

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

Injury No.: 04-104083

Employee: Fata Bosnjak

Employer: True Manufacturing

Insurer: Liberty Mutual Fire Insurance Company

Date of Accident: Alleged May 3, 2004

Place and County of Accident: Alleged St. Charles, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by §287.480 RSMo. Having reviewed the evidence, read the briefs, 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 §286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 5, 2008, as supplemented herein.

The administrative law judge found that employee failed to meet her burden of proof with regard to the contraction of an occupational disease. The administrative law judge found employee did not establish a causal connection between her upper extremity complaints and her work duties as there was no objective evidence supporting that conclusion. The administrative law judge concluded that substantial and competent evidence did not support a finding that employee's condition was causally related to work and therefore denied compensation. We agree with this conclusion.

We offer this supplemental opinion to address the issue raised by employee in her Application for Review; that the award of the administrative law judge was not clear and needed to be revised to state clear findings of fact and conclusions of law.

The administrative law judge set forth the findings of fact and conclusions of law supporting her award. For clarity, we set out the following findings and conclusions.

The substantial weight of the evidence, including the expert opinions of Dr. Rotman and Dr. Brown, supports a conclusion that there was no new injury or disease to the employee's upper extremities that was causally related to her work.

Dr. Brown evaluated employee on August 17, 2005 and opined that the cause of employee's subjective complaints was not clear. Dr. Brown opined that given the fact that employee had not been working for over a year and her upper extremity symptoms still had not improved suggested that her subjective complaints were not substantially related to her work. After nerve conduction studies were performed and came back normal, Dr. Brown opined that employee's subjective complaints with regard to her upper extremities were not substantially caused by her work.

Dr. Rotman evaluated employee on July 9, 2007 and found no evidence of rotator cuff tendonitis impingement or biceps tendonitis. Dr. Rotman noted that x-rays of employee's cervical spine as well as employee's shoulder examination were completely normal. He found that there were no objective findings to correlate with employee's subjective complaints. Dr. Rotman opined that employee's subjective complaints were completely unreliable based on her physical examination. Dr. Rotman found that there was no evidence of a work-related injury that resulted from employee's four years of employment with employer. Dr. Rotman did not recommend any further treatment and opined that employee could return to full duty.

On the contrary, Dr. Volarich initially opined that the repetitive nature of employee's work was the substantial contributing factor causing the bilateral upper extremity tenosynovitis of the forearms, as well as symptoms consistent with carpal tunnel syndrome in both hands. He further opined that the repetitive work activities caused bilateral rotator cuff and bicipital tenosynovitis. He noted that employee had not received any treatment for those conditions. After nerve conduction studies were performed and revealed no abnormalities with regard to employee's upper extremities, Dr. Volarich gave the following opinion: that the repetitive nature of employee's work was the substantial factors as well as the prevailing factors causing the bilateral rotator cuff and bicipital tendonitis with associated myofascial pain as well as causing the bilateral forearm flexor and extensor tenosynovitis with myofascial pain that required conservative treatment. Dr. Volarich's opinion is not supported by the evidence and differs from that of the more credible medical opinions of Drs. Rotman and Brown.

Employee failed to offer any evidence to support her claim that she developed an occupational disease, with regard to bilateral hands or shoulders, as a result of her work. Employee did not present any medical records showing that she sought treatment for her alleged conditions. The record does not contain any medical evidence showing that employee had problems with her upper extremities while she was employed with employer or after she left her employment with employer in August 2004. There is simply no evidence of employee receiving any treatment for any problems related to her upper extremities.

In 2005, employee underwent evaluations and testing with regard to her upper extremities; however the medical evidence indicates normal clinical findings and test results. In addition, the treatment records from November 2003 through August 2006 from employee's primary physician, Dr. Karahodzic, do not contain any references of complaints concerning employee's hands or shoulders nor do the records show treatment for any condition related to employee's hands or shoulders during that time frame.

Furthermore, employee's testimony relating her upper extremity problems to her work is lacking credibility as it is not supported by the evidence. Employee's testimony with regard to both reporting her hand/shoulder problems to her supervisor and requesting treatment from employer was not consistent, calling her credibility into question. However, employee's supervisor credibly testified that employee never made any complaints or reported any problems regarding her hands or shoulders while she was working for employer.

The Commission agrees with the ultimate conclusion reached by the administrative law judge that employee failed to meet her burden of proof that her work duties were a substantial factor in causing the problems with her bilateral upper extremities.

The award and decision of Chief Administrative Law Judge Leslie E. H. Brown, issued February 5, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 11th day of July 2008.

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: Fata Bosnjak

Injury No. 04-104083

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents: ---

Employer: True Manufacturing

Additional Party: ---

Insurer: Liberty Mutual Fire Insurance Company

Hearing Date: October 18, 2007; record closed November 13, 2007

Checked by: LEHB/Isn

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: alleged on or about May 3rd, 2004
5. State location where accident occurred or occupational disease was contracted: alleged St. Charles, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? 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: machine operator/factory work
12. Did accident or occupational disease cause death? No Date of death? ---
13. Part(s) of body injured by accident or occupational disease: alleged right and left upper extremities

- Nature and extent of any permanent disability: ---

15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$4,202.64 for evaluations
17. Value necessary medical aid not furnished by employer/insurer? ---
18. Employee's average weekly wages: \$527.15
19. Weekly compensation rate: \$351.43/\$347.05

- Method wages computation: by agreement of the parties

**COMPENSATION PAYABLE**

21. Amount of compensation payable:
  - Unpaid medical expenses: ---
  - weeks of temporary total disability (or temporary partial disability)
  - weeks of permanent partial disability from Employer
  - weeks of disfigurement from Employer
  - Permanent total disability benefits from Employer beginning --- for ---  
Claimant's lifetime
22. Second Injury Fund liability: N/A

Total: Denied case

23. Future requirements awarded: ---

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

The compensation awarded to the claimant shall be subject to a lien in the amount of --- all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Frank J. Niesen

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

Employee: Fata Bosnjak

Injury No: 04-104083

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents: ---

Employer: True Manufacturing

Additional Party ---

Insurer: Liberty Mutual Fire Insurance Company

Checked by: LEHB/lsn

This is a hearing in Injury Number 04-104083. The claimant, Fata Bosnjak, appeared in person and by counsel, Attorney Frank J. Niesen; the claimant testified through a translator, Violetta L. Niesen (who was also sworn in). The employer/insurer, True Manufacturing/Liberty Mutual Fire Insurance, appeared by and through counsel, Attorney Maureen Cary.

The parties entered into certain stipulations, and agreements as to the issues and evidence to be presented in this hearing.

The parties filed Memorandums of Law in this case.

### STIPULATIONS:

On or about May 31, 2004: a. the claimant was in the employment of True Manufacturing in St. Charles County, Missouri; b. the employer and employee were operating under and subject to the provisions of the Missouri Workers' Compensation law; c. the employer's liability was insured by Liberty Mutual Fire Insurance; d. the employee's average weekly wage was \$527.15, the rate being \$351.43/\$347.05.. e. A Claim for Compensation was filed within the time prescribed by law. f. No temporary total disability benefits were paid. G. Medical was paid for evaluation by the employer in the amount of \$4,202.64.

## ISSUES:

1. Whether or not the claimant suffered an occupational disease
2. Medical causation
3. Nature and extent of permanent partial disability

## EXHIBITS:

The following exhibits were admitted into evidence:

### Claimant's Exhibits:

No. A: Report of David T. Volarich, D.O. dated February 28, 2005

No. B: Report of David T. Volarich, D.O. dated the April 5, 2006

No. C: Excerpt from claimant's January 29, 2007 deposition - page 39, lines 15 to page 40, line 23] [RULING: Employer/Insurer's objection at the hearing to the admission of this exhibit is overruled. See, Civil rule 57.07 (a). Additionally, it should be noted that the employer/insurer, in their Memorandum of Law wrote: "The employer and insurer withdraw their objection to employee's exhibit C at this time."]

### Employer/Insurer's Exhibits:

No. 1: WITHDRAWN

No. 2: Report of Dr. Davis M. Brown, M.D. dated August 17, 2005

No. 3: Report of Dr. Daniel Phillips, M.D. dated October 10, 2005

No. 4: Report of Dr. Davis M. Brown. M.D. dated October 18, 2005

No. 5: Report of Dr. Mitchell B. Rotman, M.D. dated July 9, 2007

No. 6: Records from Dr. Edina Karahodzic M.D. of Family Medicine of South City

No. 7: Deposition transcript of Mike Lewis taken on October 26, 2007 with statements attached (Admitted subject to any objections therein)

No. 8: NOT ADMITTED (Excerpts from the claimant's January 29, 2007 deposition - page 27, line 15 going onto page 28, line 19)

### Court Exhibits:

Administrative Law Judge was asked to take official notice of the following:

Roman Numeral I: Division of Workers' Compensation file for this case, Injury Number 04-104083

## FINDINGS OF FACTS AND RULINGS OF LAW

### ISSUES: Whether or not the claimant suffered an occupational disease; Medical causation

Fata Bosnjak, the claimant, alleges that as a result of performing her work duties at True Manufacturing, she developed problems, or an occupational disease, with regards to her shoulders, hands and arms.

"Occupational disease" is defined in Section 287.067 RSMo 1993 :

1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, 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 as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. 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.

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7. With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with the immediate prior employer was the substantial contributing factor to the injury, the prior employer shall be liable for such occupational disease.

In holding that claimant's condition was an occupational disease was supported by the evidence, the Court in *Kelley v. Banta & Stude Const. Co., Inc.*, 1 S.W.3d 43, 48 (Mo.App. E.D.,1999) stated:

“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. *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 299-300 (Mo.App.1991). 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. *Polavarapu v. General Motors Corp.*, 897 S.W.2d 63, 65 (Mo.App. E.D.1995); *Dawson v. Associated Electric*, 885 S.W.2d 712, 716 (Mo.App. W.D.1994); *Hayes*, 818 S.W.2d at 300; *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413, 415 (Mo.App.1988); *Jackson v. Risby Pallet and Lumber Co.*, 736 S.W.2d 575, 578 (Mo.App.1987).

Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Dawson*, 885 S.W.2d at 716; *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 (Mo.App. W.D.1992); *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App.1991). Claimant must prove “a direct causal connection between the conditions under which the work is performed and the occupational disease.” *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App.1992); *Sellers*, 752 S.W.2d at 416; *Estes v. Noranda Aluminum, Inc.*, 574 S.W.2d 34, 38 (Mo.App.1978).”

Bosnjak, the claimant in this case, testified I started with True Manufacturing on November 2, 2000, and my last day at True was August 2004. For the whole time I was working I felt pain, the claimant said. Bosnjak testified about the departments she worked in, the machines she worked on, and the work activities she had to perform with her hands, fingers and arms while working at True Manufacturing She was asked what department was she working in when she noticed she had problems. Plastics (is) when I started noticing it, in plastics, Bosnjak answered. Agreeing that at some point while involved in doing the plastics work she noticed some sensations in her arms that bothered her, Bosnjak further stated that's when my hands started hurting, and my fingers started going numb. She stated that she told Mike at True about her problems. Agreeing that she had noticed problems with her shoulders while doing this, Bosnjak stated that she had told somebody at True about this, Steve. Agreeing that somebody made out a slip for her when she told them about this, when she reported that she had a problem, Bosnjak added - I believe they did when my fingers were swollen. She stated that these conditions affected her work, and explained this was because my hands were swollen, and I had all this pain. The claimant was asked, with respect to Mike, do you remember the last time you told him about this problem that you had? It was 2003 or 2004, I don't know, Bosnjak answered. The first time I told Mike about it was when my hands got swollen after working, the claimant said, and it was maybe two and a half years after I had started working there. The claimant was asked how her hands, arms and shoulders were feeling when she and True parted ways in August of 2004. I had a lot of problems, a lot of pain, she answered.

With respect to my employment history after this, Bosnjak agreed, I had about a year that I did not work after August of 2004. The claimant was asked - During that period of time when you were off work, did the condition of your shoulders, hands and arms get any better? It was just occasionally that it felt a little bit better, Bosnjak answered. She stated that she went to see Dr. Brown for True, but noted that she did not go to the doctor while she was at True, it was afterwards; she agreed that it was while she was off of work that she went. Bosnjak agreed that her family doctor is Dr. Karahodzic, a general doctor, and the kind of problems this doctor handled for her were colds, that kind of thing. I did not go to Dr. Karahodzic for any of my problems with my hands, arms, or shoulders; I don't think I talked to her about my shoulders or arms; I'm not certain, Bosnjak stated.

