

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

Injury No. 04-148011

Employee: Donna M. Blyzes  
Employer: General Motors Corporation  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, heard the parties' arguments, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

**Discussion**

Occupational disease - medical causation

We agree with the administrative law judge's implied finding that employee failed to meet her burden of proof with respect to the issue of medical causation. We write this decision to provide the appropriate statutory analysis. The version of § 287.067.2 RSMo applicable to this claim provides, as follows:

An occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor.

The foregoing refers us to the "requirements of an injury which is compensable" under subsections 2 and 3 of § 287.020, which provide, as follows:

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

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must

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be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

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

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

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

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

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

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

As noted by the administrative law judge, employee provided expert medical testimony from Dr. Jerry Meyers, who opined that employee's 20-year period of working on employer's assembly line was the prevailing and a substantial factor causing her to develop osteoarthritis requiring bilateral total knee replacements, as well as a traumatic injury to the right knee requiring meniscectomy, with continuing symptoms and impairment. We, like the administrative law judge, do not find Dr. Meyers's testimony sufficiently persuasive to satisfy employee's burden of proof, for the following reasons.

Employee testified at the hearing before the administrative law judge that she performed many different jobs and duties for employer during her lengthy tenure. Employee served as a secretary in the personnel department; worked on a factory line putting on rear doors; worked in the chassis department lifting shocks and axles; worked in the body shop doing unspecified tasks; performed a job requiring her to get in and out of vans, sit on a pad, and run cables through vans; drove cars off the line to a lot on employer's premises; did a front shock job using a heavy machine to compress shocks; installed left front doors; and worked on a cleaning crew. Employee failed, however, to establish a consistent timeline for these

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various duties and positions. For example, employee initially testified that she worked in the chassis department “after 2006,” *Transcript*, page 198, but later suggested that she “only” worked in the chassis department for six weeks from March to May 2004. *Transcript*, page 302. Similarly, employee initially testified she performed the job running cable through vans starting in 2004, *Transcript*, page 188, but later suggested she began this job in 2011 after being taken out of the chassis department. *Transcript*, page 210. The ambiguities with regard to the timing and duration of the chassis department jobs are particularly troubling, in that employee seemed to suggest that this work contributed to her claimed bilateral knee injuries more than any other of her duties for employer. It may have been that employee worked in the chassis department on several different occasions, but on this record, it is far from clear.

More importantly, employee failed to sufficiently describe the physical exertions or (alleged) repetitive traumas she experienced while working in these various duties and positions. It is not surprising, then, that Dr. Meyers rendered his opinions in a vague and generalized way, identifying employee’s entire tenure (or, rather, an unspecified 20 years of it) as the causative trauma causing employee to suffer osteoarthritis. Dr. Meyers’s report suggests he believed that employee worked as a repair person in a body shop, and that her duties in this position involved removing and replacing parts, welding, working with vibrating power air tools, applying hoists, doing heavy lifting, engaging in frequent bending, squatting, and walking, and working on her knees; that in 2000 employee changed to installing doors; that in 2002 employer moved employee to an unspecified more rigorous job for six weeks that caused her to suffer increasing knee pain and swelling, then moved her back to door assembly; and that in 2009 employer removed employee from her (unspecified) old job to a new position installing doors, but that employer then removed her from this job. Dr. Meyers’s timeline does not match employee’s, and it is wholly unclear from this record to what extent Dr. Meyers understood the work involved in her various positions and the physical exertions they required.

We are not unsympathetic to the fact that employee obviously has a very poor memory, and we recognize the difficulty in cataloguing the various duties she performed for employer over a span of nearly 27 years of employment. But given the widely varied nature of employee’s assignments and duties for employer, we would expect medical testimony in her occupational disease claim to address the various physical exertions or repetitive traumas attendant to employee’s different assignments and duties, and to describe the contribution of each to employee’s claimed occupational injury of bilateral osteoarthritis. This is because we must determine whether there is a recognizable link between employee’s work exposures and the disease of osteoarthritis. *Kelley v. Banta & Stude Constr. Co.*, 1 S.W.3d 43 (Mo. App. 1999). In our view, Dr. Meyers’s testimony does not adequately explain how employee’s work for employer was a factor (let alone a substantial one) in causing her to suffer the claimed injuries. We conclude, therefore, that employee’s work was not a substantial factor causing her to suffer bilateral osteoarthritis of the knees, and affirm, for this reason, the award of the administrative law judge.

Additionally, we disclaim the administrative law judge’s reference to information that was apparently derived from his own *sua sponte* perusal of materials from the Mayo Clinic, as the parties agree that no such evidence was offered or admitted into the record.

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**Conclusion**

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued August 8, 2014, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

Given at Jefferson City, State of Missouri, this 27<sup>th</sup> day of May 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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DISSENTING OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

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Secretary

Employee: Donna M. Blyzes

**DISSENTING OPINION**

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I am convinced that the decision of the administrative law judge should be reversed in favor of an award of permanent partial disability benefits and future medical care.

