

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

Injury No.: 01-103025

Employee: Linda Bryant
Employer: HealthSouth
Insurer: Pacific Employers Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 8, 2009, as supplemented herein.

The findings of fact and stipulations of the parties were accurately recounted in the award of the administrative law judge and are adopted by the Commission.

The administrative law judge found that neither employee's work position nor her activity with employer was a substantial factor in causing the onset of symptoms she experienced in June 2001, the need for the medical treatment she received after that date, or any disability. The administrative law judge further found that employee's degenerative cervical disease is not an occupational disease because it did not have its origin in a risk connected with the employment and was an ordinary disease of life to which the general public is exposed outside the employment. Thus, the administrative law judge concluded, employee failed to meet her burden of proving that her work position or activity with employer was a substantial factor in causing a compensable injury, and compensation must be denied.

Although the administrative law judge went into great detail in explaining her rationale for concluding that the opinions of Dr. Wagner and Dr. Coyle were more credible than those of Dr. Cohen or Dr. Hoffman, she did not use the proper analysis in determining whether employee should prevail on a theory of occupational disease.

As correctly stated in the award by the administrative law judge, this claim concerns an alleged occupational disease occurring before the 2005 statutory amendments; therefore, the 2000 version of § 287.067 applies. Section 287.067.1 RSMo (2000) defines occupational disease as follows:

[A]n identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the

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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.

Section 287.067.2 RSMo (2000) goes on to state that “[a]n occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable.... An occupational disease is not compensable merely because work was a triggering or precipitating factor.”

The administrative law judge correctly listed the aforementioned definition, but she did not correctly include what a claimant must prove to prevail on a theory of occupational disease. In examining occupational diseases, the courts have made clear that the claimant must prove by substantial and competent evidence that:

- 1) She has contracted an occupational disease and not an ordinary disease of life by showing that:
 - a. her work creates exposure to the disease greater than or different from that which affects the public generally; and
 - b. there is a recognizable link between the disease and a feature of jobs of claimant’s job type.
- 2) A probability that the occupational disease was caused by conditions in the workplace.

See *Smith v. Climate Engineering*, 939 S.W.2d 429, 433 (Mo. App. 1996).

In this case, Dr. Wagner opined that the onset of symptoms experienced by employee in June 2001, and the cervical surgery she underwent in December 2001, were the result of degenerative cervical disease, and that nothing employee did, while working for employer, aggravated this disease, caused the onset of symptoms she experienced in June 2001, or hastened the need for her cervical fusion.

Further, Dr. Coyle testified that he believes that the medical treatment for the cervical spine that employee received on or after July 1, 2001, was necessitated by a progressive deteriorating degenerative condition and not due to any incident or work activity at either employee’s previous job, or with employer.

Dr. Cohen opined that employee sustained an overuse disorder of the cervical spine and chronic pain syndrome, which resulted in permanent neck disability, work limitations, and the need for medical treatment, due to her injury on or about June 27, 2001, and her work with employer. Dr. Cohen attributed no medical treatment, disability, or work limitations to employee’s previous job.

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Finally, Dr. Hoffman included in a letter dated August 12, 2002, that it was his opinion that employee had "aggravation of pre-existing problems with her occupation both at [her previous job and with employer]."

The most persuasive fact in determining whether Dr. Wagner and Dr. Coyle's opinions should be found more credible than Dr. Cohen and Dr. Hoffman's is that the history employee gave Dr. Cohen and Dr. Hoffman is directly contradicted by employee's medical records.

Employee told Dr. Cohen that after she experienced a burning feeling in her neck for about five minutes after lifting a patient at her previous job on April 1, 2000, and that she had no symptoms at all in her neck until June 27, 2001. Employee also told Dr. Cohen that she previously had some neck discomfort from doing typing work, but the pain was not significant and resolved after she went home and applied Icy Hot. Employee also told Dr. Cohen that the only medical treatment she received for neck discomfort before June 27, 2001, was the Icy Hot she applied at home.

Likewise, employee told Dr. Hoffman that before the June 2001, onset of symptoms, she had experienced some problems off and on for years, but the symptoms would subside within a day or so. Dr. Hoffman performed surgery on employee and provided his August 12, 2002, opinion letter without ever having seen any of employee's MRIs.

As the administrative law judge stated, employee's medical records show that for at least four years before June 27, 2001, employee had bouts of pain that were severe enough and lasted long enough for her to seek medical evaluation, chiropractic treatment, physical therapy, and prescription medication as late as July 2000, when she was given a prescription for Flexeril (with three refills).

Dr. Cohen testified that employee's history was critical, and that he would determine causation from the history given to him by the patient.

On the other hand, Dr. Wagner and Dr. Coyle had employee's pre-2001 treatment records, which showed the history of medical treatment and evaluations for neck pain. In addition, when employee saw Dr. Coyle on February 16, 2005, she admitted that she had had flare-ups of neck pain over the years for a long period of time, but that the symptoms would go away for a spell and then would hurt again. Dr. Coyle also took notice that employee testified that her intermittent bouts of neck pain were not precipitated by work activities.

Drs. Wagner and Coyle had the benefit of employee's pre-2001 medical records in determining that employee's condition is more accurately diagnosed as degenerative cervical disease and not an occupational disease, whereas Drs. Cohen and Hoffman based their opinions off of the inaccurate self-serving history given to them by employee.

For the foregoing reasons, we find, as did the administrative law judge, that the opinions of Drs. Wagner and Coyle are more credible than the opinions of Drs. Cohen and

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Hoffman. Therefore, we find that even if it is somehow found that employee proved by substantial and competent evidence that her work created an exposure to her cervical disease greater than or different from that which affects the public generally; and that there is a recognizable link between her cervical disease and her job with employer, she still does not prevail on a theory of occupational disease because she failed to prove a **probability** that her cervical problems were caused by conditions in her workplace. The overwhelming weight of the evidence suggests that employee suffers from degenerative cervical disease that began far before her employment with employer and that it is this degenerative disease that is the cause of her cervical problems, not her work employer.

As stated above, the Commission agrees with the conclusions reached by the administrative law judge and affirms with supplementation as provided herein. Thus, employee's claim for past medical expenses, future medical treatment, temporary total disability benefits, and permanent total or partial disability benefits, is denied.

The award and decision of Administrative Law Judge Vicky Ruth, issued July 8, 2009, is affirmed, and is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25th day of February 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Linda Bryant

Injury No. 01-103025

Dependents: N/A

Employer: HealthSouth

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

Additional Party: Second Injury Fund

Insurer: Pacific Employers Insurance Company

Hearing Date: April 8, 2009

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 June 27, 2001.
5. State location where accident occurred or occupational disease was contracted: Franklin 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? N/A.
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: The claimant worked in a data-entry position, where she performed typing tasks, used the telephone and an adding machine, and completed paperwork.
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: Alleged body as a whole, referable to neck and low back; both wrists; both arms.
14. Nature and extent of any permanent disability: None/see award.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.

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18. Employee's average weekly wages: \$480.00.
19. Weekly compensation rate: \$320.00 PTD; \$314.26 PPD.
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable from Employer: None.
22. Second Injury Fund liability: None.
23. Future Requirements Awarded: None.

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FINDINGS OF FACT and RULINGS OF LAW:

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Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: HealthSouth

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

Additional Party: Second Injury Fund

Insurer: Pacific Employers Insurance Company

On April 8, 2009, the claimant, the employer/insurer, and the Second Injury Fund appeared for a final award hearing. The claimant, Linda Bryant, was represented by Mark T. Rudder and Steve Wolf. The employer/insurer was represented by Maria W. Campbell, and the Second Injury Fund (SIF) was represented by Jennifer Sommers. The claimant testified in person at the trial. Dr. Raymond F. Cohen, Dr. John Wagner, and Dr. James J. Coyle testified by deposition, as did James M. England. The parties submitted briefs on or about May 4, 2009.

