

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

Injury No.: 03-126063

Employee: Elaine Casteel  
Employer: General Council of the Assemblies of God  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: December 3, 2003  
Place and County of Accident: Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 31, 2007. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued May 31, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 28<sup>th</sup> day of November 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Dependents: N/A

Employer: General Council of the Assemblies of God

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

Insurer: Self-insured

Hearing Date: 2/26/07

Checked by: MEH

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? YES
2. Was the injury or occupational disease compensable under Chapter 287? YES
3. Was there an accident or incident of occupational disease under the Law? YES
4. Date of accident or onset of occupational disease: 12/3/03
5. State location where accident occurred or occupational disease was contracted: GREENE COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted: CLAIMANT TRIPPED AND FELL.
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: NECK AND SHOULDERS
14. Nature and extent of any permanent disability: 22% 400-WEEK LEVEL, 15% 232-WEEK LEVEL (RIGHT SHOULDER), AND 10% 232-WEEK LEVEL (LEFT SHOULDER)
14. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$2,180.04

Employee: Elaine Casteel

Injury No. 03-126063

17. Value necessary medical aid not furnished by employer/insurer? 0
18. Employee's average weekly wages: \$398.70
19. Weekly compensation rate: \$265.80
20. Method wages computation: BY AGREEMENT

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: 0

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

146 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

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

22. Second Injury Fund liability: Yes  No  Open

29.625 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:  
weekly differential (0) payable by SIF for 0 weeks, beginning N/A  
and, 0 thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: N/A

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

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

RANDY ALBERHASKY

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Elaine Casteel

Injury No. 03-126063

Dependents: N/A

Employer: General Council of the Assemblies of God

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

Insurer: Self-insured

Hearing Date: 2/26/07

Checked by: MEH

The parties appeared before the undersigned administrative law judge on February 26, 2007, for a final hearing. The claimant appeared in person represented by Randy Alberhasky. The employer and insurer appeared represented by Jerry Harmison. The Second Injury Fund appeared represented by Cara Harris. Memorandums of law were filed by March 22, 2007.

The parties stipulated to the following facts: On or about December 3, 2003, General Council of the Assemblies of God was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully self-insured. On the alleged injury date of December 3, 2003, Elaine Casteel was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about December 3, 2003, the claimant

sustained an accident which arose out of and in the course and scope of employment. This employment occurred in Greene County, Missouri. The claimant notified the employer of her injury as required by Section, 287.420, RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430, RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$398.70, which is sufficient to allow a compensation rate of \$265.80 for temporary or permanent total and permanent partial disability compensation. No temporary disability benefits have been paid to the claimant. The employer and insurer have paid medical benefits in the amount of \$2,180.04. The attorney fee being sought is 25%.

#### ISSUES:

1. Whether the accident caused the injuries and disabilities for which benefits are being claimed.
2. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.
3. The nature and extent of permanent disabilities.
4. The liability of the Second Injury Fund for permanent total disability/enhanced permanent partial disability/unpaid medical bills.

The following exhibits were offered and admitted into evidence at the hearing by the claimant:

#### MEDICAL RECORDS

- I. Cox Medical Center, 35 pages, certified March 31, 2005
- J. Cox Medical Center, 85 pages, certified April 7, 2005
- K. Cox Medical Center, 24 pages, certified August 31, 2006
- L. Cox Medical Center, 64 pages, certified August 30, 2006
  
- M. Diagnostic Clinic, 46 pages, certified August 15, 2006
- N. Diagnostic Clinic, 136 pages, certified March 23, 2005
- O. Heartland Physical Therapy, 7 pages, certified March 16, 2005
- P. Perkins Chiropractic, 13 pages, certified August 17, 2005
- Q. Springfield Physical Medicine, 3 pages, certified May 17, 2005
- R. Springfield Neurological and Spine Institute, 10 pages, certified March 22, 2005
- S. St. John's Physicians and Clinics, Dr. Michael North, 5 pages, certified August 16, 2006
- T. St. John's Health Center, 180 pages, certified April 14, 2005
- U. SW Physical Medicine & Rehab, Dr. Cary Marquis, 67 pages, certified March 24, 2005

#### DOCUMENTS

- V. Phil Eldred, M.S., C.R.C., report dated February 17, 2007

#### DEPOSITIONS

- O. Dr. Truett Swaim, 1.9.2006
- 16. CV
- 17. Report, dated 8.24.2005
- 18. Addendum, dated 1.4.2006

The following exhibits were offered and admitted into evidence by the employer, subject to an objection as to foundation on exhibits 1, 2 and 3:

- 1. Dr. Woodward's report
- 2. Deposition of Woodward
- 3. Video
- 4. Deposition of Employee
- 5. Employee's work records

#### FINDINGS OF FACT:

Final hearings were held in Injury No. 03-126063 and Injury No. 04-068866 at the same time for convenience of the parties. This Findings of Fact will include facts for both claims although separate awards are being entered on each claim.

Employee Elaine Casteel is 56 years of age. She had been employed by General Assemblies of God at Gospel Publishing as a bindery worker from 1986 through her termination on July 28, 2004. She retired after being informed by her supervisor that she was going to be terminated because she had been absent too often. Her request to transfer to a position that she felt she could perform was denied at the time of her termination. She is married to Eddie Casteel and has a high school diploma with some college credits. Her work involved use of her hands and arms, including lifting of books and working on multiple machines putting together books and pamphlets. She worked on several machines involved in binding operations, including a collator. Her duties would alternate throughout the year. Several times a year she would perform an activity called "breaking signatures." These were booklets of paper which had to be torn in half along perforations. She tore these much as you might try to tear a phone book in half. This activity would take all day, and would go on for a week to a week and a half at a time. She would also frequently stack books on "trucks" or dollies that were used to cart the books around.

In June of 1997, the employee received authorized care through Dr. Berner for her left shoulder after experiencing the gradual onset of pain at work while using a pallet jack. She was prescribed physical therapy. She reported to Dr. Berner that the pain was aggravated when she lifted and stacked 20 pound boxes at work. She was restricted to 7-10 pound lifting on June 20, 1997, and referred to Dr .Sanchez for an orthopedic evaluation on July 11, 1997. Dr. Sanchez diagnosed impingement syndrome, ordered an MRI and prescribed medicine. An MRI done on July 17, 1997 showed minimal increased intensity within the supraspinatus tendon with

minimal tendonitis, and physical therapy was continued. She sought chiropractic treatment on her own at Perkins Chiropractic in the summer of 1997 for neck and shoulder pain.