Under the version of Chapter 287 governing this claim, the law is to be "liberally construed as to the persons to be benefited," *Lawson v. Lawson*, 415 S.W.2d 313, 318 (Mo. App. 1967), with the aim of "extend[ing] benefits to the largest possible class and resolv[ing] any doubts as to the right of compensation in the employee's favor." *Sage v. Talbot Indus.*, 427 S.W.3d 906, 912 (Mo. App. 2014). I concur with the majority to the extent that I agree that employee's testimony is somewhat confused and contradictory with regard to the timing and duration of her various positions and work duties for employer. It appears to me that employee's testimony at the hearing suffered from an unfortunate combination of her poor memory as well as a rather disorganized and confusing presentation by her trial counsel. I disagree, however, that this circumstance alone warrants a rejection of her claim. Rather, to the extent that we have doubts about employee's right to compensation, we should resolve them in her favor.

Employee worked for employer for 27 years. For most of that time, she was working on her feet in employer's factory, building cars. Although she rotated to various positions on the assembly line, the record is clear enough that, for 27 years, employee was lifting heavy items and standing and walking constantly on employer's concrete floors. In addition, employee presented credible and essentially uncontradicted testimony that, on a number of occasions, employer required her to perform job duties that violated the physical restrictions assigned by her treating physicians with regard to her knees.

Combined with the testimony from Dr. Meyers, the foregoing is enough for me. Of course it would have been helpful if employee and her expert could have outlined, in exhaustive detail, the physical forces involved in each of the minute tasks required by each and every one of the various positions she worked for employer over the years. But I do not believe the law, liberally construed, requires that.

I find that employee met her burden of proof with respect to the issue of medical causation. I conclude employee's work was a substantial factor causing her to suffer bilateral osteoarthritis in her knees. I would reverse the decision of the administrative law judge and award permanent partial disability benefits and future medical care from the employer.

Because the majority has determined otherwise, I respectfully dissent.

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Curtis E. Chick, Jr., Member

## AWARD

Employee:	Donna M. Blyzes	Injury No.:	04-148011
Dependents:	N/A		
Employer:	General Motors Corporation		Before the <b>Division of Workers' Compensation</b>
Additional Party:	Second Injury Fund		Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-Insured		
Hearing Date:	June 2, June 5, & June 20, 2014	Checked by:	EJK/lsn, kr

### 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: May 31, 2004
5. State location where accident occurred or occupational disease was contracted: St. Charles County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Self-Insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
The employee alleged that from March to May 2004, she was ordered to work in the employer's chassis department against restrictions that her employer refused to honor.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Allegedly both knees
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer: \$884.00

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$2,162.37
- 19. Weekly compensation rate: \$662.55/\$347.05
- 20. Method wages computation: By agreement

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

None

22. Second Injury Fund liability: No

TOTAL:

NONE

23. Future requirements awarded: None

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Herman L. Jimerson, Esq.

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

Employee:	Donna M. Blyzes	Injury No.: 04-148011
Dependents:	N/A	Before the
Employer:	General Motors Corporation	<b>Division of Workers'</b>
Additional Party:	Second Injury Fund	<b>Compensation</b>
Insurer:	Self-Insured	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: EJK/lsn, kr

This workers' compensation case raises several issues arising out of an occupational disease claim in which the claimant, an automotive assembly line worker, alleged that from March to May 2004, she was ordered to work in the employer's chassis department against restrictions that her employer refused to honor resulting in knee injuries. The issues for determination are (1) Occupational disease; (2) Medical causal connection; (3) Future medical care, (4) Permanent disability, and (5) Statute of Limitations. The evidence supports an award for the defense.

At the hearing, the claimant testified in person along with her husband, William Blyzes, and Rick Cavins, a social worker. The claimant also offered the following exhibits:

- Claimant's Exhibit A: Mr. Cavins' letter dated October 19, 2011
- Claimant's Exhibit B: GM Wentzville Plant Special Bulletin
- Claimant's Exhibit C: George Hernia deposition transcript dated January 18, 2013
- Claimant's Exhibit D: Marlin Brown's deposition transcript dated January 18, 2003
- Claimant's Exhibit E: Jerry Meyers, M.D. deposition transcript dated October 31, 2013
- Claimant's Exhibit F: Robert Schlitt, M.D. deposition transcript dated November 8, 2013
- Claimant's Exhibit G-I: Photographs
- Claimant's Exhibit J: Kevin D. Weikart, M.D. medical report dated December 2, 2002
- Claimant's Exhibit K: Personnel Administration medical report.