With respect to the next employment after I was off work for a year, Bosnjak testified, I work at a kitchen for Washington University packing and cutting now. This year I'm working 40 hours; sometimes you work 48 hours, the claimant said. The claimant was asked if she had any problems with her hands, arms, or shoulders while doing this particular job with the kitchen at Washington University. Yes, Bosnjak answered. Describing what problems she has now, Bosnjak answered I have a lot of problems, a lot of problems in my shoulders and my arms. For example, cutting meat, usually it's done with one hand, but I have so much pain that I have to assist with another hand to cut the meat because I have such strong pain. She was asked if she has any problems doing things over her head now. I really don't have much as far as that's concerned, Bosnjak responded, maybe one or two seconds putting something up or taking it down but --. When queried if she had any problems with respect to doing things like taking a cap off a bottle, Bosnjak said it's difficult for me to open like milk, sodas, everything like that. It's very difficult, it hurts, it's a big problem, she stated. I take Advil and Ibuprofen for the pain I experience, Bosnjak said, I take it pretty much every day. I have very strong pains in the shoulders, arms and in my fingers, the claimant said, and in my hands, they're numb and they hurt. She was asked if there are things that make the pain worse or things that make the pain better. It's very little that actually makes it feel better, Bosnjak answered. Concerning what movements that makes it feel worse, Bosnjak said, for example fixing my hair, I can't do that or washing it. There's a lot of things like that that I can't do, she said. Explaining why she can't fix or wash her hair, Bosnjak stated I can wash my hair, but it's like, I mean you have to hold your hand up. I can't hold my arm up, she said. Agreeing that there are other things that she has trouble doing with her shoulders or hands or arms, Bosnjak stated when I need to wash my curtains, I can take them down, but it takes like a minute and then I have to rest and then start taking the rest of them down, and then the same putting them back up. Concerning yard work at home, I don't do any of that, Bosnjak stated, I try, but I can't do it. She stated I have trouble driving a car because of my condition, and further stated that turning the wheel sometimes is difficult for my shoulders, it hurts. Sometimes I've turned the car on, but I can't tell that I have so I try to start it again, turn it on again, she said.

On cross examination, Bosnjak agreed, that the employer True Manufacturing sent her to Dr. Brown in August 2005 for an evaluation of her hands. Agreeing that after that she had some testing done on her hands and arms by Dr. Phillips in October 2005, Bosnjak added - they checked on my nerves and my strength. She was queried - And then you went back to Dr. Brown in October of 2005; is that right? I'm not certain of the date, the claimant responded. She stated, though, that she believes she has seen Dr. Brown twice. The claimant was queried - You've only been to Dr. Volarich, Dr. Brown, and Dr. Phillips for complaints of your hands; is that right? And shoulders, Bosnjak responded. She stated that she believed in addition to that, she has been to Dr. Rotman, and those are the only four doctors.

Bosnjak agreed, during cross examination, that she started working at the kitchen at Washington University in August 2005. When queried if she had said she worked 40 to 48 hours per week, Bosnjak stated - I'm working 38 to 40 hours a week, sometimes there's not a full 40. She was asked when did she work 48 hours per week. Never, Bosnjak answered, and agreed that the attorney for the employer/insurer must have misunderstood. The claimant agreed that at the kitchen job at Washington University she lifts boxes weighing five to six kilograms. She was queried - And when you're not lifting boxes, you are cutting vegetables? It's team work, Bosnjak answered, you don't lift those boxes by yourself. And even when you're cutting, it's team work, you're cutting with someone else, she said, we're packing and making sandwiches. Bosnjak agreed that part of her job in the kitchen at Wash U. is cutting vegetables. But not every day, she added. She agreed that she also cuts fruit. Agreeing that she also cuts meat, Bosnjak added - It might be though once a week that you're cutting, otherwise you're packing or doing something else. She agreed that when she is cutting vegetables, meat, or fruit, she is using a knife and the knife is held in her hands. Bosnjak agreed that when she packs sandwiches, she is packing them in bags. I put them in plastic bags, and then I tie them, she stated. Bosnjak stated that when she packs salads, she is putting them in small plastic boxes. Bosnjak stated that she has lost time from work at the kitchen job at Wash U. because of her hands or shoulders. She was asked if any doctor had taken her off of work because of her hand complaints. No, I work, Bosnjak responded. Sometimes if I have pain, I'll ask not to go to work because I have pain, Bosnjak testified. She was again asked if a doctor has taken her off work for hand complaints. No, there's not a doctor that says I can't work, Bosnjak responded. When asked if a doctor has ever taken her off work for shoulder complaints, Bosnjak answered - No, because I can work.

During cross examination, the claimant was queried, isn't it correct that you were terminated from True Manufacturing on or about August 11, 2004. Yes, the claimant answered. She agreed that while she was unemployed between August 2004 and August 2005 the pain in her hands continued. I did not do any cleaning work to earn income between August 2004 and August 2005, the claimant stated. Agreeing that she was saying that while she was unemployed between August 2004 and August 2005 her shoulders continued to hurt, Bosnjak further testified - those were strong pains that I had in my shoulder that I still have in my shoulder. Sometimes they would feel a little bit better, but I've always had strong pains, she said. The claimant agreed that her complaints in her hands and shoulders are the same now as when she last worked at True. And it's just getting harder and harder, Bosnjak added. She agreed that she takes Advil one time per day.

The claimant was queried, during cross examination, if she had said she had complaints in her shoulders and hands before she went to the plastics department. I felt the pains, but when I started working at plastics, that's when I felt it more and more, Bosnjak testified, because we were working at plastics maybe 45 percent of the time and then we would be working on machine operators, and then the refrigerators, and then if it was very busy then they might return us back to plastics to work five hours at a time. The claimant was asked - When you told Mike about your hands, I think you said in May of 2004, did you ask for medical treatment? They told me that they wrote a report, Bosnjak answered, and they told me that if I didn't feel better, they would send me to the doctor. The swelling in my hand went down a little bit, she said. She was asked if she went back to work, and Bosnjak answered - Yes, I went back to work. The claimant was asked if at any time between May of 2004 and her last day of work at True in August of 2004 had she asked for medical care on her hands or arms. I had told them that I was hurting and that it was getting worse; the claimant responded. If it had kept on getting worse, I would have seen a doctor, but by then I wasn't working there anymore, Bosnjak said. When further queried if she was answering yes or a no, the claimant responded - What do you mean yes or no; I would have gone to the doctor if I could. The claimant was asked if she had specifically asked Mike or Steve to send her to the doctor before August 11, 2004, which was the last day she had worked. They saw my swollen hands and they asked me did I want to go and I told them if it's going to get worse, I wanted to go and by that time I wasn't working there anymore, Bosnjak answered. She was again asked - when you were terminated on or about August 11, 2004, did you ask for treatment at that time? They kicked me out of the company, Bosnjak responded. She was queried if that was a no. I did not ask, that's correct, Bosnjak admitted, I didn't have time for that; they kicked me out; they threw me out.

The claimant was asked, during cross examination, if there is any doctor that has her under permanent restrictions for her hands, any permanent physical restrictions with regard to her hand activity. They told me that it would always be like that; I would always have to take pills for that, the claimant responded. She was asked if any physician has told her she can't do certain activity with her hands. I know myself what I can and what I cannot do, Bosnjak responded. When again so queried, Bosnjak stated - They told me I can work. The claimant was queried - regarding your shoulders, has any doctor told you you have to limit certain activities you do because of your shoulders? Just to avoid doing things that are higher up; that's all, Bosnjak answered. She agreed that by higher up she meant reaching above her head. The claimant was asked what doctor had given her that restriction. I believe it was Dr. Volarich, Bosnjak said.

During cross examination, Bosnjak was asked if her job at the Washington University kitchen bothers her hands. Of course I have pain, Bosnjak answered, everything I do I have pain. She was asked if the job at Washington University in the kitchen bothers her shoulders. Yes, my shoulders and my arms and my hands, she answered. The claimant was asked if she had told Dr. Volarich when she saw him on February 28, 2005, that she was having no complaints in either elbow. When I have pains in my shoulders and my hands, sometimes I feel a little something there, sometimes, Bosnjak answered. She was asked if she had told Dr. Volarich that. I just said occasionally, very little, Bosnjak answered. The claimant was asked if she had any driving restrictions on her ability to drive a car noted on her driver's license. I do not, Bosnjak responded. When asked if she used any assistive devices to drive, Bosnjak responded - I have rubber placed around my steering wheel.

Mike Lewis (testified that his name is James Michael Lewis) testified by deposition on behalf of the employer/insurer; statements by Lewis were attached to the deposition transcript (No. 7). Lewis stated that he has

been an employee of True Manufacturing for twenty-eight and a half years, and his occupation is factory worker. On May 31, 2004 my position was night shift supervisor, Lewis said. I had been in that position for about six years, he stated. Lewis agreed that he knows Fata Bosnjak, and explained that "(s)he was a worker underneath my supervision". (Lewis Dp. pg. 6)

Lewis agreed that he had been asked to review a portion of Bosnjak's deposition, pages 20 to 38 (which was marked as Employer's Deposition Exhibit 1). Lewis testified as to what he had been asked to do: "Write down what actually happened in departments, give my overall view of what was actually going on....(in reference to)....the jobs, and what she was doing". (Lewis Dp. pg. 7) Lewis identified his handwritten comments in Employer's Deposition Exhibit 1; he agreed that he had made these comments at the time he had reviewed Bosnjak's deposition excerpt. Lewis was asked if anyone had told him what to write down. Lewis answered: "No, ma'am. I was by myself writing that." (Lewis Dp. pg. 47) He stated that no one asked him to revise what he had written down.

Lewis stated at his deposition that Bosnjak never made any complaints to him about her hands hurting while he was her supervisor. When asked if Bosnjak had ever made any complaints to him about her shoulders hurting, Lewis answered – "No, ma'am". (Lewis Dp. pg. 29)

On cross examination, Lewis agreed that Bosnjak was a good worker when he was her supervisor. Lewis agreed that he is no longer a supervisor and is now "just a factory worker", and that this was a demotion. (Lewis Dp. pg. 29) When asked what period of time he was supervisor, Lewis answered: "I cannot remember the years I was supervisor. I believe it was '96 until 2007". (Lewis Dp. pg. 33) Explaining his work hours on second shift, Lewis testified: "I start at 2:45 each day to get job placements for workers. And if there was overtime, we were there until 1:15 in the morning, end of second shift was 12:15." (Lewis Dp. pg. 33) Lewis stated that he really did not work a lot of overtime during the period he was supervisor over Bosnjak.

Lewis stated, during cross examination, that he was presented with Bosnjak's deposition in June, 2007 by the Human Resources department, and was told – "I need to read this over and write down my comments on what was said". (Lewis Dp. pg. 30) Lewis was queried – so you felt what she was saying was accurate, you just added a few things? "Just what was there", Lewis responded. (Lewis Dp. pg. 31)

Considering the medical evidence, it is found that this evidence indicates that the doctors required sophisticated testing of the claimant (i.e. nerve conduction studies) in order to aid in their determination of what problems, if any, the claimant was suffering in her upper extremities. Case law in Missouri states the following on the issue of a causal connection between a physical condition and a claimant's employment in this situation:

"For an injury to be compensable the evidence must establish a causal connection between the accident and the injury. The testimony of a claimant or other lay witness can constitute substantial evidence of the nature, cause and extent of the disability when the facts fall within the realm of lay understanding.

"An injury may be of such a nature [however] that expert opinion is essential to show that it was caused by the accident to which it is ascribed." (Citations omitted) *Griggs*, 503 S.W.2d at 704.

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"...an injury may be of such a nature that expert opinion is essential to show that it was caused by the accident to which it is ascribed. When the condition presented is a sophisticated injury that requires surgical intervention or other highly scientific techniques for diagnosis, and particularly where there is a serious question of pre-existing disability and its extent, the proof of causation is not within the realm of lay understanding..." *Knipp v. Nordyne, Inc.* 969 S.W.2d 236, 240 (Mo.App. 1998)

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"Medical causation not within common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause."

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“A medical expert’s opinion must have in support of it reasons and facts supported by competent evidence which will give the opinion sufficient probative force to be substantial evidence.” (citations omitted) *Pippin v. St. Joe Minerals Corp.*, 799 S.W.2d 898, 904 (Mo.App. 1990)

Consequently, it is found that medical evidence is required in this case to address the question of causal connection of the claimant’s upper extremity problems and her work at True Manufacturing.

Reviewing the medical evidence and opinions in this case, the evidence reveals that the only medical records of treatment for the claimant during her employment at True Manufacturing were the medical records of the claimant’s personal physician, Dr. Edina Karahodzic, M.D. of Family Medicine of South City. (No. 6) It was stipulated to by the claimant at the hearing that Dr. Karahodzic’s records did not have anything in them about Bosnjak’s hands or arms or shoulders. Bosnjak testified that she went to Dr. Karahodzic for things like colds, I didn’t talk to her about anything else because she’s not a specialist. Dr. Karahodzic’s record, it is found, concerned the treatment of Bosnjak for various ailments during the time period of November 2003 through August of 2006. The record reflected that Bosnjak saw Dr. Karahodzic for ailments of female/gynecology problems, and on several occasions for nasal congestion, cough and/or sore throat, and it was written in a 08/01/06 entry that Bosnjak was being referred for an ENT consult. Beginning with the initial 11/03/03 entry and continuing, it was indicated in exam findings notations that neurologic findings were - within normal limits. Musculoskeletal findings were noted as within normal limits or did not indicate any problems throughout the record. Complaints of – anxiety, often - was noted in the 11/03/03 entry; it was written that Bosnjak’s mood and affect was appropriate in the 03/10/06 entry. Other than these stated complaints, the record reflected no other complaints from Bosnjak, i.e. the 03/16/06 entry included – “Doing well no c/o (complaints)”.

