

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

Injury No.: 97-497403

Employee: Diane Dobbs  
Employer: MCI  
Insurer: Zurich North America Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by 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 award and decision of the administrative law judge dated August 24, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge L. Timothy Wilson, issued August 24, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22<sup>nd</sup> day of October 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING  
\_\_\_\_\_  
William F. Ringer, Chairman

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

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

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Diane Dobbs

Injury No. 97-497403

Dependents: N/A

Employer: MCI

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

Insurer: Zurich North America Insurance Co.

Hearing Date: August 10, 2009

Checked by: LTW

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: Alleged November 1997
5. State location where accident occurred or occupational disease was contracted: Greene 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:  
Employee alleges that she developed upper extremity pain while performing her duties as a telemarketer.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Alleged upper extremities
14. Nature and extent of any permanent disability: N/A
14. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$151.00

Employee: Diane Dobbs

Injury No. 97-497403

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$295.06
- 19. Weekly compensation rate: \$196.71
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable: No compensation is awarded.

22. Second Injury Fund liability: No

TOTAL: \$ .00

23. Future requirements awarded: N/A

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

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on August 10, 2009.

The employee Diane Dobbs appeared personally pro se.<sup>1</sup> The employer MCI, and its insurer Zurich North America Insurance Co., appeared through their attorney Michael Mayes, Esq. The Second Injury Fund appeared through its attorney, Cara Harris, Assistant Attorney General.

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) In or around November 1997, MCI was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Zurich North America Insurance Co.
- (2) On the alleged injury date of November 1997, Diane Dobbs was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged accident or incident of occupational disease occurred in Greene County, Missouri. The parties agree to venue lying in Springfield, Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (5) At the time of the alleged accident or incident of occupational disease, the employee's average weekly wage was \$295.06, which is sufficient to allow a compensation rate of \$196.71 for both temporary total disability compensation and permanent disability compensation.
- (6) Temporary disability benefits have not been provided to the employee.
- (7) The employer and insurer have provided medical treatment to the employee, having paid \$151.00 in medical expenses.

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<sup>1</sup> Diane Dobbs was previously known as Diane Witt Gooch. Any reference to Diane Gooch in this award or in the evidence admitted at trial relates to the employee Diane Dobbs.

The sole issues to be resolved by hearing include:

- (1) Whether the claimant sustained an accident or incident of occupational disease in or around November 1997; and, if so, whether the accident or occupational disease arose out of and in the course of the employee's employment with the employer?
- (2) Whether the employee gave the employer proper notice of the injury, if applicable?
- (3) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (4) Whether the employer and insurer are obligated to pay for certain past medical care and expenses?
- (5) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee from the effects of the injuries?
- (6) Whether the employee is entitled to temporary disability benefits? (The employee seeks payment of temporary total disability compensation, payable for a four month period between November 1997 and February 1998.)
- (7) Whether the employee sustained any permanent disability as a consequence of the alleged accident or occupational disease; and, if so, what is the nature and extent of the disability?
- (8) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation or permanent total disability compensation?

### **EVIDENCE PRESENTED**

The employee testified at the hearing in support of her claim. In addition, the employee offered for admission the following exhibits:

Exhibit A..... Medical Records from St. John's Physicians & Clinics  
Exhibit B ..... Deposition of David Paff, M.D.  
Exhibit C ..... Deposition of Diane Gooch (Dobbs)  
Exhibit D..... Medical Records from Springfield Neurological Institute  
Exhibit E ..... Medical Records from St. John's Physicians & Clinics

Exhibit F Medical Imaging Consultation (MRI of Cervical Spine) from St. John's Regional Health Center  
Exhibit G.....Social Security Benefit Statement  
Exhibit H..... Letter Dated September 3, 2008 from Shane L. Bennoch, M.D. to John Newman, Esq.  
Exhibit I ..... Medical Report from Morfeo M. Suva, M.D.  
Exhibit J .....Medical Records from St. John's Physicians & Clinics  
Exhibit K.....Medical Records from South Creek Family Care (allegedly)  
Exhibit L ..... Correspondence from Robert Freeman, Esq.  
Exhibit M .....Medical Records from South Creek Family Care (allegedly)

Exhibits A, B, C, D, E, F, and H, were received and admitted into evidence without objection. Exhibit J was received and admitted into evidence over the objections of the employer and insurer, and Second Injury Fund. The undersigned sustained the objections of the employer and insurer, and Second Injury Fund, to the admission of Exhibits G, I, K, L and M. Exhibits G, I, K, L and M were received but denied admission into evidence.