On September 9, 1997, Dr. Sanchez released her from care following improvement. He said, "It appears that the impingement syndrome has satisfactorily resolved. It is now appropriate to release her from my care. She does not have a final impairment that requires a rating, however, I suspect that her original duties may provoke a return of her symptoms and it may be prudent to continue with the (light duty) job description she currently holds or something of a similar nature." No claim for compensation was filed.

While working for the Assemblies of God on September 14, 2000 she suffered a fall on a rubber mat at work where she injured her neck, thoracic and lumbar regions. X-rays were performed, and Dr. Mackie released her back to work with a prescription but without restrictions. Physical therapy was ordered on September 25, 2000, and she was referred to Dr. Weber for a consultation regarding myofascial pain, located in the trapezius, rhomboid, levator and scapula regions. She was continued on muscle relaxers and pain medication. CT scans were eventually done on her cervical and lumbar back on January 29, 2001. She then followed up with Dr. Lennard on February 5, 2001, with complaints in her neck, back and left shoulder. She was on regular work duties without restriction. No claim for compensation was filed.

On July 8, 2001, the employee was involved in a vehicular accident that resulted in a fracture of her left wrist and facial lacerations. Surgery was performed and pins were placed in the arm. During recovery from the accident, she developed deep venous thrombosis in her right lower extremity, which required hospitalization and medication.

On August 30, 2002, she received authorized treatment through the Assemblies of God for a neck, shoulder and mid-back injury with Dr. Lennard. It was reported that she "injured her neck and upper back while 'breaking objects' on 8-26-02 while at work. She states this is a repetitive activity. She developed gradual onset of pain generally in the back of her neck, shoulder and mid-back. Claimant complains of pain in the posterior shoulder, mid-back and lower cervical spine somewhat off to the right." She had tenderness without trigger points or loss of strength. Dr. Lennard diagnosed cervicothoracic strain, advised her to apply heat and perform stretching and gave her a muscle relaxant. She was advised to return to unrestricted duty after the three day weekend. When Dr. Lennard saw her a week later on September 4, 2002, he reported improvement but ongoing pain in her neck and shoulder as before. She was still on medication. Dr. Lennard released her without restrictions, prescriptions or follow up care. She returned to her regular job duties. No claim for compensation was filed

On December 3, 2003, the employee fell while at work. She landed on her knees and hands, with her arms stretched forward. She felt jolted and stunned. Since her supervisor had already left for the day she reported the accident the next day and was set up for authorized care after she requested treatment for her neck and back a

few days later.

On December 8, 2003, she was seen by Dr. Woodward for authorized care, reporting that she had fallen on to the concrete floor, on her hands and knees, while working. "She states that she jarred her neck and had abrupt neck and mid-back pain post fall. Today, patient complains of right and left mid-lower neck paraspinal aching. She notes moderate discomfort in neck today. Flexion and extension aggravate pain moderately with sharper pain on the left rotation. Frequent cervical crepitus is described. Patient notes some intermittent dizziness and nausea with increased neck pain lately. Left upper extremity aching discomfort was noted after the fall, which has resolved." She was given medication, instructed on the use of heat and neck stretches and returned to regular duty.

On December 15, 2003 she returned to Dr. Woodward complaining of "frequent lower neck and left upper trapezius aching pain. Pain radiates to left scapular area with lifting. No left upper extremity symptoms. Intermittent cervical crepitus noted. Patient notices some pain radiating to thoracic/upper lumbar area with increased neck pain." She had decreased range of motion and was given Vioxx, Zanaflex and physical therapy, while she was placed on modified duty. She took 1-2 weeks off from work before returning to see Dr. Woodward on December 30, 2003, complaining that her pain had not improved. She was given a course of physical therapy and remained on "full-time modified work duty." She followed up with physical therapy, and on February 6, 2004 was prescribed a TENS unit. She reported "She has noted some gradual improvement in her neck discomfort since the injury. Pain seems to worsen later each workday after prolonged sitting. She notes gradual muscle aching and tightness."

On February 23, 2004, she again saw Dr. Woodward. He recommended a two week trial of a TENS unit and a home TENS unit purchase if the trial provided significant relief. She was instructed to call him after she tried the TENS unit and report on her pain response. He released her to full-time regular work with no restrictions. The claimant failed to follow-up with physical therapy for the TENS recheck on two consecutive visits. She was discharged at that time. The reason claimant later gave Dr. Woodward was that her daughter had a baby and she spent some time with her.

Claimant's employment was terminated on July 28, 2004.

The claimant sought treatment on her own from her personal physician, Dr. Brockman. He ordered MRIs of her brain and cervical spine, as well as physical therapy. He also prescribed a TENS unit and medication. She reported that the physical therapy and TENS unit gave short term relief but not long term improvement. She tried employment with a convenience store for about a week following her termination, but quit the job because it required too much standing, walking and lifting, which bothered her neck, back and shoulders.

She saw Dr. Woodward on April 12, 2005. He released her without permanent restrictions, impairment or disability. By that time, she had obtained additional physical therapy on her own through Dr. Brockman and The Meyer Center. She reported pain all over, including her cervical spine that radiated to her upper trapezius area with aching discomfort from activity. Dr. Woodward recommended purchase of a TENS unit through workers' compensation with provision of six months equipment. On May 4, 2005, Dr. Woodward concluded that "Patient's ongoing cervical pain condition is a combination of substantial work-related strain and substantial preexisting cervical spondylosis." He again released her to full-time work duty without restrictions and stated that she sustained no impairment or disability from the work-related condition.

On August 25, 2005, Claimant was seen by orthopedic surgeon Dr. Truett Swaim at the request of her attorney. On exam he noted mild to moderate bilateral tremors of the upper extremities. She had tenderness and muscle spasms. Spurling sign was positive in the upper right periscapular area with radiating pain into the left upper arm. Jackson compression sign caused radicular symptoms, and her range of motion testing of the cervical spine was limited. Strength testing revealed weakness in the triceps bilaterally. She had a positive impingement sign on the right shoulder. Dr. Swaim diagnosed osteophyte disc abnormality of the cervical spine with stenotic changes; cervical radiculopathy; possible bilateral peripheral neuropathy, and cervical vertebral artery syndrome with tendonitis in both shoulders; right shoulder impingement syndrome and cervical/lumbar strain.

Dr. Swaim opined that the accident on December 3, 2003 was a substantial factor in causing her to develop cervical pain and radiculopathy, tendonitis in both shoulders, right shoulder impingement and cervical vertebral artery syndrome. He felt that her cumulative trauma from working at Gospel Publishing House between 1986 through July 15, 2004 was a substantial factor in causing her to develop degenerative changes of the cervical spine and tingling in the upper extremities.

