dr. Lovinger for depression on June 18, 2002.

Ms. Bevenue denied that her depression ever kept her from working, in spite of the Lovinger chart notes of January 24, 1992 and September 17, 2001. Those chart notes indicate that the depression hindered Ms. Bevenue at her work. She contradicted these chart notes by saying that her employment at 3M helped the symptoms of her depression.

Ms. Bevenue underwent a total abdominal hysterectomy in 1980, at the age of 28. According to Ms. Bevenue, following this surgery she began taking hormone replacement therapy then. However, the evidence presented by the parties suggests that she did not always use the prescription medication for her hormone therapy replacement. For example, she did not refill prescriptions for at least six months or more during the following periods: 10 months from January 3, 1997 to November 6, 1997; 6 months from December 16, 1997 to June 15, 1998; one year and nine months from January 22, 2000 to October 12, 2001; and 2 years and one month from October 12, 2001 to November 8, 2003.

Ms. Bevenue underwent a series of diagnostic testing, which extended from August 4, 2000 until early January 2001. During this period, while presenting with pain in her right shoulder and arm, Ms. Bevenue underwent an x-ray of her cervical spine. The x-ray indicated mild anterior osteophyte formation at C5-6 and C6-7, with a straightening of the normal lordotic curvature suggesting muscle spasm and mild degenerative spondylosis of the lower cervical spine. An x-ray of the right shoulder conducted the same date was negative. Later, on November 3, 2000, and in light of left sciatica complaints, Ms. Bevenue underwent an x-ray of the lumbar spine. The x-ray indicated mild vertebral osteophyte formation at multiple levels with mild degenerative spondylosis. She underwent another x-ray of the cervical spine on December 22, 2000, based upon complaints that resembled parasthesia on the right side. This was a normal study. A doppler ultrasound conducted on the same date indicated normal bilateral extracranial arteries. An MRI scan conducted on January 2, 2001, prompted by complaints that Ms. Bevenue had of pain in her right arm and neck. The MRI scan indicated minimal degenerative changes of the intervertebral discs associated with degeneration and dessication. Another physician, reviewing the same MRI scan, found moderate disc degeneration with dessication and mild generalized annular bulging at C5-6 and C6-7. That physician found no disc herniation, central canal stenosis, lesion, or mass.

Employment at 3M

Ms. Bevenue engaged in employment with 3M, working in the Nevada plant, for approximately 13 years. She officially ended her employment with 3M in 2004, when her benefits for long term disability through a 3M-employee benefit plan ended. Notably, during the period of 1997/1998 to April 2002 Ms. Bevenue worked in the converting department.

Employment in the Converting Department from 1997/1998 to 2003

The converting department concerned work in which sheets of product, such as vinyl, plastic or paper, were pulled from rolls, cut into pieces, and then packed into crates. The crates were then sealed and shipped.

Ms. Bevenue claimed that she suffered injuries to her knees because of excessive standing on concrete and crawling on concrete in order to fix a slitting machine. She claims she suffered the injuries to her shoulders because she would pull the product from the rolls through a slitting machine and lifting an air bar.

Ms. Bevenue had at least two positions within the converting department. Those include the positions of "slitter" and "sheeter". Ms. Bevenue worked as a "sheeter" ninety-five percent of the time, and as a "slitter" five percent of the time. As a sheeter, according to Ms. Bevenue, she spent seventy-five percent of her time working upon a particular machine, commonly referred to as a "72 machine". The 72 machine was slightly older than two other machines in the plant. In commenting on this machine, Ms. Bevenue testified that the parts were slightly older and did not work quite as well, though the functions were the same as the two newer machines.

Notably, Ms. Bevenue's work on the "72 machine" involved two basic functions – (1) rolling and spreading the product; and (2) cutting and placing the product in crates for shipping. In performing the first function, Ms. Bevenue would pull the product with both hands, while guiding the product with the right hand. On the "72 machine", it was necessary to flap the product slightly in order to have enough air underneath in order to pull the product over. The product would then be cut and placed into a crate for shipping. According to Ms. Bevenue, she cut 8 to 10 rolls of product per work shift. Also, Ms. Bevenue testified that, approximately six to seven times per day, she lifted during her work shift an "air bar" that weighed 100 pounds and was about 80 inches long.