The employer and insurer did not present any witnesses at the hearing of this case. The employer and insurer, however, offered for admission the following exhibit:

Exhibit 1 ..... Deposition of Thomas B. Corsolini, M.D.

Exhibit 1 was received and admitted into evidence.

The Second Injury Fund did not present any witnesses or offer any additional exhibits at the hearing of this case.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official or judicial notice of the documents contained in the Legal File, which include:

- Notice of Hearing (August 10, 2009)
- Proof of Mailing (Certified Mail) Notice of Hearing to Employee (August 10, 2009)
- Order – Cancellation of Trial Setting (June 19, 2009) & Scheduling of a New Evidentiary Hearing Date (August 10, 2009)
- Notice of Cancellation of Hearing (August 19, 2009)
- Notice of Hearing (June 19, 2009)
- Request for Hearing-Final Award
- Answer of Employer/Insurer to Claim for Compensation
- Motion to Withdraw & Order Granting Leave to Withdraw as Attorney for Employee (John Newman, Esq.)
- Order Granting Leave to Withdraw as Attorney for Employee (Robert Hill, Esq.)
- Motion to Withdraw (Robert Hill, Esq.)
- Order Granting Leave to Withdraw as Attorney for Employee (Robert Freeman, Esq.)
- Motion to Withdraw (Robert Freeman, Esq.)
- Notice of Attorney's Lien (Robert Freeman, Esq.)

- Order Granting Leave to Withdraw as Attorney for Employee (Kevin Dunaway, Esq.)
- Motion to Withdraw (Kevin Dunaway, Esq.)
- Order of Labor & Industrial Relations Commission (Order of Dismissal Set Aside)
- Order of Dismissal
- Answer of Second Injury Fund to Amended Claim for Compensation
- Answer of Employer/Insurer to Amended Claim for Compensation
- Amended Claim for Compensation
- Answer of Employer/Insurer to Claim for Compensation
- Claim for Compensation
- Report of Injury

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

### **DISCUSSION**

The employee Diane Dobbs is 46 years of age, having been born on April 17, 1963. Ms. Dobbs resides in Ozark, Missouri.

Ms. Dobbs graduated from high school, and then attended college but did not graduate. During early adulthood, Ms. Dobbs married her former husband and moved to San Antonio, Texas, with her husband, who was in the Army. Initially, Ms. Dobbs did not work outside the home. Later, she obtained and engaged in various employment occupations, including work as a contract employee.

In 1994, Ms. Dobbs obtained employment with the employer MCI, working in telecommunications sales. This employment involved sales over the telephone. Ms. Dobbs worked for MCI until in or around July 1998. In describing the nature of this work and her use of the computer and telephone communications system while working for MCI, Ms. Dobbs testified in her deposition and trial as follows:

- MCI provided both a handset and a headset for talking on the telephone, but she used primarily the handset, which was connected to the telephone. (Ms. Dobbs described the handset as an “old time handset with two round ends.”) Often times, the computer would dial the telephone numbers, but at other times she would have to manually dial the telephone numbers. Ms. Dobbs further indicated that she made approximately ten calls an hour, although these calls included busy signals, answering machines, and the calls not being answered. In using a handset, Ms. Dobbs commonly (approximately 90 percent of the time) held the phone in her left hand and typed with her right hand; but she alternated use of her hands. Additionally, she would put the phone down and type with both hands.
- During telephone sales calls, Ms. Dobbs input into the computer information relating to the customer and the sales incident, including details relating to the product and the name, address and telephone number of the customer. The data entry involved approximately 10 to 15 screens and the use of a keyboard, which occurred with each

call, regardless of whether a sale was made. The telephone calls were categorized into three categories: (1) sale made, (2) sale not made, and (3) call back.

