

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

Injury No.: 05-138598

Employee: William Cochran  
Employer: Honeywell  
Insurer: Ace American Insurance Co.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

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 14, 2008. The award and decision of Administrative Law Judge Mark Siedlik, issued May 14, 2008, 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 2nd day of February 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: William Cochran Injury No: 05-138598  
Dependents: N/A  
Employer: Honeywell  
Additional Party: N/A  
Insurer: Ace American Insurance Co.  
Hearing Date: March 11, 2008  
Briefs Filed: April 11, 2008 Checked by: MSS/cg

## 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: series to 1/7/05; series to 1/6/06
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
repetitive use of bilateral upper extremities
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: right wrist, left wrist, left shoulder
14. Nature and extent of any permanent disability: 20% disability to the body as a whole.
15. Compensation paid to date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? N/A
17. Value necessary medical aid not furnished by employer/insurer? 43,054.56
18. Employee's average weekly wages: sufficient for maximum
19. Weekly compensation rate: \$354.05
20. Method wages computation: By stipulation

## COMPENSATION PAYABLE

Benefits Currently Due: \$12,704.78, plus \$813.00 out of pocket medical (covering both injuries).

### Ongoing Benefits

Medical Care: Past medical: \$43,054.56, covering both injuries.

Total Award..... permanent partial disability benefits and  
 apportionment of  
 medical expenses. Includes medical expenses attributed to  
 both injuries.

22. Second Injury Fund liability: to be determined at a later date.

## FINDINGS OF FACT

Employee: William Cochran Injury No: 05-138598

Dependents: N/A

Employer: Honeywell

Additional Party: N/A

Insurer: Ace American Insurance Co.

Hearing Date: March 11, 2008

On March 11, 2008, the Employee and Employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to R.S.Mo. 287.110. The Employee, William Cochran, appeared in person and with counsel, Michael Stang. The Employer, Honeywell FMT, appeared through counsel, Thomas Billam. The Second Injury Fund is a party to the case. However, the liability of the Second Injury Fund was bifurcated to be determined at a later date. The primary issue the parties requested the Division to determine was whether or not Claimant's injuries alleged to have resulted from repetitive activities culminating on January 7, 2005 and January 6, 2006 are compensable pursuant to R.S.Mo. 287.020.2 (1998 Supp.) for injury number 05-138598 and R.S.Mo. 287.020.3 (1) and 287.067.3 (2005 Supp.) as a substantial factor in causing the Claimant's bilateral carpal tunnel syndrome and resulting disability and the prevailing factor in causing the Claimant's left shoulder injury and the resulting disability.

### STIPULATIONS

The parties stipulated that:

1. On or about January 7, 2005 and January 6, 2006, Honeywell FMT (herein referred to as "Honeywell") was an Employer operating subject to the Missouri workers' compensation law with its liability fully insured by ACE American Insurance Company, c/o ESIS.
2. William Cochran was the Employee of Honeywell working on January 7, 2005 and January 6, 2006 in Kansas City, Jackson County, Missouri subject to the Workers' Compensation Act;
3. William Cochran notified Honeywell of his alleged injuries and filed his claims within the time allotted by law;

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4. William Cochran earned wages sufficient to qualify for the maximum permanent partial disability compensation rate for both accident dates.

### ISSUES

The parties requested the Division to determine:

1. Whether Employee sustained a compensable "injury" or "injury by accident", as defined under R.S.Mo. 287.020.2 (1998 Supp.) and R.S.Mo. 287.020.3 (1)(2005 Supp.) a R.S.Mo. 287.067.3 (2005 Supp.)
2. Whether the medical treatment received by the Claimant for both injuries is considered reasonably required to cure and relieve the effects of the injuries and whether reimbursement for such denied treatment by Honeywell is appropriate.

### FINDINGS

Employee testified on his own behalf and presented the following exhibits, all of which were admitted into evidence over Employer's objection:

Exhibit A - The transcript of the deposition of Dr. P. Brent Koprivica, M.D. (July 12, 2007). Objections made within the deposition by counsel for the Employer and Insurer are overruled.

Exhibit B - A stipulated submission of medical records relating to Employee's treatment.

Exhibit C - An itemization of medical bills incurred for the treatment of all of the Employee's alleged claims and supportive materials provided by the various providers.