Because of her work-related injuries, Dr. Swaim opined that she would have ongoing neck pain with cervical radiculopathy that would necessitate treatment and surgical intervention, ongoing discomfort in both shoulders and a symptomatic lumbar condition. He did not feel that she was at maximum medical improvement because "her cervical condition will eventually necessitate surgical intervention," but assigned to her permanent disability ratings because "These ratings are not likely to change significantly with or without treatment." His ratings were 40% to the body as a whole for her cervical condition, 22% of which he attributed to her accident on December 3, 2003, and 18% of which he attributed to her cumulative exposure injuries through July 15, 2004. With respect to her shoulder conditions, he assigned a 15% rating to the right shoulder and a 10% rating to the left shoulder, both attributable to the December 3, 2003 accident.

In regard to preexisting disabilities, he assigned to her a 15% disability rating to the left arm at the 175 week level from her fracture, and 15% disability to her right leg at the 160 week level from her deep vein

thrombosis with permanent vein damage, and finally a 25% body as a whole disability for her lumbar condition. In conclusion, he felt that she was permanently and totally disabled as a result of her prior and work-related disabilities in combination. He did not feel that her disabilities from the December 3, 2003 accident or the work exposure through July 15, 2004 made her permanently and totally disabled in isolation. He limited her to lifting 5-15 pounds on an occasional basis and up to 5 pounds frequently, with avoidance of repetitive bending, stooping, twisting, squatting, climbing, kneeling or crawling. She was not to do repetitive, prolonged or forceful use of her upper extremities above shoulder level, should avoid prolonged sitting, standing or walking, and shouldn't perform repetitive use of her arms.

Dr. Swaim concluded that she would need further evaluation by a neurologist and neurosurgeon for her cervical condition and dizziness, and recommended testing for her arteries: a cervical myelogram and post myelogram CT, EBG's and nerve conduction studies, and evaluation of her shoulders by an orthopedic surgeon. He felt she would require a cervical discectomy and fusion.

Dr. Swaim was deposed on January 9, 2006. Dr. Swaim testified that in his review of the medical records he noted that the employee had tested positive on the vertebral artery test performed on September 28, 2004, during physical therapy that she received on her own accord. The test is positive when someone turns their head with additional force and they become light headed or dizzy. It results when "you get enough bony spur formation and the vertebral arteries actually go through the bone in the cervical spine. . . when you turn, the area where the vertebral artery is going between one bone and another, then what happens is the vertebral artery will get occlusive changes." Dr. Swaim also noted an MRI done on November 17, 2004, indicating moderate spinal canal stenosis at the L4-5 and L5-6 levels and mild stenosis at L3-4. An MRI is an objective test. His review of the cervical MRI revealed significant osteophyte disc complexes at C3-4, C4-5 and C5-6, meaning "there's a protrusion of bone and disc material beyond what would be acceptable." This presentation accounted for her radicular symptoms.

In terms of the cervical spine, Dr. Swaim felt the pain and radiculopathy were related to the December 3, 2003 fall because, "If you look at the scan, then I would assess that she did have some preexisting cervical spine disease even though the scan is done, you know, multiple – you know, 11 months later. And one of the reasons is that, when she has - - when she has this injury, afterwards she develops neck pain, mid back pain, she develops neck pain with pain to the left trapezius area, and then there's this ongoing she has regarding her neck, so I think, you know, like I said, it's aggravated her preexisting degenerative condition and it caused her to develop a radiculopathy. Most of that is based on subjective findings and the medical records."

In terms of her developing tendonitis in both shoulders and right shoulder impingement, he noted that she

had some history of prior shoulder pain in 2002 (when she saw Dr. Lennard for work-related problems from “breaking down objects”), but then she did not complain of significant problems again in the shoulder until the fall on December 3, 2003. He noted her history of work-related problems with her shoulders prior to that date, and testified, “I could have said that, you know, I think it’s reasonable that I could have said, well, her occupation also contributed and caused her to develop tendonitis because of the repetitive nature but, because of the fact that these - - it seems like there was pain that developed after this fall, I attributed it to the fall when in reality it could be attributed to both.”

He concluded that her repetitive activities with her arms at Gospel Publishing were also a substantial factor in causing her shoulder injuries, and that “the risk of developing this problem from her employment was greater than the risk due to stresses in her unemployment activities.” In particular, “repetitive use of the upper extremities, lifting and twisting and lifting above shoulder level and transferring books from a machine to a skid and repetitive use of her upper extremities. That puts stress on the neck. . . move the arms independently, and that puts compressive force on the neck. If you then consider that there’s also twisting involved, then that puts an impact loading and torque into the picture. Well, impact loading and torque are what causes breakdown of cartilage and degenerative changes.” He felt that the vertebral artery syndrome was the result of these degenerative changes in combination with the December 3, 2003 fall.

Because of preexisting deep vein thrombosis, Dr. Swaim limited the employee to avoid prolonged standing or sitting without moving her legs. Her prior left arm fracture would limit her to avoid repetitive or forceful use of the left hand on a symptomatic basis. Overall, he limited her to sedentary light work level based upon her December 3, 2003 related problems as well as prior problems with her neck and lumbar back. She couldn’t do bending, stooping, squatting, kneeling or crawling repetitively because of her back. Her prior lumbar condition in isolation would reduce her to a medium capacity work level.

Dr. Woodward testified by deposition on November 26, 2006. He did not feel that the claimant’s regular work duties would substantially contribute to a cervical repetitive trauma condition sufficiently to contribute to cervical spondylosis or degenerative arthritis in the neck. In forming his opinion regarding occupational exposure, he relied upon a video that was taken of her job duties. The video does not reference lifting activities that the employee performed while stacking books on to “trucks.” Nor does the video contain an activity called “breaking down” objects or “signatures” where she would tear perforated booklets of varying thickness in half continuously throughout the day for several days at a time. Dr. Woodward testified that he specifically did not review or include this activity in rendering his opinions, “The patient did not review with me any work activity that she described as breaking objects, and so I did not address that specific activity in my opinions.” When he saw and treated the employee, it was specifically for the December 3, 2003 fall, not any source of possible occupational exposure to

injury. His opinions regarding occupational exposure to repetitive trauma injury are based on the activity that he saw on the tape he reviewed.

He did feel that the 2003 fall was a substantial factor in causing a strain, but her residual discomfort was due to cervical degeneration, "I did indicate that the work-related cervical strain was a substantial contributor to symptoms," but not "permanent impairment." Nonetheless, he did prescribe a TENS unit for her to use for 6 months. He admitted that the TENS unit would not provide permanent improvement, only temporary relief. He did not know how effective the TENS unit actually was. Any long term pain she had would not be related to the December 3, 2003 fall according to Dr. Woodward. He did not undertake an analysis of the nature and extent of preexisting disability that she had for her cervical, lumbar or other conditions.