The claimant was sent for independent medical examinations by both the employer/insurer and by the claimant’s attorney on the claimant’s behalf. Dr. David T. Volarich, D.O. examined Bosnjak on the claimant’s behalf on February 28, 2005 and prepared a report on that date (No. A).

Dr. Volarich noted that Bosnjak was an immigrant from Bosnia and had only been in the United States since 1998, and that translation services had been provided as Bosnjak “has a very poor understanding of the English language”. Dr. Volarich discussed Bosnjak’s work duties at True Manufacturing during her employment from 11/2/00 until 8/11/04; it was noted that Bosnjak received no medical treatment and was fired from employment on 08/11/04 and had not worked since that time. It was written that Bosnjak began to develop bilateral shoulder pain in late 2003 and shortly thereafter began to develop swelling and numbness in both hands. The doctor noted that Bosnjak had never been diagnosed with any medical disease or metabolic abnormality “that could cause the development of carpal tunnel syndrome or similar entrapment neuropathy”, and was not pregnant now during the onset and progression of her overuse syndrome. “Ms. Bosnjak tells me that prior to the development of these symptoms leading up to 8/04 she had no difficulties with her upper extremities”, the doctor wrote. The doctor wrote of Bosnjak’s relayed symptoms at the 02/28/05 exam, and included in the Brief Summary of Events section of his report:

Leading up to 8/04, she developed pain, numbness, and tingling in both upper extremities at the wrists and hands, as well as bilateral shoulder pain. No treatment has been provided. She continues to experience significant difficulties with both upper extremities, particularly the hands.

Dr. Volarich further wrote in his February 28, 2005 report – “She tells me symptoms in her hands have improved since she is no longer working”. Dr. Volarich discussed his examination findings on 02/28/05, including: a. In each shoulder a 10% loss of motion as evaluated by the Apley scratch test; impingement, apprehension, clunk, and Adson’s testing are all negative; mild weakness noted in confrontational testing of the deltoid and rotator cuff at 4.5/5 bilaterally; trace crepitus is found in the right shoulder, but none is found in the left shoulder; overall findings in each shoulder are consistent with low-grade tendonitis in both the rotator cuff and biceps tendon; b. Phalen’s test is positive where she complains of a significant increase in pressure in both hands; Provocative and Tinel’s signs are

positive bilaterally; over both distal forearms, mild swelling is noted both dorsally and ventrally consistent with both flexor and extensor tenosynovitis. Dr. Volarich's written diagnosis on 02/28/05 was: 1. Repetitive trauma, upper extremities, causing bilateral hand paresthesias including pain, pressure, numbness, and tingling consistent with flexor and extensor tenosynovitis – rule out carpal tunnel syndrome; and 2. Repetitive trauma, bilateral shoulders, causing rotator cuff and bicipital tendonitis – mild. Dr. Volarich wrote the following as his opinion on causation:

It is my opinion the repetitive nature of Ms. Bosnjak's work, as described in the history and job activities section of this report leading up to 8/04, is the substantial contributing factor causing the bilateral upper extremity tenosynovitis of the forearms, as well as symptoms consistent with carpal tunnel syndrome in both hands. It is further my opinion that the repetitive work activities caused bilateral shoulder rotator cuff and bicipital tenosynovitis. She has received no treatment for these conditions.

It was Dr. Volarich's written opinion that Bosnjak had not reached maximum medical improvement as of the date of his evaluation (02/28/05). Dr. Volarich wrote that Bosnjak required evaluation and treatment, and he recommended a nerve conduction study of both wrists and hands to exclude carpal tunnel syndrome. "In the interim, she requires physical therapy to the shoulders, forearms, wrists, and hands for the tendonitis and tenosynovitis complaints", the doctor wrote.

The employer/insurer sent Bosnjak to Dr. Davis M. Brown, M.D. for evaluation, and the doctor wrote a report after seeing Bosnjak on August 17, 2005 (No. 2). Dr. Brown wrote that Bosnjak was a 28-year-old right hand dominant woman who was seen for an independent medical evaluation "regarding problems with both her upper extremities". The doctor noted that the history was obtained from Bosnjak, and there were no accompanying medical records; it was noted that a family member of Bosnjak was present to translate. It was written that Bosnjak had worked for True Manufacturing from November 2000 until August 11, 2004; job duties of Bosnjak were discussed. It was noted that Bosnjak said she first developed problems with her upper extremities sometime around 2002 when she noticed some pain and swelling in both her hands and wrists; additional symptoms noted were tingling in her hands. Dr. Brown wrote: "She can recall no specific traumatic injury. She states she has had no treatment. She states in spite of not working now for over a year, her symptoms have not improved." Physical examination findings by Dr. Brown on 08/17/05 included the following: no visible swelling to either extremity; good active range of motion of both elbows, both wrists and all digits of both hands; negative Tinel's sign over the ulnar nerve of both the right and left cubital tunnel. Direct compression test and elbow flexion test is negative bilaterally; no intrinsic muscle atrophy in either hand; Finkelstein's test is negative bilaterally; has no pain in her elbows with resisted wrist extension or resisted pronation. Dr. Brown's impression/recommendations in his 08/17/05 report included:

The cause of Ms. Bosnjak's subjective complaints is not clear. Her examination is relatively benign. At this point to work up her subjective complaints, I recommend she undergo detailed nerve conduction studies of both upper extremities.....

Based on the fact that Ms. Bosnjak's symptoms have not improved now having not worked at True Manufacturing over a year or working anywhere else suggests that her subjective complaints are not substantially related to her work at True Manufacturing. I anticipate if the substantial cause of her subjective complaints was the work she did at True Manufacturing, then her symptoms would have at least improved by now not having worked there in over a year. Either way, to work up her subjective complaints, I believe Ms. Bosnjak should undergo nerve conduction studies. If those are done, I would be glad to review those and provide an addendum to this report. I see no objective reason why she cannot work at this point.

Dr. Daniel Phillips, M.D. of Neurological & Electrodiagnostic Institute, Inc. prepared a report dated October 10, 2005 after performing a Nerve Conduction & EMG test on Bosnjak (No. 3). Dr. Phillips wrote that Bosnjak was unfortunately not accompanied by a translator, so the only history obtained was that she has right upper extremity pain; it was noted that "(b)ilateral upper extremity median and ulnar nerve studies were requested". The written examination findings by Dr. Phillips on 10/10/05 were:

On examination, the cervical range of motion is intact without complaint. Adson's maneuvers are objectively

negative. There are negative spontaneous Tinel signs at the cubital tunnels and condylar grooves. There are spontaneous negative Tinel or Phalens signs at the carpal tunnels. Motor testing appears unremarkable.

The doctor wrote of his findings upon testing: "To review the most pertinent aspects of the study, bilateral median motor terminal latencies and response voltages fall within the range of normal. The median sensory conduction velocities antidromically and orthodromically across the carpal tunnels fall within the range of normal. The ulnar motor and sensory NCV's were performed segmentally across the elbows and demonstrated normal values." Dr. Phillips' written summary in his October 10, 2005 report was: "In summary, the upper extremity nerves studied fall in the range of normal and the study is not impressive for carpal or cubital tunnel." Dr. Brown prepared a report dated October 18, 2005 (No. 4) noting that he had "received and reviewed the nerve conduction studies that were done on Ms. Bosnjak". Dr. Brown further wrote on 10/18/05 the following:

She underwent nerve conduction studies on October 10, 2005 and these were normal. There was no electrodiagnostic evidence for carpal tunnel syndrome or cubital tunnel syndrome. It was also noted by the examining neurologist that there were negative spontaneous Tinel's sign at the cubital tunnels and condylar grooves and there were negative Tinel's and Phalen's signs at the carpal tunnels. Please refer to my report of August 17, 2005. At that time, Ms. Bosnjak's examination was not significant for a significant ongoing peripheral compression neuropathy. Her examination was relatively benign. This is consistent with her nerve conduction studies as well as examination by a neurologist. With regards to her upper extremities I do not believe her subjective complaints are substantially caused by her work at True Manufacturing for the reasons stated in my report of 8/17/05.

Dr. Volarich prepared another evaluation report after seeing Bosnjak again on April 5, 2006 (No. B). The doctor wrote that he had reexamined Bosnjak for injuries sustained while in the employ of True Manufacturing; it was again noted that translation services were provided. Since seeing Bosnjak on 02/28/05, Dr. Volarich wrote, "Bosnjak has begun a new job at Washington University as a baker making cookies where she continues to work". Dr. Volarich wrote that Bosnjak had "undergone additional treatment since I last saw her"; it was noted that Bosnjak had presented to Dr. Brown on 8/17/05 for an IME, and Dr. Brown had ordered a nerve conduction study. Dr. Volarich wrote that an EMG was performed on 10/10/05 and failed to reveal abnormality (according to medical records), and that Dr. Brown suggested that there was no upper extremity peripheral neuropathy and the injury was not related to Bosnjak's work at True Manufacturing, and that Bosnjak was not currently under active treatment. Bosnjak's work duties beginning in August 2005 at Washington University Bakery were discussed by Dr. Volarich: "She performed a variety of duties, making sandwiches, stacking cookies, cutting breads, mixing and emptying ingredients. She worked 40 hours per week and took a 30 minute break." In the Present Complaints Concerning the Injury Leading Up To 8/04 section of his 04/05/06 report, Dr. Volarich wrote the following:

I reviewed with Ms. Bosnjak the information she provided to me in my report of February 28, 2005. She agrees it is accurate. She tells me that symptoms have not improved since she has been off work and that when her shoulders become painful she cannot accomplish much.

Dr. Volarich's examination findings on 04/05/06 included: a. findings in each shoulder remain similar as evaluated by the Apley scratch test; impingement, apprehension, clunk, and Adson's testing are all negative but pain occurs at the extremes of motion consistent with a rotator cuff tendonitis; also a suggestion of myofascial pain in the trapezius muscles and shoulder girdles bilaterally; mild weakness again identified in the shoulders at +4.5/5 as previously noted; no crepitus is found in either shoulder today; again, the overall findings are consistent with tendonitis of both the rotator cuff and biceps bilaterally; b. Phalen's, reverse Phalen's and provocative testing are negative bilaterally; the soft tissues in the forearms ventrally and dorsally remain somewhat tense but significant swelling is not found today; again the findings in these extremities are consistent with a flexor and extensor tenosynovitis mild in nature. Dr. Volarich's diagnosis on 04/05/06 was: 1. Repetitive trauma bilateral upper extremities causing bilateral shoulder rotator cuff and biceps tendonitis with associated myofascial pain as well as causing bilateral forearm flexor and extensor tenosynovitis with myofascial pain. Dr. Volarich wrote in the 04/05/06 report the following as his opinion on causation:

It is my opinion the repetitive nature of Ms. Bosnjak's work as described in the history and job activities section of

this report leading up to 8/04 are the substantial contributing factors as well as the prevailing factors causing the bilateral shoulder rotator cuff and bicipital tendonitis with associated myofascial pain as well as causing the bilateral forearm flexor and extensor tenosynovitis with myofascial pain that required conservative treatment.

It was Dr. Volarich's written opinion on 04/05/06 that Bosnjak had achieved maximum medical improvement based on the examination and the treatment provided. The doctor recommended medication and physical therapy to maintain Bosnjak at her current state. Dr. Volarich wrote that Bosnjak was not a surgical candidate, and that she could work with some restrictions in regards to her shoulders and her forearms/wrists/hands (which he listed). Disability ratings were assessed by Dr. Volarich in his 04/05/06 report.

Dr. Mitchell B. Rotman, M.D. performed an independent medical examination of Bosnjak on behalf of the employer/insurer on July 9, 2007 and prepared an evaluation report on that date. (No. 5) It was noted that Bosnjak was present with an interpreter. Dr. Rotman initially wrote the following:

She is 30 years old. She used to be a machine operator for True Manufacturing. She is complaining of carpal tunnel and pain in both of her shoulders. She feels that her fingers gets swollen, that her shoulders hurt and that when she does her job with her arms and causes discomfort she complains of having no pain in her hands and she can't open a bottle of water. She is right handed. Both arms are involved. She hasn't worked at True Manufacturing however since August 2005. She states that she worked for True for four years and did a lot of overhead work. Now she works as a server in a school kitchen. Presently she is off on school break. She is in her second year of that job. She denies any specific injuries. She states that she started hurting in both of her shoulders two years after she started with True Manufacturing and that she has numbness and tingling down her arms. Sometimes she can't bend them. She occasionally has some neck discomfort. (sic)

Dr. Rotman noted that Bosnjak had had nerve studies done in the past and had seen several physicians, and that she had had no surgeries. The doctor wrote: "She states that her hands and fingers are swollen in the morning and they hurt all the time. Her job at True Manufacturing was eventually terminated...Hobbies include watching T.V., shopping and cleaning the house." Bosnjak's pain diagram, the doctor wrote, "shows pain over her top and back of both shoulders, in front of both shoulders and numbness over the top of both hands". Discussing Bosnjak's relayed history of her job duties, Dr. Rotman wrote: "She described her job at True as operating different manufacturing machines such as aluminum cutting machines for plastic reductions. Past history prior to that included working for Spaan Cleaning Company which she did cleaning and housekeeping." Dr. Rotman discussed his review of medical records as well as his review of Bosnjak's deposition. The doctor discussed his exam findings. Dr. Rotman wrote of his Impression/Plan in his July 9, 2007 report:

Ms. Bosnjak has no evidence of rotator cuff tendonitis impingement or biceps tendonitis. Her pain is myofascial in the trapezial regions. To be sure that she didn't have any referred pain from her neck I took a lateral cervical spine x-ray which was completely normal today. She has already had complete workup with regards to numbness and tingling. She has had normal nerve studies in the past. There have been no objective findings to correlate with her subjective complaints. Her physical examination showed some nonphysiologic findings including the changes on the two point discrimination suggesting that her subjective complaints are completely unreliable at this point. What I did find today was a completely normal shoulder exam with regards to range of motion and strength. Her pain complaints with regards to her shoulder exam had no correlation to the biceps or rotator cuff. As I stated, her pain was over the trapezial region. This is myofascial pain. This is not a work-related injury and would not be related to the biceps tendon or rotator cuff. Presently, I see no evidence of a work related injury that resulted from any activity at True Manufacturing Company during her four years of employment. I would not recommend any further treatment. She can be full duty.