STIPULATIONS

The parties stipulated to the following:

1. On or about June 27, 2001, the claimant was an employee of HealthSouth (the employer).
2. The employer was operating subject to Missouri's workers' compensation law.
3. The employer's liability for workers' compensation was insured by Pacific Employers Insurance Company.
4. The Missouri Division of Workers' Compensation has jurisdiction, and venue in Franklin County is proper.
5. A Claim for Compensation was filed within the time prescribed by law.
6. At the time of the alleged occupational disease, employee's average weekly wage was \$480, yielding a weekly compensation rate of \$320 for permanent total disability and temporary total disability.
7. The employer has not provided any medical aid for the claimant.

ISSUES

At the hearing, the parties agreed that the issues to be resolved by this proceeding are as follows:

1. Whether the claimant sustained an accident or occupational disease that arose out of and in the course of employment.
2. Medical causation.

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3. Temporary total disability benefits.
4. Permanent total disability benefits or permanent partial disability benefits.
5. Liability for past medical expenses.
6. Reasonableness of medical treatment.
7. Need for future medical treatment.
8. Liability of the Second Injury Fund.

EXHIBITS¹

On behalf of the claimant, the following exhibits were entered into evidence without objection:

Exhibit A	Medical records – Mercy Medical Group, Dr. Edward Lynch, set 1 of 2
Exhibit B	Medical records – Mercy Medical Group, Dr. Edward Lynch, set 2 of 2
Exhibit C	Medical records – SSM St. Joseph Hospital
Exhibit D	Medical records – Koelling and Turnbull Chiropractic
Exhibit E	Medical records – Missouri Baptist Medical Center, set 1 of 2
Exhibit F	Medical records – Missouri Baptist Medical Center, set 2 of 2
Exhibit G	Medical records – Patients First Health Care
Exhibit H	Medical records – St. John’s Mercy Medical Center
Exhibit I	Medical records – Pacific Chiropractic Center
Exhibit J	Medical records – Pain Management Services
Exhibit K	Medical records – Dr. Ahmed Jafri
Exhibit L	Medical records – North County Neurosurgery
Exhibit M	Medical records – Christian Hospital Northwest
Exhibit N	Medical records – Dr. William Hoffman
Exhibit O	Medical records – Allied Behavioral Consultants
Exhibit P	Medical records – Dr. Ted Vargas, set 1 of 2
Exhibit Q	Medical records – Dr. Ted Vargas, set 2 of 2
Exhibit R	Medical records – SSM Rehab
Exhibit S	Medical records – Dr. James Goldring
Exhibit T	Medical records – A&A Pain Institute
Exhibit U	Medical records – Brentwood Physical Therapy
Exhibit V	Medical records – Eureka Medical
Exhibit W	Medical records – Des Peres Hospital
Exhibit X	Medical records – Dr. William Logan
Exhibit Y	Medical records – St. John’s Mercy Sports & Therapy
Exhibit Z	Supplemental medical report – Dr. Raymond F. Cohen
Exhibit AA	Medical records – DePaul Health Center
Exhibit BB	Medical bills
Exhibit CC	Deposition of Dr. Raymond F. Cohen with attached exhibits
Exhibit DD	Deposition of James M. England with attached exhibits.

¹ The depositions were admitted subject to any objections contained therein.

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The employer/insurer offered the following exhibits and they were admitted into the record without objection:

- Exhibit 1 Deposition of Dr. John Wagner
- Exhibit 2 Deposition of Dr. James J. Coyle.

The following exhibit was admitted into the record on behalf of the employer/insurer over the objection of the claimant:

- Exhibit 3 Diagram drawn by the claimant.

The Second Injury Fund offered the following exhibit, which was admitted without objection:

- Exhibit I Claimant's deposition, dated September 29, 2005.

FINDINGS OF FACT

Based on the above exhibits and the testimony presented at the hearing, I make the following findings:

1. The claimant stated that she currently lived in the Chicago area. She testified that she was born in 1950 and graduated from high school in 1968. She took some nursing courses for less than one semester, and she took courses on subjects such as insurance while working for one of her employers.
2. The claimant worked for St. John's Mercy Hospital (St. John's) in Washington, Missouri, from approximately February 1999 to May 7, 2001. Her work at St. John's involved typing on a computer and using office equipment. Prior to St. John's, she worked for various employers, and her work largely involved typing and using office equipment.
3. The claimant worked for HealthSouth (the employer) from May 14, 2001, through July 3, 2001. She testified that her position primarily involved computer data entry. She worked 8 hours per day, 40 hours per week. She usually started work around 7:30 a.m. and worked until 4:00 p.m., with two 15-minute breaks and a half-hour lunch break.
4. The claimant contends that she sustained an injury while working at HealthSouth. She stated that this injury occurred over time while working on various pieces of office equipment that were not properly arranged. According to the claimant, her computer monitor was at an angle to the side of the keyboard, causing her to keep her head turned to the side at an awkward angle while typing. She also testified that she worked in a very cramped work space. She testified that she spent nearly the entire day at her workstation.
5. The claimant testified at the hearing that her desk was "L" shaped, with a corner near the center of the workstation. Her chair was near the corner. Her computer keyboard was on the desk to the left of the corner. Her monitor was to the right of her chair and keyboard, her

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adding machine was to the right of the monitor, and her phone was to the left of the monitor. She stated that in order to type, she had to have her arms in front of her but her head turned at approximately 45° to her right. She claims that she spent over six hours per day with her feet on the floor in front of her, her hands and arms outstretched in front of her to reach the keyboard, and her head turned about 45° to the right.

6. The claimant admitted that the workstation diagram that she drew in her first deposition, on July 17, 2003, showed a different location for her chair and keyboard than what she testified to at the hearing. Her diagram showed her keyboard on the diagonal at the corner of the desk, with the chair facing the keyboard, and the computer monitor behind and slightly to the right of the keyboard. In the diagram, her telephone was to the left of the monitor, and her adding machine was to the right of the monitor.
7. She testified that on occasion, she would need to use the telephone, the adding machine, and view the computer monitor at the same time. She stated that this caused her to contort her head and body to hold the phone with her shoulder, type on the adding machine, and at the same time, turn to see the computer monitor. She testified that she could not rearrange her workstation because of the tight space and because some of the equipment cords were too short.
8. The claimant testified that while she was at work on Wednesday, June 27, 2001, she experienced the onset of severe neck pain radiating down both arms, and that she left work early that day because of the pain. On cross-examination, the claimant admitted that in her deposition, she testified that her neck and arm pain started the night of June 27, 2001. She also admitted that before then, she never asked her supervisor about moving her computer, nor had she mentioned the inconvenience of her workstation.
9. She stated that she did not work on Thursday, June 28, 2001, because of neck pain. She further stated that her pain was under control on Friday, June 29, 2001, and so she returned to work. She could not recall whether she experienced any symptoms on that date. She also worked on Monday, July 2, 2001, and on Tuesday, July 3, 2001. She stated that by the end of the work day on July 3rd, she was experiencing severe pain. She indicated that she was in severe pain on July 4, 2001, which was not a scheduled workday. Thursday, July 5, 2001, was a scheduled workday for the claimant, but she did not work on that day. She testified that she called her employer and reported that her neck hurt and she was unable to work.
10. The claimant testified that although July 3, 2001, was her last day performing work for the employer, her employer placed her on short-term disability for approximately six months, until January 2002. She believes that she was officially terminated by the employer in January 2002.
11. On July 5, 2001, the claimant consulted Dr. Kim Colter at Patients First. Dr. Colter's office note indicates that the claimant had a one-week history of neck pain that radiated into her shoulders and arms, without known injury, that she had started a new job in May where she worked on a computer, but that she had always worked at a computer. It was also noted that she had obtained no relief with Advil or Icy Hot. There was no mention of any inconvenience or difficulty with the claimant's workstation. Dr. Colter noted that

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degenerative joint disease was likely to be the underlying abnormality, and he ordered an x-ray of the claimant's cervical spine, physical therapy, and cervical traction. He also prescribed Celebrex.