Ms. Bevenue asserts that she developed symptoms in her knees from walking on concrete floors and crawling upon it when attempting to repair the "72 machine". Relative to this issue, "Sheeters" working for 3M, including Ms. Bevenue, enjoyed the use of an ergonomic rubber mat. According to Ms. Bevenue, however, the mat was only two feet by four feet, and she spent 80 percent of her time walking the product off of the mat in order to keep it from kinking. On the other hand, Lynn Deweese, who is a 3M representative and professional in the area of Environmental Safety and Health, testified that additional mats were available for use of the employees. Also, Ms. Bevenue notes that, during her time as a "Sheeter" she was required to fix knives (The knives that would cut the product) on the "72 machine". And, she claimed that the "72 machine" would encounter other malfunctions, which required her to spend at least 45 minutes out of each workday crawling around the machine in order to repair it. Mr. DeWeese, however, disputed this testimony, stating that 3M employed a maintenance crew, who was available to make repairs that would require any lengthy period of time.

Also, in discussing the nature of Ms. Bevenue's employment and work with 3M, Mr. DeWeese identified Employer's Exhibit 3 as an accurate job description of the essential functions of a "Sheeter". This report was prepared by staff of Freeman Occumed of Joplin, Missouri, and preserved as a business record by the plant. Mr. DeWeese testified that the essential and representative functions of a "Sheeter" were specified in Exhibit 3. Notably, this exhibit indicates that the workday was eight hours per day; and the "Sheeter" would sit up to three hours per day at the machine guiding sheets; the "Sheeter" would stand four to six hours guiding sheeting and performing machine set up; and the "Sheeter" would walk one to two hours, which involved moving pallets and changeovers. In addition, Exhibit 3 indicates that a "Sheeter" would walk and maneuver around machines and perform the following activities:

- Occasionally, the Sheeter would bending/stoop, squat, twist, crawl, climb stairs, crouch and kneel.
- Frequently, the "Sheeter" would be required to balance, while standing, sliding sheets, and setting up machines.

Also, in disputing parts of Ms. Bevenue's testimony, Mr. DeWeese testified that it would not be necessary to use the air bar six times per work shift; and that the air bar weighed no more than 50 lbs.

Medical Treatment for Knees and Shoulders Beginning in 1999

Ms. Bevenue centers her claim upon both knees and both shoulders. The following is a chronology of surgeries she has undergone for her knees and right shoulder:

- November 10, 1999: The operative diagnosis was Grade III chondromalacia of the right knee. The surgery included a diagnostic and operative arthroscopy, which included a chondroplasty of the patella and injection into the right knee.
- December 8, 1999: The operative diagnosis was Grade III chondromalacia of the patella of the left knee, Grade III chondromalacia of the medial femoral condyle of the left knee, and medial plica of the left knee. The surgery was a diagnostic and operative arthroscopy, which included a chondroplasty of the patella, chondroplasty of the medial femoral condyle, resection of medial plica, and injection into the left knee.

- March 19, 2002: The operative diagnosis was chondromalacia of the patella and medial femoral condyle. The surgery was a chondroplasty upon those areas, with again, an injection of the left knee.
- April 30, 2002: The operative diagnosis included a glenoid labral tear, impingement syndrome, and full thickness rotator cuff repair. Surgery was a resection of the glenoid labral tear, open decompression with release of the coracoacromial ligament, repair of the rotator cuff, and partial ostectomy acromion.
- October 1, 2002: The operative diagnosis was degenerative joint disease of the left knee. The surgery was a total left knee joint replacement.

Ms. Bevenue began experiencing discomfort in her knees in 1994 or 1995, and began taking medication for her knees in 1996. Notably, the medical records of Dr. Lovinger indicate that Ms. Bevenue informed Dr. Lovinger of problems with her knees on January 3, 1996, when she mentioned two years of recurrent knee pain. These symptoms gradually escalated and she began suffering from pain, swelling, and weakness. By 1999, according to Ms. Bevenue, the pain was a "9" on a scale of 1 to 10. Eventually, on August 25, 1999, Dr. Lovinger referred Ms. Bevenue to Dr. Scott Compton, who is an orthopedic surgeon in Nevada, Missouri. Thereafter, Ms. Bevenue underwent the initial surgeries for her knees. At no time do any of the medical records reference or associate her knee pain and discomfort with work at 3M.