It is found, considering the medical evidence and opinions, that the substantial weight of this evidence indicates only subjective complaints from the claimant with no objective findings or test results supporting any neurological problems for the claimant; it is found that the substantial weight of the medical evidence and opinions are that there is no injury or disease to the claimant's upper extremities caused by the claimant's occupational duties at True Manufacturing. It is found that Dr. Volarich's opinions are opposite of the majority of the medical opinions and tests, and, further, are inaccurate and/or not supported by the evidence [i.e. Dr. Volarich's written

opinion in his 04/05/06 report that Bosnjak had achieved maximum medical improvement “based on the examination and the *treatment provided*”. (Emphasis added) There is no evidence of the claimant ever receiving treatment for her upper extremity complaints, only evaluations. It was confirmed during cross examination that the only doctors Bosnjak saw in relation to her alleged work related physical problems were Drs. Volarich, Brown, Phillips and Rotman, and the record of these physicians reflect evaluation of the claimant only.]. It is found that there is no medical evidence of problems or treatment in regards to the claimant’s upper extremities during or immediately after her leaving employment with True Manufacturer in August 2004. Again, there are no records of treatment for the claimant’s upper extremities of any kind; the medical evidence concerns evaluations of the claimant, and the first of this medical evidence occurs in 2005, and the substantial weight of the competent medical evidence indicates normal clinical findings and testing results with only subjective complaints, and with medical opinions that the subjective complaints were not substantially related to Bosnjak’s work at True Manufacturing. Furthermore, it is found that the claimant’s allegation of problems with her upper extremities while working for or soon after leaving her employment with True Manufacturing is not supported by the evidence, thus putting her credibility into question. During questioning about Bosnjak’s testimony that she had told her supervisor, Mike, about problems with her hands in May 2004, when further questioned if she had asked Mike for treatment in May of 2004, Bosnjak answered - They told me that they wrote a report, and they told me that if I didn't feel better, they would send me to the doctor. The swelling in my hand went down a little bit, she further said. Bosnjak was queried if she had specifically asked Mike or Steve to send her to the doctor before August 11, 2004, which was the last day she had worked. They saw my swollen hands and they asked me did I want to go and I told them if it's going to get worse, I wanted to go and by that time I wasn't working there anymore, Bosnjak answered. After further query, Bosnjak admitted that she did not ask for treatment at that time, on or about August 11, 2004. Mike Lewis, who testified on behalf of the employer/insurer, was a credible witness and stated that he was the claimant’s supervisor and that Bosnjak never made any complaints to him about her hands or shoulders hurting while he was her supervisor. The Division file for this case includes the Claim for Compensation filed by the claimant which indicates the Claim was date-stamped filed with the Division on October 8, 2004; the Division’s Acknowledgement of Claim Filed letter is dated October 18, 2004, and indicates the letter was sent to the employer True Manufacturer and the workers’ compensation insurance company. The Division file includes a Report of Injury filed by the employer with the Division on November 2, 2004, and this report indicates that the employer was notified of Bosnjak’s upper extremities injuries on October 22, 2004, or after the filing of the Claim. Additionally, the treatment records of Dr. Karahodzic for a time period of November 2003 through August of 2006, included treatment entries of Bosnjak at or near May 2004 and August 2004: a. a December 8, 2003 treatment entry included a list for problems from headaches, to chest pain, and included a category of “Tingling/numbness of fingers/toes”, however the only problem indicated was a gynecological problem; b. the next treatment entry of March 24, 2004 (which included a notation of – “Poor historian”) indicated treatment for abnormal glucose, the entry listed examination categories and at the Musculoskeletal line indicated no problems (handwritten and somewhat illegible), and nothing was written at the Neurologic category; c. the next treatment entry of March 10, 2006 again indicated no problems at the Musculoskeletal category and at the Neurologic category was written – “WNL” (within normal limits), and the entry indicated treatment on this date was for sore throat/cough. This evidence does not support Bosnjak’s testimony about asking for treatment, symptoms of swollen hands, and telling her employer of problems with her upper extremities while working at True Manufacturer; again, this puts the claimant’s credibility in question.

Thus, considering the above findings, it is further found that the claimant has failed to establish a causal connection of her present upper extremity physical complaints (described by the substantial weight of the competent medical evidence and opinions as subjective complaints with no correlating objective findings) with her work duties at True Manufacturing while employed from November 2, 2000 through August 11, 2004. Compensation, therefore is denied.

The remaining issues are moot.

## SUMMARY OF THE EVIDENCE

Fata Bosnjak, the claimant, testified that she lives in St. Louis, Missouri. My date of birth is November 2, 1976, Bosnjak said. I was born in Bihacic, Bosnia, the claimant said. I am married, Bosnjak stated, and my husband's name is Ibro. With me lives my husband, Ibro, and my son, Aidin who is seven, the claimant said. The claimant was asked her immigration status, and she answered - Green card. My highest level of education is 8th grade, Bosnjak said. I am five feet and one inch tall, Bosnjak said, and I weigh 135 pounds. I am right handed, she said.

I have never had diabetes or hypothyroidism, Bosnjak said, and I have never had rheumatoid arthritis. I have never served in the military, Bosnjak stated.

When I lived in Europe, I did not work, Bosnjak testified. I came to America in 1998, she stated, and have lived here in America and always lived in the St. Louis area.

When I first came to America, my first job was cleaning at Purina part-time, Bosnjak testified, and I worked here for about four or five months. I did not hurt myself while working for Purina, she said. My next job was working for Volpi cutting salami meat, cheeses, etc, and packaging them, Bosnjak said. I had no injuries while I worked at Volpi, she said. My next job was at a graphics company working with pictures, the claimant said. Explaining what she did, Bosnjak testified there were cartons of pictures that would come in and you would tear them apart and throw the bad parts in the trash. I did not hurt myself working for the graphics company, the claimant said. I didn't work for the graphics company for very long, Bosnjak said, two or three months maybe. After the graphics company, I worked cleaning a school for a little more than six months maybe, Bosnjak said. I did not hurt myself while I worked for the school, she said. Bosnjak agreed that it was after this that she got a job with True Manufacturing. I started with True on November 2, 2000, she said, and my last day at True was August 2004.

I worked the second shift at True, Bosnjak stated. It was eight hours, she said, and then there was some overtime. Explaining how consistent was the overtime she got, Bosnjak stated it would be every day an hour overtime, and some Saturdays five hours. I would work some Saturdays, and sometimes not, she said. In the beginning when I worked for True, I could say I was averaging 45 hours a week for maybe a year or two, Bosnjak stated, and then after that it was 40 hours a week. I different kinds of jobs at True, Bosnjak said. I did machine operator work, I worked with plastics, I worked polishing, and I worked drilling and putting screws in refrigerators, she said. Bosnjak agreed that between these four jobs, this was over 90 percent of what she did. About 30 percent of my time was dealing with the refrigerators, she agreed, and then the polishing and machine operator got the rest of the time. Bosnjak discussed what she did as a machine operator for True. There were lots of varieties of machines, there were five or six different names for machines, she said, multihead, TV machines, presses, cutting, putting in line wires, and welding. Quarter bar machine was another one. In the multihead machine job, this job the parts come in a box, she said, and you bend down, you pick up the parts and you put them on the

machine, and then from another box you take wires that you put in a container up high on the machine. You press a button and then the part goes inside and then it's welded, and the part comes back out, she said, so when it comes back out because it's been welded and pushed down, you have to pull, tug at it to get it up. And then you place it in another box, Bosnjak said. She was asked how much do the parts weigh for the multihead machine. When I first take the part, it's not very heavy, Bosnjak said, but after they've been welded, they might be between two to three kilograms. Stating how many times she perform that operation in a day, Bosnjak said - It's probably approximately 800 parts in a day, eight hours, and that's depending on if the parts are larger or smaller. This is a two-handed job, the claimant said, everything is done with both hands. You reach down and pick up the part with both hands; you put the wire and lift it up over your head, put it in the container and then pull the part out with both hands and put it in a box, all with both hands.

Bosnjak discussed how she performed the operation of the TV machine. Again the parts come in a box, and you again have to bend down and lift the parts out. Then you have to lift them up a little over my head, then you take other metal parts that you also put in the machine. You take those by two and push it in and then you take the other one and push it in, Bosnjak said, and then you press a button, and it's welded together. Then I place that in another box, she said. When asked how much did these parts weigh, Bosnjak responded - It's not that that's very heavy, it's just that it's very high. It's at about my head, eye level, she stated. With this operation, again depending on the size -- some parts are smaller, some parts are larger -- it could be a thousand on average a day or it may have been 900 if they were smaller, Bosnjak testified.

With respect to the press machine, Bosnjak stated, this is where parts were folded or bent. There were ropes there to prevent you from -- a safety -- to prevent you from moving your hands, she said. The ropes were in front of the machine, and they were hanging from -- like what you would hang a clothes line from, the claimant said. Agreeing that these were placed on her wrists, Bosnjak stated when I came to work I had to put gloves on and then there was a rope and the round part would come in and around my finger. She was asked - when the machine would operate, would the rope do something with your hands? You are not allowed to take this off your hands, so when you're picking the parts up to place on the machine or even moving the parts into the machine, it's very difficult to move around with it, Bosnjak responded. Agreeing that there was tension in the ropes when she was doing this, Bosnjak further testified as you're going into the machine, it tightens up on your hand and your fingers and arms. When questioned about the range of the weight of the parts that she had to put into the press machine, Bosnjak responded - It's not very heavy, it's that you have to use your fingers to press it; and then you put it in the machine and press it with your foot, and then the machine presses it. But as you're holding the part and you press with your foot, the part -- it moves, she said, it jumps. In the course of a day I would do maybe 700 to 800, but they're folded on both sides, Bosnjak said.

The next machine, the cutting machine, Bosnjak testified, there's different machines for that, like for cutting plastics, et cetera. Describing the process for this machine, Bosnjak stated, like for plastics, it's large pieces of plastics that you push in and then with one hand you cut. This was normally done with my right hand, Bosnjak said. These pieces of plastic weigh weren't very heavy, she said, but you had lots of them you had to make. The number of parts that had to be made in a day, the claimant said, it's a lot, it could be between 800, 900.

The next machine involved some welding, Bosnjak said. It's with wires, she stated. Again parts come, you pick them up and place them on the machine; you always have to bend down and get them, the claimant said. And you take other parts, thin wires, and slowly put them in order with your fingers, she said. However long that part is, that's how many rows of wire you have, Bosnjak said. Then you have something long that you have to put around it so that doesn't come apart, so that tightens it, the claimant stated, and then you push that inside the machine. Then you slowly bring it towards yourself as you're welding it, she said. Stating how many times she performed this operation in a day, Bosnjak said it could be maybe 220 a day were made, maximum. Concerning the weight of the parts, Bosnjak stated it depended, some parts were smaller, some parts were larger. But it was very hard to pull up after they had been welded, the claimant added. She explained that this was because as the machine is welding each wire it pushes down very hard, and so when it's completed, it's stuck and you have to pull it up, yank it. Bosnjak agreed that pulling it up was a two-handed job. You can't do it with one hand, she said. After you pulled the part up, the claimant said, then you put it back in a box.

The final machine was a quarter bend machine, Bosnjak said. It's again something that you have to with your fingers put into the machine, she said. Concerning the size of the parts, she said, sometimes they're smaller and sometimes they're very big, it just depends. Again, there are wires you take; they are thicker wires than the other wires we used, the claimant said. You take these wires and place higher than your head always; there's a place where you put them, she said. You take the part by two and you put it in one part of the machine and then in another part of the machine, Bosnjak testified, and then you take the finished part which is heavier, and then you press a button. Then you're waiting for it to be welded, and then you place it back in the box, she said. With this operation I did about 750 in a day, Bosnjak said.

The claimant was asked if she had covered all the machines in the machine operator job. There's a lot more, but they're all basically the same types of operations, Bosnjak answered.