The employer submitted the following exhibits:

- Employer's Exhibit 1: Robert M. Bruce, M.D. reports dated February 1, 2005 and May 3, 2005
- Employer's Exhibit 2: Roger L. Mell, M.D. records dated July 22, 1991 through December 9, 1992
- Employer's Exhibit 3: Roger L. Mell, M.D. records dated August 29, 2000 and November 29, 2005
- Employer's Exhibit 4: General Motors plant records dated November 19, 1986 through October 19, 1995
- Employer's Exhibit 5: William Sedgwick, M.D. records dated November 19, 1985 and December 3, 1985
- Employer's Exhibit 6: Eliseo Figueroa, M.D. report of October 10, 1995  
(Objection on hearsay from Second Injury Fund only sustained)
- Employer's Exhibit 7: Division of Workers' Compensation prior records
- Employer's Exhibit 8: Michael Nogalski, M.D. deposition dated July 22, 2013
- Employer's Exhibit 9: Wayne A. Stillings, M.D. deposition dated January 22, 2014
- Employer's Exhibit 10: Rick Cavins deposition dated February 24, 2006  
(Only received with respect to 2003 case)
- Employer's Exhibit 11: GM Global Security Incident Report dated October 13, 2011
- Employer's Exhibit 12: Claim for Compensation - Injury Number 03-124598
- Employer's Exhibit 13: Claim for Compensation - Injury Number 04-148011
- Employer's Exhibit 14: Claim for Compensation - Injury Number 09-070136
- Employer's Exhibit 15: Deposition of Donna Blyzes dated May 24, 2010 (pgs. 86-92)

The parties stipulated that the claimant was off work on short-term disability from October 8, 2003 through March 22, 2004.

All objections not previously sustained are overruled as waived. Jurisdiction in the forum is authorized under Sections 287.110, 287.450, and 287.460, RSMo 2000, because the alleged occupational disease was alleged to have been contracted in Missouri. Any markings on the exhibits were present when offered into evidence. Exhibits G, H, and I were received in the condition as presented with white out and a sticky substance on the documents.

### **SUMMARY OF FACTS**

The claimant, an automotive assembly line worker, alleged that she suffered injury and disability to her knees on two separate occasions at work:

In Injury Number 04-148011, the claimant filed a Claim for Compensation alleging an occupational disease took place from "March 2004 - May 2004". The claimant asserts that she was ordered to work in the chassis department by management against her restrictions because she was in the process of taking GM to court. She claimed injury to her knees. See Exhibit 13. When asked whether her Claim for Compensation noted a date of injury regarding her knees to

be "March 2004 - May 2004", the claimant testified that she didn't actually write out her claim but she agreed with the information in it.

In Injury Number 09-070136, the claimant filed a Claim for Compensation alleging an injury occurred on September 9, 2009 to her legs and feet. The claimant alleged that this employer refused to honor restrictions given to the claimant by a doctor and had the claimant do a job that was outside her restrictions which caused her legs and feet to swell. See Exhibit 14.

The claimant began working for this employer in 1985. On November 19, 1985, Dr. Sedgwick examined the claimant and took a history of the claimant stepping off a curb and jolting her right knee. See Exhibit 5. She suffered a hyper-extension type injury and twisted her right ankle. She developed swelling in the knee. The claimant was diagnosed with a strain to the right knee along with posterior tibial tendinitis. Dr. Sedgwick prescribed Naprosyn and physical therapy. She was released from his care on December 3, 1985. See Exhibit 5.

On July 9, 1991, the claimant injured her right knee at work. See Exhibit 7. Dr. Mell initially examined the claimant on July 22, 1991, and took a history of her right foot getting caught in a grate and twisting her right knee. See Exhibit 2. She went to plant medical where she was treated conservatively and then placed in a brace. An MRI of her right knee revealed a torn medial meniscus and torn anterior cruciate ligament. See Exhibit 2. On August 29, 1991, Dr. Mell performed an arthroscopy and arthroscopic excision of a bucket-handle tear of medial meniscus, removal of loose bodies and articular cartilage and shaved areas of chondromalacia. Dr. Mell released the claimant in December 1992 from that work injury. See Exhibit 2. The claimant settled her workers' compensation claim on the basis of a 22 ½% permanent partial disability of the right knee on December 28, 1992. See Exhibit 7.

Since 1999 and leading up to May 2004, the claimant testified that she was having problems with her right knee. Specifically, in 2000 she testified that she was going to have arthroscopic surgery, but instead they removed her meniscus, which led her to experience "bone on bone." In 2000, she testified that it was hard for her to be on the line and on her feet 10 to 12 hours a day. On August 29, 2000, the claimant returned to Dr. Mell and reported that she was doing well until about 1997 when she began having right knee pain. See Exhibit 3. She was walking with a limp. At that time, Dr. Mell diagnosed bilateral degenerative arthritis to the medial compartments of both knees, worse in the right than the left. He injected the right knee and gave a prescription for Naprosyn. He recommended a job which does not require her to walk or stand continuously, but to be able to periodically sit. See Exhibit 3.

The claimant testified that from March 2004 through May 2004, she was working in the chassis department and her knees got worse. With respect to the time frame leading up to March 2004, the claimant testified that she was off work from October 8, 2003 until March 22, 2004 (per stipulation of the parties). Therefore, during the period of March 2004 through May 2004, she only worked six weeks. On April 1, 2004, the claimant's knee problems returned with swelling in both knees when she was placed on a job which required her to get in and out of a van. She stated that the job required her to sit on a pad which was on studs and then run a cable through the van. She testified that during this time, she had restrictions which included no bending, squatting, lifting over 30 pounds, but they were not honored and therefore she had to go out on sick leave.