Phil Eldred, a certified vocational counselor, testified at the hearing. He evaluated her on January 25, 2007, and prepared a report dated February 17, 2007.

Mr. Eldred testified claimant would be limited to unskilled sedentary jobs based upon her background and physical restrictions imposed by Dr. Swaim. He testified she was unable to return back to her employment at the employer, as the work is classified as light, and according to Dr. Swaim's restrictions, she is no longer capable of performing physical light-work duties. He further testified he believed claimant had a hindrance or obstacle to her employment prior to the injury of December 3, 2003. Specifically, he pointed to the injury of September 2000, which he testified both the records and claimant's testimony established had continued to cause her some problems with her work duties and with missing time from work. He testified that whether or not she was permanently and totally disabled as the result of any one of the injuries alone, or as a combination thereof, would be a question, which would need to be directed to medical doctors.

On cross-examination by employer, Mr. Eldred admitted that both according to the medical records and claimant's testimony, her medical complaints began with an injury of September of 2000. Mr. Eldred also acknowledged, having an understanding that the claimant had missed a substantial amount of time from work, up to potentially 50% of the working days in 2001 and 2002, and a substantial number of days in 2003 as well. He testified based upon those records, claimant had a significant absentee problem prior to the injury of December 3, 2003.

On further cross-examination by the Second Injury Fund, Mr. Eldred admitted that claimant's past work has always been at a semi-skilled level, and that her testing on the WRAT-3, the academic testing he gave her, showed her current academic abilities to be high, with reading recognition at greater than high school level, spelling at an 8<sup>th</sup> grade level, and arithmetic at a 7<sup>th</sup> grade level. He testified those are reasonably high abilities for someone who has not had an academic class, other than a short computer class, which she did not finish, since high school graduation in 1968. Mr. Eldred admitted that despite his previous testimony, she may very well be

suiting for work other than "unskilled".

Mr. Eldred also testified he found no permanent restrictions placed on claimant by any medical physicians other than Dr. Swaim. He also testified that a good portion of the reason he believed she is not currently employable is due to her inability to be able to sit for the amount of time necessary for a sedentary job. Mr. Eldred produced from his file a "Functional Ability Statement", which was admitted as Second Injury Fund Exhibit II. On that form, Mr. Eldred noted that claimant told him she is able to continuously sit for 1-hour, and sit for a total of 7 hours in an 8-hour workday. It also noted that she said she gets stiff when sitting. Mr. Eldred testified that if indeed, she is able to sit continuously for 1-hour and for a total of 7-hours in a workday, and do semi-skilled work, that there would be jobs of a sedentary nature in which she would be able to be employed.

Mr. Eldred testified that the claimant's pain level also plays a part, in his opinion, as to her being unemployable. He testified she had indicated a pain level at a 6 during the interview with him, at an 8 at its worst, and a 4 at its best. Mr. Eldred testified that he understood that despite this level of pain, claimant is taking no medication for pain other than Tylenol. Further, he admitted that at the time he saw her, she was not seeking any sort of medical care treatment with any doctor for pain complaints.

Finally, Mr. Eldred testified, assuming that claimant is capable of sedentary or light work, there are jobs which she is capable of performing. His computer analysis found at least 42 jobs in the light and sedentary category for which she has the skills and aptitude to do, if she had the physical capacity to do so.

The claimant testified that since the December 2003 injury her pain level and ability have changed. She is no longer able to take care of all her housework, she has trouble sitting for long periods of time, and functioning with her arms and shoulders. She also testified she had some shaking of her upper extremities. Since the December 2003 injury, she testified she has constant pain, whereas before she would have occasional relief. She can no longer shop and carry bags, and currently the only thing that helps her feel better is if she really does nothing.

Claimant testified she takes Tylenol and some muscle relaxers, which she gets from her sister. Her sister gets this medication by a prescription written to her by her medical doctor. Claimant does not believe she can go back to work, that she does not have any strength in her arms or shoulders, and that she would like more treatment.

On cross-examination claimant admitted that she believes there were some jobs at Gospel Publishing House that she thought she could do, and that she might still be able to do. She testified that the complaints she currently has are the same as those which she has had since the December 2000 injury, and that those complaints have continuously gotten worse, and were the reason that she had such an absentee problem at work prior to the December 2003 injury.

CONCLUSIONS OF LAW:

1. Whether the accident caused the injuries and disabilities for which benefits are being claimed.

Dr. Woodward found that the claimant has sustained a work-related injury on December 3, 2003. He did not feel that she had additional, residual disability as a result. Dr. Swaim testified that the accident on December 3, 2003 was a substantial factor in causing her to develop cervical pain and radiculopathy, tendonitis in both shoulders, right shoulder impingement and cervical vertebral artery syndrome.

The claimant testified that since the December 2003 accident her pain level and its effect on her activities have changed a great deal. She now has constant pain whereas before the work injury she would have occasional relief.

While the claimant had a prior injury in September 2000 which did cause her some residual problems in the same area that is the subject of this claim: the neck and shoulders, I find that the injury of December 3, 2003, caused her the additional problems for which benefits are being sought in this case and are related to this injury and do not predate it.

2. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.

Dr. Swaim is the only physician who recommends additional medical treatment. While I have agreed with his opinion on causation, I am not persuaded that the claimant is in need of additional medical treatment, and therefore this is denied.

3. The nature and extent of permanent disabilities.

The claimant testified that she felt there were other jobs that she could do and still might be able to do at the General Council of Assemblies of God that were not offered to her. Phil Eldred testified that with her past work experience in semi-skilled level and her current academic abilities being high, she may very well be suited to work other than "unskilled. He also said if she is capable of sedentary or light work, there are jobs, which she is capable of performing and that she has the aptitude for if she has the physical capacity.

Dr. Woodward assigned no permanent disability for this injury. Dr. Swaim assigned 22% of the body as a whole for her neck complaints, 15% of the right arm at the shoulder level, and 10% of the left arm at the shoulder level. Claimant testified that she has problems functioning with her arms and shoulders. She also has constant pain and shaking in her upper extremities.

I do not find that the claimant's disability arises to the level of permanent total disability as a result of this accident. Rather I find that it is in the nature of a partial disability. After carefully considering all of the evidence, I find that the claimant has sustained a permanent partial disability consistent with Dr. Swaim's ratings, and I hereby award claimant permanent partial disability of 146 weeks at the weekly rate of \$265.80. This is based on 22% at the 400-week level, 15% at the 232-week level for the right shoulder and 10% at the 232-week level for the left shoulder.

4. The liability of the Second Injury Fund for permanent total disability/enhanced permanent partial disability/unpaid medical bills.