- Telephone calls involving a made sale would take 15 to 20 minutes at a time. In addition to data entry, Ms. Dobbs had to use a keyboard to access the internet or an information data base, which allowed her to answer sales questions, such as the cost of a phone call to Singapore. The longest telephone calls involved “call backs”, which required more data entry; while telephone calls involving no sales took the least amount of time with the least amount of data entry.
- The computer monitor was situated at a height at or near her eye level, which allowed her to read from the monitor without her having to bend her neck downward. (Ms. Dobbs noted that she had previously suffered a neck injury, and attempted to alleviate pain and discomfort in her neck by having the monitor placed at eye level.) Yet, the table upon which the keyboard rested was too high, causing her hands to be situated at a high level; and she had to type with her hands being at approximately a 90-degree angle.

According to Ms. Dobbs, while working for MCI she began to experience pain in her elbows and arms, and attributed the pain to her use of the computer and keyboard. Additionally, Ms. Dobbs indicated that she informed her supervisor (Bryan Belt) of the problems, who informed her that she needed to adjust the height level of the monitor and keyboard.

In the course of giving a deposition, Ms. Dobbs testified that, in her employment with MCI, she commonly worked six-hour shifts four days a week, and then worked occasional mandatory Saturdays, and she could come into the office and work additional time. In this regard Ms. Dobbs indicated that she worked 27 to 32 hours a week. However, in her testimony at trial Ms. Dobbs indicated that she worked 15 hours a week.

Approximately a month after leaving MCI, in August 1998, Ms. Dobbs obtained employment with Brad Bradshaw, M.D., J.D. Law Office, and assisted the law office in setting up the business systems and moving the office to a new location. Additionally, Ms. Dobbs is noted by Dr. Paff to have provided the law office with assistance as a paralegal, and used the computer very little. Ms. Dobbs engaged in her employment with Dr. Bradshaw’s law office until in or around February 1999.

Ms. Dobbs presents with a complicated medical history involving multiple medical conditions. Further, an understanding of her medical condition is complicated by the presentation of her case, including the lack or insufficiency of medical evidence that is before the undersigned judge.

The medical records in evidence reveal the following:

- On November 3, 1998, Ms. Dobbs presented to David Paff, M.D., pursuant to a referral from Dr. Wantuck and Dr. McQueary. At the time of this examination, Ms. Dobbs presented with multiple problems, and saw Dr. Paff primarily for problems relating to her arms. At the time of this examination, Dr. Paff offered an impression:

1. Fibrositis.
  2. Ulnar neuropathy, possibly at the cubital tunnel though there is no motor weakness.
  3. deQuervain's tenosynovitis bilaterally.
  4. CMC joint arthritis of the thumb.
- During her examination with Dr. Paff on November 3, 1998, Ms. Dobbs provided a history of being involved in a motor vehicle accident and suffering an injury to her neck, which resulted in her receiving treatment from Dr. McQueary, who is an orthopedic surgeon. Additionally, Dr. Paff notes a history of Ms. Dobbs hurting all over, and having difficulty sleeping and having mild chronic depression.
  - Subsequent to the November 3, 1998 examination, Dr. Paff initiated a course of treatment, which included a nerve conduction study and occupational therapy. Dr. Paff noted that the nerve conduction study was normal. Dr. Paff further noted that Ms. Dobbs presented with multiple problems, which he opined related to his diagnosis of fibrositis.
  - On December 1, 1998 Dr. Paff took Ms. Dobbs off work, noting that she was unable to work due to the thrombophlebitis in her right leg.
  - In December 1998, Dr. Paff noted that Ms. Dobbs "developed superficial thrombophlebitis in her right lower extremity below the knee where she has had varicose veins for a long time, went to the emergency room. She cannot take aspirin or nonsteroidals. She is on elevation and heat....She does have tender, swollen, inflamed saphenous system veins below the knee."
  - On December 17, 1998, Dr. Paff propounded the following comments:

The patient's [Ms. Dobbs] status is improving in regard to her upper extremities, particularly her right upper extremity. She still has a lot of tenderness in various areas on the left. Again, I think she has a lot of fibrositis and perhaps some repetitive trauma also. Her varicose veins thrombosed in the right leg are not getting better. She states she is starting to have some tenderness in the left. She is under the care of Dr. Wantuck with anticoagulant therapy with Coumadin. I am going to continue her therapy for a couple of more weeks. She should have an x-ray of her left elbow just to make sure there is no functional bone problem. I will review that. Apparently she has no more authorizations to come to me from Dr. Wantuck, and she tells me that Dr. Wantuck is not going to renew that.
  - On January 14, 1999, Dr. Paff propounded the following comments:

The patient [Ms. Dobbs] comes back in, first of all to get a sticker for her car for handicap. She has bilateral blood clots in her legs now. She is taking Coumadin. She is bleeding easily. She has lots of complaints about her upper extremities which might do well with a cortisone injection,

though I am concerned about doing that in the face of all of the problems she having in her lower extremities. I did tell her that I would like to see her back in a couple of months and if this does clear, we can try to do something about her upper extremities, though she has fibrositis and I doubt if we are going to make much progress.