The claimant testified that on November 14, 2005, Dr. Schaberg recommended a total right knee replacement. On November 29, 2005, the claimant returned to Dr. Mell at which time, she noted that she had pain off and on since 1990 but over the last several months, it had gotten worse. Dr. Mell noted that she was there for a second opinion because another physician had recommended surgery. He gave her the option of injections. See Exhibits 2, 3. On December 11, 2005, the claimant received total right knee replacement surgery. She returned to work around May 2006 and testified that her knee pain was better following the surgery, but the swelling was still sporadic.

The claimant testified that she returned to the body shop and had the same work restrictions after the knee replacement that she had while on the van job, which were again violated. This caused her to be “frozen” from the neck down and on September 9, 2006, she went to plant medical and received an injection.

With respect to her September 9, 2009 claim, the claimant testified that because her employer refused to honor her restrictions, her legs swelled up. She clarified that the September 9, 2009, claim also involved her knees.

The claimant testified that on February 15, 2011, she was removed from her position because her work restrictions could not be accommodated. In 2012, she was placed on NJAWR (no job available with restrictions) until November 2012, when she was put on a job in the chassis department aligning carriers underneath of the van. This required her to apply stress and pressure to her shoulders and knees. Later that same month, she went to the emergency room because of an anxiety attack. Upon her return, the employer placed her with the cleaning crew. However, she is currently on sick leave for unrelated shoulder injuries. The claimant testified that she has been off work since December 12, 2012, for injuries related to her shoulders, which are not part of the claims in these cases.

The claimant testified that she owned two properties with her current husband, one in Warrenton and one in Friedheim and that all of the animals are located at the Friedheim property. They have dogs, alpacas, goats, geese, ducks and eight donkeys. She stated that at the Friedheim farm she cuts the grass, waters flowers and feeds the animals in their bunks. She enjoys the animals and they make her feel good. She denied any incident where a goat knocked her over, per Mr. Cavins’ testimony.

The claimant testified that at the time of the hearing she was taking Lexapro, Trazodone, Jantoven (for a blood clot), and Abilify. She testified that those medications were impairing her concentration and memory. She testified that prior to the 2002 smoking incident, she only had a 1% absent rate at work.

The claimant testified that her involvement in litigation has been stressful because she felt violated, confused and lost, and she was frustrated with her employer and the union because she felt the union should have done more.

The claimant stated that she is not sure if she wants to go back to work, because she is afraid of getting hurt. She wondered whether she would be able to retire or quit and doesn’t even

know how to look into these options. Besides spending time with her animals, she spends her free time watching TV, mowing the grass on a riding mower and watering her flowers. At the Friedheim residence, it takes her about 2 to 2 ½ hours to mow the entire farm, while the Warrenton residence takes about 1 ½ hours. The Friedheim property is located on nine acres and she does take breaks during mowing to get up and move. She uses a riding mower.

George Hernia

Mr. Hernia has been employed with this employer for 33 years and his current position is Labor Relations Manager. Mr. Hernia did not recall any specific grievances filed by the claimant but testified generally that a grievance is when an employee and a supervisor cannot work out a situation and they get an opportunity to request their committee person to get involved. If the committee person can't work it out with the supervisor or group leader, then a complaint is generated in the form of a grievance. There are several steps involved in filing a grievance. See Hernia deposition, pages 10-11. Mr. Hernia testified that if a person had higher seniority and they bid on a job, they would get it over those with lower seniority. See Hernia deposition, page 16.

Mr. Hernia testified that when a person returns to work with restrictions, the ADAPT Program is implemented to assist in finding another job within those restrictions. The employee has joint representatives from the UAW as well as management, attempt to find them a job that they can do within their restrictions so they can be actively employed. See Hernia deposition, page 22.

Mr. Hernia testified that the employer's plant is currently a non-smoking plant and that people have been disciplined for smoking in the plant in the past. He testified that smoking is not tolerated, because it is State law and they are required to enforce the law. See Hernia deposition, page 28. With respect to placement after work restrictions, Mr. Hernia testified that the plant physician is the final authority on restrictions. See Hernia deposition, page 33. He testified that if an outside physician provides restrictions for an employee, the employer's physician reviews those and either confirms or questions it. The employer's plant physician makes the final determination. See Hernia deposition, page 40.

Marlon Brown

Mr. Brown has worked for this employer for over 27 years and is currently the District Two Committee Person. See Brown deposition, page 6. He is an elected official that has the ability to interpret the local agreement and the national agreement and to represent employees that are in his district if they have any situations with management. He testified that part of the resolution process is the filing of a grievance. See Brown deposition, page 6. He defined a grievance as a document that is used to get information in order to retrieve a loss or disadvantage of a union worker. See Brown deposition, page 7. Mr. Brown testified that he has written many grievances on behalf of the claimant. See Brown deposition, page 8. Mr. Brown testified that seniority does not guarantee that you get easier jobs. It does allow you to pick better jobs but there are no guarantees. See Brown deposition, page 12. Mr. Brown testified that this plant is a smoke-free plant but he did not know the exact date when that policy went into effect. See Brown deposition, page 24.

