

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

Injury No.: 09-040445

Employee: Kenneth Enderle

Employer: Leggett & Platt, Inc.

Insurer: Fidelity & Guaranty Insurance Underwriters
c/o Gallagher Bassett Services

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 § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 4, 2011, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Maureen Tilley, issued October 4, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 2nd day of May 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

DISSENTING OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: Kenneth Enderle

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 (ALJ) should be reversed and employee should be awarded permanent partial disability benefits, temporary total disability benefits, and past medical expenses.

The ALJ determined that employee failed to meet his burden of proving that he sustained an occupational disease arising out of and in the course his employment. It is my opinion that the ALJ failed to properly weigh the evidence and, consequently, erred in denying employee's claim.

Section 287.067.1 RSMo defines "occupational disease" as:

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

Section 287.067.2 RSMo provides that for an occupational disease to be compensable, it must be "the prevailing factor causing both the resulting medical condition and disability." Further, "[t]he '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 the normal activities of day-to-day living shall not be compensable."

Based on my review of the evidence, I find that employee's repetitive use of his left hand and wrist while working for employer was the prevailing factor in causing his left wrist carpal tunnel syndrome.

Employee's duties while working for employer as a forklift operator included moving material from one floor to the next by use of an elevator. The elevator is accessed by placing a load upon the floor of the elevator and the employee then reaches over with his left hand and pushes the electrical button on the elevator in order to move the material up or down. Employee testified that while moving the material on the elevator he had to hold the button down continuously for 20-30 seconds. He testified that the electrical button is held on an I-beam and that employee would place his left thumb on one side of the I-beam for leverage and push in on the button with his left index finger and hold it to move the material. Employee stated that he would do this 30-40 times per day. Employee further stated that this was an awkward position for him and that he had to flex his wrist to hold the button.

Employee: Kenneth Enderle

- 2 -

Employee also testified that he drove the forklift with his left arm extended and often experienced vibrations through the steering wheel due to holes in the concrete floor, railroad tracks, and chunks of the solid rubber tires breaking off of the forklift.

Employee testified that he had never had any problems concerning either his left hand or wrist or right hand or wrist before he became a forklift driver for employer.

Dr. Woiteshek saw employee for the purpose of an independent medical evaluation. Based upon his review of the medical records, physical examination and the history provided to him by employee, he diagnosed overuse syndrome of the left hand with subsequent carpal tunnel syndrome and surgery by Dr. Deisher. Dr. Woiteshek testified that the treatment provided to employee was appropriate, reasonable, and necessary. Dr. Woiteshek also opined that the repetitive use of his left hand and wrist leading up to May 23, 2009, while working for employer as a forklift driver, was the prevailing factor in causing the carpal tunnel syndrome in the left wrist. Lastly, Dr. Woiteshek opined that employee had reached maximum medical improvement and assessed 35% permanent partial disability of the left upper extremity at the level of the wrist.

Dr. Sudekum saw employee for an independent medical evaluation as well. Dr. Sudekum reviewed employee's medical records, had x-rays taken, performed a physical evaluation, reviewed a job description of employee's position provided by employer, and reviewed employee's deposition testimony. Dr. Sudekum opined that employee's work with employer was not the prevailing factor in the development of his left carpal tunnel syndrome. Dr. Sudekum believes that employee's arthritis as well as congenital anomalies were the primary factors in causing his carpal tunnel syndrome. Dr. Sudekum opined that employee had a 2% permanent partial disability to the left wrist due to his non-work-related carpal tunnel surgery.

With regard to the issue of causation, Dr. Sudekum testified that it was significant to note that employee's carpal tunnel syndrome developed in his non-dominant left hand. He stated that this was important because in a situation where overuse or work activities would be considered a factor, one would typically expect the dominant hand to be affected more significantly than the non-dominant hand.

On cross-examination, Dr. Sudekum admitted that employee's job duties as a forklift operator were minor contributing factors in the development of his carpal tunnel syndrome.

