

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

Injury No.: 04-148878

Employee: Georgianna Diener
Employer: Schreiber Foods, Inc.
Insurer: Zurich American
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the corrected award and decision of the administrative law judge dated August 16, 2011, and awards no compensation in the above-captioned case.

The corrected award and decision of Administrative Law Judge Margaret Ellis Holden, issued August 16, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25th day of May 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

Employee: Georgianna Diener

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed and employee should be awarded past medical expenses and future medical care, temporary total disability benefits and permanent total disability benefits.

Facts

Employee worked for employer as a plant worker making and processing cheese from September 2000 until March 2007. As part of employee's duties in the casting department, she was required to consume the cheese every half hour in order to fill out a quality control form indicating criteria such as color, texture, and taste.

Employee testified that the plant had several prior incidents of unsanitary conditions. Employees were sometimes sent home after the facility failed tests conducted by the United States Department of Agriculture.

In late 2004, employee began experiencing symptoms of chronic diarrhea, cramping, and bloating. A culture of her stool was performed by Freeman Hospital and it revealed that she had a bacterial infection of Hafnia.

Quality Assurance Advisors for employer testified that employer does not specifically test for the presence of Hafnia in its facility.

Employee resumed her job with employer, but continued to have severe intestinal problems that involved uncontrolled bowel movements. Employee treated with numerous health care providers for this condition. Ultimately, she saw a gynecologist in St. Louis, Missouri who informed her that her condition involved a gastrointestinal condition. Employee then began treating with Dr. Weinstock, a board certified gastroenterologist in St. Louis, Missouri.

Dr. Weinstock opined that employee acquired a rare bacterial infection called Hafnia from her work in the cheese plant. Dr. Weinstock further opined that this Hafnia infection caused her to develop "post-infection irritable bowel syndrome, which is a motility disturbance of the small intestine, which results in overgrowth of her normal bacteria, and complications of diarrhea, bleeding and abdominal discomfort, and it also caused Crohn's disease." Dr. Weinstock concluded that employee has been unable to work since at least October 27, 2006.

Mr. Swearingen performed a vocational rehabilitation evaluation of employee and concluded that "[g]iven the nature and extent of her symptoms, [employee] could not perform work tasks as normally expected to be able to maintain competitive employment. [Employee] is totally disabled as a consequence of her chronic illness and its symptoms."

Employee: Georgianna Diener

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Discussion

Dr. Weinstock, employee's treating physician, credibly testified that employee was exposed to Hafnia in the workplace and that her exposure to the same was a substantial factor in causing her gastroenterological condition.

The administrative law judge dismissed the testimony of Dr. Weinstock in favor of the testimony of Dr. Burmeister. I find that this was in error. Dr. Weinstock was employee's treating physician and is board certified in gastroenterology. Dr. Burmeister, on the other hand, was hired solely for the purpose of testifying for this claim. Dr. Burmeister unequivocally denied any connection between Hafnia and dairy products. However, as provided by employee, there is a wealth of scientific/medical literature recognizing the connection between Hafnia and dairy products and the illnesses it causes humans. For the foregoing reasons, I find the opinions of Dr. Weinstock more credible than those of Dr. Burmeister.

Section 287.067.1 RSMo defines an occupational disease as:

an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

In examining occupational diseases, the courts have stated that the determinative inquiry involves two considerations: "(1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort." *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 300 (Mo. App. 1991), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

Employee worked at a cheese processing plant that had a history of numerous sanitary violations. Employee's job duties included tasting the cheese to test for qualitative control criteria. In late 2004, employee began experiencing numerous gastroenterological problems. Employee's treating physician testified within a reasonable degree of medical certainty that employee was exposed to Hafnia while working for employer and that this exposure caused her gastroenterological condition.

Based upon the foregoing, I find that employee's exposure to Hafnia was greater while working for employer than that which affects the public generally and that there is a recognizable link between her gastroenterological condition and her tasting of the cheese in the processing plant. In sum, I find Dr. Weinstock's opinions credible and find that employee was exposed to Hafnia while working for employer and that this exposure caused her gastroenterological condition, or occupational disease.

Employee: Georgianna Diener

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Conclusion

In light of the foregoing, I find that employee should be awarded past medical expenses and future medical care, temporary total disability benefits, and permanent total disability benefits. As such, I would reverse the award of the administrative law judge and award employee the same.

Therefore, I respectfully dissent from the decision of the majority of the Commission.