Bosnjak agreed that she also did the job of polishing as a polisher. Discussing the things that she polished, Bosnjak stated completed parts came and you had to polish them. These parts were usually bigger rather than smaller, she said, they weighed, the smaller ones, maybe like two kilograms and the larger ones between three and four kilograms. They were all about the same length, she said, maybe half a meter by half a meter. When I did the polishing, the machine was in front of me, she said, and the machine came somewhere above my chest, but below my neck. To polish the part you had to constantly move your arms back and forth to polish this, and that's a lot of movements, the claimant said, and then you had to do both sides. She was queried if there was any pressure she had to put on the object. You have to do this slowly pushing in and slowly move from side to side so that it's done correctly, Bosnjak answered. I think 220 parts is the most you can polish for the eight hours of a day, she said.

Bosnjak agreed that she worked on the refrigerators as well. This job involved using both hands, first one and then the other, the claimant said. Explaining the procedure, Bosnjak testified when you first come to your workplace, you take the drill to make the holes, and then you put it on the air hose cable that operates it. You open the door of the refrigerator; these are big refrigerators, I couldn't reach the top of them, the claimant said. I had to stand on where they were placed on the line, she said, and I had to reach really hard and far to be able to reach where I had to make the holes, and I always seemed to have to bend to the side and up to be able to reach that. So the first few are really hard to reach up high, and then you work your way down and you get lower and lower, she said. When queried - you do that for how many sides to the refrigerator - Bosnjak responded -- The refrigerator has four sides, and if I remember, one row has eight holes. Agreeing that she had something to do with the bottoms, Bosnjak further stated - below the door you had to put something with screws. She was asked to describe the movement she had to make with this, and Bosnjak responded - There was a piece of metal aluminum that I would have to place underneath and hold very strongly and sturdily and drill holes with screws. After I drilled the holes in the refrigerator, then in those holes I had to place screws, the claimant said. I did between 60 to 70 of these refrigerators in a day, she said, and some of them were larger and some of them were smaller. In every refrigerator I think it came to 32 holes that I had to drill, she stated, and agreed that she then had to place a screw in each hole after she drilled it out. And when you're making these refrigerators, Bosnjak added, you can't stand inside the refrigerator, so you're leaning into the refrigerator. She was asked how many of these holes was she making with her arm over her head with the drill as to each refrigerator. With this refrigerator job I did not have any straps or anything attached to my hands, she said.

For the whole time I was working I felt pain, the claimant said.

Bosnjak agreed that with respect to the next job that she had, which was plastics, she had said she spent 40 to 45 percent of her time in plastics.

The claimant was asked what department was she working in when she noticed she had problems. Plastics (is) when I started noticing it, in plastics, Bosnjak answered.

Explaining what was involved in working in the plastics department, Bosnjak testified that that position entailed painted parts coming to you in which you put plastic. She agreed that this involve some racks. First, the parts come in; these racks come in in boxes that are very tightly packed, the claimant said, you can hardly pull them out.

You can't sometimes even pull them out by yourself, she stated, you might have to ask for assistance from someone else, and you pull two, three at a time. These racks weigh maybe one to two kilograms each, the claimant stated, but you're carrying two to three at a time. From where you're picking these parts up, it's an extremely narrow pathway that you have to take them to your workplace, the claimant said, and you always have to lift them up over your head and carry them maybe the length of this room, maybe more. Stating how many times in an hour she would carry these racks over her head, Bosnjak said from my workplace and carrying them back and maybe sometimes helping other workers, maybe 50 times an hour. After I took them to workplace, then we would place the cut plastics on them, the claimant said, and I would have to push them hard onto each wire. Bosnjak agreed that she was saying there were pieces of plastic that she would put on the metal rack. Sometimes it would be maybe 6 or 8 or 11 pieces, she said. Describing the movement she would have to make to put the plastic onto the racks, Bosnjak testified - it was very hard; you have to press very hard, and it wasn't a smooth surface, it was a rough surface and you had to push down hard with your hands, with your fingers. She was asked if she used tools to do this. Sometimes we'd use a hammer, Bosnjak answered. After completing this task, the racks would collect on the table and you would pick them up and carry them back to the empty boxes you'd taken them out of, she said. Bosnjak agreed that she would carry them out the same way she had brought them in.

The claimant was asked if at some point while involved in doing the plastics work did she notice some sensations in her arms that bothered her. Yes, the claimant answered, that's when my hands started hurting, and my fingers started going numb. Agreeing that she told somebody at True, Bosnjak stated - I told Mike that. She was asked if she had ever noticed any problems with her shoulders while she was doing this. Yes, also the same, Bosnjak responded. She stated that she had told somebody at True about this, Steve. Agreeing that somebody made out a slip for her when she told them about this, when she reported that she had a problem, Bosnjak added - I believe they did when my fingers were swollen. She stated that these conditions affected her work. Because my hands were swollen, and I had all this pain, Bosnjak said. The claimant was asked, with respect to Mike, do you remember about the last time you told him about this problem that you had? It was 2003 or 2004, I don't know, Bosnjak answered. The first time I told Mike about it was when my hands got swollen after working, the claimant said, and it was maybe two and a half years after I had started working there.

The claimant was asked how her hands, arms and shoulders were feeling when she and True parted ways in August of 2004. I had a lot of problems, a lot of pain, she answered. When asked, What kinds of things would cause you pain, Bosnjak responded - Yes, I can't take off a T-shirt. She was queried - How did you manage to get the T-shirt off after you had it on if you couldn't get it on. It's with great difficulty, Bosnjak answered, I have to bend down, way down, and with difficulty take it off.

With respect to my employment history after this, Bosnjak agreed, I had about a year that I did not work after August of 2004. And then I got a job after that, she agreed. The claimant was asked - During that period of time when you were off work, did the condition of your shoulders, hands and arms get any better? It was just occasionally that it felt a little bit better, Bosnjak answered. She stated that she went to see Dr. Brown for True. Bit I didn't go while I was at True to the doctor, Bosnjak said, it was afterwards. She agreed that it was while she was off of work that she went. Bosnjak agreed that she went to Dr. Volarich as well at her attorney's request. Agreeing that her family doctor is Dr. Karahodzic, Bosnjak stated that she is a general doctor, the kind of problems this doctor handles for her are colds, that kind of thing. I did not go to Dr. Karahodzic for any of my problems with my hands, arms, or shoulders; I don't think I talked to her about my shoulders or arms, I'm not certain, Bosnjak stated.

With respect to the next employment I had after I was off work for a year, Bosnjak testified, I work at a kitchen now for Washington University packing and cutting. This year I'm working 40 hours, sometimes you work 48 hours, she said. The claimant was asked if she had any problems with her hands, arms, or shoulders while doing this particular job with the kitchen at Washington University. Yes, Bosnjak answered. She was asked - what problems do you have now. I have a lot of problems, Bosnjak answered, a lot of problems in my shoulders and my arms. For example, cutting meat, usually it's done with one hand, but I have so much pain that I have to assist with another hand to cut the meat because I have such strong pain, Bosnjak stated. She was asked if she has any problems doing things over her head now. I really don't have much as far as that's concerned, Bosnjak responded, maybe one or two seconds putting something up or taking it down but --. When queried if she had any problems with respect to doing things like taking a cap off a bottle, Bosnjak said it's difficult for me to open like milk, sodas,

everything like that. It's very difficult, it hurts, it's a big problem, she stated. I take Advil and Ibuprofen for the pain I experience, Bosnjak said. I take it pretty much every day. I have very strong pains in the shoulders, arms and in my fingers, the claimant said, and in my hands, they're numb and they hurt. She was asked if there are things that make the pain worse or things that make the pain better. It's very little that actually makes it feel better, Bosnjak answered. Concerning what movements that makes it feel worse, Bosnjak said, for example fixing my hair, I can't do that or washing it. There's a lot of things like that that I can't do, she said. Explaining why she can't fix or wash her hair, Bosnjak stated I can wash my hair, but it's like, I mean you have to hold your hand up. I can't hold my arm up, she said. Agreeing that there are other things that she has trouble doing with her shoulders or hands or arms, Bosnjak stated when I need to wash my curtains, I can take them down, but it takes like a minute and then I have to rest and then start taking the rest of them down, and then the same putting them back up. Concerning yard work at home, I don't do any of that, Bosnjak stated, I try, but I can't do it. She stated that she has trouble driving a car because of her condition, and further stated that turning the wheel sometimes is difficult for my shoulders, it hurts. Sometimes I've turned the car on, but I can't tell that I have so I try to start it again, turn it on again, she said.

Bosnjak agreed that she saw a doctor for True Manufacturing in June of this year, a Dr. Rotman. She was asked to tell what kind of an examination this doctor gave her. Almost nothing, Bosnjak said, he took some kind of pictures of my neck, he touched my shoulder. I think most of the time he was on the telephone, Bosnjak stated, and he also checked on the strength of my hands. The nurse is who did that; she might have spent maybe ten minutes with me, the claimant said. The doctor didn't even spend that with me, she said. Agreeing that the nurse is the one who spent time with her, Bosnjak further stated she's the one who did the checking on the strength and wrote something down on the paper. She stated that True provided a translator for that visit with Dr. Rotman. But I wasn't very happy with the job they did, Bosnjak said. He seemed to talk very quickly and didn't seem very serious, she explained.

On cross examination by the employer/insurer, it was noted that the claimant's expert, Dr. Volarich's, report did not document any history regarding the multihead machine; Bosnjak was asked if she had told Dr. Volarich about her work on the multihead machine. I talked about a lot of machines, Bosnjak answered, I don't know if I talked about all of them; I don't know which ones. She was asked if she had told Dr. Volarich about her activities on the TV machine. I talked to him about working on different kinds of machines, Bosnjak responded. She was further queried - Do you remember if you talked to him about the TV machine? The machines that I was talking about were all the machines I was working on generally as a machine operator, that I talked to him about, the claimant answered. The claimant admitted that she did not believe she specifically told Dr. Volarich about the press machine where she had straps on her arms. Bosnjak stated that the straps in the press machine were adjustable to make them shorter or longer. A supervisor comes and marks down how much you can move around, she added. Bosnjak was queried if she had told Dr. Volarich regarding the cutting machine and how many pieces she processed per day. That's tied in with plastics, Bosnjak responded. The claimant was further queried if that was a yes or a no. I think I told him I was cutting, she answered. Bosnjak agreed that she told Dr. Volarich she was processing 800 to 900 pieces per day. Regarding the welding job on the machine you described, the claimant was asked, did you tell Dr. Volarich you were welding? Yes, I told him I was welding on different machines, Bosnjak answered. She was asked if she had told Dr. Volarich that she operated the welding machine with a foot pedal. I might have, Bosnjak answered, they didn't ask me that many questions for me to go into that kind of detail. The claimant then said that Dr. Volarich did ask her many questions. It takes a long time to explain, she said. Bosnjak agreed that Dr. Volarich had an assistant who took information from her at that appointment. They were writing things down, Bosnjak added. When I went to the doctor, the nurse asked me all kinds of questions, the claimant said, then he asked some questions when I went in also. Bosnjak agreed that she saw the nurse separately from Dr. Volarich. She was asked if she told Dr. Volarich about the quarter bar machine and her work involved in that. I believe I explained to him all my jobs, Bosnjak responded. When further queried she stated - I believe yes, I explained what I was doing.

Bosnjak agreed, during cross examination, that the employer True Manufacturing sent her to Dr. Brown in August 2005 for an evaluation of her hand. Agreeing that then after that she had some testing done on her hands and arms by Dr. Phillips in October 2005, Bosnjak added - they checked on my nerves and my strength. She was queried - And then you went back to Dr. Brown in October of 2005; is that right? I'm not certain of the date, the

claimant responded. She stated, though, that she believes she has seen Dr. Brown twice. It was noted that Bosnjak had described her evaluation with Dr. Rotman in July of 2007 and he had evaluated her for her shoulders. Yes, that was the doctor I waited a long time to see, Bosnjak responded. The claimant agreed that she is not a medical doctor. Bosnjak stated that she did not know what information Dr. Rotman had reviewed in conjunction with his examination of her in July 2007. The claimant was queried - You've only been to Dr. Volarich, Dr. Brown, and Dr. Phillips for complaints of your hands; is that right? And shoulders, Bosnjak responded. She stated that she believed in addition to that, she has been to Dr. Rotman, and those are the only four doctors.

Bosnjak agreed, during cross examination, that she started working at the kitchen at Washington University in August 2005. When queried if she had said she worked 40 to 48 hours per week, Bosnjak stated - I'm working 38 to 40 hours a week, sometimes there's not a full 40. She was asked when did she work 48 hours per week. Never, Bosnjak answered, and agreed that the attorney for the employer/insurer must have misunderstood. The claimant agreed that at the kitchen job at Washington University she lifts boxes weighing five to six kilograms. She was queried - And when you're not lifting boxes, you are cutting vegetables? It's team work, Bosnjak answered, you don't lift those boxes by yourself. And even when you're cutting, it's team work, you're cutting with someone else, she said, we're packing and making sandwiches. Bosnjak agreed that part of her job in the kitchen at Wash U. is cutting vegetables. But not every day, she added. She agreed that she also cuts fruit. Agreeing that she also cuts meat, Bosnjak added - It might be though once a week that you're cutting, otherwise you're packing or doing something else. She agreed that when she is cutting vegetables, meat, or fruit, she is using a knife and the knife is held in her hands. Bosnjak agreed that when she packs sandwiches, she is packing them in bags. I put them in plastic bags, and then I tie them, she stated. Bosnjak stated that when she packs salads, she is putting them in small plastic boxes. Bosnjak stated that she has lost time from work at the kitchen job at Wash U. because of her hands or shoulders. She was asked if any doctor had taken her off of work because of her hand complaints. No, I work, Bosnjak responded. Sometimes if I have pain, I'll ask not to go to work because I have pain, Bosnjak testified. She was again asked if a doctor has taken her off work for hand complaints. No, there's not a doctor that says I can't work, Bosnjak responded. When asked if a doctor has ever taken her off work for shoulder complaints, Bosnjak answered - No, because I can work.