- On March 29, 1999, Dr. Paff noted that Ms. Dobbs is off Coumadin and is not taking any medications. Additionally, Dr. Paff noted that Ms. Dobbs has fibrositis, and states that the fibrositis “is her major problem outside of her veins.” (Dr. Paff, at a different time, notes that these two conditions are not related to Ms. Dobbs’ employment with MCI.) Dr. Paff further noted during this examination that Ms. Dobbs was having a lot of tender areas that trigger point injections could be tried on, but he did not want to proceed with such treatment until after Ms. Dobbs underwent a scheduled surgery for removal of the right saphenous vein system.
- On November 21, 2001, Ms. Dobbs presented to Salim Rahman, M.D., who is a neurosurgeon with Springfield Neurological Spine Institute, for an examination. At the time of this examination, Dr. Rahman noted that the MRI (performed on September 26, 2001) demonstrated a disc protrusion paracentrally at C5-6 and an osteophyte disc complex at C6-7; and there is evidence of compression of the anterior space. Dr. Rahman offered an impression of neck pain and cervical stenosis, and recommended that Ms. Dobbs undergo a CT myelogram to delineate the bony anatomy.
- On December 4, 2001, Ms. Dobbs underwent an examination at St. John’s Physicians and Clinics, Orthopedic Association Branch, pursuant to a referral by John W. Hawkins, M.D. In light of this examination, Ramon Shane, M.D., offered his impression – “There is evidence of extensive chronic superficial and deep vein thrombosis demonstrable in the right lower extremity with no evidence of any active component seen.”
- On January 11, 2002, Ms. Dobbs underwent a diagnostic study relating to a venous exam, which resulted in John Clark, M.D., offering the following impression:
  1. There is no evidence of deep venous thrombosis.
  2. Venous reflux is noted in the popliteal and saphanous systems.
  3. There is a focal area of superficial thrombosis in the varicosed branches of the greater vein above the ankle.
- On September 2, 2008, Ms. Dobbs presented to Shane L. Bennoch, M.D., for an independent medical examination at the request of her prior attorney. In light of his examination and findings, Dr. Bennoch did not identify or conclude that Ms. Dobbs sustained a work-related injury in her employment with MCI. In this regard, Dr. Bennoch states,

As you recall Ms. Dobbs had worked at MCI for several years and complained of numbness and pain to her shoulders, elbows and hands.

After taking a history and doing an exam of Ms. Dobbs, I would be unable to conclude with any reasonable degree of medical certainty that Ms. Dobbs had carpal tunnel syndrome.

David G. Paff, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition on July 25, 2007 in behalf of the employee. Dr. Paff provided certain treatment for Ms. Dobbs, pursuant to a referral from Drs. Wantuck and McQueary. And at the request of a prior attorney, Dr. Paff performed an evaluation and issued a final rating report on April 5, 2000. In light of his examinations and evaluations of the employee, Dr. Paff opined that the repetitive trauma associated with Ms. Dobbs' work at MCI aggravated her fibrositis; and, as a result her repetitive trauma injury at MCI, Ms. Dobbs sustained a permanent partial disability of 10 percent to each upper extremity at the 210-week level (elbow). In his deposition Dr. Paff refers to this condition as cubital tunnel syndrome. And, relative to the treatment for her elbows, Dr. Paff opined that Ms. Dobbs does not need any additional medical care.

In addition, Dr. Paff opined that, Ms. Dobbs presented with a permanent partial disability of 15 percent to the body as a whole, referable to the fibrositis; she presented with a permanent partial disability of 7.5 percent to the body as a whole, referable to the neck (motor vehicle accident in 1996); and she presented with a permanent partial disability of 10 percent to her upper extremity at the 175-week level, referable to bilateral CMC joint arthritis of the thumb. Dr. Paff opined that the disabilities attributable to the fibrositis, neck, and bilateral CMC joint arthritis of the thumb are not related to her employment at MCI.