John J. Hickey, Member

CORRECTED AWARD

Employee: Georgianna Diener Injury No. 04-148878
Dependents: N/A
Employer: Schreiber Foods, Inc.
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund
Insurer: Zurich American
Hearing Date: 5/11/10 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: ALLEGED JASPER COUNTY, MISSOURI
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? NO
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
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: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: NONE
16. Value necessary medical aid paid to date by employer/insurer? NONE

Employee: Georgianna Diener

Injury No. 04-148878

- 17. Value necessary medical aid not furnished by employer/insurer? NONE
- 18. Employee's average weekly wages: \$599.87
- 19. Weekly compensation rate: \$399.91/354.05
- 20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Unpaid medical expenses: NONE

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 0 weeks, 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:

JOSEPH WALSH

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Georgianna Diener Injury No. 04-148878
Dependents: N/A
Employer: Schreiber Foods, Inc.
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund
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Hearing Date: 5/11/10 Checked by: MEH

The parties appeared before the undersigned administrative law judge on May 11, 2010, for a final hearing. The claimant appeared in person represented by Joseph Walsh. The employer and insurer appeared represented by Patricia Musick and Josh Decker. The Second Injury Fund appeared represented by Christina Hammers. Memorandums of law were filed by June 10, 2020.

The parties stipulated to the following facts. On or about November 4, 2004, Schreiber Foods, Inc., was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by Zurich American. On the alleged injury date of November 4, 2004, Georgianna Diener was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. The employment disease occurred in Jasper 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 occupational disease the claimant's average weekly wage was \$599.87, which is sufficient to allow a compensation rate of \$399.91 for temporary total disability compensation, and a compensation rate of \$354.05 for 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 employer is obligated to pay past medical expenses.
4. 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.
5. Any temporary total benefits owed to the claimant.
6. The nature and extent of permanent disabilities, including permanent total disability.
7. The liability of the Second Injury Fund for permanent total disability or enhanced permanent partial disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Employer and Insurer's objections to Exhibit P are sustained. Exhibit P is not admitted but will be included in the transcript as offered. The relevancy objections of Employer and Insurer contained in the depositions are overruled. Appropriate weight will be given to the evidence, if relevant.

The claimant alleges that she contracted a bacterial infection while working for the employer, Schreiber Foods, at their Carthage, Missouri, cheese processing plant. She further alleges that she has contracted irritable bowel syndrome and Crohn's disease as a result of the bacterial infection.

The claimant is 50 years old. She has lived in Carthage, Missouri, for the past 16 years. She graduated from high school and took some vocational classes in photography and computer in 1981, 1990, and 1991. She has never worked in the computer industry and has no formal vocational training. Her past employment history includes working in a darkroom, manufacturing, a cabinet factory, restaurant, she operated a forklift in a warehouse, and then Schreiber Foods in Carthage. She went to work at Schreiber in September 2000.

The Schreiber Foods facility in Carthage, Missouri, is a cheese processing plant. They also have two other locations. They receive large blocks of cheese product that has been previously pasteurized. The plant does not receive any raw cheese that has not been previously pasteurized. They then will add ingredients according to specific customers' recipes and specifications, then reheat it to repasteurize it. This is done because new ingredients have been added to make the products according to the individual recipes. It is then finished and packaged. The pasteurization process involves heating the cheese to the appropriate temperature of 160 degrees or higher for 30 seconds in order to kill any pathogens, including bacteria, that is present in the cheese.

When she was hired in September 5, 2000, claimant originally worked in a floating pool that sent her to various departments. On January 6, 2002, she went to work on the "casting line" as a line attendant. On April 14, 2003, she was a line attendant in the AST department. The cheese slices were individually wrapped. She would also work in the casting department on overtime, if needed. On October 12, 2003, she changed her shift to days doing pile off. Here the cheese was already boxed and stacked on a pallet. She did not taste the cheese. She again changed her shift in November 2003 and August 2005 but continued to do the pile off and did not taste cheese. On October 2, 2005, she again went to the flexible pool but did not taste cheese.

When she was in the casting department as a line attendant, her duties included cooking the cheese, cutting ribbons and slices of cheese, wrapping the cheese, packaging it in cases and then sending it out on a pallet.