In denying employee's claim, the ALJ heavily relied on Dr. Sudekum's opinion that if employee's carpal tunnel syndrome was caused by his work activities, he would also have carpal tunnel syndrome in his dominant right hand. I find that this opinion is speculative and ignores significant facts from the record. Employee testified that he drove the forklift with his left arm extended and pushed the elevator button with his left hand and wrist. These are two specific, repetitive activities that employee did exclusively with his left hand and wrist. While it may be more common for a worker to experience carpal tunnel syndrome in their dominant hand, in this case the anomaly is clearly explained by employee's credible testimony concerning his job duties.

Employee: Kenneth Enderle

- 3 -

For the foregoing reasons, I find Dr. Woiteshek's opinions more credible and conclude that employee's repetitive use of his left hand and wrist leading up to May 23, 2009, while working for employer, was the prevailing factor in causing the carpal tunnel syndrome in his left wrist. Employee should be awarded permanent partial disability benefits, temporary total disability benefits, and past medical expenses.

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

Cutis E. Chick, Jr., Member

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Kenneth Enderle

Injury No. 09-040445

Dependents: N/A

Employer: Leggett & Platt Inc.

Additional Party: Second Injury Fund

Insurer: Fidelity Insur Underwriters c/o Gallagher Bassett Services

Hearing Date: July 6, 2011

Checked by: MT/rf

SUMMARY OF FINDINGS

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 5/23/09.
5. State location where accident occurred or occupational disease contracted: Cape Girardeau County, MO.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? 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 happened or occupational disease contracted: Employee alleges use of his left hand in a repetitive fashion while employed at Leggett & Platt.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Left wrist.
14. Nature and extent of any permanent disability: None.
15. Compensation paid-to date for temporary total disability: None.
16. Value necessary medical aid paid to date by employer-insurer? None.
17. Value necessary medical aid not furnished by employer-insurer? None.
18. Employee's average weekly wage: \$429.58.
19. Weekly compensation rate: \$286.39/\$286.39.
20. Method wages computation: By stipulation.
21. Amount of compensation payable:
 - Unpaid medical expenses: None.
 - Medical mileage or travel expenses: None.
 - weeks of temporary total disability: None.
 - weeks of permanent partial disability: None.
 - weeks of disfigurement: None.
22. Second Injury Fund liability: None.
23. Future requirements awarded: None.

FINDINGS OF FACT AND RULINGS OF LAW

On July 6, 2011, the employee, Kenneth Enderle appeared in person and with his attorney, Chris Weiss for a hearing for a final award. The employer was represented at the hearing by its attorney, Kenneth Voigt. The Second Injury Fund was not represented at the hearing and was left open. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. The employer, Leggett & Platt, Inc. was insured through Fidelity Guaranty Insurance Underwriters c/o Gallagher Bassett Services.
2. Mr. Enderle was an employee of Leggett & Platt, Inc. at the time of the claim.
3. Notice of the injury/occupational disease was provided in a timely manner.
4. The Claim for Compensation was filed within the statute of limitations.
5. The parties have stipulated to an average weekly wage of \$429.58 with a corresponding compensation rate for both temporary total disability and permanent partial disability of \$286.39.
6. The parties stipulate that the employer/insurer have paid no medical aid.
7. The parties stipulate that the employer/insurer has paid no temporary total disability benefits.

ISSUES:

1. Did the claimant sustain an occupational disease in connection with his employment at Leggett & Platt?
2. Is the claimant's employment at Leggett & Platt the prevailing factor in his left wrist condition, need for medical treatment, and resulting disability?
3. Is the claimant entitled to reimbursement of \$1,069.23 in out-of-pocket medical expenses?
4. Is the employee entitled to payment of \$734.17 for lost time benefits?
5. What, if any, is the nature and extent of the claimant's permanent partial disability?
6. What, if any, disfigurement is present?