12. Cervical x-rays were obtained on July 6, 2001, and were interpreted by West County Radiological Group as showing degenerative disc disease at C5-6 and C6-7 with neural foraminal narrowing bilaterally at C6-7.²
13. On July 9, 2001, the claimant returned to Patients First with increased neck complaints. According to Dr. Colter, the claimant's cervical x-rays showed degenerative disc disease at C5-6 and C6-7 with laminal narrowing bilaterally at C6-7. He ordered a cervical MRI, which was performed at St. John's Mercy Hospital on July 13, 2001. According to the interpreting radiologist, the MRI showed disc/osteophyte ridging at C5-6 and C6-7, producing canal narrowing and bilateral neural foraminal narrowing and the suggestion of mild neural foraminal on the left at C4-5 level secondary to osteophytic changes.
14. On July 30, 2001, the claimant consulted chiropractor David Ellenbogen at Pacific Chiropractic Center.³ In the patient statement, signed by the claimant, she stated that her chief complaint was cervical osteoarthritic, narrowing C5, C6, and C7. She inserted a question mark where she was asked whether the condition was due to an injury arising out of her employment, and said that her symptoms appeared or the accident happened six years previously. Handwritten notes at the bottom of the statement, and the chiropractor's handwritten office notes, indicate that the symptoms in the claimant's neck and both arms were chronic but worse the past month. There was no mention of the claimant's workstation or a one-year hiatus in symptoms before the increase in pain.
15. On July 31, 2001, the claimant returned to Patients First with complaints of neck and shoulder pain. Dr. Colter reported that the claimant had a history of spinal stenosis proven by MRI with some foraminal narrowing.
16. On August 3, 2001, the claimant saw Dr. Judson Martin of Pain Management Services.⁴ Dr. Martin noted that the claimant had approximately 5–6 years worth of neck pain and pain radiating into her shoulders, elbow, and wrists, and a significant increase in pain over the previous 3-4 months without provocation. Dr. Martin's records reflect that the claimant had been working at a computer for HealthSouth, but had to discontinue her employment due to the pain. There was no mention of any difficulty or inconvenience with the claimant's workstation or of any one-year hiatus in symptoms before the pain increased. After reviewing the claimant's recent MRI, Dr. Martin's impression was osteophytic ridging and neural foraminal narrowing, radicular pain associated with the above, and degenerative arthritis and degenerative disc disease of the cervical spine. He prescribed a Medrol dose pack.

² Claimant's Exh. G.

³ Claimant's Exh. I.

⁴ Claimant's Exh. J.

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17. On August 8, 2001, the claimant returned to Dr. Colter for neck and shoulder pain.⁵ Dr. Colter arranged for an appointment with Dr. James Gibbons, and wrote a letter indicating that the claimant should not do activities that involved repetitive neck flexion and extension. This was the last visit by the claimant to Dr. Colter.
18. The claimant saw Dr. Gibbons at Pain Management Services on August 21, 2001, for bilateral neck and shoulder pain.⁶ Dr. Gibbons noted that the claimant worked at a computer and had a five to six year history of symptoms, but that her symptoms had been bad for six weeks. There was no mention of any inconvenience or difficulty with the claimant's workstation, nor was there a mention of a one-year hiatus in symptoms before an increase in pain. The doctor provided trigger point injections to the upper trapezius muscles.
19. On August 27, 2001, the claimant consulted Dr. Ahmed Jafri.⁷ Dr. Jafri's records indicate that the claimant reported six years of neck trouble provoked by exercise, with increased neck pain in July 2001. Again, there was no mention of any difficulty or inconvenience with the claimant's workstation or a one-year hiatus in symptoms before the pain increase. Dr. Jafri ordered additional testing. The claimant had nerve conduction studies performed on September 14, 2001.
20. On September 18, 2001, the claimant went to Dr. Edward Lynch at Mercy Medical Group, stating that she'd had a recent MRI of the brain and neck.⁸ The history indicates that the claimant had an ergonomically incorrect work that was causing neck pain, that she had worked from May to July 5, 2001, and that she had then gone on leave. This is the first notation in the medical records that the claimant had any difficulty with her workstation. Dr. Lynch's impressions were cervical disc disease, small vessel cerebrovascular disease, smoking, and hypercholesteremia.
21. The claimant consulted Dr. Daniel Scodary at North County Neurosurgery on September 24, 2001.⁹ Her complaint was bilateral occipital pain radiating up the back of her head. According to Dr. Scodary, the claimant's cervical MRI was remarkable for posterior spondylosis associated with anterior spinal stenosis at C5-6 and C6-7, which merited observation, and he discussed the options for quitting smoking.
22. The claimant returned to Dr. Lynch on October 4, 2001, stating that her neck pain was worse. She reported that she had recently lifted a chair and a couch, which led to severe posterior neck pain and arm and shoulder aching. Dr. Lynch's impression was cervical disc disease and spinal stenosis, and he noted that the claimant was to be off work at least one month.
23. On October 10, 2001, the claimant returned to Dr. Jafri. His impression was cervical spondylosis, left carpal tunnel syndrome, and ulnar neuropathy.

⁵ Claimant's Exh. G.

⁶ Claimant's Exh. I.

⁷ Claimant's Exh. K.

⁸ Claimant's Exh. A.

⁹ Claimant's Exh. L.

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24. Dr. Lynch referred the claimant to St. John's Mercy Sports and Therapy, where she was seen on October 16, 2001, for cervical disc disease, chronic neck pain, headaches, and spinal stenosis. The claimant reported that the previous summer she had begun a new job at HealthSouth where she worked at a computer all day, and that her symptoms had really flared up and she had not been able to get rid of them. It was noted that her past medical history included neck problems for six to seven years, but that this was the first time the claimant had been unable to get rid of the symptoms.
25. On October 24, 2001, the claimant reported to the physical therapist at St. John's Mercy Sports and Therapy that she had increased pain that she attributed to bathing a 20-pound dog the previous day.
26. On November 1, 2001, the claimant underwent a cervical myelogram and post myelogram CT, which showed extensive spondylitic change at C5-6 with bilateral foraminal stenosis and mild cord compression, and spondylitic change at C6-7.¹⁰
27. On November 8, 2001, the claimant saw Dr. Lynch with continued complaints of neck and shoulder pain.¹¹ Dr. Lynch's opinion was cervical disc disease with mild cord compression and failed physical therapy and injections, and he stated that surgery was a consideration now.
28. The claimant saw Dr. William Hoffman on November 19, 2001, with complaints of severe neck, suboccipital and bilateral shoulder pain for about four months.¹² Dr. Hoffman noted that the claimant thought her problem started at work when she used her computer and had to look off to the side. Before that, the claimant had experienced some problems off and on for years, but the symptoms would subside within a day or so. Dr. Hoffman noted that although the claimant had undergone several MRI scans, she did not bring them with her. On examination, Dr. Hoffman reported diminished cervical motion and mild arthritic deformities in the claimant's extremities. His assessment was marked degenerative changes, and a posterior osteophyte at C5-6 with some root compression bilaterally, and marked degenerative changes at C6-7. Dr. Hoffman discussed the options with the claimant, and told her that surgery might result in no improvement. She elected to undergo surgery.
29. On December 4, 2001, the claimant underwent a C5-6, C6-7 anterior cervical discectomy and fusion with allograft bone and anterior premiere cervical plate fixed with screws at C5-6.¹³ Dr. Hoffman's post-operative diagnoses were multi-level cervical disc disease with neck pain, headache, and some shoulder and arm pain.¹⁴ There was no evidence of a herniated disc at this time, but there were spurs.¹⁵ During the claimant's follow-up treatment with Dr. Hoffman, he described her recovery from the cervical surgery as fair at best.¹⁶ At the

¹⁰ Claimant's Exh. M.

¹¹ Claimant's Exh. A.

¹² Claimant's Exh. M.

¹³ Claimant's Exh. M.

¹⁴ Claimant's Exhs. M and N.

¹⁵ Claimant's Exhs. M and N, and Employer/insurer's Exh. 2.

¹⁶ Claimant's Exh. N.

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hearing, the claimant testified that after she recovered from the surgery, her pain was worse than before.