Claimant testified that as part of her work on the casting line from approximately 2001 to 2003 she performed quality control. She was required on the hour and half-hour to check that the packaging was correct, check the package was sealed, check code date, and taste the cheese for texture and salt content. She would then have to indicate on a report called a Process Control Point Form if the cheese was salty or the wrong texture. The employer trained every line attendant how to do this.

Claimant, along with other employees at Schreiber Foods, was required to wear a uniform of white pants and shirt, latex gloves, hairnets and captive shoes. These were shoes that could only be worn inside the facility. Employees were not allowed to wear these outside of the building. Captive shoes were identified with green shoelaces. A footbath was also used to clean the shoes in the plant.

The claimant testified that she also consumed dairy foods in her nonemployment life. She drank milk about once a week and had other dairy foods three to four times a week. She also had a history of staff infections beginning in 2000.

A number of people who have worked at Schreiber Foods testified:

Cathy Batson was a co-worker of the claimant in the casting line. She has worked at the plant over 30 years. She stopped working there in December 2004. She described how they had to taste the cheese, which was all pasteurized, and mark off different criteria on the Process Control Point Form. She did not recall the dates or year this occurred. She said it had to be done every one half an hour and that it would not always be the same person doing it. She said the

tasting was not done for the majority of the time but, rather, occurred for a short period of time. She estimates six months or so.

Rob Foster, the Human Resources Team Leader, testified that he has worked for the employer 12 years, only at the Carthage plant since 2008. He does not know the claimant. He is not familiar with the casting line tasting.

Danny Swearingin, Plant Manager for the employer the last 13 years, testified. He has worked for the employer a total of 24 years. He was at the Carthage plant from 2000 – 2005. He described the product produced there as pasteurized cheese including individual slices, pimento cheese, and shredded cheese. There is no raw milk or raw ingredients used. Bagged or bulk cheese is brought in - no cheese is manufactured there. Some natural cheese will mold and the mold is removed and placed in scrap boxes which are later disposed of in the landfill. He recalled the recall in 2005 when Listeria bacteria was detected. He has never heard of Hafnia and is not aware of it ever being found in the Carthage plant.

Richard Dale Rector, a 27-year employee of the employer testified by deposition taken October 12, 2007. He is a machine operator. He described the process of taking cheese from the cooler and blending it with appropriate ingredients, grinding it, cooking it, then cooling and forming it. He recalled a portion of the plant being shut down for approximately two weeks three years prior for what he thinks was bacteria in the drains. He has no involvement with any sanitary testing. He said that quality control people are present through the day observing and making sure that things are done properly. This includes doing swab testing of areas and equipment. He said that quality control will take equipment apart to swab it, will swab light fixtures and the insides of pipes. They also check under and behind machinery and the same with pallets. If they are not cleaning properly, a couple of warnings are given, then workers are written up. As part of his duties he is also involved in disposing of cheese at the landfill about a

half-dozen times a year. They contract with a company that picks up the cheese in a large truck and he follows the truck to the landfill to watch it being dumped and then covered with dirt.

John Lucas, employed by the employer as a sanitarian, testified by deposition taken October 12, 2007. He has worked for employer for 28 years. Prior to being a sanitarian he worked as a supervisor. The claimant worked under him in approximately 2002 – 2003 in the casting department. He testified that as a sanitarian the Quality Assurance department takes samples by swabbing areas and send them to an outside lab for testing. A report comes back about a week later. They also do bioluminescence scanning. If anything is detected, they re-clean the area. Cleaning includes niche areas such as the bottom of equipment, ledges, anything that could have a crease or holes that could accumulate product. He recalled working in the casting department when the area was shut down due to bacteria. He does not know what organisms were involved and does not know if any Hafnia was found present.

Amy Renea Parks, the Quality Assurance team advisor at the Fairview plant, testified by deposition taken October 12, 2007. She had previously worked at the Carthage plant from June 2005 until June 2007. She has a master's degree in food technology and an undergraduate degree in food science. She described the swabbing procedure used. The employer has quality systems procedures which dictate how often to swab certain locations. Some customers require swabbing more often. Testing is performed for Salmonella, aerobic plate count, coliform, yeast and molds. The actual culturing and identification of bacteria is performed by an outside lab. She said that when monitoring, they look for generic species of organisms and do not speciate.

She recalled an incident at the Carthage plant in December 2005 when the bacteria Listeria was detected. The casting and shredding portion of the plant was shut down. That portion of the plant was remodeled, including replacing equipment, portions of walls and portions of floors. She is not aware of any incidents like this before 2005. Due to the

seriousness of any food recall and food safety, she said that she explains to employees that a food recall could lead to plant closings and layoffs.