The Employer called two witnesses, Craig Miller and Dale Morgan, who testified at the hearing. In addition, Employer presented the following exhibits, all of which were admitted into evidence without objection:

Exhibit 1 - a CD-ROM containing video of Employee and Mr. Morgan demonstrating one of Employee's work tasks.

Exhibit 2 - Dr. Clymer's report submitted under R.S.Mo. Section 287.210.7 on December 15, 2006 and received without objection.

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Based on the above exhibits and the testimony of Cochran, Mr. Miller and Mr. Morgan, I make the following findings:

Employee, William Cochran, is a long time Employee of Honeywell working almost his entire tenure as a fire protection specialist. His duties encompass all manner of fire protection activities as well as maintenance of the fire control system at Honeywell.

Employee's duties included maintenance of all of the water valves throughout the plant. Until approximately 2002, Employee would assist in an annual valve inspection, opening every valve in the plant and count the turns and then close each valve, again counting the turns. This activity was performed by Employee and other members of his department until approximately 2002 when union rules required a pipe fitter to perform the inspection, accompanied by a member of the fire protection service. After that change, Employee would accompany the pipe fitter on the annual inspection and would occasionally help with some of the valves when the pipe fitter became fatigued. In addition to that task, known as the operational valve inspection, Employee performed a number of other tasks requiring vigorous upper extremity use including main drain testing on an annual basis, flow testing, which was performed quarterly, fire hose maintenance requiring the spooling and unspooling of all of the fire hoses, hydrant maintenance, maintenance on fire doors, manual pull stations, as well as administrative duties requiring daily routine typing and data entry.

Employee began complaining of numbness in his hands and arms to his supervisor in approximately May of 2004. After meeting with members of the safety department and receiving no treatment, Employee sought treatment with his own doctor, Dr. Bogner. Dr. Bogner referred Employee to Dr. Pryor for diagnostic testing which identified carpal tunnel syndrome in both of his hands. Employee continued to follow up with his supervisors and the Honeywell plant doctor, Dr. Bennett. It is suggested in the medical records that Honeywell's position was that Employee's symptoms were caused by diabetes and not the repetitive nature of his work. Dr. Pryor had previously conducted testing eliminating diabetes as the cause of Employee's symptoms. Regardless, Employer continued to deny benefits. Employee was then referred to Dr. Carroll who ultimately performed carpal tunnel syndrome surgery on Employee's left hand on January 7, 2005 and his right hand on March 25, 2005.

In approximately September of 2004, Employee began complaining of symptoms in his left shoulder. He testified that many of his work assignments, especially those dealing with sprinkler system maintenance, required overhead activities. He had previously developed this condition in his right shoulder in 2001 but elected to treat it privately and not make a workers' compensation claim. When the same activities began

causing the similar symptoms in his left shoulder, Employee reported it to the safety department. The response of the safety department was to videotape Employee and Dale Morgan on September 22, 2005 conducting an annual valve inspection. As this took place after the assignment of pipe fitters to this task, Employee's role

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consisted of locking and unlocking the chains protecting the valves. Despite the wide range of other job tasks testified to by Employee and his supervisor, Craig Miller, it was apparently this videotape which led to the conclusion by Honeywell that Employee's job tasks were not mechanically competent to cause the injury he claims.

As a result of this denial, Employee continued to treat with Dr. Carroll who had previously operated on Employee's right shoulder and bilateral wrists and he ultimately performed arthroscopic surgery on January 6, 2006, on Employee's left shoulder.

Employee sustained little or no lost time as a result of his two carpal tunnel surgeries and his left shoulder surgery. He testified he was able to return to accommodated light duty immediately following each surgery.

Following Employee's return to work, he retained counsel and filed his workers' compensation claims on October 4, 2004. He then retained his current counsel and filed his current claims on February 15, 2006, dismissing his original claim without prejudice on December 14, 2006.

At the request of his attorney, Employee was seen by Dr. P. Brent Koprivica on May 16, 2006. The Claimant apparently indicated to Dr. Koprivica a history of ongoing problems with his left shoulder and bilateral wrists. Dr. Koprivica's report indicates that the Employee described multiple upper extremity use activities, "especially the opening and closing of valves and the forces required in doing that" as the cause of his ongoing upper extremity injuries. While his report does not go into detail regarding Employee's assigned activities with the exception of "overhead valve opening and closing", it is clear that Employee described the same mechanical activities which he described at the hearing on March 11, 2008 but which he ascribed to specific work assignments at hearing.