Ms. Bevenue claims her knees were "perfect" after the initial surgeries. However, the records indicate that she complained of recurrent pain in her right leg on November 3, 2000.

Also, in addition to treating Ms. Bevenue for her knees, Dr. Lovinger initially evaluated Ms. Bevenue for discomfort associated with her right shoulder. Ms. Bevenue first presented to Dr. Lovinger with a problem concerning the right side of her neck and right shoulder on August 2, 2000. During this visit, Ms. Bevenue stated that she had suffered pain in her right neck and shoulder for one week. She also stated her right arm ached. At the time of this examination Dr. Lovinger noted no obvious injury.

Dr. Compton wrote to Dr. Lovinger on December 26, 2000 with respect to these particular problems. He also mentioned the onset of symptoms to have started in either late July or early August 2000, with no preceding injury or change in activities. It was at this time that Dr. Compton recommended the MRI scan of the neck. He further recommended that Ms. Bevenue see a neurologist if the MRI scan was negative. There is no indication that Ms. Bevenue ever saw a neurologist for her neck and right arm discomfort.

Dr. Brian Ellefsen last saw Ms. Bevenue on April 21, 2003 and June 4, 2003. Ms. Bevenue had complained of pain in her right shoulder. She claimed she was having more sharp pain in using her arm to reach across her body and lifting out of cabinets. Dr. Ellefsen recommended a repeat MRI scan of the right shoulder. This showed no abnormality in the rotator cuff or bony pathology. His diagnosis was a tendonitis of the right shoulder.

Ms. Bevenue, according to deposition testimony, first discussed the potential of job related injuries in the calendar year 2000. Ms. Bevenue needed to complete paperwork with the assistance of the plant nurse, Vicky Dennison, because she had missed time from employment following her knee surgeries. This was shortly after she returned to work following her 1999 knee surgeries. In recounting her discussions with Ms. Dennison Ms. Bevenue provided the following testimony:

She was asked whether her conditions were due to a job related incident, and the paperwork asked for the dates of the incident or injury. She told Ms. Dennison that she did not know what date to put down. According to Ms. Bevenue, she told Ms. Dennison that she didn't know when the injury happened and that it was gradual. Additionally, she told Ms. Dennison that she did not know how to answer the question. Ms. Dennison replied, according to Ms. Bevenue, that if she marked the condition as job related, it would be a "lost time" accident. Such a designation was important because the plant had few lost time accidents. Ms. Dennison, according to Bevenue, stated that she would "take care of it, and that was it". Ms. Bevenue testified that she made this comment to Ms. Dennison because she did not want a job related incident to be recorded.

The plant had a good record for absenteeism, and she thought it would be a black mark against both the plant and her. She stated that the 3M "Sheeter" job was the best job she had ever had, and that she enjoyed her work greatly. She decided not to file a claim against 3M until after she knew she would not return to work there.

Dr. Robert Paul

Robert E. Paul, M.D., who is a physician practicing in the specialty of family medicine, and who performs workers' compensation evaluations, testified by deposition on behalf of the employee. Dr. Paul performed an independent medical examination of the employee on October 31, 2003. At the time of this examination, Dr. Paul took a history from Ms. Bevenue, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of the employee, Dr. Paul opined that, as a consequence of her employment with the employer 3M, she sustained a cumulative trauma injury to her right shoulder, left shoulder, right knee, and left knee.

In summarizing his opinion of Ms. Bevenue's medical condition, and its relationship to work, Dr. Paul propounded the following medical summary:

This patient has been exposed to cumulative trauma over the last 14 years while working for 3M. The patient would load Panaflex or Control Tech film on a cutter or sheeter machine and then manually cut or crate up to 6000 pieces of this film a day. Width would vary from 3 – 63 inches and length would vary from 12 – 155 inches. In 1994 the patient began having problems with her right knee. In 1999 she developed bilateral knee problems and underwent right and left knee surgery that same year. The diagnosis was chondromalacia patella. The patient faithfully returned to work following these surgeries. In 2000 the patient began developing pain in her right neck, shoulder and arm. The patient eventually underwent a right shoulder surgery on 04/30/2002. The patient's knee problems still bothered her and she underwent a second knee surgery on 03/19/2002 and finally had a total left knee replacement on 10/01/2002.