Jerry Meyers, M.D.

Dr. Meyers examined the claimant on March 28, 2010, and took a medical history from the claimant including her 1985 and 1991 prior knee injuries and also her visit with Dr. Mell in 2000, wherein he diagnosed osteoarthritis of both knees. See Dr. Meyers deposition, page 21. When he examined the claimant, she weighed 255 pounds and was 5' 9" tall. See Dr. Meyers' deposition, page 13. Dr. Meyers only evaluated the claimant's knees. Dr. Meyers testified that in 2002, the claimant was transferred to a job which exceeded the restrictions Dr. Mell placed on her in 2000 which were no prolonged standing or walking and during that six-week period on the new job, she experienced increasing pain and swelling in her knees. See Dr. Meyers' deposition, page 22. Dr. Meyers noted that in December 2005, Dr. Schaberg performed a right total knee replacement and in December 2006 a left total knee replacement.

Dr. Meyers concluded that "her 20-year period of working on the assembly line of General Motors was the prevailing factor, substantial factor, in causing her to develop bilateral osteoarthritis, requiring bilateral total knee replacements and a traumatic injury to the right knee, requiring a meniscectomy, with continuing symptoms and impairment." See Dr. Meyers' deposition, page 27. Dr. Meyers opined that the claimant suffered a 28% permanent partial disability to her right knee, 10% of which was pre-existing. He also opined that she suffered a 28% permanent partial disability of the left knee. See Dr. Meyers' deposition, page 29. Dr. Meyers gave permanent restrictions of avoiding repetitive bending, kneeling, climbing steps and ladders and she should not lift more than 30 pounds nor walk on uneven surfaces. She also should avoid walking longer than 40 minutes at a time. See Dr. Meyers' deposition, pages 31-32.

Dr. Meyers testified that the injury the claimant sustained to her right knee in 1991 was a torn medial meniscus which was a bucket-handle type tear and also a torn anterior cruciate ligament. See Dr. Meyers' deposition, page 44. He agreed that Dr. Mell performed surgery on the right knee on August 29, 1991 which included arthroscopy and arthroscopic incision of a bucket-handle tear of the medial meniscus, removal of loose bodies of articular cartilage and shaved areas of chondromalacia. The post-op diagnosis was bucket-handle tear, medial meniscus; chondromalacia; medial femoral condyle; and tibial plateau; articular cartilage loose body; and anterior cruciate ligament deficit, right knee. See Dr. Meyer's deposition, pages 45-46. Chondromalacia is a thinning of the cartilage and in the claimant's case it was located inside of the knee joint. An anterior cruciate deficit is an abnormal ligament. The doctor agreed that she had a pretty "banged up knee." He further agreed with Dr. Mell's conclusions in his December 9, 1992 report which noted that the cruciate ligament had become fibrotic and diminished in size and therefore had to be compensated for by other ligaments and therefore in essence, it had fibrosed and degenerated. He further agreed with Dr. Mell's conclusions that the deficit in the anterior cruciate ligament had created instability in the knee in 1992. See Dr. Meyers' deposition, page 47.

Dr. Meyers testified that the plant medical records indicated that in 1998 or 1999 the claimant fell, landed on both knees, and developed popping in her left knee with locking. See Dr. Meyer's deposition, page 49. He further agreed that the claimant was diagnosed by Dr. Mell in 2000 with pain and symptoms in both knees along with osteoarthritis. Dr. Meyers defined osteoarthritis as bony abnormality causing a change in the joint. See Dr. Meyers' deposition, page 49. Dr. Meyers further agreed that Dr. Mell ordered x-rays of the claimant's knees in

August 2000 that showed a bone on bone in both knees with extension. See Dr. Meyers' deposition, pages 49-50. Finally, Dr. Meyers testified that he was unaware of the claimant being paid 22 ½% permanent partial disability for the right knee referable to her 1991 case. See Dr. Meyers' deposition, page 51.

Michael P. Nogalski, M.D.

Dr. Nogalski, an orthopedic surgeon licensed to practice in Missouri, who generally treats patients with knee and shoulder problems, examined the claimant and took a medical history that she had prior knee problems beginning in the 1990's at which time she underwent right knee surgery. He notes that she then had a position that allowed her to work four to five jobs on the assembly line, but then would allow her to sit down. She did well with this for about three to four years. She was then moved to a different job that involved lifting shocks and axles as well as continuously walking on her legs. She was on this particular job for only six weeks and then she was moved back to her old job. Her old job allowed her to sit for a period of time. See Dr. Nogalski deposition, pages 6-7.