30. The claimant underwent a left ulnar transposition on February 21, 2002, performed by Dr. Hoffman. The claimant continued to treat with Dr. Hoffman until May 6, 2002, when he reported that she desired to apply for disability.
31. After the claimant was released by Dr. Hoffman, she consulted numerous doctors and a chiropractor, frequently reporting neck and arm pain. This treatment is reflected in Claimant's Exhibits A and M- X. The last date of treatment reflected in the exhibits was January 2, 2007, when the claimant requested medication refills, stating that she was moving to Alabama the next day and would find a new doctor there.
32. At the request of her attorney, the claimant saw Dr. Raymond F. Cohen, a neurologist, on or about July 19, 2004.¹⁷ Dr. Cohen's diagnosis was overuse disorder of the cervical spine (cumulative trauma disorder) with the patient being status-post cervical surgery for discogenic cervical spine pain and for an aggravation of cervical spondylosis. He also diagnosed the claimant as suffering from chronic pain syndrome. As for pre-existing conditions, he noted that the claimant had age-related cervical degenerative changes and prior cervical strain/sprain. In his opinion, the claimant's injuries to her cervical spine are a direct result of injuries she sustained at work and that work is a substantial factor in her disability. He rated her with a permanent partial disability of 40% of the body as a whole – cervical spine, due to her employment at HealthSouth. He also rated her as having an additional pre-existing disability of 2.5% of the body as a whole at the cervical spine.
33. Dr. Cohen's deposition was taken on February 9, 2005. In his deposition, he acknowledged that he was not furnished and did not review any x-rays, MRIs, myelograms or CT scan films for anything that occurred prior to June 28, 2001.¹⁸
34. Dr. John Wagner examined the claimant on December 20, 2004. His deposition was taken on February 23, 2005.¹⁹ Dr. Wagner performed a thorough examination and records review. In his report, he states that this "is a classic case of a triggering event." He notes that the claimant had symptoms before working for the employer and that she had advanced degenerative disease at two levels of her cervical spine. He stated that whether the claimant worked in version one or version two of her workstation, it would be a simple triggering event and not a significant injury. He reported that the claimant had degenerative disc disease and ongoing problems and no matter what she did, her neck would become symptomatic and she would have needed a cervical fusion in the normal course of her life. He explained that the claimant has systemic arthritis in her neck and this arthritis is not because of her occupation. In his opinion, the claimant has 0% disability regarding her work at HealthSouth. He opined that from an orthopedic standpoint, the claimant can do sedentary work; however, he also noted that she has multiple other medical problems (anxiety, etc.) that might preclude this. As for the claimant's hands and wrists, he noted that she did not

¹⁷ Claimant's Exh. CC.

¹⁸ Claimant's Exh. CC, pp. 65 and 81.

¹⁹ Employer/insurer's Exh. 1.

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have any findings and did not have any complaints at the time of the exam. He opined that clinically she does not have carpal tunnel syndrome, and that there was 0% disability in each wrist due to any suggestion of carpal tunnel syndrome.

35. Based on his examination of the claimant and his review of her medical records, including various films, Dr. Wagner opined that the claimant had pre-existing degenerative disc disease with advanced degenerative disease in the cervical spine at C5-6 and C6-7. He also indicated that the claimant had a fusion because of that degenerative disease. He further testified that the best term for her condition is probably arthritis in the neck or osteoarthritis in the cervical spine.²⁰ He explained that degenerative arthritis is a progressive disease with deterioration of the joints, and in the cervical spine it includes deterioration of the disc as well as the little tiny joints called the facet joints. These tiny facet joints sometimes put spurts out, and they are particularly prone to pinch the nerves going out of the neck into the extremities.²¹ When asked what the cause of this condition was, he noted that systemic osteoarthritis or systemic degenerative disease is a familial problem and that they do not know the exact causes. They strongly suspect that it is due to the body's ability to do ordinary repair, and it tends to be aggravated in smokers. People who smoke then to have more degenerative disease. He testified that arthritis of the cervical spine is an ordinary disease of life – if people live long enough, they get disease in their joints and it always gets worse. Some people get the disease early and others get it late, but it is almost impossible to avoid. It is simply wear and tear.²²
36. Dr. Wagner further testified that people who type for a living are not exposed to degenerative arthritis of the cervical spine any more than people outside of this type of employment. Degenerative arthritis of the cervical spine is a progressive condition whereby over time, the joints get narrower in that the surface of the joint gets eroded, the surface cartilage disappears, and you get giant spurs on the edge of the joint. As degenerative arthritis progresses, people tend to have pains and it comes on for no reason at all. They will have loss of motion in their joints, and if the spurs are large, they will sometimes irritate the nerves going out into the arms. The pain pattern is one of neck pain, posterior cervical pain across both shoulders.
37. Dr. Wagner noted that the claimant had degenerative arthritis of the cervical spine before she went to work at HealthSouth in May 2001. He pointed out that the July 5, 2001 films and the August 27, 2001 MRI show marked spurring and marked narrowing that has been going on for years – probably at least ten years or more.²³ In fact, he would rate her degenerative arthritis of the cervical spine at C5-6 and C6-7 as severe.
38. Moreover, Dr. Wagner stated that based on the claimant's medical records, her degenerative arthritis of the cervical spine was symptomatic *before* she went to work at HealthSouth. For instance, the April 29, 1997 reference in the records of Mercy Medical Group indicates that the claimant had upper extremity symptoms and that her cervical motion was diminished 20% to side bending in both directions. Dr. Wagner noted that these are perfect symptoms for degenerative disease of the cervical spine. At the April 1997 visit, the physician ordered

²⁰ Employer/Insurer's Exh. 1, pp. 25-26.

²¹ Employer/insurer's Exh. 1, p. 27.

²² *Id.* at 29.

²³ Employer/insurer's Exh. 1, p. 30.

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cervical x-rays, which showed degenerative disc disease of C5-6 and C6-7, which are the same levels at which the claimant underwent a fusion in December 2001. The claimant returned to Mercy Medical Group with complaints of neck and shoulder pain that were consistent with degenerative joint disease of the cervical spine (which is a synonym for arthritis of the cervical spine). Flexeril and Dolobid were prescribed for the claimant in May 1997, and Flexeril was again prescribed for her in July, August, and November 1997. Dr. Wagner noted that Dolobid is an anti-inflammatory agent that is prescribed for arthritis and Flexeril is a sedative muscle relaxer also prescribed frequently for arthritis. The claimant returned to Mercy Medical Group on December 7, 1999, at which time she reported that she had suffered from a neck ache for weeks and that the pain occasionally went into her right arm. She also stated that her neck flared up three to four times per year, and that it was hard to sleep. Dr. Wagner testified that these are “exact symptoms that one complains of [with] degenerative disease of the cervical spine. It couldn’t be any more specific than that. And the flare-ups are periodic. This is part of the degenerative disease syndrome. It flares, goes away, flares up, goes away, comes on [its] own, comes on for no reason at all.”²⁴

39. Dr. Wagner also noted that Flexeril was prescribed in March, May, and July 2000. The Pain Management Services records note that the claimant has had approximately five to six years of neck pain as well as pain that radiated into her shoulders, elbows, and wrists; Dr. Wagner stated that this history is “absolutely perfect for symptomatic arthritis of the cervical spine.”²⁵ In addition, when the claimant saw Dr. Jafri on August 27, 2001, she told him that she had a six-year history of neck trouble provoked by exercise. Dr. Wagner again explained that this history is consistent with symptomatic degenerative arthritis of the cervical spine.
40. Dr. Wagner opined that the claimant had permanent disability – degenerative disease of the neck - referable to the cervical spine *before* she went to work at HealthSouth in May 2001. He also stated that people with degenerative disease of the cervical spine should not do heavy duty lifting, pushing, or pulling (50 – 100 pounds), and that they should avoid frequent or constant overhead work. The overhead work and the heavy lifting would tend to aggravate degenerative disease of the cervical spine.²⁶ There was no indication in the record that the claimant performed heavy lifting, pushing, or pulling at HealthSouth.
41. In the deposition, Dr. Wagner was given a long list of assumptions to make for the purposes of some deposition questions. Those questions included information regarding the claimant’s age, work history, length of service for HealthSouth, the type of tasks at HealthSouth, and the physical layout of her cubicle at HealthSouth. The doctor was told to assume that the claimant experienced the onset of severe pain in her neck and shoulder or shoulders on approximately June 25, 26, or 27, 2001, while either at home or at work, and that the claimant did not have any neck or shoulder symptoms or arm symptoms for about six months before she worked at HealthSouth or for the first six weeks that she worked at HealthSouth. Dr. Wagner was asked, assuming that all of these factors are true, whether the claimant’s work activity or workstation at HealthSouth was a substantial factor in causing

²⁴ Employer/insurer’s Exh. 1, pp. 32-33.