Troy Scott Garrison, Quality Assurance Team Leader in the Carthage plant since 2005, testified by deposition taken October 12, 2007. He could not testify as to procedures or what was done there before 2005. He confirmed that testing is performed on indicator organisms to determine if things are adequately cleaned. Specific organisms are not identified. He also confirmed that product is dumped in a landfill when it is not saleable, typically due to age. Bacteria are not typically a reason to dump cheese because it is killed by pasteurizing the cheese. He also recalled the incident in 2005 when they shut down the casting area and determined that the equipment could not adequately be broken down for cleaning, so they redesigned the whole line. He was involved in this redesigning and rebuilding of the department. They were not particularly concerned with the drains because they expect bacteria to be present in the drains and that it does not move out of the drain. He is not familiar with the bacteria Hafnia. In addition, the employer has a retention program where they retain samples of cheese they have sent out so that it can be tested throughout the course of the product's shelf life if a question ever arose from a customer.

Jeffrey Curtis Musick, Human Resource Team Leader for Schreiber Foods, testified by deposition taken July 3, 2007, as the corporate representative. Before December 2004 he worked in another facility and began filling in at the Carthage plant. He moved over full time in February 2005. Mr. Musick stated that no raw dairy products are used at the Carthage plant. It is all processed cheese. He testified that in the 2005 remodeling they replaced the belts used to cool the cheese with larger belts. He said during the remodeling no one was allowed in that part of the plant other than the construction people. He also wears the same uniform, including the captive shoes. He testified that if any employee has anything contagious, they are not to be working.

Claimant brought a medical document showing a culture of a staph infection, boils and colitis on November 4, 2004. He had never heard of Hafnia bacteria before this case occurred.

In 2003 and 2004 claimant had some respiratory infections and boils. She later became ill with severe diarrhea. She was treated at Freeman Hospital on November 4, 2004. A stool culture taken in the emergency room grew Hafnia alvei. No fecal white blood cells were present. Claimant was treated with antibiotic Cipro.

In January 2005 she saw her primary care physician with abdominal pain. She was referred to a gynecologist. Claimant was originally diagnosed with gynecological problems, including an ovarian cyst. In the spring of 2005 she was being prepared for surgery when a low grade temperature prompted a cancellation of the surgery and a referral to Dr. Leonard Weinstock, a board certified gastroenterologist.

Dr. Weinstock examined the claimant on May 25, 2005, on referral from Dr. Gibb, claimant's OB/GYN, for abdominal pain and diarrhea. His notes reflect lower quadrant pain and low back pain starting in October 2004. She was having up to 12 bowel movements a day and had watery, grease-like effect that by history also started in October 2004. A colonoscopy was performed. Dr. Weinstock diagnosed claimant with irritable bowel syndrome like condition following an infection, an ulcer in the illium and rectum. He later amended his diagnosis to small intestinal bacterial overgrowth and Crohn's disease. He treated her with anti-inflammatory medications as well as an antibiotic.

Part of Dr. Weinstock's diagnosis was Hafnia alvei, a bacteria causing diarrhea. Dr. Weinstock testified that the Hafnia alvei is related to the Crohn's disease in two ways. First, "Crohn's disease is triggered by an infection in the setting of a person with a specific genetic makeup. And it's known that post-infectious irritable bowel syndrome, which basically is bacterial overgrowth, is caused by an infection such as infectious food poisoning or an infection

you might get and somehow gets into your gut and changes motility, and results in excess bacteria in the small intestine.”