The claimant had some pre-existing conditions including a fracture to the left arm, deep vein thrombosis in the right leg, and a lumbar condition. Dr. Swaim rated these at 15% at the 175-week level for the left arm fracture, 15% at the 160-week level for the deep vein thrombosis, and 25% at the 400-week level for the lumbar condition. I find that these meet the threshold for enhanced permanent partial disability from the Second Injury Fund.

Claimant alleges that she is permanently and totally disabled. I do not find that the claimant is permanently and totally disabled as a combination of the prior disabilities and the December 3, 2003, injury.

Therefore, the Second Injury Fund is ordered to pay 29.625 weeks at the weekly rate of \$265.80 for a total of \$7,874.33, based on a 10% loading factor, calculated as follows:

Pre-existing disability	15% x 175	26.25
	15% x 160	24
	25% x 400	100
Current disability		<u>146</u>
Total		296.25 x 10% loading factor = 29.625 weeks

Attorney for the claimant, Randy Alberhasky, is awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Date: May 31, 2007

Made by: /s/ Margaret Ellis Holden  
Margaret Ellis Holden  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

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

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 04-068866

Employee: Elaine Casteel  
Employer: General Council of the Assemblies of God  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: July 14, 2004

Place and County of Accident: Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 22, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued May 22, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 28<sup>th</sup> day of November 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Elaine Casteel

Injury No. 04-068866

Dependents: N/A

Employer: General Council of the Assemblies of God

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

Insurer: Self-insured

Hearing Date: 2/26/07

Checked by: MEH

**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: N/A

5. State location where accident occurred or occupational disease was contracted: GREENE COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? N/A
9. Did employer receive proper notice? N/A
10. Did accident or occupational disease arise out of and in the course of the employment? N/A
9. Was claim for compensation filed within time required by Law? N/A
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
12. Did accident or occupational disease cause death? NO Date of death? N/A
15. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
16. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? 0

Employee: Elaine Casteel

Injury No. 04-068866

20. Value necessary medical aid not furnished by employer/insurer? 0
21. Employee's average weekly wages: \$408.66
22. Weekly compensation rate:\$272.44
20. Method wages computation: BY AGREEMENT

#### **COMPENSATION PAYABLE**

21. Amount of compensation payable:
  - Unpaid medical expenses: 0
  - 0 weeks of temporary total disability (or temporary partial disability)
  - 0 weeks of permanent partial disability from Employer
  - 0 weeks of disfigurement from Employer
  - Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime
22. Second Injury Fund liability: Yes No  Open
  - 0 weeks of permanent partial disability from Second Injury Fund
  - Uninsured medical/death benefits: N/A
  - Permanent total disability benefits from Second Injury Fund:
    - weekly differential (0) payable by SIF for 0weeks, beginning N/A
    - and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: NONE

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

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

RANDY ALBERHASKY

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

Employee: Elaine Casteel Injury No. 04-068866  
Dependents: N/A  
Employer: General Council of the Assemblies of God  
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund  
Insurer: Self-insured  
Hearing Date: 2/26/07 Checked by: MEH

The parties appeared before the undersigned administrative law judge on February 26, 2007, for a final hearing. The claimant appeared in person represented by Randy Alberhasky. The employer and insurer appeared represented by Jerry Harmison. The Second Injury Fund appeared represented by Cara Harris. Memorandums of law were filed by March 22, 2007.

The parties stipulated to the following facts: On or about July 14, 2004, General Council of the Assemblies of God was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully self-insured. On the alleged injury date of July 14, 2004, Elaine Casteel was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about July 14, 2004, the claimant sustained an accident which arose out of and in the course and scope of employment. This employment occurred in Greene County, Missouri. The claimant notified the employer of her injury as required by Section, 287.420, RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430, RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$408.66, which is sufficient to allow a compensation rate of \$272.44 for temporary or permanent total and permanent partial disability compensation. No temporary disability benefits have been paid to the claimant. The employer and insurer have paid no medical benefits. The attorney fee being sought is 25%.

### **ISSUES:**

1. Whether the claimant sustained an occupational disease which arose out of the course and scope of employment.
2. Whether the occupational disease caused the injuries and disabilities for which benefits are being claimed.
3. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the

claimant of the effects of the injuries.

4. The nature and extent of permanent disabilities.

5. The liability of the Second Injury Fund for permanent total disability/enhanced permanent partial disability/unpaid medical bills.

The following exhibits were offered and admitted into evidence at the hearing by the claimant:

MEDICAL RECORDS

- I. Cox Medical Center, 35 pages, certified March 31, 2005
- J. Cox Medical Center, 85 pages, certified April 7, 2005
- K. Cox Medical Center, 24 pages, certified August 31, 2006
- L. Cox Medical Center, 64 pages, certified August 30, 2006
  
- M. Diagnostic Clinic, 46 pages, certified August 15, 2006
- N. Diagnostic Clinic, 136 pages, certified March 23, 2005
- O. Heartland Physical Therapy, 7 pages, certified March 16, 2005
- P. Perkins Chiropractic, 13 pages, certified August 17, 2005
- Q. Springfield Physical Medicine, 3 pages, certified May 17, 2005
- R. Springfield Neurological and Spine Institute, 10 pages, certified March 22, 2005
- S. St. John's Physicians and Clinics, Dr. Michael North, 5 pages, certified August 16, 2006
- T. St. John's Health Center, 180 pages, certified April 14, 2005
- U. SW Physical Medicine & Rehab, Dr. Cary Marquis, 67 pages, certified March 24, 2005

DOCUMENTS

- V. Phil Eldred, M.S., C.R.C., report dated February 17, 2007

DEPOSITIONS

- O. Dr. Truett Swaim, 1.9.2006
  - 16. CV
  - 17. Report, dated 8.24.2005
  - 18. Addendum, dated 1.4.2006

The following exhibits were offered and admitted into evidence by the employer, subject to an objection as to foundation on exhibits 1, 2 and 3:

- 1. Dr. Woodward's report
- 2. Deposition of Woodward
  
- 3. Video

4. Deposition of Employee
5. Employee's work records

#### FINDINGS OF FACT:

Final hearings were held in Injury No. 03-126063 and Injury No. 04-068866 at the same time for convenience of the parties. This Findings of Fact will include facts for both claims although separate awards are being entered on each claim.