Based upon Employee's history and his clinical evaluation, Dr. Koprivica rated Employee's bilateral wrist injuries at 20% to the body as a whole and his left shoulder injury at 20% at the 232 week level. In addition, Dr. Koprivica found that the Employee's activities at Honeywell constituted the prevailing factor in the development of his medical conditions and resulting disabilities. In addition, Dr. Koprivica reviewed the medical bills which were incurred as a result of Employee's multiple surgeries. He found that the treatment was reasonable and necessary to relieve the effects of Employee's injuries and further found the medical bills to be reasonable and cites as a basis for that determination his status as a Diplomate with the American Board of Quality Assurance and Utilization Review Physicians.

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Employer's cross-examination of Dr. Koprivica seems to focus on its issue taken with Employee's description of his duties to Dr. Koprivica. Employer's issue appears to be its position that the video taken of Employee and Mr. Morgan constitutes the sum total of Employee's job tasks at Honeywell. This conclusion is further based upon the Employer having sent the video to Dr. Clymer as part with his examination of October 23, 2006. After reviewing the medical records and his clinical examination with Employee, Dr. Clymer determined that Employee had 20% disability in each wrist with 15% relating to carpal tunnel syndrome and 5% related to what he describes as non-work related Dupuytren's Disease. In addition, he diagnoses

impingement syndrome in the left shoulder and assesses 10% disability to the shoulder.

Regarding the issue of causation, Dr. Clymer makes an interesting note. He was provided with a copy of Employer's Exhibit 1 and apparently was told that this video constitutes the extent of Employee's mechanical activities at Honeywell. It is obvious that Employee provided a history to Dr. Clymer which was similar to that provided to Dr. Koprivica and to the Court at the hearing on March 11, 2008. In response to the seemingly diverse descriptions of Employee's job duties, Dr. Clymer says,

"With regard to the bilateral carpal tunnel disease, it is certainly possible that work activities may have been a contributing factor in this process. The difficulty in determining this, however, is having some clear understanding of the extent and nature of his work. His description of his work is clearly different from the video material I have reviewed and from your letter describing work activities. If indeed Mr. Cochran's work is accurately described by the video presentation and involved primarily supervisory activities, locking and unlocking padlocks, removing chains, and documenting the testing process in written form, then I feel these activities are not so repetitive or forceful as to contribute in any significant way to the development of carpal tunnel disease. If, on the other hand, as Mr. Cochran describes, his work involved primarily opening and closing the valves on a repetitive basis over many many years along with other repetitive activities involving both upper extremities, then certainly this may be at least a significant contributing factor in the process."

Giving Employer the benefit of the doubt, Dr. Clymer goes on to conclude that he does not believe the work was a significant contributing factor in the carpal tunnel syndrome. Regarding the left shoulder, without any real description of any other contributing factor, Dr. Clymer concludes that Employee's work at Honeywell is not the prevailing factor in the development of his medical condition or disability.

Employee's supervisor, Craig Miller, essentially corroborated the activities testified to by Employee. While he questioned some of the frequency of Employee's job tasks, he made clear that the activities depicted in Respondent's Exhibit 1 does not accurately depict all of Employee's job activities. The Court finds that Employee's work activities require vigorous and repetitive use of his upper extremities as well as overhead activities relating to his job as a fire protection specialist.

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#### RULINGS OF LAW

In this case, there are two distinct accidents with two distinct accident dates. Unfortunately, the standard of proof for each accident is different as a result of the 2005 amendments to the Workers' Compensation Act. Specifically, prior to those statutory amendments, to qualify as a compensable injury or accident, work must have been "a substantial factor" in causing the resulting medical condition and disability. See Lawson v. Ford Motor Co., S.W. 3d App, Case No. ED88584 (Mo.App. E.D. March 20, 2007). Effective with the 2005 amendments, an injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both a resulting medical condition and disability. R.S.Mo. 287.020.3 (1)(2005 Supp.). In addition, the statute recognizes a specific standard of proof regarding repetitive injuries stating that, "an occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by normal activities of day to day living shall not be compensable." R.S.Mo. 287.067.3.