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Leggett & Platt, Inc. Disability Claim Form signed by Employee on February 13, 2009.
- B. Attending physician's statement of Dr. Lastrapes of February 16, 2009.
- C. Leggett & Platt, Inc. Disability Claim Form signed by Employee on April 13, 2009.
- D. Family and Medical Leave Act Request and Agreement dated February 20, 2009.

- E. St. Francis Medical Center occupational records.
- F. Orthopaedic Associate records dated February 25, 2009 through March 6, 2009.
- G. Dr. David Deisher's medical records dated March 18, 2009 through June 10, 2009.
- H. Mid-America Rehab records dated April 7, 2009 through August 19, 2009.
- I. Deposition of Dr. Dwight Woiteshek.
- J. Paid medical bills and receipts.
- K. Wage Statement.

Employer-Insurer's Exhibits

- 1. February 19, 2009 report of Dr. Dennis Straubinger.
- 2. February 19, 2009 radiology report of St. Francis Medical Center.
- 3. March 5, 2009 report of Dr. Charles Lastrapes.
- 4. March 5, 2009 Certification of Medical Leave signed by Dr. Lastrapes.
- 5. February 25, 2009 through March 10, 2009 - certified records of Orthopaedic Associates of Cape Girardeau.
- 6. March 18, 2009 to June 10, 2009 - certified records of Dr. David Deisher.
- 7. April 13, 2009 - attending physician's statement signed by Dr. David Deisher.
- 8. February 23, 2009 - Leggett & Platt, Inc. Disability Form signed by Kenneth Enderle.
- 9. April 13, 2009 - Leggett & Platt, Inc. Disability Form signed by Kenneth Enderle.
- 10. Color photographs taken of the elevator control panel and beam supporting the elevator control panel.
- 11. Deposition transcript of Anthony Sudekum, M.D. taken on February 21, 2011 with signature page attached.
- 12. Video depicting use of the elevator control button.

FINDINGS OF FACT:

Employee testified that he currently resides in Scott City, Missouri. He has lived there since 1995. He has two children that are both self-supporting. He attended high school in Scott City and graduated in 1974. After that he went to New Orleans and attended diesel school. He worked for approximately six years as a diesel mechanic helper. His next job was working at the Schwartz Dairy in Scott County, Missouri from approximately 1989 through 1995. There he assisted in milking approximately 400 cows twice a day, feeding cattle, running equipment including tractors, loaders and moving manure and hay. This was a full-time job plus overtime totaling approximately 60 hours per week. After that he worked at a factory job at QC for approximately two years.

In 1997 he became employed at the Leggett & Platt factory in Cape Girardeau County starting in the pig mill. The job in the pig mill was cutting rubber matting that is used on the underside of carpet by hand with a knife. His next job at Leggett & Platt involved working on the banberry #1. This is basically a mixer or mill that mixes together the rubber and ingredients. This was more a physical type work where he handled the rubber and other materials. He started his next job as a forklift operator in approximately 2001 was. He worked there for approximately 7 to 8 years. He testified that at different times his shift would either be 8 hours per day for 5

days in a week or 12 hours per day for 3 days in 1 week and 4 days the following week.

Employee testified that his duties as a forklift operator involved checking the forklift each day when he arrived at work and then operating the forklift for approximately 90% of the day. He described lifting heavy racks with the forklift which are approximately 5 or 6 feet tall and stacking them 3 high with the forklift. The forklift was run on a concrete floor that had some holes in it and also crossed railroad tracks. At times the solid rubber tires on the forklift would lose chunks which would also cause jarring in the forklift and vibrations in the steering wheel. Employee testified that he drove the forklift with his left hand in an extended position and kept a fairly heavy grip on the steering wheel with his left hand. His right hand was used to control the hydraulic controls of the forklift.