Employee Elaine Casteel is 56 years of age. She had been employed by General Assemblies of God at Gospel Publishing as a bindery worker from 1986 through her termination on July 28, 2004. She retired after being informed by her supervisor that she was going to be terminated because she had been absent too often. Her request to transfer to a position that she felt she could perform was denied at the time of her termination. She is married to Eddie Casteel and has a high school diploma with some college credits. Her work involved use of her hands and arms, including lifting of books and working on multiple machines putting together books and pamphlets. She worked on several machines involved in binding operations, including a collator. Her duties would alternate throughout the year. Several times a year she would perform an activity called "breaking signatures." These were booklets of paper which had to be torn in half along perforations. She tore these much as you might try to tear a phone book in half. This activity would take all day, and would go on for a week to a week and a half at a time. She would also frequently stack books on "trucks" or dollies that were used to cart the books around.

In June of 1997, the employee received authorized care through Dr. Berner for her left shoulder after experiencing the gradual onset of pain at work while using a pallet jack. She was prescribed physical therapy. She reported to Dr. Berner that the pain was aggravated when she lifted and stacked 20 pound boxes at work. She was restricted to 7-10 pound lifting on June 20, 1997, and referred to Dr. Sanchez for an orthopedic evaluation on July 11, 1997. Dr. Sanchez diagnosed impingement syndrome, ordered an MRI and prescribed medicine. An MRI done on July 17, 1997 showed minimal increased intensity within the supraspinatus tendon with minimal tendonitis, and physical therapy was continued. She sought chiropractic treatment on her own at Perkins Chiropractic in the summer of 1997 for neck and shoulder pain.

On September 9, 1997, Dr. Sanchez released her from care following improvement. He said, "It appears that the impingement syndrome has satisfactorily resolved. It is now appropriate to release her from my care. She does not have a final impairment that requires a rating, however, I suspect that her original duties may provoke a return of her symptoms and it may be prudent to continue with the (light duty) job description she currently holds or something of a similar nature." No claim for compensation was filed.

While working for the Assemblies of God on September 14, 2000 she suffered a fall on a rubber mat at work where she injured her neck, thoracic and lumbar regions. X-rays were performed, and Dr. Mackie released her

back to work with a prescription but without restrictions. Physical therapy was ordered on September 25, 2000, and she was referred to Dr. Weber for a consultation regarding myofascial pain, located in the trapezius, rhomboid, levator and scapula regions. She was continued on muscle relaxers and pain medication. CT scans were eventually done on her cervical and lumbar back on January 29, 2001. She then followed up with Dr. Lennard on February 5, 2001, with complaints in her neck, back and left shoulder. She was on regular work duties without restriction. No claim for compensation was filed.

On July 8, 2001, the employee was involved in a vehicular accident that resulted in a fracture of her left wrist and facial lacerations. Surgery was performed and pins were placed in the arm. During recovery from the accident, she developed deep venous thrombosis in her right lower extremity, which required hospitalization and medication.

On August 30, 2002, she received authorized treatment through the Assemblies of God for a neck, shoulder and mid-back injury with Dr. Lennard. It was reported that she "injured her neck and upper back while 'breaking objects' on 8-26-02 while at work. She states this is a repetitive activity. She developed gradual onset of pain generally in the back of her neck, shoulder and mid-back. Claimant complains of pain in the posterior shoulder, mid-back and lower cervical spine somewhat off to the right." She had tenderness without trigger points or loss of strength. Dr. Lennard diagnosed cervicothoracic strain, advised her to apply heat and perform stretching and gave her a muscle relaxant. She was advised to return to unrestricted duty after the three day weekend. When Dr. Lennard saw her a week later on September 4, 2002, he reported improvement but ongoing pain in her neck and shoulder as before. She was still on medication. Dr. Lennard released her without restrictions, prescriptions or follow up care. She returned to her regular job duties. No claim for compensation was filed

On December 3, 2003, the employee fell while at work. She landed on her knees and hands, with her arms stretched forward. She felt jolted and stunned. Since her supervisor had already left for the day she reported the accident the next day and was set up for authorized care after she requested treatment for her neck and back a few days later.

On December 8, 2003, she was seen by Dr. Woodward for authorized care, reporting that she had fallen on to the concrete floor, on her hands and knees, while working. "She states that she jarred her neck and had abrupt neck and mid-back pain post fall. Today, patient complains of right and left mid-lower neck paraspinal aching. She notes moderate discomfort in neck today. Flexion and extension aggravate pain moderately with sharper pain on the left rotation. Frequent cervical crepitus is described. Patient notes some intermittent dizziness and nausea with increased neck pain lately. Left upper extremity aching discomfort was noted after the fall, which has resolved." She was given medication, instructed on the use of heat and neck stretches and returned to regular

duty.

On December 15, 2003 she returned to Dr. Woodward complaining of "frequent lower neck and left upper trapezius aching pain. Pain radiates to left scapular area with lifting. No left upper extremity symptoms. Intermittent cervical crepitus noted. Patient notices some pain radiating to thoracic/upper lumbar area with increased neck pain." She had decreased range of motion and was given Vioxx, Zanaflex and physical therapy, while she was placed on modified duty. She took 1-2 weeks off from work before returning to see Dr. Woodward on December 30, 2003, complaining that her pain had not improved. She was given a course of physical therapy and remained on "full-time modified work duty." She followed up with physical therapy, and on February 6, 2004 was prescribed a TENs unit. She reported "She has noted some gradual improvement in her neck discomfort since the injury. Pain seems to worsen later each workday after prolonged sitting. She notes gradual muscle aching and tightness."

On February 23, 2004, she again saw Dr. Woodward. He recommended a two week trial of a TENs unit and a home TENs unit purchase if the trial provided significant relief. She was instructed to call him after she tried the TENs unit and report on her pain response. He released her to full-time regular work with no restrictions. The claimant failed to follow-up with physical therapy for the TENs recheck on two consecutive visits. She was discharged at that time. The reason claimant later gave Dr. Woodward was that her daughter had a baby and she spent some time with her.

Claimant's employment was terminated on July 28, 2004.

The claimant sought treatment on her own from her personal physician, Dr. Brockman. He ordered MRIs of her brain and cervical spine, as well as physical therapy. He also prescribed a TENs unit and medication. She reported that the physical therapy and TENs unit gave short term relief but not long term improvement. She tried employment with a convenience store for about a week following her termination, but quit the job because it required too much standing, walking and lifting, which bothered her neck, back and shoulders.

She saw Dr. Woodward on April 12, 2005. He released her without permanent restrictions, impairment or disability. By that time, she had obtained additional physical therapy on her own through Dr. Brockman and The Meyer Center. She reported pain all over, including her cervical spine that radiated to her upper trapezius area with aching discomfort from activity. Dr. Woodward recommended purchase of a TENS unit through workers' compensation with provision of six months equipment. On May 4, 2005, Dr. Woodward concluded that "Patient's ongoing cervical pain condition is a combination of substantial work-related strain and substantial preexisting cervical spondylosis." He again released her to full-time work duty without restrictions and stated that she sustained no impairment or disability from the work-related condition.