This Court, already having found that Employee's work requires vigorous and repetitive upper extremity use, finds that Employee's work at Honeywell is, at least, a substantial factor in the development of his carpal

tunnel syndrome. Employer's suggestion that Employee's work consisted only of the activity videotaped in Respondent's Exhibit 1 is disingenuous at best. Both Dr. Koprivica and Dr. Clymer agree that, if the job is as described by Employee, the resulting condition and disability is compensable. As Dr. Koprivica does not believe any aspect of Employee's wrist injuries are unrelated to work and given the fact that Dr. Clymer provides no explanation as to why it is his opinion that a portion of his rating is considered non-work related, it is the conclusion of this Court that while both doctors have identified 20% disability to each upper extremity at the 175 week level and further, the Court adopts Dr. Koprivica's opinion that the resulting disability equals 20% to the body as a whole which includes an additional load in light of the bilateral nature of Employee's injury. This results in 80 weeks of disability at \$354.05 per week totaling \$28,324.00

With regard to Employee's left shoulder injury, the Court finds that Claimant's repetitive overhead work was competent to cause his injury and disability. The Court specifically disagrees with the causation opinion of Dr. Clymer. The record contains ample evidence of Employee's overhead work but contains no evidence whatsoever of any other possible cause of Employee's left shoulder impingement. As such, the Court again adopts the opinions of Dr. Koprivica and finds that the Claimant's work at Honeywell was the prevailing cause of his left shoulder injury. The ratings of both Dr. Clymer and Dr. Koprivica are both credible and, as such, the court finds the Employee has suffered 15% disability at the 232 week level resulting in 34.8 weeks of disability at \$365.08 per week, totaling \$12,704.78.

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Regarding the medical bills, the only evidence in the record is the opinion of Dr. Koprivica who believes the treatment was reasonable and necessary to relieve the effects of the injuries and that the bills were reasonable and customary. The Court orders Employer to reimburse Employee \$813.00 for his out-of-pocket expenses and reimburse Employee's group insurance carrier the remaining cost of the treatment, \$43,054.56.

I find Employee's attorney is entitled to fees of 25 percent of sums recovered for his legal services. The Employer and Insurer filed two post-trial motions which are not addressed and may be deemed denied.

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

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

*Mark Siedlik*  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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

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

Injury No.: 06-015251

Employee: William Cochran  
Employer: Honeywell  
Insurer: Ace American Insurance Co.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

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 14, 2008. The award and decision of Administrative Law Judge Mark Siedlik, issued May 14, 2008, 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 2nd day of February 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

AWARD

Employee: William Cochran

Injury No: 06-015251

Dependents: N/A

Employer: Honeywell

Additional Party: N/A

Insurer: Ace American Insurance Co.

Hearing Date: March 11, 2008

Briefs Filed: April 11, 2008

Checked by: MSS/cg

## 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: series to 1/7/05; series to 1/6/06
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
repetitive use of bilateral upper extremities
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: right wrist, left wrist, left shoulder
14. Nature and extent of any permanent disability: 15% disability to the left shoulder.

- 15. Compensation paid to date for temporary disability: 0
- 16. Value necessary medical aid paid to date by employer/insurer? N/A
- 17. Value necessary medical aid not furnished by employer/insurer? 43,054.56
- 18. Employee's average weekly wages: sufficient for maximum
- 19. Weekly compensation rate: \$365.08
- 20. Method wages computation: By stipulation

## COMPENSATION PAYABLE

Benefits Currently Due: \$12,704.78, plus \$813.00 out of pocket medical (covering both injuries).

### Ongoing Benefits

Medical Care: Past medical: \$43,054.56, covering both injuries.

Total Award..... permanent partial disability benefits and  
 apportionment of  
 medical expenses. Includes medical expenses attributed to  
 both injuries.

- 22. Second Injury Fund liability: to be determined at a later date.

## FINDINGS OF FACT

Employee: William Cochran Injury No: 06-015251

Dependents: N/A

Employer: Honeywell

Additional Party: N/A

Insurer: Ace American Insurance Co.

