

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

Injury No.: 00-129558

Employee: Jeff Botkins  
Employer: Diemakers/Intermet  
Insurer: Liberty Mutual Fire Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: September 22, 2000

Place and County of Accident: Monroe City, Monroe County, 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. We have reviewed the evidence, read the briefs of the parties, heard oral argument and considered the whole record. Pursuant to §286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated December 28, 2007.

#### Preliminaries

The issues stipulated in dispute at trial were nature and extent of permanent disability; second injury fund liability; liability for past medical expenses; and future medical treatment. The parties stipulated that employee sustained an injury by occupational disease on the alleged date of injury, September 22, 2000, while under the employ of employer.

The administrative law judge determined and concluded that employee failed to prove that the event on September 22, 2000 was compensable rather than merely a continuation of the complaints and symptoms arising from a June 4, 1998 accident. The administrative law judge found that employee's injuries pertaining to employee's wrists relate back to the June 4, 1998 accident rather than a separate accident. The administrative law judge denied employee benefits on that basis.

Employee filed an Application for Review with the Commission alleging the administrative law judge erred in finding that the employee's wrist condition was merely a continuation of the complaints and symptoms arising from the 1998 accident. Employee argues that the administrative law judge's failure to find that employee was permanently and totally disabled as a result of the combination of work-related injuries and prior injuries was against the weight of the evidence.

For the reasons set forth in this award and decision, the Commission reverses the administrative law judge's award.

## **Summary of Facts**

Employee began working for employer in 1978 as a die caster. In 1987 employee injured his hip when he slipped on oil and fell while at work. The bruised portion of his hip developed into a fatty tumor which was removed surgically in June 1987. Employee settled the claim for his hip injury for 5% of the body as a whole. Employee returned to work full-time after his injury. Employee underwent bilateral carpal tunnel releases performed by Dr. Goldberg in 1993. Employee settled his claim for 10% of each hand at the wrist.

On June 4, 1998, employee tripped and fell on his back and right shoulder. Employee was on light duty for one week and then returned to regular duty. The Report of Injury listed the nature of injury as "pain in the middle of back around shoulder blade and left side." On June 23, 1998, employee felt a pop in his back while lifting parts at work. The Report of Injury listed the nature of the injury as "low back pain."

Employee initially underwent physical therapy to alleviate lower back pain. Employee saw Dr. Hertel for an evaluation on October 28, 1998. An MRI of the lumbar spine revealed degenerative disc disease of L3-4 and L4-5, with mild disc bulging and spondylosis at L4-5. On a December 29, 1998 office visit, employee indicated that his right shoulder pain extended into his forearm and complained of pain in his right wrist. Employee believed that it may be a recurrence of his carpal tunnel syndrome. A lumbar myelogram and post myelogram CT scan revealed mild posterior disc bulging at L3-4 and L4-5. Employee underwent physical therapy through March of 1999. Employee received facet injections for his shoulder and back pain from March to July of 1999. In July 1999, Dr. Hertel opined that employee had facet syndrome. On July 27, 1999, Dr. Hertel placed permanent restrictions on employee including no lifting greater than 20 pounds on a repetitive basis and occasional bending and stooping. On August 20, 1999, Dr. Hertel released employee to work without restrictions. Dr. Hertel opined that employee suffered from a 2% permanent partial disability of the back.

Employee was evaluated by Dr. Jolly on May 16, 2000. An MRI revealed a small complete tear of the rotator cuff. On September 15, 2000, employee was seen by Dr. Cunningham for complaints of constant pain in his low back and right shoulder. Dr. Cunningham diagnosed employee with degenerative disc disease at L3-4 and L4-5 with mild central disc bulging; small complete tear of the rotator cuff of the right shoulder; and suspected bilateral carpal tunnel syndrome. On October 11, 2000, Dr. Cunningham recommended that employee undergo surgery for the rotator cuff tear in his right shoulder and to address his bilateral carpal tunnel syndrome. He also recommended epidural steroid injections for employee's back pain. Dr. Cunningham opined that employee's right rotator cuff tear was attributed the June 4, 1998 injury.