On August 25, 2005, Claimant was seen by orthopedic surgeon Dr. Truett Swaim at the request of her

attorney. On exam he noted mild to moderate bilateral tremors of the upper extremities. She had tenderness and muscle spasms. Spurling sign was positive in the upper right periscapular area with radiating pain into the left upper arm. Jackson compression sign caused radicular symptoms, and her range of motion testing of the cervical spine was limited. Strength testing revealed weakness in the triceps bilaterally. She had a positive impingement sign on the right shoulder. Dr. Swaim diagnosed osteophyte disc abnormality of the cervical spine with stenotic changes; cervical radiculopathy; possible bilateral peripheral neuropathy, and cervical vertebral artery syndrome with tendonitis in both shoulders; right shoulder impingement syndrome and cervical/lumbar strain.

Dr. Swaim opined that the accident on December 3, 2003 was a substantial factor in causing her to develop cervical pain and radiculopathy, tendonitis in both shoulders, right shoulder impingement and cervical vertebral artery syndrome. He felt that her cumulative trauma from working at Gospel Publishing House between 1986 through July 15, 2004 was a substantial factor in causing her to develop degenerative changes of the cervical spine and tingling in the upper extremities.

Because of her work-related injuries, Dr. Swaim opined that she would have ongoing neck pain with cervical radiculopathy that would necessitate treatment and surgical intervention, ongoing discomfort in both shoulders and a symptomatic lumbar condition. He did not feel that she was at maximum medical improvement because "her cervical condition will eventually necessitate surgical intervention," but assigned to her permanent disability ratings because "These ratings are not likely to change significantly with or without treatment." His ratings were 40% to the body as a whole for her cervical condition, 22% of which he attributed to her accident on December 3, 2003, and 18% of which he attributed to her cumulative exposure injuries through July 15, 2004. With respect to her shoulder conditions, he assigned a 15% rating to the right shoulder and a 10% rating to the left shoulder, both attributable to the December 3, 2003 accident.

In regard to preexisting disabilities, he assigned to her a 15% disability rating to the left arm at the 175 week level from her fracture, and 15% disability to her right leg at the 160 week level from her deep vein thrombosis with permanent vein damage, and finally a 25% body as a whole disability for her lumbar condition. In conclusion, he felt that she was permanently and totally disabled as a result of her prior and work-related disabilities in combination. He did not feel that her disabilities from the December 3, 2003 accident or the work exposure through July 15, 2004 made her permanently and totally disabled in isolation. He limited her to lifting 5-15 pounds on an occasional basis and up to 5 pounds frequently, with avoidance of repetitive bending, stooping, twisting, squatting, climbing, kneeling or crawling. She was not to do repetitive, prolonged or forceful use of her upper extremities above shoulder level, should avoid prolonged sitting, standing or walking, and shouldn't perform repetitive use of her arms.

Dr. Swaim concluded that she would need further evaluation by a neurologist and neurosurgeon for her

cervical condition and dizziness, and recommended testing for her arteries: a cervical myelogram and post myelogram CT, EBG's and nerve conduction studies, and evaluation of her shoulders by an orthopedic surgeon. He felt she would require a cervical discectomy and fusion.

Dr. Swaim was deposed on January 9, 2006. Dr. Swaim testified that in his review of the medical records he noted that the employee had tested positive on the vertebral artery test performed on September 28, 2004, during physical therapy that she received on her own accord. The test is positive when someone turns their head with additional force and they become light headed or dizzy. It results when "you get enough bony spur formation and the vertebral arteries actually go through the bone in the cervical spine. . . when you turn, the area where the vertebral artery is going between one bone and another, then what happens is the vertebral artery will get occlusive changes." Dr. Swaim also noted an MRI done on November 17, 2004, indicating moderate spinal canal stenosis at the L4-5 and L5-6 levels and mild stenosis at L3-4. An MRI is an objective test. His review of the cervical MRI revealed significant osteophyte disc complexes at C3-4, C4-5 and C5-6, meaning "there's a protrusion of bone and disc material beyond what would be acceptable." This presentation accounted for her radicular symptoms.

In terms of the cervical spine, Dr. Swaim felt the pain and radiculopathy were related to the December 3, 2003 fall because, "If you look at the scan, then I would assess that she did have some preexisting cervical spine disease even though the scan is done, you know, multiple - you know, 11 months later. And one of the reasons is that, when she has - - when she has this injury, afterwards she develops neck pain, mid back pain, she develops neck pain with pain to the left trapezius area, and then there's this ongoing she has regarding her neck, so I think, you know, like I said, it's aggravated her preexisting degenerative condition and it caused her to develop a radiculopathy. Most of that is based on subjective findings and the medical records."

In terms of her developing tendonitis in both shoulders and right shoulder impingement, he noted that she had some history of prior shoulder pain in 2002 (when she saw Dr. Lennard for work-related problems from "breaking down objects"), but then she did not complain of significant problems again in the shoulder until the fall on December 3, 2003. He noted her history of work-related problems with her shoulders prior to that date, and testified, "I could have said that, you know, I think it's reasonable that I could have said, well, her occupation also contributed and caused her to develop tendonitis because of the repetitive nature but, because of the fact that these - - it seems like there was pain that developed after this fall, I attributed it to the fall when in reality it could be attributed to both."

He concluded that her repetitive activities with her arms at Gospel Publishing were also a substantial factor in causing her shoulder injuries, and that "the risk of developing this problem from her employment was greater

than the risk due to stresses in her unemployment activities.” In particular, “repetitive use of the upper extremities, lifting and twisting and lifting above shoulder level and transferring books from a machine to a skid and repetitive use of her upper extremities. That puts stress on the neck. . . move the arms independently, and that puts compressive force on the neck. If you then consider that there’s also twisting involved, then that puts an impact loading and torque into the picture. Well, impact loading and torque are what causes breakdown of cartilage and degenerative changes.” He felt that the vertebral artery syndrome was the result of these degenerative changes in combination with the December 3, 2003 fall.

Because of preexisting deep vein thrombosis, Dr. Swaim limited the employee to avoid prolonged standing or sitting without moving her legs. Her prior left arm fracture would limit her to avoid repetitive or forceful use of the left hand on a symptomatic basis. Overall, he limited her to sedentary light work level based upon her December 3, 2003 related problems as well as prior problems with her neck and lumbar back. She couldn’t do bending, stooping, squatting, kneeling or crawling repetitively because of her back. Her prior lumbar condition in isolation would reduce her to a medium capacity work level.