Dr. Paff did not render an opinion relative to Second Injury Fund liability.

On cross-examination Dr. Paff acknowledges that his understanding of the work performed by Ms. Dobbs is limited to his statement that she was a telemarketer for MCI. In this regard, Dr. Paff propounded testimony as follows:

Q. In your report you indicate that Ms. Gooch [Dobbs] was a telemarketer for MCI. Do you have any other history or information about what she did specifically for MCI?

A. Nothing more specific than that.

Q. You would need more information than simply a job title to be able to make an opinion that her elbow problems were caused by her job duties at MCI, wouldn't you?

A. My understanding of the job duties is it's repetitive use of the phone and use of a computer.

Q. Where did you get that information from?

A. Well, because I've been in places where they're doing that kind of work and my daughter has done that kind of work in telemarketing. I have not been at MCI specifically.

Q. She [Ms. Dobbs] didn't tell you what type of computer she used, did she?

A. No.

Q. She didn't tell you how much she used her arms and hands, did she?

A. She didn't tell me because I didn't ask because this – at that point in time when I started on this it wasn't a Workers' Compensation case, so I didn't go into that.

Q. Now, at her subsequent employment at Mr. Bradshaw's law office, she also talked on the phone and screen calls, didn't you?

A. That's what she told me, yes.

Q. Which was the same type of work that she was doing at MCI, wasn't it?

A. I don't believe so, but I haven't seen both of those jobs, so I can't be sure of that.

Q. Both of them involved, from what you know, extensive telephone work, didn't they?

A. What she told me about Bradshaw's office is she talked on the phone and screened calls. She used the computer very little. I don't have much detail about MCI, but that's when her symptoms began.

Q. You don't have any detail about whether she used the computer at all at MCI, do you?

A. That's my – it's my impression, but it's not in my report. It's my impression that telemarketers use computers, yes.

In addition, on cross-examination, Dr. Paff acknowledged that Ms. Dobbs suffers from fibrositis or fibromyalgia, which is not related to her work at MCI. And Dr. Paff acknowledged that Ms. Dobb's condition of fibromyalgia has been progressive.

Thomas B. Corsolini, M.D., who is a physician practicing in the specialty of physical medicine, testified by deposition in behalf of the employer and insurer. Dr. Corsolini performed an independent medical examination of the employee on April 13, 2005. At the time of this examination, Dr. Corsolini took a history from Ms. Dobbs, reviewed various medical records and the deposition given by Ms. Dobbs in June 2003, and performed a physical examination of her.

According to Dr. Corsolini, in performing an examination of Ms. Dobbs, he noted that his visual inspection of the legs revealed some scarring on the right lower extremity that could be consistent with previous superficial venous inflammation; but she presented with no apparent swelling, and no pitting edema in the lower legs. Dr. Corsolini further noted that, at the time of his examination, Ms. Dobbs demonstrated a normal active range of motion at all joints in both upper extremities, and a normal range of motion in all directions in the cervical spine. Nor did he find any evidence of muscle atrophy in her hands or any portion of her arms or legs. However,

Dr. Corsolini noted that Ms. Dobbs reported some tenderness with palpation at the left ulnar groove at the elbow.

In light of his examination and evaluation of the employee, Dr. Corsolini opined that Ms. Dobbs presents with no diagnosis that he could associate with her working experience at MCI. In this context, Dr. Corsolini propounds the following comments:

I think Ms. Gooch's [Dobbs] complaints and her physical examination yield no diagnosis, and with the length of time since leaving her job at MCI, over six years ago, there is no logical basis upon which to presume that any of the activities she was performing have produced any permanent injury. I will note that she had negative nerve conduction test studies in 1998, effectively ruling out carpal tunnel syndrome or ulnar neuropathy. Anything else that she might have been having would at most be considered nonspecific muscle pain or nonspecific tendon and joint pain.

### FINDINGS AND CONCLUSIONS

The Workers' Compensation Law for the State of Missouri underwent substantial change on or about August 28, 2005. However, in light of the underlying workers' compensation case involving an alleged accident or occupational disease date of November 1997, the legislative changes occurring in August 2005 enjoy only limited application to this case. The legislation in effect in November 1997, which is substantive in nature, and not procedural, governs substantively the adjudication of this case. Accordingly, in this context, several familiar principles bear reprise.