Hearing Date: March 11, 2008

Briefs Filed: April 11, 2008 Checked by: MSS/cg

On March 11, 2008, the Employee and Employer appeared for a final hearing. The Division had jurisdiction

to hear this case pursuant to R.S.Mo. 287.110. The Employee, William Cochran, appeared in person and with counsel, Michael Stang. The Employer, Honeywell FMT, appeared through counsel, Thomas Billam. The Second Injury Fund is a party to the case. However, the liability of the Second Injury Fund was bifurcated to be determined at a later date. The primary issue the parties requested the Division to determine was whether or not Claimant's injuries alleged to have resulted from repetitive activities culminating on January 7, 2005 and January 6, 2006 are compensable pursuant to R.S.Mo. 287.020.2 (1998 Supp.) for injury number 05-138598 and R.S.Mo. 287.020.3 (1) and 287.067.3 (2005 Supp.) as a substantial factor in causing the Claimant's bilateral carpal tunnel syndrome and resulting disability and the prevailing factor in causing the Claimant's left shoulder injury and the resulting disability.

### STIPULATIONS

The parties stipulated that:

1. On or about January 7, 2005 and January 6, 2006, Honeywell FMT (herein referred to as "Honeywell") was an Employer operating subject to the Missouri workers' compensation law with its liability fully insured by ACE American Insurance Company, c/o ESIS.
2. William Cochran was the Employee of Honeywell working on January 7, 2005 and January 6, 2006 in Kansas City, Jackson County, Missouri subject to the Workers' Compensation Act;
3. William Cochran notified Honeywell of his alleged injuries and filed his claims within the time allotted by law;

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4. William Cochran earned wages sufficient to qualify for the maximum permanent partial disability compensation rate for both accident dates.

### ISSUES

The parties requested the Division to determine:

1. Whether Employee sustained a compensable "injury" or "injury by accident", as defined under R.S.Mo. 287.020.2 (1998 Supp.) and R.S.Mo. 287.020.3 (1)(2005 Supp.) a R.S.Mo. 287.067.3 (2005 Supp.)
2. Whether the medical treatment received by the Claimant for both injuries is considered reasonably required to cure and relieve the effects of the injuries and whether reimbursement for such denied treatment by Honeywell is appropriate.

### FINDINGS

Employee testified on his own behalf and presented the following exhibits, all of which were admitted into evidence over Employer's objection:

Exhibit A - The transcript of the deposition of Dr. P. Brent Koprivica, M.D. (July 12, 2007). Objections made within the deposition by counsel for the Employer and Insurer are overruled.

Exhibit B - A stipulated submission of medical records relating to Employee's treatment.

Exhibit C - An itemization of medical bills incurred for the treatment of all of the Employee's alleged claims

and supportive materials provided by the various providers.

The Employer called two witnesses, Craig Miller and Dale Morgan, who testified at the hearing. In addition, Employer presented the following exhibits, all of which were admitted into evidence without objection:

Exhibit 1 - a CD-ROM containing video of Employee and Mr. Morgan demonstrating one of Employee's work tasks.

Exhibit 2 - Dr. Clymer's report submitted under R.S.Mo. Section 287.210.7 on December 15, 2006 and received without objection.

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Based on the above exhibits and the testimony of Cochran, Mr. Miller and Mr. Morgan, I make the following findings:

Employee, William Cochran, is a long time Employee of Honeywell working almost his entire tenure as a fire protection specialist. His duties encompass all manner of fire protection activities as well as maintenance of the fire control system at Honeywell.

Employee's duties included maintenance of all of the water valves throughout the plant. Until approximately 2002, Employee would assist in an annual valve inspection, opening every valve in the plant and count the turns and then close each valve, again counting the turns. This activity was performed by Employee and other members of his department until approximately 2002 when union rules required a pipe fitter to perform the inspection, accompanied by a member of the fire protection service. After that change, Employee would accompany the pipe fitter on the annual inspection and would occasionally help with some of the valves when the pipe fitter became fatigued. In addition to that task, known as the operational valve inspection, Employee performed a number of other tasks requiring vigorous upper extremity use including main drain testing on an annual basis, flow testing, which was performed quarterly, fire hose maintenance requiring the spooling and unspooling of all of the fire hoses, hydrant maintenance, maintenance on fire doors, manual pull stations, as well as administrative duties requiring daily routine typing and data entry.