Dr. Weinstock testified that he had never seen *Hafnia alvei* before seeing the claimant and was not familiar with it because it is not a typical bacteria for restaurant-induced diarrhea. He performed a literature search. This search found an article which showed that *Hafnia* was found to be associated with diarrhea and another article that discussed its properties. Neither article related it to food or food processing. Nothing related it to dairy or dairy processing. After his initial deposition in August 2007 Dr. Weinstock issued a supplemental report after researching *Hafnia* further. He stated that articles he reviewed provided authoritative support and corroborated his earlier opinion that claimant was exposed to *Hafnia* at Schreiber Foods. A supplemental deposition was taken in October 2009. Dr. Weinstock testified that none of the articles dealt with Schreiber Foods plants. One article did indicate that *Hafnia* bacteria was found in 31% of fish and 100% of packages of mined meat as well as 6% of milk and cream. It did not indicate cheese. Another article dealt with mozzarella cheese. He testified that he found the source from her work because, “it’s inferred in the articles because you’ve got to get it somewhere. It doesn’t appear out of nowhere... Generally it’s where the product is made or the water supply that is used to make the product.” In response to questioning whether bacteria can come from a food handler or at any place along the line from the source of the food, he responded “Well, it’s one of the two.” He ultimately based his opinion on the fact the bacteria is found in cheese, the claimant worked with cheese and tasted it, she is the only patient he has had that worked in a cheese processing plant, and he had never seen this in other normal foodborne illnesses. He felt more likely than not it was from her work. Dr. Weinstock also said that it is found in the feces of humans, birds, sewage, soil, and dairy.

In September 2006 Dr. Weinstock wrote a report that stated the claimant had acquired a Hafnia infection by working in a poultry processing plant. He later changed that to “Georgianna has been diagnosed with an occupational illness condition from rare dairy. Patients were working in an area infected with E. Coli and other bacteria associated with dairy production which onset patient’s current medical condition.” He testified that he wrote this based on the claimant’s statement that it came from an area with rare dairy infection and that she was working in that area during an infestation. He said that he used the term “rare dairy” because “Hafnia is a bacteria I have, in 20 years of doing gastroenterology, not seen prior to or since this patient brought this to my attention. So this is a very rare infection, something that I have never encountered in the normal infections we see of outpatients or inpatients. So it’s a very unusual infection.” He said that it is related to diarrheal diseases and most diarrheal diseases are acquired by eating something that’s infected. He testified that she has not been able to work since October 27, 2006.

Dr. Weinstock did not know details of what type of dairy she worked with or her duties or the safety measures Schreiber Foods took. He further testified that for him to know if Hafnia is something contracted by working with dairy, he would have to do further research.

On July 25, 2007, the employer notified the claimant by letter that she could no longer work at the plant due to the communicable disease.

Dr. Weinstock continues to treat the claimant with Remicade. She had previously failed treatment with steroids and antibiotics. He described attempting to use Lotronex, which shuts down the GI tract and slows it down to control diarrhea. Next he tried Xifaxan, a broad-spectrum antibiotic working against bacterial overgrowth. He next tried specific treatments for Crohn’s with steroids. She would have periods of improvement and then relapse, so he recommended the Remicade, an autobiological agent that is given intravenously. Side effects from this treatment

include a general risk of infections. He had initially withheld using this because of her history of infections.

Claimant testified that the Remicade treatments initially cause flu-like symptoms, then will control her diarrhea for two to three weeks before it slowly returns. After 8 weeks it is again severe, occurring about 10 to 12 times a day. Her symptoms also include stomach gas, cramping, and body aches. She testified that she is also depressed due to not being able to perform her usual activities. She testified that she has problems going anywhere, as she has to frequently use the bathroom. She has attempted to work since March 2007. She worked at a convenience store from September 2008 to June 2009 operating the cash register. She worked four to six hours a day three days a week. She had to be off work twice due to infections and eventually lost the job.

Dr. R. William Burmeister, an infectious disease specialist, examined the claimant on December 12, 2007. He also performed a medical review of the claimant and issued a report on March 28, 2008. He also testified by deposition on October 3, 2008. His review included medical records as well as depositions of the claimant and Dr. Weinstock as well as depositions of some employees at Schreiber Foods.

Dr. Burmeister agreed with the diagnosis of Crohn's disease, although he questions the date of onset by finding that the histories in the medical records are inconsistent. He also notes that the only time Hafnia was detected was in the culture at Freeman Hospital in November 2004. He did not find that this was in any way related to her work at Schreiber Foods and that the bacteria had never been found in the plant. He stated that Hafnia alvei is not considered a pathogen and, although not at all times, can be found in a small number of persons, part of the normal flora present in human feces. He commented on the reports of it being found in travelers or an infant with diarrhea as false as later DNA testing actually showed this not to be Hafnia but a new species of bacteria called Escherichia albertii.

Dr. Burmeister also testified that almost all the time you have a bacterial infection in the gut that is causing infectious diarrhea, one of the tests done to prove that is to look at a smear of the stool for white cells. White cells are not normally present in the gut. He explained that if there is an infection, the body will produce white cells to kill the bugs causing the infection. If the test is positive for white cells, then an infection is causing the diarrhea. In her test there were no white cells present, so he concludes there were no bacteria causing an infection.