On October 17, 2000, employee was evaluated by Dr. Bieniek for bilateral hand numbness. Dr. Bieniek recommended employee continue to use night splints on his wrists and administered injections to both wrists in October 2000. In November, employee was diagnosed with recurrent carpal tunnel syndrome. Dr. Bieniek performed a carpal tunnel release on employee's left wrist on December 18, 2000 and on his right wrist on December 27, 2000. Employee was released by Dr. Bieniek on February 6, 2001.

On February 1, 2001, Dr. Peter Mirkin performed an independent medical examination (IME) at the request of employer/insurer. Dr. Mirkin rated employee as having a 4% permanent partial disability secondary to the work incidents in June 1998; half of this due to each incident. Dr. Mirkin found employee to suffer a 4% permanent partial disability of the shoulder as a result of the June 4, 1998 incident; and a preexisting 5% permanent partial disability regarding his spine.

A MRI on March 27, 2001 of employee's lumbar spine revealed a central disc herniation at L4-5. Employee was re-examined by Dr. Bieniek on April 11, 2001 for right shoulder and low back pain. Dr. Bieniek recommended shoulder surgery. On May 2, 2001, Dr. Bieniek performed an arthroscopy, arthroscopic acromioplasty and bursectomy, and mini rotator cuff repair on employee's right shoulder. Employee

underwent physical therapy from May until August 2001.

Employee underwent discograms in June 2001, which were abnormal. Employee did not return to work after June 20, 2001. On September 4, 2001, Dr. Burton performed a posterior lumbar fusion at L3-4 and L4-5 and placement of pedicle screws.

Employee returned to Dr. Bieniek on August 24, 2001 for left arm pain and numbness. On October 26, 2001, employee returned to Dr. Bieniek with complaints of chronic numbness in his left thumb and index finger with intermittent numbness in his right hand. On January 22, 2002, employee continued to complain of numbness in both hands.

At the request of employer on July 11, 2002, Dr. Coin performed an IME on employee to address bilateral upper extremity complaints. On November 22, 2002, employee underwent a third carpal tunnel release on the left. Employee had physical therapy from December to January 2003. Employee complained that his pain was worse after the surgery, and Dr. Coin recommended pain management.

On March 24, 2003, Dr. Jolly performed surgery on employee's back to remove the hardware, place a bone stimulator, and augment the fusion. The bone stimulator was later removed on June 25, 2004. Dr. Jolly recommended employee avoid repetitive activity with his hands, change positions often, and not lift more than very limited amounts of weight.

Employee saw Dr. Stephen Schmidt on April 24, 2003 for a pain management evaluation. Employee was placed on pain medication for neuralgia/neuritis involving the median nerve. Dr. Schmidt opined that employee would need these medications on an ongoing basis.

On November 11, 2003, Dr. Coin opined that employee had reached maximum medical improvement (MMI) for injuries to his bilateral upper extremities. Dr. Coin found employee to have a 15% permanent partial disability at the level of the left wrist and 12% permanent partial disability at the level of the right wrist. Dr. Coin released employee without restrictions with respect to his wrists.

On August 4, 2005, employee was examined by Dr. Shekhani. Dr. Shekhani opined that employee had a 30% permanent partial disability of the upper left extremity at the wrist; 25% permanent partial disability of the right upper extremity at the wrist; 50% permanent partial disability of the right upper extremity at the shoulder; 50% permanent partial disability of the body as a whole secondary to the back surgeries; and an additional 10% permanent partial disability of the body as a whole referable to obesity. Dr. Shekhani opined that due to preexisting disabilities, employee suffered a 15% permanent partial disability of the left upper extremity at the wrist and 12% permanent partial disability of the right upper extremity at the wrist, both due to the 1994 carpal tunnel releases. Dr. Shekhani stated that employee's carpal tunnel syndrome could have been caused by the 1998 fall, the repetitive nature of employee's job, or the combination of both.