²⁵ Employer/insurer’s Exh. 1, p. 33.

²⁶ Employer/insurer’s Exh. 1, p. 34.

injury to her cervical spine that resulted in the cervical fusion. Dr. Wagner responded that it was his opinion that neither the work activities nor the workstation at HealthSouth was a substantial factor causing the need for the operation on the claimant's neck. He stated that the surgery on the neck was done for degenerative disease. He also noted that the "motion of turning the head on the neck is actually at the upper cervical spine; the skull sits on the atlas and that skull atlas joint is where you rotate your head. The rest of the neck only does flexion and extension."²⁷ Dr. Wagner explained that actually, "typing puts the head in just a little bit of flexion, and this opens up the little holes in the back where the nerves are. So it's not a cause. In fact, it's a position that would relieve the pressure on the nerves."²⁸ The claimant's problem was in the lower cervical spine. Dr. Wagner noted that whether the onset of symptoms was at home or while working would not affect his opinion. In his opinion, the claimant had essentially a spontaneous onset of symptoms that could have occurred at any time.

42. It also did not matter to Dr. Wagner whether the claimant's keyboard was on the diagonal at her workstation or to her left (as depicted in the diagram the claimant drew, Employer/insurer's Exh. 3).²⁹ Dr. Wagner clearly stated that "[t]here was nothing that she did at HealthSouth that would actually aggravate her cervical spine degenerative disease."³⁰ At most, her work could have been a triggering event. According to Dr. Wagner, it is "just a matter of when the clock stops ticking and then you get the symptoms."³¹
43. At the request of the employer/insurer, the claimant saw Dr. James J. Coyle for an independent medical exam on or about February 16, 2005.³² Dr. Coyle is a board-certified orthopedist. He limits his practice to cervical, thoracic, and lumbar spine surgery. In Dr. Coyle's opinion, the claimant has cervical spondylosis with bilateral upper extremity radiculopathy. He opined that the claimant's December 2001 surgery was directly caused by cervical spondylosis and cervical degenerative disc disease producing cervical radiculopathy. He noted that this is a degenerative process, and that he is unable to identify any work activities that necessitated this surgery. He agreed with Dr. Wagner that the claimant had systemic arthritis. Dr. Coyle also noted that the claimant smoked before, during, and after her surgical period, and that this is strongly implicated in her unsuccessful outcome from surgery.
44. Dr. Coyle's deposition was taken on November 2, 2005.³³ He noted that in 1997, the claimant had degenerative disc disease that was at least moderate, and that in 2001 it was consistent with severe degenerative disc disease. He indicated that this change was a "passage of time progression."³⁴ He explained that degenerative disc disease is progressive with time and age. He also explained that the etiology of degenerative disc disease is multifactorial, meaning that a number of factors can influence it. The condition is more

²⁷ Employer/insurer's Exh. 1, p. 38.

²⁸ Employer/insurer's Exh. 1, pp. 38-39.

²⁹ Employer/insurer's Exh. 1, p. 39.

³⁰ Employer/insurer's Exh. 1, pp. 40-41.

³¹ Employer/insurer's Exh. 1, p. 42.

³² Employer/insurer's Exh. 2.

³³ *Id.*

³⁴ Employer/insurer's Exh. 2, p. 16.

common in smokers, and the claimant is a half-a-pack-a-day smoker for 30 years. Dr. Coyle indicated that her smoking history is significant because the effect that smoking has on the spine is to diminish the blood supply to the disc. Over time, the effect of nicotine is to constrict the blood vessels, causing decreased blood supply. Cigarette smoking delivers carbon monoxide to the tissues – so you “are basically pumping carbon monoxide to tissues that are not getting a good blood supply to begin with.”³⁵ As a result, the disc becomes desiccated (dries out), the linings of the disc fray, and the body’s compensation is to form bone spurs. These bone spurs are the body’s attempt to form a fusion. The problem with this is that as the body makes bone, it sometimes makes bone in the space where the nerve ought to be and this causes foraminal narrowing or nerve root compression.

45. Dr. Coyle noted that Dr. Hoffman’s diagnosis of the claimant’s condition was spondylosis, which is not a post-traumatic diagnosis. There was no disc herniation found; there was no fracture; there was no instability; there was nothing about his diagnosis or findings at surgery that was post-traumatic or conceivably post-traumatic in origin.³⁶
46. Dr. Coyle opined that he could see no way that working in a cramped workstation necessitated any of the treatment or surgery for the claimant’s cervical spine.³⁷ He noted that it is not uncommon for patients to take activities or events coincidental to their onset of symptoms and attribute causation to those activities or events; however, this does not make the activities or events the cause of their problem or necessitate treatment.³⁸ He indicated that symptomology with a person with the claimant’s pathology in her spine can come on insidiously or at any time, for any reason. He also indicated that osteoarthritis of the spine is an ordinary disease of life. When questioned as to whether the claimant’s work activities at St. John’s and at HealthSouth are in any way a substantial factor in causing the claimant’s medical treatment and need for treatment in her cervical spine, Dr. Coyle responded that he “was unable to identify any work activities, either at St. John’s or at HealthSouth, that were a substantial contributing factor to her need for treatment or surgery for her cervical spine.”³⁹ Dr. Coyle agreed with Dr. Wagner that claimant’s work activities at HealthSouth were a classic example of a triggering event. Dr. Coyle also agreed with Dr. Wagner that the claimant had systemic arthritis, and that no matter what the claimant did, her neck would have become symptomatic.
47. James M. England, a vocational rehabilitation counselor, examined the claimant on or about April 4, 2005, at the request of her attorney.⁴⁰ Mr. England noted that the claimant has transferrable skills down to a sedentary level of exertion. He noted that the claimant’s primary problem appears to be pain in her neck and shoulders that goes down into her arms and limits her ability to effectively use her upper extremities on a repetitive basis. In addition, she has some depression and on-going severe pain. In Mr. England’s opinion, “[c]onsidering the combination of her medical problems I do not see how she would be able to last in any type of work setting. Absent significant improvement in her overall

³⁵ Employer/insurer’s Exh. 2, p. 18.

³⁶ Employer/insurer’s Exh. 2, pp. 21-22.

³⁷ Employer/insurer’s Exh. 2, p. 27.

³⁸ *Id.*

³⁹ Employer/insurer’s Exh. 2, p. 28.

⁴⁰ Claimant’s Exh. DD.

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functioning I believe that she is likely to remain totally disabled from a vocational standpoint.”⁴¹

48. On or about April 12, 2005, the claimant filed an Amended Claim for Compensation against the employer and the Second Injury Fund, alleging permanent and total disability. She contends that she sustained an occupational disease in her neck, arms, both wrists, and low back caused by work at an allegedly ergonomically incorrect computer workstation. She also alleges that such occupational disease, in combination with her alleged prior impairments, rendered her permanently and totally disabled.
49. After her surgeries, the claimant attempted to return to work in early 2002. She went to work for Barnes Retina Institute in a position involving data entry and talking on the telephone. She worked 40 hours per week for a few weeks. She testified that she resigned due to neck and arm pain.
50. In approximately 2004, the claimant again attempted to return to work. She worked for the YMCA for one day performing sweeping, dusting, and housekeeping tasks. She testified that she had throbbing pain in her arms, and pain in her neck and at the back of her head, and that she resigned due to severe pain. She has not attempted to work again.
51. The claimant has a 30-year history of smoking approximately one-half pack of cigarettes per day.
52. At the hearing, the claimant initially testified that currently, her symptoms come and go and that she does not have symptoms on a daily basis. Upon further questioning by her attorney, she described numerous ongoing complaints.
53. The claimant testified that she did have neck pain before she went to work at HealthSouth, but that it was not constant. She stated that prior to working at HealthSouth, her neck might flare up after a day full of data entry, but that if she used Icy Hot, a heating pad, and over-the-counter medications, the pain would be gone by the next day. However, she also testified that before working at HealthSouth, if her symptoms did not resolve, she would see a chiropractor.
54. The claimant testified that she did have bouts of neck pain while she worked at St. John's Mercy Hospital, but that her neck pain never lasted more than a few hours and was always gone by the next day. She also testified that she had been pain free for approximately one year before she started experiencing symptoms at HealthSouth. The claimant's medical records, however, contradicted her testimony that her prior bouts of neck pain never lasted more than a few hours and were always gone by the next day with over-the-counter remedies. Her records show a history of at least intermittent neck and possibly chronic complaints for a period of at least four years that were significant enough in severity and duration to require medical evaluation, x-rays, physical therapy, traction, chiropractic care, work restriction, and prescription medication.