During cross examination, Bosnjak was questioned about her personal doctor, Dr. Odonna Karahodzic and a November 3, 2003 appointment date. I don't recall if that was the date; I did go to her, Bosnjak responded. It was noted that on November 3, 2003 Dr. Karahodzic makes no documentation that Bosnjak complained of hand or shoulder complaints; the claimant was asked if she would agree that she made no arms or hands complaints to the doctor on November 3, 2003. I might have said something, I might not have said something; it may have been 2004, Bosnjak answered. I don't know, I don't recall, she said. The claimant was queried - You went to Dr. Karahodzic on December 8, 2003 and made no complaints at that visit of your hands and shoulders; is that right? I went to her for things like colds, Bosnjak stated, I didn't talk to her about anything else because she's not a specialist. When further queried about the December 8, 2003 appointment and that she did not tell Dr. Karahodzic about her hands or shoulders, Bosnjak responded - I can't recall that. The claimant was queried - When you went to Dr. Karahodzic on March 10, 2006, you did not tell her about your hands complaints?

STIPULATION BY THE CLAIMANT at this point: We'll stipulate that Dr. Karahodzic's records don't have anything in there about the hands or arms or shoulders.

Yeah, she's not for that, the claimant stated.

During cross examination, the claimant was queried, isn't it correct that you were terminated from True Manufacturing on or about August 11, 2004. Yes, the claimant answered. She agreed that while she was unemployed between August 2004 and August 2005 the pain in her hands continued. Agreeing that she was saying that while she was unemployed between August 2004 and August 2005 her shoulders continued to hurt, Bosnjak further testified - those were strong pains that I had in my shoulder that I still have in my shoulder. Sometimes they would feel a little bit better, but I've always had strong pains, she said. The claimant agreed that her complaints in her hands and shoulders are the same now as when she last worked at True. And it's just getting harder and harder, Bosnjak added. She agreed that she takes Advil one time per day.

Bosnjak agreed, during cross examination, that while she worked at True she worked many, many different jobs. She was asked what portion of her time at True was spent being a machine operator. Percentage, that would be about ten percent, Bosnjak answered. She agreed that the term "machine operator" included the jobs multihead, TV machine, presses, cutting machine, welding, and quarter bar machine. You would work on this one, and then another one; it's always changing, the claimant said. Agreeing that she was placed in positions at True to cover for employees who weren't there, Bosnjak added - Whenever someone didn't show up, they would put me there. No exactly everyday I might be doing something different, she said. She was asked if it was every week. Sometimes you would be working on the plastics or sometimes on the machines, she answered, and then that's where that comes in, the 10 and 30 percent. Sometimes it could be a month on the machines and then on plastics and then back on the machines again, Bosnjak stated.

She stated that she believed it was correct that when she said 40 to 45 percent of her time was in plastic, that was during her entire employment at True between November 2000 and August 2004.

The claimant was asked if there was a job she described - coating. I don't know what that is, Bosnjak responded. She agreed that her first position at True was a machine operator and then she moved to the plastics department. The claimant was queried - Once in the plastics department did you ever go back to being a machine operator? They could send me to refrigerators or they could send me back for one day like a machine operator and then bring me back to plastics, Bosnjak answered. The type of job I did truly varied from month to month but not from day-to-day, she said, but the machines changed daily. I don't know if, when I worked in the plastics department where I described coating the plastic on a rack, if that was called an organizer, Bosnjak said, nobody ever told me what that was called. Bosnjak agreed that the size of the item she coated with plastic did vary. A half a meter by half a meter was one example, Bosnjak said, and sometimes they might have been as big as a meter. Agreeing that they were sometimes smaller than half a meter by half a meter, Bosnjak added - Twelve RF I believe was the smallest. The claimant agreed that in order to push the plastic onto the metal wires she wore a glove. That wasn't smooth, it was rough, she added, and sometimes you might forget to put your gloves on and you would be pushing on it and it was very rough and hard on your hands, and then your hands get red and swollen. It's a very hard job, the claimant said. She was asked if she would put the glove on when she realized she forgot to put it on. As soon as you start working and you start pressing, you lose your feelings in your hand, Bosnjak responded. The claimant then agreed that when she realized she had forgot to put on her glove she put it on. But it's about the same with or without the gloves, Bosnjak stated, you still have the same feelings in your hands. She was asked - When you put the plastic on the metal wires, did you use a sliding motion away from your body? No, towards me, Bosnjak answered. She agreed that sometimes you put a piece of plastic on the metal wire with a rubber mallet, and that may take four to eight hits with the rubber mallet. It might take more if it's not welded properly, Bosnjak added, you try and try and you might have to throw it away. At times it took four to eight hits to put the tag on, Bosnjak said, and sometimes the wire might have been too wide, and we would still have to try to put the plastic on that.

Agreeing that she had said when she carried the metal shelves used in the plastics department, they weighed one to two kilograms a piece, Bosnjak further testified when we picked them up, that's what they were but when we were finished with them they weighed much more than that. If you take more, bigger, then it would be heavier than three kilogram when finished, and if you take a smaller, then it would be less, so it's all approximate, Bosnjak stated. Maybe a small one, the thinner rack, can weigh like three, but a larger one can be four or five kilograms, the claimant said. Agreeing that she had said when she carried these metal shelves on which she put plastic, she carried them over her head, Bosnjak further said - I would lift them from the box and I would put them up over my head to carry them to my workplace, and then when I was done at the workplace, I would have to pick them up and carry them over my head back to boxes. You could not carry these metal shelves in front of you because the walkway was very narrow, and it was impossible to carry it that way, Bosnjak said. I never carried the metal racks behind me, she said, I mean, when you're lifting up, I mean it's over your head, part of it might be behind you. She was asked if she had ever seen anyone carry these racks in front of them to get from one place to another in that work area. To carry in front of myself, nobody carried them in front of themselves, the claimant answered, everybody carried the way that I did. She agreed that she had said she carried or lifted these metal racks over her head 50 times an hour. You pick it up, you carry it to your place, you work it, you carry it back and also if you have to move the product and get it out quickly, you might assist other workers to get that carried also, the claimant further stated. If I lifted these wire racks 50 times over my head in one hour, that would only be for two to three hours in one day, Bosnjak agreed. Sometimes you worked five hours, it depended on how much work that there was at the plastic; occasionally that would happen, that they would only need you for five hours because of the demand and send you somewhere else, she added. Bosnjak agreed that there were days when she lifted the wire

rack 50 times over her head in a one-hour time span for just two to three hours in an eight-hour day. I believe it might have been ten kilograms I have lifted above my head at any one time, the claimant said, but I don't believe I lifted more than that. Agreeing that the number of the metal racks that she lifted at a time was up to her, Bosnjak added - We all worked like that, you decided; if you take three or four of them, they're heavier so you choose how many you can carry.

Describing the polishing job and the buffing wheel that was mounted on a bench grinder, Bosnjak stated it was narrow, and it was standing on a stone; it was maybe like if you could say on a wall, it would be turning. She agreed that the item she was polishing was a wire shelf. It was all metal, the claimant added. Agreeing that it had a sharp edge that was hanging over the frame, Bosnjak further stated that you had to push and move it back and forth to make it real smooth. The polishing machine would be spinning, she agreed. And, and while it was turning, you would have to be holding it in front of you and moving the part from side to side, the claimant said. The weight of these metal shelves was approximately two kilograms or it could be more, she stated. Most of them were the larger size, Bosnjak said, and they would be somewhere in maybe the three kilogram. It depended on the size, she said. Very rarely was it less than three kilograms, she stated. Around three kilograms was the heaviest one, she stated, and you have to remember that you don't have anywhere to lean up against, you're holding this the entire time you're doing these motions, you're carrying it. The claimant agreed that she would be holding the wire shelf at approximately chest level. And you're holding it and you're moving it back and forth, she added, you're doing one side and then you have to do the other side.

During cross examination, Bosnjak testified about the drilling job. Agreeing that she had described drilling with an air drill, she further said - there's the machine and then you have to hook it up with the cable that makes it work. She was queried if the drill she used weighed approximately one kilogram. It may not have even been a kilogram, she answered. When I drilled the inside of the cooler, the surface I was drilling was the inside of the refrigerator, on the sides, and then underneath as well, Bosnjak said. She was asked if the holes were prepunched that she was drilling. It was marked where you're supposed to drill the hole, Bosnjak answered, and there's four sides, four lines that you have to do that. Agreeing that the refrigerators where she drilled the holes had some holes above her shoulder, Bosnjak added - yes, from all four lines, all sides. There were five holes on each line above my shoulders, and there's four lines so that would be 20, the claimant said. The refrigerator units were never laid on their side for me to reach the upper holes, Bosnjak said, they were standing straight, and then they went on to be checked. She was asked if she had ever asked for a step stool or anything to help her reach the upper holes. There's no place that you could put that because it's on a track that they pull the refrigerators on, she said. The claimant was queried - But you're standing next to the refrigerator when you drill the holes? Yes, I'm standing next to it on the track, Bosnjak answered.

The claimant was asked, during cross examination, if there was a coding job. For coding, I don't know that, Bosnjak responded. The refrigerators, they were looking it over, checking it; I don't know if that was a coding job or not, she further stated, I did not do that.

The claimant was queried, during cross examination, if she had said she had complaints in her shoulders and hands before she went to the plastics department. I felt the pains, but when I started working at plastics, that's when I felt it more and more, Bosnjak testified, because we were working at plastics maybe 45 percent of the time and then we would be working on machine operators, and then the refrigerators, and then if it was very busy then they might return us back to plastics to work five hours at a time. The claimant was asked - When you told Mike about your hands, I think you said in May of 2004, did you ask for medical treatment? They told me that they wrote a report, Bosnjak answered, and they told me that if I didn't feel better, they would send me to the doctor. The swelling in my hand went down a little bit, she said. She was asked if she went back to work, and Bosnjak answered - Yes, I went back to work. The claimant was asked if at any time between May of 2004 and her last day of work at True in August of 2004 had she asked for medical care on her hands or arms. I had told them that I was hurting and that it was getting worse; the claimant responded. If it had kept on getting worse, I would have seen a doctor, but by then I wasn't working there anymore, Bosnjak said. When queried if she was answering yes or a no, the claimant responded - What do you mean yes or no; I would have gone to the doctor if I could. The claimant was asked if she had specifically asked Mike or Steve to send her to the doctor before August 11, 2004, which was the last day she had worked. They saw my swollen hands and they asked me did I want to go and I told them if it's

going to get worse, I wanted to go and by that time I wasn't working there anymore, Bosnjak answered. She was asked - when you were terminated on or about August 11, 2004, did you ask for treatment at that time? They kicked me out of the company, Bosnjak responded. She was asked if that was a no. I did not ask, that's correct, Bosnjak admitted, I didn't have time for that; they kicked me out; they threw me out.

The claimant was asked, during cross examination, if there is any doctor that has her under permanent restrictions for her hands, any permanent physical restrictions with regard to her hand activity. They told me that it would always be like that; I would always have to take pills for that, the claimant responded. She was asked if any physician has told her she can't do certain activity with her hands. I know myself what I can and what I cannot do, Bosnjak responded. When again so queried, Bosnjak stated - They told me I can work. The claimant was asked - regarding your shoulders, has any doctor told you you have to limit certain activities you do because of your shoulders? Just to avoid doing things that are higher up; that's all, Bosnjak answered. She agreed that by higher up she meant reaching above her head. The claimant was asked what doctor had given her that restriction. I believe it was the attorney's doctor, whatever his name is, Bosnjak said, and stated that she believed it was Dr. Volarich.

During cross examination, Bosnjak was asked if her job at the Washington University kitchen bothers her hands. Of course I have pain, Bosnjak answered, everything I do I have pain. She was asked if the job at Washington University in the kitchen bothers her shoulders. Yes, my shoulders and my arms and my hands, she answered. The claimant was asked if she had told Dr. Volarich when she saw him on February 28, 2005, that she was having no complaints in either elbow. When I have pains in my shoulders and my hands, sometimes I feel a little something there, sometimes, Bosnjak answered. She was asked if she had told Dr. Volarich that. I just said occasionally, very little, Bosnjak answered. The claimant was asked if she had any driving restrictions on her ability to drive a car noted on her driver's license. I do not, Bosnjak responded. When asked if she used any assistive devices to drive, Bosnjak responded - I have rubber placed around my steering wheel.

I did not do any cleaning work to earn income between August 2004 and August 2005, the claimant stated during cross examination.

When I said I worked the second shift, I'm not certain I remember what hours of the day was that, Bosnjak stated, but I believe it was 3:45 p.m. or maybe 4:15 p.m. to 12:15.