Dr. Shekhani found employee to be permanently and totally disabled due to the combination of employee's work-related injuries. Dr. Shekhani made reference to employee's bilateral carpal tunnel releases, shoulder surgery, and two back surgeries; and opined that it was a combination of all things that made it difficult for employee to work. Dr. Shekhani opined that employee was not able to engage in any substantial gainful activity nor would he expect employee to be able to perform full-time work on an ongoing basis. Dr. Shekhani recommended to avoid repetitive lifting, uneven surfaces, prolonged walking or standing; to take appropriate pain medication; and limit the amount of weight he lifted. Dr. Shekhani believed employee would need continued medical care for his work-related conditions including doctor's visits, physical therapy, and oral medication.

Mr. England, vocational expert, examined employee on January 26, 2006. Mr. England opined the

combination of employee's upper extremity problems along with his back problems would negate his ability to sustain any type of work activity, on a consistent, day to day basis.

On December 29, 2006, Dr. Mirkin performed another IME at the request of employer. Dr. Mirkin was not requested to evaluate employee's complaints referable to his hands or wrists. Dr. Mirkin opined that employee suffered a 6% permanent partial disability of his right upper extremity at the shoulder; 30% permanent partial disability secondary to his back surgeries.

### Findings of Fact and Conclusions of Law

Upon careful review of the entire record, including the testimony, as well as the medical records offered and admitted into evidence, the Commission determines and concludes that employee has met his burden, showing he contracted an occupational disease, bilateral carpal tunnel syndrome, on or about September 22, 2000.

#### *Occupational Disease*

Section 287.067, RSMo. 2000, states as follows:

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. . . 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.

The employee must prove by substantial and competent evidence that he has contracted an occupational disease. *Kelley v. Banta & Stude Const. Co., Inc.*, 1 S.W.3d 43, 48 (Mo.App. E.D. 1999); *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 299-300 (Mo.App. S.D. 1991). This involves showing that there was an exposure to the disease which was greater than or different from that which affects the public generally, and that 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. *Id.*; *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo.App. W.D. 1994). The probability that the claimed occupational disease was caused by conditions in the work place is generally established through medical expert testimony. *Id.*

A claim for benefits is not necessarily defeated by the mere possibility that multiple factors caused or contributed to the cause of an occupational disease. *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795, 797-98 (Mo.App. S.D. 1987). Work conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. *Kelley*, 1 S.W.3d at 48. A single expert medical opinion will support a finding of compensability even where the causes of the occupational disease are indeterminate. *Id.*; *Dawson*, 885 S.W.2d at 716.

After careful review, the Commission does not agree with the finding of the administrative law judge that employee's bilateral carpal tunnel syndrome was a continuation of the 1998 injuries. The Commission finds that employee's bilateral carpal tunnel was a separate occupational disease.

The parties stipulated to the fact that employee sustained an occupational disease that arose out of and in the course of employment. Medical causation was not at issue.

Even so, employee met his burden by establishing that he contracted an occupational disease, bilateral carpal tunnel syndrome; separate from the 1998 injuries relating to his back and right shoulder. The evidence supports a finding that employee was exposed to carpal tunnel syndrome and that his work

conditions were a substantial factor in his causing the disease.

The record supports the finding of a separate injury by way of occupational disease. Neither Report of Injury regarding employee's injuries in June 1998 mentions injuries to the hands or wrists. The June 4, 1998, only addresses pain in the shoulder and back; while the June 23, 1998 only addresses pain in employee's low back. There is no mention of any injury to employee's hands or wrists. Employee made a separate and distinct claim for his hand/wrist injuries, alleging injury by occupational disease September 22, 2000.

The testimony offered by employee as well as medical experts was sufficient in convincing the Commission that his employment was a substantial factor resulting in his bilateral carpal tunnel syndrome. Therefore, the Commission finds that there was exposure in the workplace sufficient to conclude that employee's repetitive activity was capable of producing his resultant medical condition, bilateral carpal tunnel syndrome.

### *Permanent Total Disability*

The Commission disagrees with the determination that employee is permanently and totally disabled due to the combination of his work-related injuries and conditions that arose following the work-related injuries. Rather, we believe the evidence demonstrates that employee is permanently and totally disabled as a result of the combination of his work injuries and pre-existing disabilities, triggering Second Injury Fund liability.