⁴¹ *Id.*

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- On April 29, 1997, the claimant saw Dr. Abell, who reported that pain in claimant's elbows and left hand had worsened after unloading mulch the previous Wednesday, and that she had experienced numbness in her hands for years and that her cervical range of motion was 20% decreased to side bend laterally. His assessment was suspected cervical spine disease, and he ordered cervical x-rays, prescribed physical therapy, and advised the claimant to avoid heavy lifting.
- Cervical x-rays, taken April 29, 1997, were found to show intervertebral disc narrowing at C5-6 and C6-7, with anterior osteophyte formation compatible with degenerative disc disease, and mild neural foraminal encroachment on the right at the C5-6 level and on the left at the C4-5 level.⁴² The radiologist's impression was degenerative disc disease at C5-6 and C6-7 with neural foraminal encroachment to a mild degree.
- On May 22, 1997, the claimant left a telephone message at Mercy Medical Group, complaining of neck pain and shoulder pain and requesting something for pain. According to the records, the claimant had gone to physical therapy, but it did not help. She requested referral to a chiropractor. She was referred to chiropractors Koelling and Turnbull for cervical spine dysfunction, and Dolobid and Flexeril were prescribed.
- From May 27 – June 6, 1997, the claimant received treatment to the neck and shoulders at K T Chiropractic. On June 4, 1997, chiropractor Turnbull noted that the claimant's radiating pain had returned the previous few days, and that she had decreased cervical range of motion. She was given a home traction device.
- The claimant received prescriptions for Flexeril from Mercy Medical Group Physicians on May 2, 1997, July 9, 1997, September 10, 1997, and November 25, 1997.
- On April 9, 1999, Dr. Abel noted that the claimant's neck was tight.
- On December 7, 1999, the claimant complained to Dr. Lynch of posterior neck ache for three weeks and upper spine pain, occasionally radiating into the right arm. She reported that these symptoms flared up three to four times per years, and that she had gone to a chiropractor. Dr. Lynch's notes indicate that the claimant's April 1997 cervical x-rays showed degenerative joint disease and neural foraminal encroachment. Dr. Lynch's impression was cervical disc disease, and he prescribed Flexeril, Doclotenate, and six physical therapy visits.
- Flexeril was again prescribed for the claimant on March 7, 2000, May 8, 2000, and on July 31, 2000, at which time she was prescribed 20 Flexeril tablets, with up to three refills.

55. The claimant's testimony at the hearing that she was pain-free for approximately one year before leaving St. John's (on or about May 7, 2001), was also belied by her treatment records and her previous deposition testimony.

56. In the reports of Dr. Martin, Dr. Gibbons, and Dr. Jafri, there are notations that the claimant had a five or six year history of neck symptoms with increased neck pain in June or July 2001.

⁴² Claimant's Exh. A.

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57. On cross examination at the hearing, the claimant acknowledged that while she worked at St. John's, she did have bouts of neck pain and pain down her arms, that she took Tylenol PM, Advil, and the prescription medication Flexeril. She admitted that she had previously testified that the symptoms did not happen weekly while she was at St. John's, but that she did not know if they occurred once a month.
58. On cross-examination, she also testified that she had no idea where she was working when her neck symptoms began, or when the symptoms in her neck or shoulder occurred for the very first time.
59. The claimant's hearing testimony was not trustworthy, in light of inconsistent deposition testimony regarding her workstation and whether she was at home or work when her symptoms began on June 27, 2001, and in light of the medical records that contradicted her testimony regarding the frequency, severity, and duration of neck complaints before she started working at HealthSouth.
60. The history given by the claimant to Dr. Cohen and Dr. Hoffman was incomplete and inconsistent with her medical records.
61. The extent to which the claimant's workstation at HealthSouth was difficult and uncomfortable is suspect, considering that she mentioned no such thing to her supervisor and this assertion was not made to the first five medical providers the claimant saw after her symptoms flared up in June 2001.
62. Whether accidental or intended, the claimant's testimony was incomplete and inaccurate in many areas. As such, her testimony carries little weight.

CONCLUSIONS OF LAW

Based upon the findings of fact, I find the following:

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim.⁴³ Proof is made only by competent and substantial evidence, and may not rest on speculation.⁴⁴ Medical causation not within lay understanding or experience requires expert medical evidence.⁴⁵ When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.⁴⁶

In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.⁴⁷ Where there are conflicting medical opinions, the fact finder may

⁴³ *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo. App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).

⁴⁴ *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo. App. W.D. 1974).

⁴⁵ *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).

⁴⁶ *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo. App. 1984).

⁴⁷ *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo. App. 1957).

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reject all or part of one party's expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant's expert.⁴⁸

This claim concerns an alleged occupational disease from before the 2005 statutory changes; therefore, the 2000 version of Section 287.067 applies and it defines occupational disease as follows:

[a]n 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.

An occupational disease is not compensable merely because work was a "triggering or precipitating factor."⁴⁹ It must be shown that work is a "substantial factor" in the cause of the resulting medical condition or disability.⁵⁰ Work that is merely a triggering or precipitating factor is not deemed to be compensable.⁵¹

Section 287.020.3 defines an "injury" to be one that "has arisen out of and in the course of employment." In addition, the "injury must be incidental to and not independent of the relation of the employer and employee. Ordinarily, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment."⁵²

Expert medical opinion is needed to resolve the issue of causation in this cause, because the claimant's condition of degenerative arthritis is a sophisticated diagnosis, requiring surgical intervention, x-rays, MRIs, myelograms, and CT scans for diagnosis. And, there was undisputed evidence of pre-existing degenerative cervical arthritis, which was symptomatic and medically treated, there was no specific work incident or traumatic event, and Dr. Hoffman's post-operative diagnosis referenced only the claimant's degenerative conditions. Under these circumstances, the issue of causation is not within common knowledge or lay understanding, and expert medical opinion is required.

The testifying experts were Dr. John Wagner and Dr. James Coyle for the employer/insurer, and Dr. Raymond Cohen for the claimant. By the criteria generally used to evaluate expert testimony, such as qualifications, basis, and reasoning, the opinions of Dr. Wagner and Dr. Coyle were more credible than those of Dr. Cohen or Dr. Hoffman.

⁴⁸ *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo. App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).

⁴⁹ Section 287.067.2, Section 287.020.2, and Section 287.020.3, RSMo.

⁵⁰ Section 287.020.2, RSMo.

⁵¹ *Id.*

⁵² Section 287.020.3, RSMo.

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Dr. Wagner's medical opinion was that the onset of symptoms experienced by the claimant in June 2001, and the cervical surgery she underwent in December 2001, were the result of degenerative cervical disease, and that nothing the claimant did at HealthSouth aggravated this disease, caused the onset of symptoms she experienced in June 2001, or hastened the need for her cervical fusion.

Dr. Coyle testified that he was unable to identify any work activities, either at St. John's or HealthSouth, that were a substantial contributing factor to the claimant's need for treatment or surgery for her cervical spine. Based on the history given by the claimant, and the medical records and films he reviewed, Dr. Coyle believes that the medical treatment for the cervical spine that the claimant received on or after July 1, 2001, was necessitated by a progressive deteriorating degenerative condition and not due to any incident or work activity at St. John's or HealthSouth.