The Employee testified that one of the duties of his job was to move material from one floor to the next by use of an elevator. The elevator is accessed by placing a load upon the floor of the elevator and the employee then reaches over with his left hand and pushes the electrical button on the elevator in order to move the material up or down. Employee testified he thought it took 15 to 30 seconds to push the button in. He testified that the electrical button is held on an i-beam and that the employee would place his left thumb on one side of the i-beam for leverage and push in on the button with his left index finger and hold it to move the material. He testified that he would do this 30 to 40 times per day. He testified that this was an awkward position for him and that he had to flex his wrist to hold the button.

Employee began to notice numbness and stinging in the left thumb and the inside portion of his left index finger in December of 2008. He first reported his symptoms in February of 2009. He stated that he participated in outside activities which involved use of his left hand to include mowing his yard, fishing, and playing golf.

Employee was sent to Dr. Straubinger, who opined that his complaints were not work-related. Thereafter, the claimant was seen by Dr. Trueblood, Dr. Burns and Dr. Lents at Orthopaedic Associates in Cape Girardeau, Missouri.

The employee testified that Employee's Exhibit "A" was a disability claim form that he had signed on February 13, 2009 for the injury to his right hand when he slipped and fell on the ice. This was not work-related and was not involved in his workers' comp claim. The employee testified that Exhibit "B" is a form completed by his family physician, Dr. Charles Lastrapes noting the hand sprain and it was not related to his employment.

The employee testified that Employee's Exhibit "C" is a disability claim form submitted to Leggett & Platt that contained his signature wherein he requested short-term disability benefits for the carpal tunnel and the treatment by Dr. David Deisher. That form was checked that the condition was not related to his employment. Employee explained that he understood from Donna Carpenter that the claim had been denied and that the only way he could get treatment for this was to submit it through his health insurance carrier. The employee testified that Dr. David Deisher had indicated it would be best to submit it under his health insurance.

Eventually, Employee treated on his own with Dr. Deisher. He had surgery on April 3, 2009 and was off work through May 26, 2009. He acknowledged payment of out-of-pocket expenses totaling \$1,069.43.

Employee noted that following his release to return to work by Dr. Deisher on May 26, 2009, he worked a couple of weeks at Leggett & Platt. He quit work for Leggett & Platt in August of 2009 and began to work for the Missouri Barge Line Company. He stopped working for Missouri Barge Line Company because he believed it was too dangerous to work there.

Employee works 20 hours a week for St. Francis Medical Center as a courier delivering medication to cancer patients. He also works 20 hours a week at St. Francis Medical Center in their kitchen department. He washes dishes and stacks trays.

Employee noted that he still has numbness in his index finger and the web space between his left index finger and left thumb. He stated that the numbness is constant. He has some loss of grip strength and some difficulty with range of motion. He stated that he is unable to do the things with his left hand that he was before his carpal tunnel complaints began.

He stated that the residual problems from his carpal tunnel surgery affect his ability to mow his lawn and how he grips the golf club when he plays golf.

On cross-examination, the employee conceded that the majority of his work at Leggett & Platt was completed in the Shift Utility Department. He conceded that 99% of the work he did at Leggett & Platt was done while driving the forklift. In connection with his operation of the elevator, the employee noted that he used his left index finger to push in the elevator button.

The employee initially reported pain in his left thumb and index finger to Donna Carpenter on February 18, 2009. He told Donna Carpenter that he was pulling on carpet rolls that led to the pain in his left wrist, not pushing in the elevator button.

In the weeks leading up to February 18, 2009, the employee stated that he was off work due to his non-work-related right hand injury.

The employee was sent by Ms. Carpenter to Dr. Straubinger. He was seen on one occasion of February 19, 2009. Employee admitted that Dr. Straubinger found clubbing or shortening of the distal digit of the fingers of both his right and left hand. The employee was unsure as to whether he had this condition involving his fingers since birth.

Following his examination with Dr. Straubinger on February 19, 2009, employee applied for short term disability benefits and filled out a form on February 23, 2009 indicating that his condition was not related to his employment.