To trigger the liability of the Second Injury Fund, an employee must have a pre-existing permanent partial disability, whether from a compensable injury or otherwise. The permanent disability pre-dating the injury in question must exist at the time the work-related injury was sustained and be of such seriousness as to constitute a hindrance or obstacle to employment or re-employment should the employee become unemployed. To determine whether a pre-existing partial disability constitutes a hindrance or obstacle to the employee's employment, the Commission should focus on the potential that the pre-existing injury may combine with a future work related injury to result in a greater degree of disability than would have resulted if there was no such prior condition. Liability of the Second Injury Fund is triggered only by a finding of the presence of an actual and measurable disability at the time the work injury is sustained.

*E. W. v. Kansas City, Missouri, School District*, 89 S.W.3d 527, 537 (Mo.App. W.D. 2002), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003) (citations omitted).

In order to be entitled to Fund liability, the claimant must establish either that (1) a preexisting partial disability combined with a disability from a subsequent injury to create permanent and total disability or (2) the two disabilities combined to result in a greater disability than that which would have resulted from the last injury by itself.

*Gassen v. Lienbengood*, 134 S.W.3d 75, 79 (Mo.App. W.D. 2004), citing *Karoutzos v. Treasurer of State*, 55 S.W.3d 493, 498 (Mo.App. W.D. 2001).

Permanent and total disability is defined by §287.020.7 RSMo (2000) as the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident.

The test for permanent total disability is whether, given the employee's situation and condition he or she is competent to compete in the open labor market. The pivotal question is whether any employer would reasonably be expected to employ the employee in that person's present condition, reasonably expecting the employee to perform the work for which he or she is hired.

*Gordon v. Tri-State Motor Transit Company*, 908 S.W.2d 849, 853 (Mo.App. S.D. 1995) (citations omitted).

The evidence supports a finding that employee's pre-existing disabilities combined with his occupational disease to render him permanently and totally disabled. The record demonstrates that employee did suffer from actual and measurable disabilities at the time of his September 22, 2000, injury by occupational disease, that were a hindrance or obstacle to employment. Employee suffered from pre-existing disabilities to both his back and right shoulder as a result of his 1998 injuries. Employee underwent two back surgeries and right shoulder surgery as a result of his 1998 injuries. Employee also underwent bilateral carpal tunnel releases in 1993, settling his claim for 10% of each hand at the wrist. Employee continued to experience symptoms following his back surgeries and carpal tunnel releases and sought treatment in the form of pain management for problems related to his back and upper extremities.

Both employee's medical expert and vocational expert found employee to be permanently and totally disabled. Dr. Shekhani and Mr. England opined that employee was permanently and totally disabled from any level of work activity as result of the combination of employee's upper extremity, back and shoulder conditions.

With respect to employee's primary injury, Dr. Shekhani opined employee suffered a 15% permanent partial disability at the level of the left wrist and 13% permanent partial disability at the level of the right wrist. Dr. Shekhani provided ratings regarding employee's back and shoulder conditions as well. He concluded employee suffered a 50% permanent partial disability of the right upper extremity at the shoulder; 50% permanent partial disability of the body as a whole referable to the back; and an additional 10% permanent partial disability of the body as a whole due to obesity. Dr. Shekhani opined that due to preexisting disabilities, employee suffered a 15% permanent partial disability of the left upper extremity at the wrist and 12% permanent partial disability of the right upper extremity at the wrist, both due to the 1994 carpal tunnel releases.

Dr. Shekhani testified that employee is unable to sustain work due to the combination of employee's conditions, including his bilateral carpal tunnel, shoulder surgery and two back surgeries. Dr. Shekhani stated that employee was not able to engage in any substantial gainful activity, nor would he be expected to perform any ongoing work in the future.

Furthermore, Mr. James England, vocational expert, evaluated employee on January 26, 2006, and concurred with Dr. Shekhani. Mr. England found that employee would not be able to sustain any type of regular work activity. Mr. England found that the combination of employee's back problems combined with his upper extremity problems would negate employee's ability to compete in the work force. Mr. England provided competent testimony that employee's work-related conditions impeded his employment and negated his ability to compete in the open labor market.

Employee has sustained his burden of proof, establishing Second Injury Fund liability, as the evidence, including the opinions of both employee's medical and vocational experts, supports a finding that employee is permanently and totally disabled as a result of the combination of his pre-existing disabilities and work-related condition.