In rendering this opinion, Dr. Paul acknowledges that, he did not see Ms. Bevenue's work area at the 3M plant in Nevada, Missouri; he did not see her job description; he did not see the production process at which she works, either by herself or with other people; and he did not see any reenactments of her work activities. Also, Dr. Paul's opinion assumes that Ms. Bevenue was slitting and packaging 6,000 pieces of product per day; and he assumes that Ms. Bevenue did not stand upon a rubber, ergonomic mat. Additionally, the testimony of Dr. Paul does not indicate whether he believed that she had to lift the "iron bar" upon a frequent or constant basis.

During his cross-examination, Dr. Paul admitted that studies could be done to determine the epidemiology of the reasons for Ms. Bevenue's condition. Such studies could either be a prospective cohort study, retrospective study, or case control study. He was not aware of any studies that attempted to explain the onset of physical disabilities for Ms. Bevenue or any other employee. Similarly, he did not know why other employees did not suffer these same conditions as Bevenue.

Also, in examining his opinion, Dr. Paul admits that not all people who walk on concrete floors develop Grade III chondromalacia in their knees, as he believes developed with Ms. Bevenue. Similarly, Dr. Paul admits that there are hundreds of thousands of surgeries performed for total knee joint replacements, and, in some cases, an idiopathic degenerative condition with no known cause is the reason provided for such surgeries.

Finally, Dr. Paul is of the opinion that, as a consequence of Ms. Bevenue's employment with 3M and the injuries she sustained to her knees and shoulders, she has suffered permanent partial disability to both knees and to both shoulders. In seeking to apportion disability, Dr. Paul propounded the following opinion:

- As a consequence of the October 1, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 50 percent, referable to the left knee, and taking into consideration the total knee replacement.
- As a consequence of the November 1999 and April 30, 2002 injuries, Ms. Bevenue sustained a permanent partial impairment of 15 percent, referable to the left knee, and taking into consideration the surgically treated chondromalacia patella and plicectomy.
- As a consequence of the April 30, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 42 percent, referable to the right shoulder, and taking into consideration the

decompression acroimioplasty (10 percent); rotator cuff repair, same surgery (5 percent); labral tear repair, same surgery (5 percent); crepitation (10 percent); range of motion loss (7 percent); and weakness (5 percent).

- As a consequence of April 30, 2002 injury, Ms. Bevenue sustained a permanent partial impairment of 15 percent, referable to the left shoulder, and taking into consideration crepitation (10 percent); decreased range of motion (2 percent); and chronic pain (3 percent).
- Prior to October 1, 2002, Ms. Bevenue presented with a permanent partial impairment of 20 percent, referable to the right knee, and taking into consideration the arthroscopic surgery to the right knee.

In addition, Dr. Paul opined that the combined effects of all the impairments enhance Ms. Bevenue's overall disability, and have resulted in Ms. Bevenue's disability of 10 percent to the body as a whole. Additionally, Dr. Paul is of the opinion that the combined effects of all injuries and disabilities render Ms. Bevenue permanently and totally disabled.

Dr. Allen Parmet

Allen J. Parmet, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition on behalf of the employer and insurer. Dr. Parmet performed an independent medical examination of Ms. Bevenue on September 8, 2005. At the time of this examination, Dr. Parmet took a history from Ms. Bevenue, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Bevenue, Dr. Parmet opined that Ms. Bevenue suffers from degenerative joint disease of both knees, an impingement syndrome of the right shoulder, pain in the left shoulder, and depression. Dr. Parmet further opined that these conditions, which necessitated several surgeries, are not occupationally related to Ms. Bevenue's employment with 3M.