He further testified that stool is made up of 99% bacteria that is normal colonic flora consisting of 150 to 200 species of normal bacteria existing in a normal stool. Hafnia is not a pathogen and does not cause an increase in white cells. He testified that infectious diarrhea is primarily transmitted through the fecal oral route. He said, "What that means is that you have contaminated feces or foods that are contaminated by feces and you ingest it and then that gives you an infectious diarrhea...The other characteristic of infectious diarrhea agents that cause diarrhea is the infectious dose for all of them is quite high." Dr. Burmeister said that viruses are normally the cause of diarrhea.

Regarding the outbreak of Listeria in the Schreiber Foods plant, Dr. Burmeister explains that this is a totally different type of bacteria. This bacteria causes sepsis and meningitis, particularly in pregnant women. Listeria is a bacteria that comes from cows, and when the milk producing the dairy products is contaminated, the bacteria resists normal efforts to get rid of it. He said the fact that this was there has no relationship to the presence of Hafnia because they are two different organisms. While Listeria is very hard to kill, Hafnia is very susceptible to destruction, so it would be destroyed in any procedures used to clean the environment.

Dr. Burmeister concludes that claimant's Crohn's disease would not prevent her being gainfully employed if she was under active treatment.

Wilbur Swearingin, a certified vocational counselor, testified by deposition. He reviewed claimant's medical records and interviewed her by phone on October 18, 2007. He testified that she cannot work in the food service industry with a bacterial infection. Her ability to access and stay on the job is affected by her nausea, multiple stools a day, fatigue, and recurring boils. Her need to go to the bathroom several times a day also impacts her ability to function on the job and be there consistently. He concluded that the claimant is permanently and totally disabled absent any a medical breakthrough that would relieve her symptoms of nausea, diarrhea, and chronic fatigue.

James England, a certified vocational counselor, reviewed medical records, medical reports, Wilbur Swearingin's report, and depositions of the claimant, some of the physicians, and the employees of Schreiber Foods. He issued a report on January 8, 2009, and testified by deposition. He concluded that the primary problem in determining whether she can work is based on which doctor's restrictions are followed. He found that under Dr. Weinstock's restrictions she could not work. Under Dr. Burmeister she could work and, if she needed help, would be eligible for assistance through the Missouri Division of Vocational Rehabilitation.

1. Whether the claimant sustained an occupational disease which arose out of the course and scope of employment.

Both doctors, Dr. Weinstock and Dr. Burmeister, agree that the claimant has Crohn's disease. Claimant alleges that this was caused by exposure to the *Hafnia alvei* bacteria during her work at Schreiber Foods. After carefully considering all of the evidence, I do not find any evidence that claimant was exposed to this bacteria during the course and scope of her employment. The claimant has failed to show that this bacteria was present at Schreiber Foods. The only bacteria conclusively shown present is *Listeria*. Based on the testimony of Dr. Burmeister and his description of the properties of these bacteria, I do not find the presence of

Listeria sufficient to prove that Hafnia was present. These are distinct bacteria and the presence of Listeria does not establish the presence of Hafnia. I find insufficient evidence to conclude that claimant's work at Schreiber Foods was a substantial factor in the contracting of any occupational disease.

2. Whether the occupational disease caused the injuries and disabilities for which benefits are being claimed.

I do not find any causal connection to establish claimant sustained an occupational disease while working for Schreiber Foods.

3. Whether the employer is obligated to pay past medical expenses.

As a result of my conclusions that claimant did not sustain a compensable injury, the employer is not obligated to pay any past medical expenses.

4. 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.

While the evidence does show that the claimant will require ongoing treatment for her Crohn's disease, this is not a compensable injury that is work related. Therefore, no future medical benefits are ordered.

5. Any temporary total benefits owed to the claimant.

I find that no temporary total disability benefits are owed to the claimant.

6. The nature and extent of permanent disabilities, including permanent total disability.

I find no compensable injury has occurred. Therefore, no permanent disability is awarded.

7. The liability of the Second Injury Fund for permanent total disability or enhanced permanent partial disability.

Because the injury giving rise to this claim has been found to be not compensable, the Second Injury Fund is not liable for any benefits.

Date: 8/16/10

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

A true copy: Attest:

/s/ Naomi Pearson
Naomi Pearson
Division of Workers' Compensation