After considering the entire record, including the expert opinions of Dr. Shekhani and Mr. England, we conclude that employee is permanently and totally disabled due to a combination of his pre-existing disabilities and September 22, 2000 occupational disease.

#### *Future Medical Care and Treatment*

Section 287.140.1 RSMo. 2000, provides:

[T]he employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

The need for future medical care need not be established as a certainty, but it must be established as being reasonably probable through competent, medical testimony. *Bowers v. Highland Dairy Company*, 132 S.W.3d 260, 270 (Mo. App. S.D. 2004).

Employee was referred to pain management services after symptoms in his upper extremities were not relieved after undergoing multiple bilateral carpal tunnel releases (three in total on the left and two on the right). Dr. Schmidt diagnosed employee with neuralgia/neuritis involving the median nerve and placed employee on pain medication. Dr. Schmidt opined that employee would need pain medication to treat his condition on an ongoing basis.

The Commission concludes that the competent and substantial evidence supports a finding that employee is entitled to receive future medical care and treatment reasonably required to cure and relieve him from the effects of his occupational disease, bilateral carpal tunnel syndrome, and this benefit is awarded.

## Conclusion

Based on the foregoing, the Commission concludes and determines that the combination of employee's pre-existing disabilities and his September 22, 2000 occupational disease render employee permanently and totally disabled. The Commission concludes that the competent and substantial evidence supports a finding that employer is liable for 15% permanent partial disability at the level of the left wrist and 13% permanent partial disability at the level of the right wrist, with an additional 10% for multiplicity. We find employee suffered the following pre-existing disabilities: 15% permanent partial disability at the level of the left wrist; 12% permanent partial disability at the level of the right wrist; 40% permanent partial disability to the body as a whole referable to the back and 25% permanent partial disability of the right shoulder.

Employer shall pay employee permanent partial disability benefits in the weekly amount of \$314.27 and the Second Injury Fund shall pay the difference of \$41.73, beginning November 11, 2003 for 53.90 weeks; and thereafter, employee shall receive permanent total disability benefits from the Second Injury Fund in the weekly amount of \$356.00 for the remainder of his lifetime, or until as modified by law.

We award future medical care and treatment to cure and relieve employee from the residuals and effects of the injuries related to his bilateral carpal tunnel syndrome, pursuant to the provisions of §287.140 RSMo.

The award and decision of Administrative Law Judge Ronald F. Harris, issued December 28, 2007, is attached solely for reference.

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

Given at Jefferson City, State of Missouri, this 22nd day of December 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING  
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: Jeff Botkins

Injury No. 00-129558

Dependents: N/A

WORKERS' Employer: Diemakers/Internet

Additional Party: Second Injury Fund

Insurer: Liberty Mutual Fire Insurance Company

Hearing Date: October 29, 2007

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

Checked by: RFH/tmh

### 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 September 22, 2000.
5. State location where accident occurred or occupational disease was contracted: Monroe City, Monroe County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
Yes.
7. Did employer receive proper notice? Yes.

8. Did accident or occupational disease arise out of and in the course of the employment? 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: Noticed aching, pain, tingling, and numbness in hands.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: Hands/wrists.
14. Nature and extent of any permanent disability: N/A.
15. Compensation paid to-date for temporary disability: \$2,746.44; 7 6/7 weeks, 11/22/02-12/30/02 and 12/31/02-1/14/03.
16. Value necessary medical aid paid to date by employer/insurer? \$35,071.47.
17. Value necessary medical aid not furnished by employer/insurer? N/A.
18. Employee's average weekly wages: \$534.00.
19. Weekly compensation rate: \$356.00/\$314.27.
20. Method wages computation: By agreement.

#### COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Future Requirements Awarded: N/A.

### FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jeff Botkins

Injury No: 00-129558

Dependents: N/A

Employer: Diemakers/Intermet

Additional Party: Second Injury Fund

Insurer: Liberty Mutual Fire Insurance

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

## FINAL AWARD

### PRELIMINARIES

On October 29, 2007, Jeff Botkins ("Employee") appeared in person and by his attorney Stephen Thurmer, for a hearing for a final award on his claim against Diemakers/Intermet ("Employer") and its insurer Liberty Mutual Fire Insurance Company ("Insurer"). The employer and insurer were represented at the hearing by attorney Robert Bidstrup. The Second Injury Fund ("SIF") was represented by Assistant Attorneys General Mike Finneran and Amber Jordan. At the same time this case was heard, evidence was also taken on Employee's two other claims with Injury Numbers of 98-060682 and 98-081543. Separate awards will be issued for those claims. At the time of the hearing, the parties agreed on certain stipulated facts and identified the issues in dispute. These stipulations and the disputed issues, together with the findings of fact and rulings of law, are set forth below as follows:

### STIPULATIONS

1. At all relevant times the Employee and Employer were operating under the provisions of the Workers' Compensation Law;
2. The Employer was insured for workers' compensation;
3. The Employee sustained an accident/occupational disease that arose out of and in the course of employment with the Employer;
4. Timely notice of the accident was provided to the employer;
5. Employee filed a timely Claim for Compensation;
6. Employee's average weekly wage at the time of the accident was \$534.00;
7. Employee's compensation rate for PTD is \$356.00 and PPD is \$314.27;
8. Employer has paid TTD benefits in the amount of \$2,746.44 representing 7 6/7ths weeks from 11/22/02 through 12/30/02 and from 12/31/02 through 1/14/03;
9. Employer has provided medical aid in the amount of \$35,071.47.

### ISSUES TO BE RESOLVED

The parties requested the Division to determine:

1. Liability for past medical expenses;
2. Nature and extent of permanent disability PTD v. PPD;
3. Second Injury Fund Liability; and
4. Future medical treatment.

Initially, reimbursement for unpaid mileage was an issue but the parties resolved that issue prior to commencement of the hearing. A lien has been submitted from a prior attorney and employee's attorney indicated that was being resolved.

### EXHIBITS

Employee Exhibit's A through Z and AA through KK were offered and admitted into evidence. Employer/Insurer Exhibits 1, 2, and 5 were offered and admitted into evidence. The SIF offered no exhibits.

As noted earlier, evidence was taken on three claims and while separate awards will be issued for each there is some overlap so the following summary may prove helpful.

This case, Injury Number 00-129558, involves a claim for bilateral carpal tunnel syndrome arising on or about September 22, 2000[1].

Injury Number 98-060682 involves a claim for an accident occurring on June 4, 1998. The Claim for Compensation alleges the employee fell and injured his low back[2].

Injury Number 98-081543 involves a claim for an accident occurring on June 23, 1998. The Claim for Compensation alleges the employee was lifting a box and felt a "pop" in his back.

Any exhibits containing markings, highlighting, etc., were submitted in that manner. The undersigned has made no markings of any kind on any of the evidence. Any objections not specifically addressed in this award are overruled. Only evidence necessary to support this award will be summarized.

## FINDINGS OF FACT

Employee testified at the hearing on his own behalf. He testified that he is 47 years of age, born on March 23, 1960. He completed the twelfth grade at Monroe City High School in 1978 and has had no additional vocational training nor completed any college courses. Employee testified that in 1978 he began working for employer as a dye caster. Employee's last day of work for the employer was June 20, 2001.

Employee testified that in 1987, while at work, he slipped on oil on the floor and fell injuring his left hip. He testified that the bruised portion of his left hip turned into a fatty tumor and was subsequently surgically removed in June of 1987. He testified that this work related injury settled for 5% of the body as a whole. On cross-examination he acknowledged that after the injury of 1987 he was able to work full-time, full duty, and also worked overtime. He further stated that he was able to perform all of his job duties without any problems up until his injury of June 4, 1998.

Employee further testified that he underwent bilateral carpal tunnel releases performed by Dr. Goldberg in 1993. A claim for compensation was filed regarding the carpal tunnel syndrome and that claim settled for 10% of each hand at the wrist. On cross-examination, employee testified that after his bilateral carpal tunnel release surgeries in 1993, he went back to work full-time, full duty, and worked overtime. He also testified that his wrists did not present him with any problems and that his wrists were fine up until his injury of June 4, 1998. Further, Jim England, vocational rehabilitation specialist, testified during his deposition that employee did not mention missing any days of work prior to June of 1998 due to any kind of physical injury or condition. (Employee's Exhibit A, pg. 12).