In explaining his diagnosis of degenerative joint disease, Dr. Parmet testified that degenerative joint disease "is a long-term process, wherein the joint surfaces which are composed of articular cartilage are eroded away and eventually lost." Dr. Parmet further indicated that the cartilage "can be lost to the point that there is no cartilage left at all and the articular surface becomes – the term we sometimes use is bone on bone." Notably, in examining the causal relationship of this medical condition to Ms. Bevenue's employment, Dr. Parmet opined that Ms. Bevenue's employment activities with 3M were not a significant or substantial factor in contributing to the degenerative joint disease in her knees; and, similarly, were not the cause of her need for the surgeries.

Rather, Dr. Partmet is of the opinion that the aging processes, combined with her metabolic state, were the causes of Ms. Bevenue's degenerative joint disease. In this regard, Dr. Parmet noted that a metabolic state is "a condition where people malabsorb certain nutrients. They may excrete nutrients." Additionally, Dr. Parmet noted that, "women who are postmenopausal lose excessive amounts of calcium and bone substrate and develop thinning of the bones.... The basic process of aging simply causes wear and tear of the joints with loss of the joint surfaces over time." And, Dr. Parmet notes, Bevenue, she was post-menopausal.

Further, in discussing the issue of causation, upon being asked why Ms. Bevenue's work with 3M was not a significant or substantial factor in contributing to the degenerative joint disease in her knees and "bone on bone" syndrome, Dr. Parmet propounded the following testimony:

Ms. Bevenue did not describe any specific traumatic injury of any kind and any other onset of knee conditions except gradual as one expect on a chronic degenerative change. Further, after her knees were cleaned up surgically the first time she had a gradual return of the symptoms, which is really what you would expect after removal of some damaged cartilage. But the joint would still not be restored to normal and would continue to degenerate unless whatever caused the original problem was remitted.

In addition, findings on the DEXA scan indicated degenerative processes from a loss of metabolism. It was "pretty widespread" for Ms. Bevenue and "very typical" of post-menopausal females. The DEXA scan is a dual x-

ray bone densitometry study that examines the density of the lumbar spine and femur. This study is designed to estimate if thinning of the bones, osteopenia, is present. Ms. Bevenue had significant changes and degenerative findings in the vertebra and the density was below normal. This meant that she was osteopenic, and had thinning of the bones, but not so pathologically thinned to the point that she was risking fractures or collapse.

Similarly, Dr. Parmet opined that Ms. Bevenue's employment at 3M was not the cause of problems associated with her shoulders and need for medical care. In this regard, Dr. Parmet testified that Ms. Bevenue suffered only a gradual onset of pain, and no specific injury to her right shoulder. He believed, for the reasons given relative to the knees, Ms. Bevenue had begun to experience the "same chronic degenerative changes" in her shoulder". Likewise, the pain being experienced by Ms. Bevenue in her left shoulder was not causally related to her work with 3M.

In providing additional testimony relative to the issue of medical causation, Dr. Parmet testified that he did not believe that Ms. Bevenue's conditions should be viewed as work related, simply because she noticed her symptoms while at work. Dr. Parmet notes, if a patient has degenerative joint disease and the thinning of the bone is apparent, any physical activity will produce cause pain. Yet, merely feeling pain in association with activity does not mean that the activity is the cause, or a substantial factor in the cause, of the medical condition that produces the pain. Rather, the patient is merely identifying the pain with the activity.

In seeking to provide support for his opinion, Dr. Parmet notes that the status of medical research provides verification. Long term studies were started to review whether people who ran long distances, stood for long periods, or carried heavy loads on hard surfaces, suffered an acceleration of arthritis due to these activities. In fact, the opposite occurred. The body instead responds to this continued stress and stimulus by creating a healthier and stronger joint with less arthritis rather than more. Mere physical activity at work is not something that would necessarily injure a cartilage within an orthopedic joint.

In addition, Dr. Parmet believed that the morbid obesity that prompted the bariatric surgery in 1987 would have likewise been a substantial contributing factor to the degenerative joint disease in the knees. Overall, obese people have a 65% increased risk of arthritis, according to the Missouri Department of Health and Human Services publication "*Missouri Obesity Burden Report 2002*". Further research indicates that women who suffer from morbid obesity have an increased risk for total knee joint replacements by 1,905 per cent. Dr. Parmet testified that these scientific publications support the proposition that degenerative arthritis of Bevenue's knees was due to her obesity.