Dr. Nogalski advised that the claimant told him that her knees did not hurt before the job with the axles and shocks and again, it lasted about six weeks. He noted that she took this job around March 2004. It involved constantly moving to several stations without an opportunity to sit. She would have to pick up shocks and use guns to tighten the front springs. There were no unusual positions. She did not have to squat but had to walk a lot. She did not relate any specific twisting or other types of activities within the job that stressed her knees. See Dr. Nogalski deposition, pages 7-8.

Dr. Nogalski opined that the claimant's job duties were not a substantial factor causing her knee condition. He diagnosed bilateral knee arthritis which necessitated bilateral total knee replacements. He opined that the claimant's knee replacements were not necessary to cure and relieve the effects of her job duties nor that she needed any additional treatment referable to her job. (p. 13). He opined that the claimant suffered from a 15% permanent partial disability in her right knee and an 18% permanent partial disability in her left knee but was not related to her job duties. See Dr. Nogalski deposition, page 12.

Dr. Nogalski testified that osteoarthritis occurs over a period of time and takes years to develop. He stated that this condition existed prior to the claimant's claimed injuries. See Dr. Nogalski deposition, page 35. Dr. Nogalski opined that the claimant experienced symptoms of osteoarthritis during her work activities, but the work itself wasn't what caused it, it just caused her to have symptoms. See Dr. Nogalski deposition, page 36. Dr. Nogalski opined that any activity could cause a symptom to be experienced in an osteoarthritic knee, but the symptoms are just a manifestation of the problem, but not the problem. See Dr. Nogalski deposition, page 41. Dr. Nogalski opined that low impact repetitive use could not accelerate arthritis. See Dr. Nogalski deposition, page 42.

## COMPENSABILITY

In this case, the claimant filed a Claim for Compensation alleging an occupational disease “March 2004 - May 2004” resulting in injuries to her knees because she was ordered to work in the chassis department by management. See Exhibit 13.

The statute provides that an occupational disease is defined as “an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease. . .” Section 287.067.1, RSMo 2000. An occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 & 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor. Section 287.067.2, RSMo 2000.

An informative legal analysis of occupational diseases pursuant to Missouri law is found in Kelley v. Banta and Stude Const. Co., Inc., 1 S.W.3d 43 (Mo. App. E.D. 1999), from which the following legal principles are cited:

In order to support a finding of occupational disease, employee must provide substantial and competent evidence that he/she has contracted an occupationally induced disease rather than an ordinary disease of life. The inquiry involves two considerations: (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee’s job which is common to all jobs of that sort.

Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. Claimant must prove “a direct causal connection between the conditions under which the work is performed and the occupational disease.” However, such conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. The opinion may be based on a doctor’s written report alone. Where the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is the most credible. Where there are conflicting medical opinions, the fact finder may reject all or part of one party’s expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant’s expert.

In conformity with the above-cited case law, the instant case is controlled by the “last exposure rule”, sometimes referred to as the “rule of convenience” which has been the law in Missouri for many years. In a workers’ compensation case in Missouri, based upon occupational disease, liability accrues and attaches to the employer as of the date of the disability. The test for determining when compensation accrues is the time when incapacity from occupational disease occurs, and not when the exposure commences or the disease begins and continues to develop. It

is disability after exposure in the employer's business that creates the obligation to compensation. Because the development of occupational diseases is characteristically gradual, but variable in different diseases and with different persons, the earlier stages being frequently undetectable, the only rule which ensures the benevolent legislative objective of recovery in every meritorious case is one which fixes liability at the single and easily determinable point when there is inability to work.

“[T]he question of causation is one for medical testimony, without which a finding for claimant would be based upon mere conjecture and speculation and not on substantial evidence.” Elliot v. Kansas City, Mo., Sch. Dist., 71 S.W.3d 652, 658 (Mo.App. W.D. 2002). Accordingly, where expert medical testimony is presented, “logic and common sense,” or an ALJ's personal views of what is “unnatural,” cannot provide a sufficient basis to decide the causation question, at least where the ALJ fails to account for the relevant medical testimony. Cf. Wright v. Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo. banc 1994) (“The commission may not substitute an administrative law judge's opinion on the question of medical causation of a herniated disc for the uncontradicted testimony of a qualified medical expert.”). Van Winkle v. Lewellens Professional Cleaning, Inc., 358 S.W.3d 889, 897, 898 (Mo.App. W.D. 2008).

In this case, the claimant had a prior history of injury to her right knee. In 1985, she went to plant medical and told them she hurt her right knee stepping off a curb after completing her shift. Dr. William Sedgwick evaluated her on November 19, 1985, at which time he diagnosed posterior tibial tendinitis and a strain to the right knee. He placed the claimant on Naprosyn and ordered physical therapy. See Exhibit 5.