Mike Lewis (he testified that his name is James Michael Lewis) testified by deposition on behalf of the employer/insurer on October 26, 2007, and statements by Lewis were attached to the deposition transcript (No. 7). Lewis stated that he is forty-eight years old. He has been an employee of True Manufacturing for twenty-eight and a half years, and his occupation is factory worker. On May 31, 2004 my position was night shift supervisor, Lewis said. I had been in that position for about six years, he stated. Lewis agreed that he knows Fata Bosnjak, and explained that "(s)he was a worker underneath my supervision". (Lewis Dp. pg. 6)

Lewis agreed that he had been asked to review a portion of Bosnjak's deposition, pages 20 to 38 (which was marked as Employer's Deposition Exhibit 1), and stated that he had reviewed it in June of 2007. Lewis testified as to what he had been asked to do: "Write down what actually happened in departments, give my overall view of what was actually going on....(in reference to).....the jobs, and what she was doing". (Lewis Dp. pg. 7) Lewis identified his handwritten comments in Exhibit 1; he agreed that he had made these comments at the time he had reviewed Bosnjak's deposition excerpt.

Lewis' written comments in Employer's Deposition Exhibit 1. Page 20: Bosnjak was asked how many different jobs did she do while at True, and her answer was - "Many. Many different." Lewis wrote that Bosnjak did - "All machines in W/S dept, plastics dept, cleaning line, oven dept (making door handles)". In further discussion of how many different jobs she had performed, Bosnjak further stated: "I was machine operator. I was working with plastic polishing. Oh. There was like making holes inside the refrigerator. I had to make holes." Lewis further elaborated, noting: "cleaning line drilling & plugging tank sides for standards." Page 21: Lewis put a question mark at Bosnjak's answer to the question if there were any other positions in addition to the four she had named (1.

machine operator, 2. working in the plastics department, 3. doing some gliding with the machine, and 4. making the holes inside of the refrigerator); Lewis questioned Bosnjak's answer – "There were like what she said by machines. So she did codes, coding." Lewis prepared a written page after deposition page 21:

"In plastic dept there were usually two to three rows of baskets put into the horseshoe shaped dept and were 5-6 basket deep. There was anywhere between 24" – 36' aisle way between rows so you could open the baskets to get the organizers out. The sizes of the organizers varied from 17 1/2" x 20 5/8" for a GDM 10/12 up to 23 3/8" x 35 1/4" for a GDM 35 RF. Those would be carried to the work tables and stacked or placed on the floor so the parts would be close. The slides were place on the wires on the bottom and pushed in by hand while wearing a leather glove by using a sliding motion pushing away from your body. If they didn't get a pricing strip they were put back in the basket. If they needed a pricing strip it was put on the front of the organizer with a rubber mallet, depending on the size of the organizer this took 4-5 hits. How the parts were carried to and from the baskets was up to the worker, they were carried either in front of their body or behind sometimes two pieces in each hand or carried over the head if they were long organizers, but this would have been only 2 pcs at a time. The baskets were tagged and wrapped with plastic then pulled out by the forklift driver and more were put in their place. It was most times a fast paced work area."

Page 22: At the question - Which one of these jobs do you feel like caused your hand problems?, and Bosnjak answered "Drilling machine, the holes", Lewis additionally wrote – "hand held air drill". Page 24-25: Bosnjak was asked what was the weight of the items she had to carry in the plastics department, and Lewis elaborated on Bosnjak's answer (*Lewis in italics*) – "Metal net would arrive (*Metal baskets full of organizers*) metal nets we were supposed to apply the plastic (*plastic slides*). We also had to hammer and had to fasten this plastic with the hammer. (*had to hammer on price strips with rubber mallet*). Fasten the plastic on the metal net with the hammer. (*organizer most times were put on by sliding your gloved hand over the plastic to pop it into place*)". Describing other activities she did in the plastics department, Bosnjak stated – "These items would come into the boxes. (*organizers sometimes were put into cardboard boxes 4' x 4'*). You need to lift and carry the boxes, empty them." Bosnjak was asked how much each weighed, and she answered – "each net (*organizer*) that we got was about two or three kilograms. Weighed two or three kilograms. (*I don't know exact weigh but these may be close*)" Page 26: Stating that she was lifting and carrying these nets/organizers that weight approximately 10 kilograms, Bosnjak agreed that she was carrying it over her head, and Lewis further wrote – (*Could carry waist high in front of herself or behind herself and overhead*). Page 33: Discussing how she would lift and carrying things when she was buffing or polishing, Bosnjak testified – "For example, if there is some part of a box I would have to bend to pick up something, hang it polish it, take it off, put it back in the box. Lewis wrote a page between page 33 and 34:

"I believe she is talking about narrow gap wire shelves when they are welded most times the wire's hung over the frame and then they had to be run through the nibbler and this left a sharp edge on the wire that had to be buffed down. The buffing wheel was mounted on a standard bench grinder and the shelf was moved back and forth across the wheel till smooth. I don't know what the exact weight of these parts were but I don't think they were over 7 lbs."

Page 34-35: Bosnjak testified about work activities that hurt her shoulders, stating – "As I said, about five kilograms. Because a lot of times the whole net is made of wires. So it's heavy.....She's telling since the machine is in front of you you have to press to do the polishing.....Machine is doing polishing.....You are holding a part that has to be polished, and you have to move it in different directions and press it onto the machine." When asked if there were any other activities in the plastics department that hurt her shoulder with lifting, Bosnjak answered: "The third that was really hard was – making the holes, working with drilling." Lewis wrote a statement which was placed between deposition pages 34 and 35:

"She would go work on the cleaning line to drill and plug. The tank sides on the inside of the cooler were pre punched and had a backup strip of 22 ga. metal taped to it. When it was foamed the tape prevented the foam from coming into the cooler but the holes had to be redrilled. On the GDM 10/12's most people opened the door and held it with their leg and reached inside to redrill them and then insert a riv-nut into the hole. On the 23 + 26 cooler it was possible to sit inside this cooler to do this also you would be drilling from the floor of the cooler where you are sitting to over the level of your head. A air operated hand drill was used for this."

Page 38: Testifying as to when she had initially report hand problems to someone at work, Bosnjak said – “There was the supervisor Mike, and he was the first one I told about my problems (specifically my hands).” Lewis added – *(Mike Woelfel was overseeing the plastics dept. at this time. I believe he was also first aid provider.)* Bosnjak was asked about how long before she had stopped working at True did she tell Mike about her hand problems, and she answered – “I was telling him in 2003. I remember that I told him last time in May 2004. In August 2004 I was not working. So it was three or four months.” Lewis added – *(I was moved to Bldg #2 in Jan or Feb. 04 after Ed S. passed away.)* At his deposition, Lewis stated that the time frame he thought Woelfel was overseeing the plastics department was “2004”. (Lewis Dp. pg. 28)

Lewis stated at his deposition that Bosnjak never made any complaints to him about her hands hurting while he was her supervisor. When asked if Bosnjak had ever made any complaints to him about her shoulders hurting, Lewis answered – “No, ma’am”. (Lewis Dp. pg. 29)

On cross examination, Lewis agreed that Bosnjak was a good worker when he was her supervisor. Lewis agreed that he is no longer a supervisor and is now “just a factory worker”, and that this was a demotion. (Lewis Dp. pg. 29) When asked what period of time he was supervisor, Lewis answered: “I cannot remember the years I was supervisor. I believe it was '96 until 2007”. (Lewis Dp. pg. 33) Explaining his work hours on second shift, Lewis testified: “I start at 2:45 each day to get job placements for workers. And if there was overtime, we were there until 1:15 in the morning, end of second shift was 12:15.” (Lewis Dp. pg. 33) Lewis stated that he really did not work a lot of overtime during the period he was supervisor over Bosnjak.

Lewis stated, during cross examination, that he was presented with Bosnjak’s deposition in June, 2007 by the Human Resources department, and was told – “I need to read this over and write down my comments on what was said”. (Lewis Dp. pg. 30) Lewis was queried – so you felt what she was saying was accurate, you just added a few things? “Just what was there”, Lewis responded. (Lewis Dp. pg. 31)

During cross examination, it was noted that a kilogram is about 2.2 pounds; Lewis noted that Bosnjak “has ten kilograms, so that’s 20 pounds over her head”. (Lewis Dp. pg. 40) (RULING: Employer/Insurer’s objection on grounds of – objection, he knows that – is overruled. Lewis Dp. pg. 39) It was noted that actually, it would be 22 pounds, and Lewis’ response was: “Organizers didn’t weigh that much. On page 27, she has that she lifted that above her head 50 times in an hour. I did not see her lift that over her head that many times in one hour. She did carry them in front of her and behind her.” (Lewis Dp. pg. 40) When asked how many people did he supervise, Lewis answered: “At one time I had 102 people....It fluctuated” (Lewis Dp. pp. 40-41) He was queried that he would not have been able to necessarily view every worker every night, and Lewis responded: “I went around and checked every worker every night. I just made complete circles all night long.” (Lewis Dp. pg. 41) Lewis admitted that he would not be able to see what the employees were doing all night, “(n)ot for a full eight hour shift, no”. (Lewis Dp. pg. 41) Lewis further noted that Bosnjak had said on page 29, line 17 that the organizers were approximately 3 to 4 feet. “Our organizers are not that big”, Lewis stated. (Lewis Dp. pg. 41) When queried if there was a reason he had not commented on this when he had initially seen Bosnjak’s deposition, Lewis responded – “That is when I went back and just wrote it down on a note pad for the full length back to the page I have behind 21.” (Lewis Dp. pg. 41) Agreeing that the page behind deposition page 21 would deal with the things on deposition page 29, Lewis further stated: “That’s where I had the dimensions of the organizer, the smallest size to the largest.” (Lewis Dp. pg. 42) He was asked how did he obtain this information, did he just know it by heart. Lewis answered: “No. It’s wrote down so we can go back, so we know to check the parts. So, we have a copy to go back.” (Lewis Dp. pg. 42)

On redirect examination, Lewis was asked if anyone had told him what to write down. Lewis answered: “No, ma’am. I was by myself writing that.” (Lewis Dp. pg. 47) He stated that no one asked him to revise what he had written down.

Dr. David T. Volarich, D.O. prepared an evaluation report dated February 28, 2005 (No. A) after seeing Bosnjak on that date. It was noted that Bosnjak was an immigrant from Bosnia and had only been in the United

States since 1998, and translation services had been provided as Bosnjak “has a very poor understanding of the English language”. Dr. Volarich discussed Bosnjak’s work duties at True Manufacturing during her employment from 11/2/00 until 8/11/04; it was noted that Bosnjak received no medical treatment and was fired from employment on 08/11/04 and had not worked since that time. It was written that Bosnjak began to develop bilateral shoulder pain in late 2003 and shortly thereafter began to develop swelling and numbness in both hands. The doctor noted that Bosnjak had never been diagnosed with any medical disease or metabolic abnormality “that could cause the development of carpal tunnel syndrome or similar entrapment neuropathy”, and was not pregnant now during the onset and progression of her overuse syndrome. “Ms. Bosnjak tells me that prior to the development of these symptoms leading up to 8/04 she had no difficulties with her upper extremities”, the doctor wrote. The doctor wrote of Bosnjak’s relayed symptoms at the 02/28/05 exam, and included in the Brief Summary of Events section of his report:

Leading up to 8/04, she developed pain, numbness, and tingling in both upper extremities at the wrists and hands, as well as bilateral shoulder pain. No treatment has been provided. She continues to experience significant difficulties with both upper extremities, particularly the hands.

Dr. Volarich further wrote in his report – “She tells me symptoms in her hands have improved since she is no longer working”. Dr. Volarich discussed his examination findings on 02/28/05, including: a. In each shoulder a 10% loss of motion as evaluated by the Apley scratch test; impingement, apprehension, clunk, and Adson’s testing are all negative; mild weakness noted in confrontational testing of the deltoid and rotator cuff at 4.5/5 bilaterally; trace crepitus is found in the right shoulder, but none is found in the left shoulder; overall findings in each shoulder are consistent with low-grade tendonitis in both the rotator cuff and biceps tendon; b. Phalen’s test is positive where she complains of a significant increase in pressure in both hands; Provocative and Tinel’s signs are positive bilaterally; over both distal forearms, mild swelling is noted both dorsally and ventrally consistent with both flexor and extensor tenosynovitis. Dr. Volarich’s written diagnosis on 02/28/05 was: 1. Repetitive trauma, upper extremities, causing bilateral hand paresthesias including pain, pressure, numbness, and tingling consistent with flexor and extensor tenosynovitis – rule out carpal tunnel syndrome; and 2. Repetitive trauma, bilateral shoulders, causing rotator cuff and bicipital tendonitis – mild. Dr. Volarich wrote the following as his opinion on causation:

It is my opinion the repetitive nature of Ms. Bosnjak’s work, as described in the history and job activities section of this report leading up to 8/04, is the substantial contributing factor causing the bilateral upper extremity tenosynovitis of the forearms, as well as symptoms consistent with carpal tunnel syndrome in both hands. It is further my opinion that the repetitive work activities caused bilateral shoulder rotator cuff and bicipital tenosynovitis. She has received no treatment for these conditions.