Employee began complaining of numbness in his hands and arms to his supervisor in approximately May of 2004. After meeting with members of the safety department and receiving no treatment, Employee sought treatment with his own doctor, Dr. Bogner. Dr. Bogner referred Employee to Dr. Pryor for diagnostic testing which identified carpal tunnel syndrome in both of his hands. Employee continued to follow up with his supervisors and the Honeywell plant doctor, Dr. Bennett. It is suggested in the medical records that Honeywell's position was that Employee's symptoms were caused by diabetes and not the repetitive nature of his work. Dr. Pryor had previously conducted testing eliminating diabetes as the cause of Employee's symptoms. Regardless, Employer continued to deny benefits. Employee was then referred to Dr. Carroll who ultimately performed carpal tunnel syndrome surgery on Employee's left hand on January 7, 2005 and his right hand on March 25, 2005.

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consisted of locking and unlocking the chains protecting the valves. Despite the wide range of other job tasks testified to by Employee and his supervisor, Craig Miller, it was apparently this videotape which led to the conclusion by Honeywell that Employee's job tasks were not mechanically competent to cause the injury he claims.

As a result of this denial, Employee continued to treat with Dr. Carroll who had previously operated on Employee's right shoulder and bilateral wrists and he ultimately performed arthroscopic surgery on January 6, 2006, on Employee's left shoulder.

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Following Employee's return to work, he retained counsel and filed his workers' compensation claims on October 4, 2004. He then retained his current counsel and filed his current claims on February 15, 2006, dismissing his original claim without prejudice on December 14, 2006.

At the request of his attorney, Employee was seen by Dr. P. Brent Koprivica on May 16, 2006. The Claimant apparently indicated to Dr. Koprivica a history of ongoing problems with his left shoulder and bilateral wrists. Dr. Koprivica's report indicates that the Employee described multiple upper extremity use activities, "especially the opening and closing of valves and the forces required in doing that" as the cause of his ongoing upper extremity injuries. While his report does not go into detail regarding Employee's assigned activities with the exception of "overhead valve opening and closing", it is clear that Employee described the same mechanical activities which he described at the hearing on March 11, 2008 but which he ascribed to specific work assignments at hearing.

Based upon Employee's history and his clinical evaluation, Dr. Koprivica rated Employee's bilateral wrist injuries at 20% to the body as a whole and his left shoulder injury at 20% at the 232 week level. In addition, Dr. Koprivica found that the Employee's activities at Honeywell constituted the prevailing factor in the development of his medical conditions and resulting disabilities. In addition, Dr. Koprivica reviewed the medical bills which were incurred as a result of Employee's multiple surgeries. He found that the treatment was reasonable and necessary to relieve the effects of Employee's injuries and further found the medical bills to be reasonable and cites as a basis for that determination his status as a Diplomate with the American Board of Quality Assurance and Utilization Review Physicians.

Employer's cross-examination of Dr. Koprivica seems to focus on its issue taken with Employee's description of his duties to Dr. Koprivica. Employer's issue appears to be its position that the video taken of Employee and Mr. Morgan constitutes the sum total of Employee's job tasks at Honeywell. This conclusion is further based upon the Employer having sent the video to Dr. Clymer as part with his examination of October 23, 2006. After reviewing the medical records and his clinical examination with Employee, Dr. Clymer determined that Employee had 20% disability in each wrist with 15% relating to carpal tunnel syndrome and 5% related to what he describes as non-work related Dupuytren's Disease. In addition, he diagnoses impingement syndrome in the left shoulder and assesses 10% disability to the shoulder.

Regarding the issue of causation, Dr. Clymer makes an interesting note. He was provided with a copy of

Employer's Exhibit 1 and apparently was told that this video constitutes the extent of Employee's mechanical activities at Honeywell. It is obvious that Employee provided a history to Dr. Clymer which was similar to that provided to Dr. Koprivica and to the Court at the hearing on March 11, 2008. In response to the seemingly diverse descriptions of Employee's job duties, Dr. Clymer says,

"With regard to the bilateral carpal tunnel disease, it is certainly possible that work activities may have been a contributing factor in this process. The difficulty in determining this, however, is having some clear understanding of the extent and nature of his work. His description of his work is clearly different from the video material I have reviewed and from your letter describing work activities. If indeed Mr. Cochran's work is accurately described by the video presentation and involved primarily supervisory activities, locking and unlocking padlocks, removing chains, and documenting the testing process in written form, then I feel these activities are not so repetitive or forceful as to contribute in any significant way to the development of carpal tunnel disease. If, on the other hand, as Mr. Cochran describes, his work involved primarily opening and closing the valves on a repetitive basis over many many years along with other repetitive activities involving both upper extremities, then certainly this may be at least a significant contributing factor in the process."