The claimant suffered a second injury to her right knee on July 10, 1991, and consulted Dr. Mell on July 22, 1991, with a history of getting her right foot caught on a grate and twisting her right knee. She initially went to the plant facility and had ice applied, was placed in a brace, and had x-rays. On August 29, 1991, Dr. Mell performed an arthroscopy and arthroscopic excision for a right bucket-handle tear of the medial meniscus, along with removal of loose bodies and articular cartilage and he shaved areas of chondromalacia. See Exhibit 2. Dr. Mell's post-op diagnosis for the 1991 surgical procedure was a medial meniscus bucket-handle tear; chondromalacia of the medial femoral condyle and tibial plateau; articular cartilage loose bodies; and anterior cruciate ligament deficit. See Exhibit 2. The claimant filed a Claim for Compensation for the 1991 injury and settled her case on the basis of a 22 ½% permanent partial disability. See Exhibit 7.

The claimant testified that she continued having problems with her right knee leading up to May 2004. On August 29, 2000, she returned to Dr. Mell with a history of doing well until three years prior when she began having right knee pain. The doctor notes that she was walking with a limp and experiencing catching, locking, grinding and swelling in the knee. Dr. Mell diagnosed bilateral degenerative arthritis in the medial compartments of both knees, the right worse than the left. On that visit, Dr. Mell injected the right knee and gave her a prescription for Naprosyn. He noted that the claimant was not interested in having more aggressive treatment at that time and he advised that she should work at a job which does not require her to walk or stand continuously, but to be able to sit periodically. See Exhibit 3. The evidence is clear that the claimant suffers from osteoarthritis and that the condition degenerated to the point that the claimant required bilateral knee replacement surgery in 2005 and 2006.

The claim alleges that the claimant suffered an injury to her knees from working for six weeks in the employer's chassis department from March 2004 through May 2004. The claimant testified that during March through May 2004, she had been transferred to the chassis department. She worked six weeks during that period of time. The parties stipulated that she was off work on short-term disability from October 8, 2003 until March 22, 2004. See Exhibit 13.

The forensic medical evidence diverges on whether the claimant's work during that period meets the criteria stated above to constitute a compensable case. Dr. Meyers opined that the claimant's "20-year period of working on the assembly line of General Motors was the prevailing factor, substantial factor, in causing her to develop bilateral osteoarthritis, requiring bilateral total knee replacements and a traumatic injury to the right knee, requiring meniscectomy, with continuing symptoms." See Dr. Meyers' deposition, page 27. "It is my opinion that they were work related." See Dr. Meyers' deposition, page 28. He opined that "activities of daily living and your work activities do indeed relate to the development of arthritis; it can certainly aggravate – and depending on the rapidity with which it may occur." See Dr. Meyers' deposition, page 27.

Dr. Nogalski also diagnosed bilateral knee osteoarthritis and opined that the claimant underwent bilateral total knee replacements as a result of that condition. However, he opined that the claimant's job duties were not a substantial factor causing her symptoms or her diagnosis and that the claimant's knee replacements were not needed to cure and relieve the effects of her job duties. See Dr. Nogalski deposition, pages 9-10. Dr. Nogalski based his conclusions on a detailed medical history that during the three to four year period leading up to the date of her claim, she worked four or five jobs on an assembly line and then had an opportunity to sit down, when needed. Then she was transferred to a job involving lifting shocks and axles as well as continuously walking on her legs, but he noted that the job lasted for only six weeks and then she was moved back to her old job. He noted that her old job allowed her to sit down for periods of time, but the six-week position did not. See Dr. Nogalski deposition, pages 6-7. Dr. Nogalski found that while working at the transfer position for about six weeks, she did not work in any unusual positions, nor did she have to squat but did continuously walk. Additionally, the claimant did not relate any specific twisting or other types of activities within that job that would have stressed her knees. See Dr. Nogalski deposition, page 8.

In comparing the two evaluations, the claimant's medical expert, Dr. Meyers, concluded that she suffered knee injuries from working at the plant for a 20-year period, which covers the span of most of her employment with this employer and at least three claims for compensation regarding her knee condition, 1991, 2004, and 2009. He did not identify a specific history relating to the six-week period that is the subject of this claim. In addition, he stated that various aspects of the claimant's work and activities of daily living that he opined can contribute to osteoarthritis. However, he did not opine (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. He did not address the specific contribution, if any, of the work performed in the chassis department during the six-week period discussed in the claim

filed by the claimant. Dr. Meyers could not identify how often the claimant had to bend or squat or how long the claimant had to walk at work. See Dr. Meyers' deposition, pages 41-43.

On the other hand, Dr. Nogalski was provided with much more detailed information with respect to the claimant's job duties. Dr. Nogalski testified that the three to four year period leading up to the date of her claim, she would work four or five jobs on an assembly line and then had an opportunity to sit down, when needed. Then she was transferred to a job involving lifting shocks and axles as well as continuously walking on her legs, but he noted that the job lasted for only six weeks and then she was moved back to her old job. He testified that her old job allowed her to sit down for periods of time, but the six week position did not. See Dr. Nogalski deposition, pages 6-7. Dr. Nogalski testified that while working at the transfer position for about six weeks, she did not work in any unusual positions, nor did she have to squat but did continuously walk. Additionally, the claimant did not relate any specific twisting or other types of activities within that job that would have stressed her knees. See Dr. Nogalski deposition, page 8. Dr. Nogalski diagnosed bilateral knee osteoarthritis and opined that she underwent bilateral total knee replacements as a result of that condition. However, he opined that the claimant's job duties were not a substantial factor causing her symptoms or her diagnosis or that the claimant's knee replacements were needed to cure and relieve the effects of her job duties. See Dr. Nogalski deposition, pages 9-10. Dr. Nogalski did not attribute any of the permanent partial disability to her knees to her work for this employer. See Dr. Nogalski deposition, page 12.