It was Dr. Volarich’s written opinion that Bosnjak had not reached maximum medical improvement as of the date of his evaluation (02/28/05). Dr. Volarich wrote that Bosnjak required evaluation and treatment, and he recommended a nerve conduction study of both wrists and hands to exclude carpal tunnel syndrome. “In the interim, she requires physical therapy to the shoulders, forearms, wrists, and hands for the tendonitis and tenosynovitis complaints”, the doctor wrote.

Dr. Volarich prepared another evaluation report after seeing Bosnjak again on April 5, 2006 (No. B). The doctor wrote that he had reexamined Bosnjak for injuries sustained while in the employ of True Manufacturing; it was again noted that translation services were provided. Since seeing Bosnjak on 02/28/05, Dr. Volarich wrote, “Bosnjak has begun a new job at Washington University as a baker making cookies where she continues to work”. Dr. Volarich wrote that Bosnjak had “undergone additional treatment since I last saw her”; it was noted that Bosnjak had presented to Dr. Brown on 8/17/05 for an IME, and Dr. Brown had ordered a nerve conduction study. Dr. Volarich wrote that an EMG was performed on 10/10/05 and failed to reveal abnormality (according to medical records), and that Dr. Brown suggested that there was no upper extremity peripheral neuropathy and the injury was not related to Bosnjak’s work at True Manufacturing, and that Bosnjak was not currently under active treatment.. Bosnjak’s work duties beginning in August 2005 at Washington University Bakery was discussed: “She performed a variety of duties, making sandwiches, stacking cookies, cutting breads, mixing and emptying ingredients. She worked 40 hours per week and took a 30 minute break.”

In the Present Complaints Concerning the Injury Leading Up To 8/04 section of his 04/05/06 report, Dr. Volarich wrote the following:

I reviewed with Ms. Bosnjak the information she provided to me in my report of February 28, 2005. She agrees it is accurate. She tells me that symptoms have not improved since she has been off work and that when her shoulders become painful she cannot accomplish much.

Dr. Volarich's examination findings on 04/05/06 included: a. findings in each shoulder remain similar as evaluated by the Apley scratch test; impingement, apprehension, clunk, and Adson's testing are all negative but pain occurs at the extremes of motion consistent with a rotator cuff tendonitis; also a suggestion of myofascial pain in the trapezius muscles and shoulder girdles bilaterally; mild weakness again identified in the shoulders at +4.5/5 as previously noted; no crepitus is found in either shoulder today; again, the overall findings are consistent with tendonitis of both the rotator cuff and biceps bilaterally; b. Phalen's, reverse Phalen's and provocative testing are negative bilaterally; the soft tissues in the forearms ventrally and dorsally remain somewhat tense but significant swelling is not found today; again the findings in these extremities are consistent with a flexor and extensor tenosynovitis mild in nature. Dr. Volarich's diagnosis on 04/05/06 was: 1. Repetitive trauma bilateral upper extremities causing bilateral shoulder rotator cuff and biceps tendonitis with associated myofascial pain as well as causing bilateral forearm flexor and extensor tenosynovitis with myofascial pain. Dr. Volarich wrote in the 04/05/06 report the following as his opinion on causation:

It is my opinion the repetitive nature of Ms. Bosnjak's work as described in the history and job activities section of this report leading up to 8/04 are the substantial contributing factors as well as the prevailing factors causing the bilateral shoulder rotator cuff and bicipital tendonitis with associated myofascial pain as well as causing the bilateral forearm flexor and extensor tenosynovitis with myofascial pain that required conservative treatment.

It was Dr. Volarich's written opinion on 04/05/06 that Bosnjak had achieved maximum medical improvement based on the examination and the treatment provided. The doctor recommended mediation and physical therapy to maintain Bosnjak at her current state. Dr. Volarich wrote that Bosnjak was not a surgical candidate, and that she could work with some restrictions in regards to her shoulders and her forearms/wrists/hands (which he listed). Disability ratings were assessed by Dr. Volarich in his 04/05/06 report: a. 15% permanent partial disability to each the right upper extremity at the shoulder and the left upper extremity at the shoulder "due to the rotator cuff and biceps tendonitis with associated myofascial pain. The rating accounts for weakness and lost motion in the non-dominant and the dominant arm"; and b. 15% permanent partial disability to each the right upper extremity at the forearm and the left upper extremity at the forearm "due to the flexor and extensor tenosynovitis with occasional paresthesias in the hands. The rating accounts for weakness and pain in the non-dominant and the dominant arm".

Dr. Davis M. Brown, M.D. wrote a report after seeing Bosnjak on August 17, 2005 (No. 2). Dr. Brown wrote that Bosnjak was a 28-year-old right hand dominant woman who was seen for an independent medical evaluation "regarding problems with both her upper extremities". The doctor noted that the history was obtained from Bosnjak, and there were no accompanying medical records; it was noted that a family member of Bosnjak was present to translate. It was written that Bosnjak had worked for rue manufacturing from November 200 until August 11, 2004; job duties of Bosnjak was discussed. It was noted that Bosnjak said she first developed problems with her upper extremities sometime around 2002 when she noticed some pain and swelling in both her hands and wrists; additional symptoms noted were tingling in her hands. Dr. Brown wrote: "She can recall no specific traumatic injury. She states she has had no treatment. She states in spite of not working now for over a year, her symptoms have not improved." Physical examination findings by dr. Brown on 08/17/05 included the following: no visible swelling to either extremity; good active range of motion of both elbows, both wrists and all digits of both hands; negative Tinel's sign over the ulnar nerve of both the right and left cubital tunnel Direct compression test and elbow flexion test is negative bilaterally; no intrinsic muscle atrophy in either hand; Finkelstein's test is negative bilaterally; has no pain in her elbows with resisted wrist extension or resisted pronation. Dr. Brown's impression/recommended in his 08/17/05 report included:

The clause of Ms. Bosnjak's subjective complaints is not clear. Her examination is relatively benign. At this point to

work up her subjective complaints, I recommend she undergo detailed nerve conduction studies of both upper extremities.....

Based on the fact that Ms. Bosnjak's symptoms have not improved now having not worked at True manufacturing over a year or working anywhere else suggests that her subjective complaints are not substantially related to her work at True Manufacturing. I anticipate if the substantial cause of her subjective complaints was the work she did at True Manufacturing, then her symptoms would have at least improved by now not having worked there in over a year. Either way, to work up her subjective complaints, I believe Ms. Bosnjak should undergo nerve conduction studies. If those are done, I would be glad to review those and provide an addendum to this report. I see no objective reason why she cannot work at this point. Since this was an independent medical evaluation, no treatment was rendered, no follow up appointment was made.

Dr. Daniel Phillips, M.D. of Neurological & Electrodiagnostic Institute, Inc. prepared a report dated October 10, 2005 after performing a Nerve Conduction & EMG on Bosnjak (No. 3). Dr. Phillips wrote that Bosnjak was unfortunately not accompanied by a translator, so the only history obtained was that she has right upper extremity pain; it was noted that "(b)ilateral upper extremity median and ulnar nerve studies were requested". The written examination findings by Dr. Phillips on 10/10/05 were:

On examination, the cervical range of motion is intact without complaint. Adson's maneuvers are objectively negative. There are negative spontaneous Tinel signs at the cubital tunnels and condylar grooves. There are spontaneous negative Tinel or Phalens signs at the carpal tunnels. Motor testing appears unremarkable.

The doctor wrote of his findings upon testing: "To review the most pertinent aspects of the study, bilateral median motor terminal latencies and response voltages fall within the range of normal. The median sensory conduction velocities antidromically and orthodromically across the carpal tunnels fall within the range of normal. The ulnar motor and sensory NCV's were performed segmentally across the elbows and demonstrated normal values." Dr. Phillips' written summary was: "In summary, the upper extremity nerves studied fall in the range of normal and the study is not impressive for carpal or cubital tunnel."

Dr. Brown prepared a report dated October 18, 2005 (No. 4). The doctor wrote that he had "received and reviewed the nerve conduction studies that were done on Ms. Bosnjak". Dr. Brown further wrote on 10/18/05 the following:

She underwent nerve conduction studies on October 10, 2005 and these were normal. There was no electrodiagnostic evidence for carpal tunnel syndrome or cubital tunnel syndrome. It was also noted by the examining neurologist that there were negative spontaneous Tinel's sign at the cubital tunnels and condylar grooves and there were negative Tinel's and Phalen's signs at the carpal tunnels. Please refer to my report of August 17, 2005. At that time, Ms. Bosnjak's examination was not significant for a significant ongoing peripheral compression neuropathy. Her examination was relatively benign. This is consistent with her nerve conduction studies as well as examination by a neurologist. With regards to her upper extremities I do not believe her subjective complaints are substantially caused by her work at True manufacturing for the reasons stated in my report of 8/17/05.

Medical records of Dr. Edina Karahodzic, M.D. of Family Medicine of South City concerned the treatment of Bosnjak for various ailments during the time period of November 2003 through August of 2006 (No. 6). The record reflected that Bosnjak saw Dr. Karahodzic for ailments of female/gynecology problems, and on several occasions for nasal congestion, cough and/or sore throat; it was written in a 08/01/06 entry that Bosnjak was being referred for an ENT consult. Beginning with the initial 11/03/03 entry and continuing, it was indicated that neurologic findings were - within normal limits. Musculoskeletal findings were noted as within normal limits or did not indicate any problems throughout the record. Complaints of - anxiety, often - was noted in the 11/03/03 entry; it was written that Bosnjak's mood and affect was appropriate in the 03/10/06 entry. Other than these stated complaints, the record reflected no other complaints from Bosnjak, i.e. the 03/16/06 entry included - "Doing well no c/o (complaints)".

Dr. Mitchell B. Rotman, M.D. prepared an evaluation report dated July 9, 2007 after performing an independent medical examination of Bosnjak on that date on behalf of the employer/insurer. (No. 5) It was noted that Bosnjak was present with an interpreter. Dr. Rotman initially wrote the following:

She is 30 years old. She used to be a machine operator for True manufacturing. She is complaining of carpal tunnel and pain in both of her shoulders. She feels that her fingers gets swollen, that her shoulders hurt and that when she does her job with her arms and cases discomfort she complains of having no pain in her hands and she can't open a bottle of water. She is right handed. Both arms are involved. She hasn't worked at True manufacturing however since August 2005. She states that she worked for True for four years and did a lot of overhead work. Now she works as a sever in a school kitchen. Presently she is off on school break. She is in her second year of that job. She denies any specific injuries. She states that she started hurting in both of her shoulders two years after she started with True Manufacturing and that she has numbness and tingling down her arms. Sometimes she can't bend them. She occasionally has some neck discomfort. (sic)

Dr. Rotman noted that Bosnjak had had nerve studies done in the past and had seen several physicians, and that she had had no surgeries. The doctor wrote: "She states that her hands and fingers are swollen in the morning and they hurt all the time. Her job at True Manufacturing was eventually terminated...Hobbies include watching T.V., shopping and cleaning the house." Bosnjak's pain diagram, the doctor wrote, "shows pain over her top and back of both shoulders, in front of both shoulders and numbness over the top of both hands". Discussing Bosnjak's relayed history of her job duties, Dr. Rotman wrote: "She described her job at True as operating different manufacturing machines such as aluminum cutting machines for plastic reductions. Past history prior to that included working for Spaan Cleaning company which she did cleaning and housekeeping." Dr. Rotman discussed his review of medical records as well as his review of Bosnjak's deposition. The doctor discussed his exam findings. Dr. Rotman wrote of his Impression/Plan in his July 9, 2007 report:

Ms. Bosnjak has no evidence of rotator cuff tendonitis impingement or biceps tendonitis. Her pain is myofascial in the trapezial regions. To be sure that she didn't have any referred pain from her neck I took a lateral cervical spine x-ray which was completely normal today. She has already had complete workup with regards to numbness and tingling. She has had normal nerve studies in the past. There have been no objective findings to correlate with her subjective complaints. Her physical examination showed some nonphysiologic findings including the change son the two point discrimination suggesting that her subjective complaints are completely unreliable at this point. What I did find today was a completely normal shoulder exam with regards to range of motion and strength. Her pain complaints with regards to her shoulder exam had no correlation to the biceps or rotator cuff. As I stated, her pain was over the trapezial region. This is myofascial pain. This is not a work-related injury and would not be related to the biceps tendon or rotator cuff. Presently, I see no evidence of a work related injury that resulted from any activity at True manufacturing company during her four years of employment. I would not recommend any further treatment. She can be full duty.

Date: February 5, 2008

Made by: /s/ LESLIE E.H. BROWN  
LESLIE E.H. BROWN  
*Chief Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ JEFFREY BUKER  
JEFFREY BUKER  
*Director*  
*Division of Workers' Compensation*

**SUMMARY OF THE EVIDENCE** starts on page 16.

Section 287.067 was amended in 2005.

See, also, the typed version of this statement which Lewis stated was accurate, marked at the deposition as Employer's Exhibit 2 (Lewis Dp. pg. 14).

See, also, the typed version of this statement which Lewis stated was accurate, marked and offered at the deposition as Employer's Exhibit 3 (Lewis Dp. pg. 29).

See, also, the typed version of this statement which Lewis stated was accurate, marked at the deposition as Employer's Exhibit 4 (Lewis Dp. pg. 21).