Finally, Dr. Parmet testified that, even if Ms. Bevenue had been crawling on her hands and knees to repair machines such as the "72 machine", she would not have suffered degenerative joint disease. Instead, she would have developed pre-patellar bursitis. This is because the point of contact when one is crawling is actually the front of the tibia, the shinbone. It sometimes also includes the kneecap. This area is actually covered by the lower part of what is known as tibial tuberosity. This is where the quadriceps tendon inserts into the front of the shinbone. This is a bursitis at the front of the knee, rather than a disease process within the knee itself.

In rendering an assessment of permanent disability, Dr. Parmet opined that, Ms. Bevenue presents with a permanent disability of 50 percent, referable to the left knee; she presents with a permanent disability of 25 percent, referable to the right knee; she presents with a permanent disability of 20 percent, referable to the right shoulder; and she presents with a permanent disability of 10 percent, referable to the left shoulder. Dr. Parmet did not provide an opinion relative to the depression, premised on his belief that he lacked sufficient information render a disability rating for the depression. Additionally, Dr. Parmet opined that Ms. Bevenue is capable of working at the sedentary level of labor, according to the U.S. Department of Labor, *Dictionary of Occupational Titles*.

Phillip Eldred

Phillip Eldred is a vocational consultant whose regular employment is with the Missouri Department of Secondary and Elementary Education. And, in addition to this employment, he is engaged in private practice as a vocational consultant. Mr. Eldred testified that he did not believe Ms. Bevenue to be employable or placeable. Notably, in rendering his vocational opinion, Mr. Eldred presumed that Ms. Bevenue could not perform activities that would qualify as "sedentary labor" as defined by the Dictionary of Occupational Titles, published by the United

States Department of Labor. Similarly, he did not Dr. Parmet's medical opinion. And, if he assumed that Ms. Bevenue could work at a sedentary level, then he acknowledge that employment opportunities existed for Ms. Bevenue.

FINDINGS AND CONCLUSIONS

The principal issue before the undersigned is whether the employee, Wilma Bevenue, sustained an occupational injury to her right and left knees as a consequence of her employment with the employer, 3M. The parties offer differing medical opinions, evidence, and arguments relative to this issue.

The employee argues that, in the course of working for 3M and performing her duties as a Sheeter, she suffered cumulative trauma to her knees, as a consequence of standing, walking or crawling on concrete for nearly eight hours every workday for 13 years. In support of her claim, Ms. Bevenue relies upon the medical opinion of Dr. Paul. The employer and insurer, however, argue that, while Ms. Bevenue suffers from degenerative joint disease in her knees, the medical condition is not an occupational disease, but an ordinary disease of life. In the particular case of Ms. Bevenue, the employer and insurer argue, Ms. Bevenue suffers from degenerative joint disease in her knees as a consequence of the effects of aging and obesity. The employer and insurer further note that, only occasionally Ms. Bevenue's duties as a Sheeter required her to crawl, climb or kneel; and she enjoyed in her work station an ergonomic rubber mat, which minimized her standing on a concrete floor.

After consideration and review of the evidence, I resolve the differences in medical opinion in favor of the testimony and opinion of Dr. Parmet, who, in this case, I find to be more credible and persuasive. I am persuaded, and thus find and conclude, that the employee Wilma Bevenue suffers from degenerative joint disease in her right and left knees, but this medical condition is an ordinary disease of life caused by the effects of aging and obesity.

Date: ____ July 6, 2006

Made by: _____/s/ L. Timothy Wilson_____
L. Timothy Wilson
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

_____/s/ Patricia "Pat" Secrest_____
Patricia "Pat" Secrest
Director
Division of Workers' Compensation

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- [1] The workers' compensation cases consolidated for hearing include Injury Nos. 99-183655; 02-154103; 02-154106; and 02-154105.
- [2] The workers' compensation cases consolidated for hearing include Injury Nos. 99-183655; 02-154103; 02-154106; and 02-154105.
- [3] The workers' compensation cases consolidated for hearing include Injury Nos. 99-183655; 02-154103; 02-154106; and 02-154105.
- [4] The workers' compensation cases consolidated for hearing include Injury Nos. 99-183655; 02-154103; 02-154106; and 02-154105.