Employee testified that on June 4, 1998, he was going to get water and tripped and fell over binding on the floor. He testified that as a result of this trip and fall incident, he injured his right shoulder and lower back. On cross-examination, he also testified that as a result of this incident, he injured his wrists as well. On cross-examination, employee also testified that he experienced pain in his wrists from the time of the June 4, 1998, accident until the time of his second and third carpal tunnel release surgeries. When employee was examined by Dr. Shekhani on February 6, 2006, he also told the doctor that he injured his wrists, shoulders, and back during the June 4, 1998, accident. (Employee's Exhibit F pg. 1). In addition,

employee also told James England that he injured his wrists, shoulders, and back during his accident in June of 1998. (Employee's Exhibit C pg. 14).

Mr. Botkins testified that on June 23, 1998, he was lifting or placing parts into a box and felt something pop in his lower back and immediately notified his supervisor. On cross-examination by the employer, the employee stated that "he viewed the two accidents in June as one event and thought that the accidents would be on one report." From June 1998 until December 1998 Mr. Botkins underwent physical therapy. (Employee's Exhibit C). An MRI of the cervical spine was performed on December 12, 1998, and was negative. An MRI of the lumbar spine was also performed and revealed degenerative disc disease at L3-L4 and L4-5 with mild disc bulging and spondylosis at L4-5. Additionally, an MRI of the thoracic spine was negative. (Employee's Exhibit C pg. 3). Employee was seen for physical therapy approximately nine times. (Employee's Exhibit C pg. 3). He underwent conservative treatment (including but not limited to injections) for his shoulder and back injuries from March of 1999 until July of 1999. On July 27, 1999, Dr. Hertel placed Mr. Botkins on a permanent restriction of no lifting greater than 20 pounds on a repetitive basis and of occasional bending and stooping. (Employer/Insurer Exhibit 5). On August 20, 1999, after re-examining employee, Dr. Hertel released the employee to work without any further restrictions. (Employer/Insurer Exhibit 5).

On November 19, 1999, Dr. Hertel found that employee suffered from 2% permanent partial disability of the right shoulder and 5% permanent partial disability of the back. (Employer/Insurer Exhibit 5). On September 15, 2000, employee saw Dr. Cunningham for complaints of constant pain in his low back and right shoulder pain. (Employee's Exhibit T). Dr. Cunningham found that there was a small complete tear of the rotator cuff of the right shoulder and attributed the tear to the job injury of June 4, 1998, which was aggravated by the incident on June 23, 1998. (Employee's Exhibit T and Employee's Exhibit C pg 4). On April 11, 2001, Dr. Beiniek examined employee for right shoulder and low back pain and diagnosed him as having a right rotator cuff tear, supraspinatus tendon, disc herniation at L4-5 and a disc bulge at L3-4. (Employee's Exhibit O). On May 2, 2001, employee underwent right shoulder arthroscopy, arthroscopic acromioplasty, and bursectomy, and a mini rotator cuff repair by Dr. Beiniek at Northeast Missouri Ambulatory Center. (Employee's Exhibit O).

On September 4, 2001, employee underwent posterior lumbar fusion L3-4, L4-5 and had pedicle screws placed in his back by Dr. Burton. (Employee's Exhibit C pg. 7). Employee testified that after this back surgery he continued to have pain in his back. He testified that he told Dr. Burton about the continual pain and that he felt Dr. Burton was unresponsive to his complaints. Employee testified that he later saw Dr. Abernathy and that Dr. Abernathy said that he could not help him. He eventually saw Dr. Jolly, who performed a subsequent back surgery on March 24, 2003. He testified that Dr. Jolly removed the hardware from his back, performed a fusion, and placed a stimulator in his back. After the second surgery, employee testified that he experienced a different type of pain.