Looking at the central question relating to osteoarthritis from the standpoint of the Mayo Clinic, the condition "occurs when the cartilage that cushions the ends of bones in joints deteriorates over time. Cartilage is a firm, slippery tissue that permits nearly frictionless joint motion. In osteoarthritis, the slick surface of the cartilage becomes rough. Eventually, if the cartilage wears down completely, one may be left with bone rubbing on bone." According to the same source, the risk factors for osteoarthritis include:

- **Older age.** The risk of osteoarthritis increases with age.
- **Sex.** Women are more likely to develop osteoarthritis, though it isn't clear why.
- **Bone deformities.** Some people are born with malformed joints or defective cartilage, which can increase the risk of osteoarthritis.
- **Joint injuries.** Injuries, such as those that occur when playing sports or from an accident, may increase the risk of osteoarthritis.
- **Obesity.** Carrying more body weight puts added stress on your weight-bearing joints, such as your knees.
- **Certain occupations.** If your job includes tasks that place repetitive stress on a particular joint, that joint may eventually develop osteoarthritis.
- **Other diseases.** Having diabetes, underactive thyroid, gout or Paget's disease of bone can increase your risk of developing osteoarthritis.

This analysis presents a complicated question that is not clearly answered by the claimant's forensic expert. The narrow question in this case based on the claim as filed is whether the work performed by the claimant during six weeks from March to May 2004 was a substantial factor causing the claimant's disabling condition in her knees. Clearly, the claimant

had bilateral degenerative arthritis as early as August 2000. See Exhibit 3. By that time, she had right pain and swelling, walked with a limp, and had catching, locking, grinding, and swelling in her knee, but no giving way. See Exhibit 3. At that time, x-rays revealed bone on bone in both knees with the knees in extension. See Exhibit 3. Dr. Meyers testified that “her twenty-year period of working on the assembly line of General Motors was the prevailing factor, substantial factor, in causing her to develop bilateral osteoarthritis, requiring bilateral total knee replacements, and a traumatic injury to the right knee, requiring meniscectomy, with continuing symptoms and impairment.” See Dr. Meyers’ deposition, page 27. He did not specify when the 20-year period began or when it ended nor did he identify the specific features of the claimant’s work in the chassis department that increased her exposure to osteoarthritis. If one could recast the claim for compensation to suggest a period that fits the claimant’s forensic evidence, the situation might be different. For instance, would the claimant be entitled to recover for her osteoarthritis in both her 2004 case and her 2009 case? Based on the evidence presented, the defense prevails on this issue.

### **OTHER ISSUES**

In order to complete the record, there were other issues involved in this case. Since the claim is not compensable, no benefits are awarded. However, in order to complete the record, Dr. Meyers opined that the claimant’s knee replacements are permanent resolutions for her knee condition unless she suffers a fall or an unrelated disease such as diabetes or she lives longer than the expected life of the knee replacement joints. See Dr. Meyers’ deposition, pages 55, 56. The concern is whether the employer bears the burden of the unforeseen injury of deterioration or whether Medicare bears the burden of an additional surgery many years down the road. It would seem that the employer would not be liable for additional medical care that resulted from ordinary degeneration or an additional injury or unrelated disease.

Dr. Meyers opined that the claimant suffered a 28% permanent partial disability to her right knee, 10% of which was pre-existing. He also opined that she suffered a 28% permanent partial disability of the left knee. See Dr. Meyers’ deposition, page 29. Dr. Nogalski opined that the claimant suffered from a 15% permanent partial disability in her right knee and an 18% permanent partial disability in her left knee but was not related to her job duties. See Dr. Nogalski deposition, page 12. The records reflect a pre-existing 22 ½% permanent partial disability to her right knee. See Exhibit 7. Based on the evidence, the claimant has a 28% permanent partial disability to her right knee, 22 ½% of which was pre-existing. Thus, the claimant suffered a 5 ½% permanent partial disability from reasons other than her 1991 accident at work. The claimant appears to have a 25% permanent partial disability of the left knee.

The claim for compensation alleges that the occurrence was from March 2004 to May 2004, and the claim was filed on March 13, 2006, less than two years after the alleged occurrence. The claim appears to have been filed within the-two year period of the statute of limitations.

Made by: /s/ EDWIN J. KOHNER  
EDWIN J. KOHNER  
*Administrative Law Judge*  
*Division of Workers' Compensation*