Dr. Cohen's opinion was that the claimant sustained an overuse disorder of the cervical spine (cumulative trauma disorder) and chronic pain syndrome, which resulted in permanent neck disability, work limitations, and the need for medical treatment, due to her injury or about June 27, 2001, and her work at HealthSouth. He attributed no medical treatment, disability, or work limitations to the claimant's work at St. John's.

Dr. Hoffman, in a letter dated August 12, 2002, wrote that it was his opinion that the claimant had "aggravation of pre-existing problems with her occupation both at St. John's and HealthSouth."

Due to the differing medical opinions, a decision must be made as to which is more credible. Dr. Wagner specialized in orthopedic surgery for approximately 40 years; he retired approximately two months before his deposition. He regularly treated degenerative diseases of the cervical and lumbar spine, regularly performed surgery on the lumbar spine, and performed many cervical spine surgeries during his residency. Dr. Wagner examined the records of 17 different providers, dating back to July 18, 1996, including the cervical x-ray report of April 29, 1997, and he personally reviewed the claimant's cervical x-ray films of July 5, 2001, cervical MRI films of August 27, 2001, cervical myelogram and CT scan films of November 1, 2001, and the films obtained during numerous diagnostic studies performed on and after the claimant's December 4, 2001 surgery.

Dr. Coyle is a board-certified orthopedist. He limits his practice to cervical, thoracic, and lumbar spine surgery. Approximately 40% of his surgeries involve the cervical spine, and issues such as osteoarthritis and its effect on the spine and body have been a part of his specialty, which has included issues of medical causation between events and the need for surgery. Dr. Coyle reviewed records dating back to July 18, 1996, including the April 29, 1997 cervical x-ray report, and personally reviewed the MRI films of August 27, 2001, and the cervical myelogram and CT scan films of November 1, 2001.

Dr. Cohen has been a practicing neurologist since 1984. Approximately two-thirds of his practice consists of evaluating injured people in workers' compensation and personal injury cases, with the remaining one-third being treating neurology patients. There is no evidence that Dr. Cohen ever treated or diagnosed degenerative spine disease in his practice. Dr. Cohen did

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not review any actual x-ray, MRI, myelogram or CT scan films; he was given no records that went back to 1997, the first neck complaint in the medical records he reviewed occurred after June 27 or 28, 2001, and the earliest record referenced in his report was dated July 5, 2001. Dr. Cohen was not provided with the April 1997 x-ray report or the claimant's pre-2001 treatment records – the same records that Dr. Coyle and Dr. Wagner found highly significant. In addition, the claimant gave Dr. Cohen an incomplete and incorrect history regarding her prior symptoms and treatment. The claimant told Dr. Cohen that after she experienced a burning feeling in her neck for about five minutes after lifting a patient at St. John's on April 1, 2000, that she had no symptoms at all in her neck until June 27, 2001. The claimant also told Dr. Cohen that she previously had some neck discomfort from doing typing work, but the pain was not significant and resolved after she went home and applied Icy Hot. She told Dr. Cohen that the only medical treatment she received for neck discomfort before June 27, 2001, was the Icy Hot she applied at home.

Dr. Hoffman performed the claimant's cervical fusion surgery. There is no evidence that Dr. Hoffman had the record of any treatment or evaluation the claimant received before he saw her on November 19, 2001. In fact, he stated that he did not have any of her MRIs. Dr. Hoffman was also given an erroneous and incomplete history. The claimant told him that her symptoms started at work when she used her computer and looked off to the side, that she'd had some problems off and on for years, but that she would rub her neck with Ben-Gay and would be fine about a day later.

The history the claimant gave Dr. Cohen and Dr. Hoffman is directly contradicted by the claimant's medical records, which show that for at least four years before June 27, 2001, she had bouts of pain that were severe enough and lasted long enough for her to seek medical evaluation, chiropractic treatment, physical therapy, and prescription medication as late as July 23000, when she was given a prescription for Flexeril (with three refills). Dr. Cohen testified that the patient's history was critical, and that he would determine causation from the history given to him by the patient. In this case, that history was erroneous – robbing Dr. Cohen's causation opinion of most of its probative value.

As noted above, Dr. Wagner had the benefit of the claimant's pre-2001 treatment records, which showed the history of medical treatment and evaluations for neck pain. When the claimant saw Dr. Coyle on February 16, 2005, she admitted that she had had flare-ups of neck pain over the years for a long period of time, but that the symptoms would go away for a spell and then would hurt again. The claimant told Dr. Coyle that she was asymptomatic after the bathroom lifting incident at St. John's in April 2000, but Dr. Coyle noted that at deposition, the claimant testified that she previously had intermittent bouts of neck pain that were not precipitated by work activities, but not for "the six months from March until [she] left St. John's [on approximately May 7, 2001]." Dr. Coyle also had the benefit of the claimant's pre-2001 medical records, which showed a history of medical treatment and evaluations for neck pain. Clearly, Dr. Wagner and Dr. Coyle had far more complete and accurate information on which to base their medical opinions than Dr. Cohen or even Dr. Hoffman.

The reasoning of Dr. Wagner and Dr. Coyle was more logical and persuasive than the reasoning of Dr. Cohen or Dr. Hoffman. Dr. Wagner explained that degenerative cervical arthritis is a disease that involves deterioration of the discs and facet joints, which put out spurs

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that are prone to pinch the nerves going out of the neck into the upper extremities, and that the condition always gets worse over time. As the disease progresses, people tend to experience pain that comes on for no reason at all. They experience loss of motion in their joints, and if the spurs are large, they will sometimes irritate the nerves going out into the arms. He said that the classic pattern with the disease is neck pain, and pain in the posterior neck and across both shoulders.

Dr. Wagner explained that arthritis of the cervical spine is an ordinary disease of life, and is almost impossible to avoid if a person lives long enough. He said that some people get the disease earlier than others, and that people who smoke, which the claimant has done for more than 30 years, tend to have more degenerative disease. Dr. Wagner said that people who type for a living are not exposed to degenerative arthritis of the cervical spine any more than people outside of this type of employment.

Dr. Wagner testified convincingly that the claimant's diagnostic studies established that she had severe degenerative disease of the cervical spine at C5-6 and C6-7 long before she went to work at HealthSouth. He stated that the claimant's April 29, 1997 cervical spine x-ray showed degenerative disc disease at C5-6 and C7, and that the cervical x-rays of July 5, 2001, the MRI of August 27, 2001, and the myelogram and post myelogram CT of November 1, 2001, showed only a progression of the degenerative disc disease that had been seen back on April 29, 1997. According to Dr. Wagner, the claimant's films showed nothing but degenerative disease, including degenerative disc and joint disease, which is also called spondylosis, and arthritis.

Dr. Wagner pointed out that the claimant's medical records not only established that she had severe degenerative cervical disease, but that it was symptomatic long before she went to work at HealthSouth. He said that the upper extremity complaints and diminished side bending reported in the April 29, 1997 Mercy Medical Group records were perfect symptoms of degenerative cervical spine disease. The claimant's complaints of neck and shoulder pain at Mercy Medical Group on May 2, 1997, were consistent with degenerative joint cervical disease. According to Dr. Wagner, Flexeril is a muscle relaxer, and Dolobid is an anti-inflammatory agent, and these medications, which were prescribed for the claimant between May and November 1997, would have been prescribed for pain caused by degenerative disease of the cervical spine. He said that the neck ache for three weeks with pain going occasionally into the right arm, and the neck flare ups three to four times a year, were exact symptoms of degenerative cervical disease. Likewise, the five to six years of neck pain and pain radiating into the shoulder, elbows, and wrists, which was reported in the Pain Management Services record of August 31, 2001, were perfect symptoms of cervical spine arthritis. Dr. Wagner testified that a six-year history of neck trouble provoked by exercise described in Dr. Jafri's August 27, 2001 record was consistent with symptomatic degenerative arthritis of the cervical spine, and that Flexeril, which was prescribed for the claimant in March May and July 2000, would have been used to alleviate discomfort in her neck and upper arm.

Furthermore, Dr. Wagner testified credibly that people with the claimant's disease and persistent symptoms end up with anterior cervical fusions no matter what happens, and usually following a spontaneous onset of symptoms like the claimant's situation. To paraphrase Dr. Wagner, when the clock stopped ticking, the claimant would get the symptoms and need surgery no matter what she did.