Giving Employer the benefit of the doubt, Dr. Clymer goes on to conclude that he does not believe the work was a significant contributing factor in the carpal tunnel syndrome. Regarding the left shoulder, without any real description of any other contributing factor, Dr. Clymer concludes that Employee's work at Honeywell is not the prevailing factor in the development of his medical condition or disability.

Employee's supervisor, Craig Miller, essentially corroborated the activities testified to by Employee. While he questioned some of the frequency of Employee's job tasks, he made clear that the activities depicted in Respondent's Exhibit 1 does not accurately depict all of Employee's job activities. The Court finds that Employee's work activities require vigorous and repetitive use of his upper extremities as well as overhead activities relating to his job as a fire protection specialist.

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### RULINGS OF LAW

In this case, there are two distinct accidents with two distinct accident dates. Unfortunately, the standard of proof for each accident is different as a result of the 2005 amendments to the Workers' Compensation Act. Specifically, prior to those statutory amendments, to qualify as a compensable injury or accident, work must have been "a substantial factor" in causing the resulting medical condition and disability. See Lawson v. Ford Motor Co., S.W. 3d App, Case No. ED88584 (Mo.App. E.D. March 20, 2007). Effective with the 2005 amendments, an injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both a resulting medical condition and disability. R.S.Mo. 287.020.3 (1)(2005 Supp.). In addition, the statute recognizes a specific standard of proof regarding repetitive injuries stating that, "an occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by normal activities of day to day living shall not be compensable." R.S.Mo. 287.067.3.

This Court, already having found that Employee's work requires vigorous and repetitive upper extremity use, finds that Employee's work at Honeywell is, at least, a substantial factor in the development of his carpal tunnel syndrome. Employer's suggestion that Employee's work consisted only of the activity videotaped in Respondent's Exhibit 1 is disingenuous at best. Both Dr. Koprivica and Dr. Clymer agree that, if the job is as described by Employee, the resulting condition and disability is compensable. As Dr. Koprivica does not

believe any aspect of Employee's wrist injuries are unrelated to work and given the fact that Dr. Clymer provides no explanation as to why it is his opinion that a portion of his rating is considered non-work related, it is the conclusion of this Court that while both doctors have identified 20% disability to each upper extremity at the 175 week level and further, the Court adopts Dr. Koprivica's opinion that the resulting disability equals 20% to the body as a whole which includes an additional load in light of the bilateral nature of Employee's injury. This results in 80 weeks of disability at \$354.05 per week totaling \$28,324.00

With regard to Employee's left shoulder injury, the Court finds that Claimant's repetitive overhead work was competent to cause his injury and disability. The Court specifically disagrees with the causation opinion of Dr. Clymer. The record contains ample evidence of Employee's overhead work but contains no evidence whatsoever of any other possible cause of Employee's left shoulder impingement. As such, the Court again adopts the opinions of Dr. Koprivica and finds that the Claimant's work at Honeywell was the prevailing cause of his left shoulder injury. The ratings of both Dr. Clymer and Dr. Koprivica are both credible and, as such, the court finds the Employee has suffered 15% disability at the 232 week level resulting in 34.8 weeks of disability at \$365.08 per week, totaling \$12,704.78.

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Regarding the medical bills, the only evidence in the record is the opinion of Dr. Koprivica who believes the treatment was reasonable and necessary to relieve the effects of the injuries and that the bills were reasonable and customary. The Court orders Employer to reimburse Employee \$813.00 for his out-of-pocket expenses and reimburse Employee's group insurance carrier the remaining cost of the treatment, \$43,054.56.

I find Employee's attorney is entitled to fees of 25 percent of sums recovered for his legal services. The Employer and Insurer filed two post-trial motions which are not addressed and may be deemed denied.

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

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

*Mark Siedlik*  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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