In September 2000, employee filed a claim alleging that he experienced tingling and numbness running down his hands and wrists due to his job duties of running the dye casting machine and trimming parts. He testified on cross-examination that he had experienced pain in his hands and wrists since his injury of June 4, 1998. He testified that he notified his supervisor and that he was sent to Dr. Bieniek. Employee testified Dr. Bieniek performed a left carpal tunnel release on December 18, 2000, and a right carpal tunnel release on December 27, 2000. Employee testified that he continued to experience the numbing and tingling feeling in his hands/wrists after these surgeries. Employee testified that the employer/insurer then sent him to Dr. Coin, who performed another carpal tunnel release on his left wrist. He testified that he did not have an additional carpal tunnel release performed on his right wrist because the result of the surgery on his left wrist was unsuccessful. Employee testified after this surgery on his left wrist that his left wrist felt worse than it did before the surgery. On November 11, 2003, Dr. Coin evaluated employee and determined that he had reached maximum medical improvement and assigned permanent

partial disability ratings of 15% at the level of the left wrist and 12% at the level of the right wrist. Dr. Coin released employee to full and regular duties without restrictions with respect to his wrists.

Employee obtained a rating on August 4, 2005, from Dr. Shekhani. (Employee's Exhibit F). Dr. Shekhani opined to 30% permanent partial disability of the left upper extremity at the wrist; 25% permanent partial disability of the right upper extremity at the wrist; 50% permanent partial disability of the right upper extremity at the shoulder; 50% permanent partial disability of the body as a whole; and 10% permanent partial disability of the body as a whole referable to obesity. (Employee's Exhibit F). Dr. Shekhani opined the pre-existing injuries as follows: 15% permanent partial disability of the left upper extremity at the wrist and 12% permanent partial disability of the right upper extremity at the wrist. (Employee's Exhibit F).

Dr. Peter Mirkin, an orthopedic surgeon, performed an Independent Medical Examination of employee on 2/2/01. (Employee's Exhibit S). Dr. Mirkin evaluated employee's back and shoulder issues, but not the carpal tunnel syndrome. Dr. Mirkin would not have recommended the initial back surgery but noted that the second back surgery was necessary to remove the hardware (pedicle screw) placed in the first surgery.

At the hearing, employee testified that he continues to have pain in both hands, right shoulder, and lower back.

Additionally, employee acknowledged that subsequent to the work accident he has also had surgery to his left shoulder and both knees, which were unrelated to work. He also testified he would have to have at least one additional knee surgery in the near future.

Following a thorough review of the extensive medical records, depositions and testimony, I find employee's testimony at times to be inconsistent and contradictory.

### RULINGS OF LAW

Based upon a comprehensive review of the substantial and competent evidence, including Employee's testimony, the expert medical opinions and depositions, the medical records, my personal observations at the hearing, and the relevant statutory and case law, I find the following:

Rather than this claim representing a new or different accident/occupational disease I find the evidence supports the conclusion this is merely a continuation of the original injury occurring on June 4, 1998 for which a claim has been filed under Injury Number 98-060682. Having arrived at that conclusion, any benefits to which the employee may be entitled will be addressed in the award on Injury Number 98-060682 with the injury date of June 4, 1998.

Consequently, having concluded this was merely a continuation of the June 4, 1998, accident this does not represent a compensable accident/occupational disease for which benefits would be owed. All claims for benefits under this injury number are denied. For further explanation, see the award issued this date on Injury Number 98-060682.

### CONCLUSION

Employee has failed to prove the event on or about September 22, 2000, constituted a compensable accident/occupational disease rather than merely a continuation of the complaints and symptoms arising from a June 4, 1998, accident. All claims for benefits under this injury number are denied. For further explanation, the reader is referred to the award on Injury Number 98-060682 issued this date.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

RONALD F. HARRIS  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Jeffrey Buker  
*Director*  
*Division of Workers' Compensation*

[1] The insurer on both 1998 cases was Sentry Insurance Company but on the 2000 case it is Liberty Mutual Fire Insurance Company. The employer is the same on all three cases and attorney Robert Bidstrup represented the employer/insurer on all three cases.

[2] It should be noted that on the Claim for Compensation on Injury Number 00-129558, employee lists as pre-existing conditions right shoulder and lumbar (back) with respect to the June 4, 1998, accident.