Dr. Wagner pointed out that Dr. Hoffman's December 4, 2001 operative note referred to only degenerative disease as being the reason for the surgery. Dr. Wagner also stated that whether the claimant was pain-free in her neck when she left employment at St. John's would not matter, because with degenerative joint or disc disease, pain waxes and wanes for no good reason, and it is not significant when the symptoms occur. He stated that periods of time without symptoms would not be surprising, because the symptoms of degenerative cervical spine disease typically flare, go away, flare, go away, and so on for no reason at all. He explained that a classic description of arthritis in the neck, like the knee, is that it comes and goes, comes and goes, comes and goes, gets worse, gets worse, gets worse, and then becomes an everyday affair.

According to Dr. Wagner, it did not matter whether the onset of symptoms occurred at work or home, because it could have occurred at any time. He stated that it did not matter whether claimant's workstation was as she drew it at her first deposition or as she described it to him and at the hearing because this did not make any difference. He explained that the head rotates on the neck at the upper cervical spine, whereas the claimant's problem was at the lower end of the cervical spine (C5 – C7). He also testified that he did not necessarily consider the position in which the claimant worked to be ergonomically incorrect. He stated that it is not uncommon for a patient to believe that something caused an onset or change in their body even when that is not medically accurate.

In addition, Dr. Wagner testified that the claimant did not tell him about the severe posterior neck pain, pain in the arms, and shoulder aches that she had after lifting a chair and a couch, as reflected in Dr. Lynch's October 4, 2001 records. Likewise, the claimant did not tell him that she noticed increased pain that she attributed to bathing a 20-pound dog, as reflected in the November 17, 2001, medical records from St. John's Mercy Sports and Therapy. He testified that the dog incident, as well as the couch/chair lifting incident, could have each been a very significant aggravation of the disease to the point of accelerating the need for surgery. He said that the mechanism of injury in each of those two instances was such that it would certainly aggravate degenerative disease of the cervical spine. He reiterated his opinion that the claimant's work position of being slightly bent forward and turned to the right would not aggravate her pre-existing degenerative disease.

Dr. Coyle testified that the claimant's April 1997 x-ray showed narrowing of the foramen, which are openings where nerve roots exit from the spinal canal and spinal cord and go to the arms, which was consistent with the claimant's clinical symptoms when she was operated on by Dr. Hoffman. Dr. Coyle indicated that there was no evidence on the 1997 x-ray or later films of acute pathology such as trauma or an acute cervical disc herniation or fracture. He said that the claimant's post-injury MRIs and CT myelogram were consistent with a progression of degenerative changes at C5-6 and C6-7 from 1997, when it was at least moderate, until 2001, when it was severe. The claimant's August 2001 MRI showed spondylosis at C5-6 and C6-7 with loss of normal cervical lordosis, which is the spine curvature that would be seen in a normal neck. The claimant's November 2001 CT myelogram showed extensive spondylitic (synonymous with arthritic) changes at C5-6.

Like Dr. Wagner, Dr. Coyle testified that degenerative disc disease is progressive with time and age. In Dr. Coyle's opinion, the degenerative changes in the claimant's cervical spine

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progressed with time, and nothing influenced this process, by way of causation or aggravation, except the passage of time. Dr. Coyle testified that a number of factors can influence the causation of degenerative disc disease, but the most significant correlates are probably smoking and family history. Dr. Coyle found the claimant's history of smoking one pack per day for 30 years to be significant. He said that smoking diminishes the blood supply and pumps carbon monoxide to tissues that have a very poor blood supply to begin with. The result is that the disc dries out, the linings of the disc fray, there is abnormal joint motion, and the body compensates by forming bone spurs, sometimes where nerves ought to be, causing foraminal narrowing or nerve root compression.

Dr. Coyle testified that when the claimant underwent spine surgery in December 2001, there was no indication of a fracture, or a herniated disc, which could potentially reflect either a degenerative or traumatic injury, or instability. Dr. Hoffman's diagnosis at the time of surgery was spondylosis C5-6 and C6-7, which is synonymous with degenerative disc disease or degenerative arthritis in the spine, which involves formation of bone spurs, and is not a post-traumatic diagnosis. According to Dr. Coyle, there was nothing about Dr. Hoffman's diagnosis or findings at surgery that was post-traumatic or conceivably post-traumatic in origin.

Dr. Coyle further testified that diagnosis and mechanism of injury were the two main factors he considered in establishing causation. Dr. Coyle said the claimant had a progressive, degenerative, deteriorating condition, which meant that a year later she would be more symptomatic than she was a year earlier. He believed that the medical treatment for the cervical spine that the claimant received in and after July 2001 was necessitated by progressive deteriorating degenerative condition, and not any incident or work activity at St. John's or HealthSouth.

Dr. Coyle testified that although the claimant felt the size of her work space had something to do with her flare-up of neck pain, he could not establish any connection. Dr. Coyle testified that ergonomically incorrect workstations had been implicated in carpal tunnel or cubital tunnel syndrome, but he had never seen a circumstance where ergonomics was implicated in the need for spine surgery, and all he sees are spine patients. He said he was not saying it could not occur, but in his more than ten years of seeing spine patients, he had not encountered it.

Dr. Coyle explained that the mere fact the claimant consistently stated that she felt something had occurred in her employment at HealthSouth did not make it true. He noted that it is not uncommon for patients to take activities or events coincidental to their onset of symptoms and attribute causation to those activities or events, but that does not make the activities or events the cause of their problem or the reason treatment was needed.

Dr. Coyle said that he completely agreed with Dr. Wagner that no matter what the claimant did, her neck would have become symptomatic. Like Dr. Wagner, Dr. Coyle testified that osteoarthritis of the spine is very common, and said that he would classify it as an ordinary disease of life.

Dr. Cohen, however, provided no basis for his opinion causally relating neck injury, disability, and the need for treatment, to the claimant's work at HealthSouth. In addition, Dr.

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Cohen made significant concessions and almost abandoned this position on cross-examination. When the April 29, 1997 x-ray report was read to him, Dr. Cohen admitted that it was totally consistent with radiological findings after June 27, 2001, and said that if the December 17, 1999 Mercy Medical Group record was correct, the claimant probably did have some ongoing symptoms. Dr. Cohen also admitted that because of the nature and degree of the pre-existing disc narrowing and neuroforaminal problems, the claimant could well have come to the same clinical state when she did, totally independent of her work activities at HealthSouth.

Dr. Hoffman did not set for any reasoning in his August 12, 2002 letter. In addition, the letter has little probative value, because neither the part of the body referenced nor the extent of the aggravation is stated. Even if the referenced body part was intended to be the cervical spine, and either or both of the two referenced aggravations was sufficient to be compensable, Dr. Hoffman's letter would suffer from the same deficiencies as the opinion of Dr. Cohen in regard to qualification, medical records and films reviewed, history provided by the claimant, and reasoning. Moreover, the letter states only that the claimant had aggravation "with," not "due to," her occupation at St. John's and Health South, and could refer to timing, not causation.

While the opinions of Dr. Cohen and Dr. Hoffman lacked any stated basis, the reasoning of Dr. Wagner and Dr. Coyle was logical and well supported in the claimant's history and medical records, and must be considered the more credible.

I find that neither the claimant's work position nor her activity at HealthSouth was a substantial factor in causing the onset of symptoms she experienced in June 2001, the need for the medical treatment she received after that date, or of any disability. I find that the claimant's degenerative cervical disease is not an occupational disease because it did not have its origin in a risk connected with the employment and was an ordinary disease of life to which the general public is exposed outside the employment. Thus, the claimant failed to meet her burden of proving that her work position or activity at HealthSouth was a substantial factor in causing a compensable injury, and compensation must be denied.

Summary

I find that the claimant has not met her burden that she is entitled to permanent or partial disability benefits, and her claim for compensation fails.

Any pending objections not expressly addressed in this award are overruled.

Date: _____

Made by: _____

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson

Employee: Linda Bryant

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Division of Workers' Compensation