The fundamental purpose of The Workers' Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo. App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo. Banc 1983). Yet, a liberal construction cannot be applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo. App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo. App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Bruflat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo. App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo. App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the claimant need not establish the elements of the case on the basis of absolute certainty. It is sufficient if the claimant shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation claimant has shown the elements of a case by reasonable probability, means founded on reason and experience which inclines the mind to

believe but leaves room for doubt. *See, Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo. App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575,577 (Mo. App., W.D. 1994); and *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650 (Mo. App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo. App. W.D. 1993).

After consideration and review of the evidence, I find and conclude that the employee, Diane (Gooch) Dobbs, did not sustain her burden of proof. The evidence admitted at the hearing lacks sufficient expert testimony or medical proof that Ms. Dobbs suffers from a condition that is causally related to her employment with MCI. Although Ms. Dobbs testified to experiencing pain and numbness in her upper extremities, she lacks the competency and expertise necessary to determine whether it is biologically and/or mechanically plausible for the upper extremity pain and numbness to be causally related to her claim of injury.

Further, while Dr. Paff testified that Ms. Dobbs suffers from bilateral cubital tunnel syndrome and is causally related to her employment with MCI, Dr. Paff asserts his opinion premised solely on his assumption and speculation of the work activity performed by Ms. Dobbs as a telemarketer for MCI. Notably, Dr. Paff acknowledged that his understanding of the work performed by Ms. Dobbs is limited solely to his understanding that she was a telemarketer for MCI. He did not have any information or history about the work activity Ms. Dobbs specifically performed for MCI. He did not know the details of the work activity, or the work environment governing Ms. Dobbs employment with MCI. He did not know the nature or type of the computer and telephone communications systems utilized by Ms. Dobbs, or the amount of time she worked with such equipment or used her upper extremities in her employment with MCI. He never visited or visually observed the work environment at MCI.

Indeed, Dr. Paff offers his opinion without any facts being proffered to him that Ms. Dobbs even used a computer at MCI. Even if Ms. Dobbs suffers from cubital tunnel syndrome, which is questionable, there is no basis to conclude that the condition is causally related to her employment with MCI.

In addition, Ms. Dobbs suffers from fibrositis or fibromyalgia, which Dr. Paff notes is a progressive medical condition that is not related to her work at MCI. And Ms. Dobbs suffers from neck pain attributable to cervical stenosis and a disc protrusion paracentrally at C5-6 and an osteophyte disc complex at C6-7, with compression of the anterior space, which the treating physicians relate to a condition not causally related to her employment with MCI. These medical conditions, which began to manifest and progress in 1997, may be the source of the pain and numbness that Ms. Dobbs says she began to experience in November 1997 and is continuing to experience. And Ms. Dobbs had negative nerve conduction test studies performed in 1998, which Dr. Corsolini opines effectively ruled out carpal tunnel syndrome or ulnar neuropathy.

Moreover, Shane L. Bennoch, M.D., who performed an independent medical examination of Ms. Dobbs at the request of her prior attorney, asserts that he did not identify, and cannot conclude that Ms. Dobbs sustained a work-related injury in her employment with MCI. And Dr. Corsolini opines that any medical condition that Ms. Dobbs might have been having would at most be considered nonspecific muscle pain or nonspecific tendon and joint pain.

In light of the employee's complaints of pain and the multiple potential causes of injury or upper extremity pain, the diagnosis of an injury or medical condition and its causal relationship to the alleged work-related injury calls for expert testimony. *See, Wright v. Sports Associated, Inc.* 887 S.W.2d 596 (Mo.banc 1994). The facts of this case suggest that the resolution of this issue is beyond the area of expertise of a layperson. The determination of medical causation necessitates an understanding of the medical condition and its cause, relative to other possible causes, including unknown etiologies.

The evidence is insufficient to establish a causal relationship to the claim of injury. The employee, Diane Dobbs, failed to sustain her burden of proof.

Accordingly, the Claim for Compensation, as filed against the employer and insurer, and/or Second Injury Fund, is denied. All other issues are rendered moot.

Date: August 24, 2009

Made by: /s/ L. Timothy Wilson  
L. Timothy Wilson  
*Administrative Law Judge*  
*Division of Workers' Compensation*  
(Signed August 18, 2009)

A true copy: Attest:

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