Dr. Woodward testified by deposition on November 26, 2006. He did not feel that the claimant’s regular work duties would substantially contribute to a cervical repetitive trauma condition sufficiently to contribute to cervical spondylosis or degenerative arthritis in the neck. In forming his opinion regarding occupational exposure, he relied upon a video that was taken of her job duties. The video does not reference lifting activities that the employee performed while stacking books on to “trucks.” Nor does the video contain an activity called “breaking down” objects or “signatures” where she would tear perforated booklets of varying thickness in half continuously throughout the day for several days at a time. Dr. Woodward testified that he specifically did not review or include this activity in rendering his opinions, “The patient did not review with me any work activity that she described as breaking objects, and so I did not address that specific activity in my opinions.” When he saw and treated the employee, it was specifically for the December 3, 2003 fall, not any source of possible occupational exposure to injury. His opinions regarding occupational exposure to repetitive trauma injury are based on the activity that he saw on the tape he reviewed.

He did feel that the 2003 fall was a substantial factor in causing a strain, but her residual discomfort was due to cervical degeneration, “I did indicate that the work-related cervical strain was a substantial contributor to symptoms,” but not “permanent impairment.” Nonetheless, he did prescribe a TENS unit for her to use for 6 months. He admitted that the TENS unit would not provide permanent improvement, only temporary relief. He did not know how effective the TENS unit actually was. Any long term pain she had would not be related to the December 3, 2003 fall according to Dr. Woodward. He did not undertake an analysis of the nature and extent of

preexisting disability that she had for her cervical, lumbar or other conditions.

Phil Eldred, a certified vocational counselor, testified at the hearing. He evaluated her on January 25, 2007, and prepared a report dated February 17, 2007.

Mr. Eldred testified claimant would be limited to unskilled sedentary jobs based upon her background and physical restrictions imposed by Dr. Swaim. He testified she was unable to return back to her employment at the employer, as the work is classified as light, and according to Dr. Swaim's restrictions, she is no longer capable of performing physical light-work duties. He further testified he believed claimant had a hindrance or obstacle to her employment prior to the injury of December 3, 2003. Specifically, he pointed to the injury of September 2000, which he testified both the records and claimant's testimony established had continued to cause her some problems with her work duties and with missing time from work. He testified that whether or not she was permanently and totally disabled as the result of any one of the injuries alone, or as a combination thereof, would be a question, which would need to be directed to medical doctors.

On cross-examination by employer, Mr. Eldred admitted that both according to the medical records and claimant's testimony, her medical complaints began with an injury of September of 2000. Mr. Eldred also acknowledged, having an understanding that the claimant had missed a substantial amount of time from work, up to potentially 50% of the working days in 2001 and 2002, and a substantial number of days in 2003 as well. He testified based upon those records, claimant had a significant absentee problem prior to the injury of December 3, 2003.

On further cross-examination by the Second Injury Fund, Mr. Eldred admitted that claimant's past work has always been at a semi-skilled level, and that her testing on the WRAT-3, the academic testing he gave her, showed her current academic abilities to be high, with reading recognition at greater than high school level, spelling at an 8<sup>th</sup> grade level, and arithmetic at a 7<sup>th</sup> grade level. He testified those are reasonably high abilities for someone who has not had an academic class, other than a short computer class, which she did not finish, since high school graduation in 1968. Mr. Eldred admitted that despite his previous testimony, she may very well be suited for work other than "unskilled".

Mr. Eldred also testified he found no permanent restrictions placed on claimant by any medical physicians other than Dr. Swaim. He also testified that a good portion of the reason he believed she is not currently employable is due to her inability to be able to sit for the amount of time necessary for a sedentary job. Mr. Eldred produced from his file a "Functional Ability Statement", which was admitted as Second Injury Fund Exhibit II. On that form, Mr. Eldred noted that claimant told him she is able to continuously sit for 1-hour, and sit for a total of 7 hours in an 8-hour workday. It also noted that she said she gets stiff when sitting. Mr. Eldred testified that if indeed, she is able to sit continuously for 1-hour and for a total of 7-hours in a workday, and do semi-skilled work, that there would be jobs of a sedentary nature in which she would be able to be employed.

Mr. Eldred testified that the claimant's pain level also plays a part, in his opinion, as to her being unemployable. He testified she had indicated a pain level at a 6 during the interview with him, at an 8 at its worst, and a 4 at its best. Mr. Eldred testified that he understood that despite this level of pain, claimant is taking no medication for pain other than Tylenol. Further, he admitted that at the time he saw her, she was not seeking any sort of medical care treatment with any doctor for pain complaints.

Finally, Mr. Eldred testified, assuming that claimant is capable of sedentary or light work, there are jobs which she is capable of performing. His computer analysis found at least 42 jobs in the light and sedentary category for which she has the skills and aptitude to do, if she had the physical capacity to do so.

The claimant testified that since the December 2003 injury her pain level and ability have changed. She is no longer able to take care of all her housework, she has trouble sitting for long periods of time, and functioning with her arms and shoulders. She also testified she had some shaking of her upper extremities. Since the December 2003 injury, she testified she has constant pain, whereas before she would have occasional relief. She can no longer shop and carry bags, and currently the only thing that helps her feel better is if she really does nothing.

Claimant testified she takes Tylenol and some muscle relaxers, which she gets from her sister. Her sister gets this medication by a prescription written to her by her medical doctor. Claimant does not believe she can go back to work, that she does not have any strength in her arms or shoulders, and that she would like more treatment.

On cross-examination claimant admitted that she believes there were some jobs at Gospel Publishing House that she thought she could do, and that she might still be able to do. She testified that the complaints she currently has are the same as those which she has had since the December 2000 injury, and that those complaints have continuously gotten worse, and were the reason that she had such an absentee problem at work prior to the December 2003 injury.

#### CONCLUSIONS OF LAW:

The issue is whether the claimant's employment was sufficient to cause her additional injury to her neck, beyond what she experienced as a result of falls in 2000 and 2003, as a result of occupational disease arising from the alleged repetitive nature of her work.

After carefully considering all of the evidence, I find that the evidence does not support a finding of occupational disease. This is based largely on the opinion of Dr. Woodward. He did not feel that the claimant's regular work duties would substantially contribute to a cervical repetitive trauma condition sufficiently to contribute to cervical spondylosis or degenerative arthritis in the neck. Although his opinion is based on the video, which the claimant testified did not include some lifting and the tearing of the "breaking signatures," I find Dr. Woodward's opinion more persuasive. The omitted activities were done intermittently, and the claimant has clearly had other traumatic injuries to her neck in the form of auto

accidents and falls. Therefore, this claim is denied.

As a result of this ruling all other issues are moot.

Date: May 22, 2007

Made by: /s/ Margaret Ellis Holden  
Margaret Ellis Holden  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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