Employee also completed the same form on April 13, 2009 once again indicating that his condition was not work-related.

Employee, thereafter, saw Dr. Lastrapes, Dr. Trueblood, Dr. Burns and Dr. Lents. The employee decided to treat with Dr. Deisher and had surgery on April 3, 2009. The employee submitted his medical bills through his group personal health insurance.

The employee reiterated his deposition testimony taken on October 30, 2009 that he went to work for Missouri Grain & Barge on August 10, 2009 after resigning from Leggett & Platt four days earlier on August 6, 2009. He worked loading and unloading grain trucks and barges. He routinely used his left hand to push buttons and perform other activities. When Dr. Deisher released him to return to work on May 26, 2009, he was released without restriction. He confirmed his earlier testimony that his left wrist condition did not prevent him from doing anything he needed to do at work for Missouri Grain & Barge.

Testimony of Mark Burger

The next witness to testify on behalf of the employee was Mark Burger. Mr. Burger is a former employee of Leggett & Platt. He worked in production support from September, 2005 through September, 2008. He filled in for Mr. Enderle on occasion and was aware of the position of a forklift operator. Consistent with Mr. Enderle's testimony, Mr. Burger noted that 98% of the time the claimant worked would have been spent on the forklift.

In addressing the frequency and use of the elevator button, Mr. Burger testified that he would hold in the elevator button 12 to 15 seconds at a time. In an 8 hour shift, he guessed that he would hold in the elevator button 20 to 25 times. He then stated that if it was busier, he might need to use the elevator button more often in a shift.

On cross-examination, Mr. Burger repeated that it would take 12 to 15 second to hold in the elevator button. He also revised his earlier testimony stating that the elevator button would need to be utilized 30 to 40 times per day in an average 12 hour shift.

The employer/insurer did not present any witnesses at the hearing.

Testimony of Dr. Dwight Woiteshek by Deposition

The deposition of Dr. Woiteshek was taken on behalf of the employee on December 3, 2010. Dr. Woiteshek evaluated the employee on one occasion, May 28, 2010 (Exhibit I, Page 7). Dr. Woiteshek conducted a physical exam and diagnosed left carpal tunnel syndrome (Exhibit I, Page 12). Dr. Woiteshek testified that the employee's carpal tunnel was caused by repetitious traumatic injuries leading up to May 23, 2009 while the employee worked at Leggett & Platt as a forklift driver (Exhibit I, Page 13). He stated that the employee was required to push in a button with his left index finger and hold his left thumb in an awkward position (Exhibit I, Page 13). He also attributed the employee's carpal tunnel to his driving the forklift in which he used his left arm (Exhibit I, Page 13-14). Dr. Woiteshek stated that there was "probably some vibration coming up from the forklift on that" (Exhibit I, Page 14).

Dr. Woiteshek testified that the employee's employment was the prevailing factor in causing his need for medical treatment and disability (Exhibit I, Page 15).

Dr. Woiteshek found the claimant to be at maximum medical improvement and stated that he had a permanent partial disability of 35% rated at the level of the left wrist (Exhibit I, Page 15). Dr. Woiteshek did not notice any arthritis or degenerative changes in the hands or wrists (Exhibit I, Page 15).

On cross-examination, Dr. Woiteshek admitted that he had to rely on the employee accurately describing his job duties when coming to his opinion on medical causation (Exhibit I, Page 18).

While Dr. Woiteshek testified on direct examination that he did not see any evidence of degenerative changes in the left hand and wrist, he also conceded that he did not review any of the records from Dr. Straubinger (Exhibit I, Page 30). Moreover, he did not review the x-rays taken by Dr. Straubinger (Exhibit I, Page 30).

Finally, on re-cross-examination, Dr. Woiteshek admitted that he did not review the records of the family physician, Dr. Lastrapes, as well as the reports of Dr. Sudekum (Exhibit I, Page 40).

Deposition Testimony of Dr. Anthony Sudekum

The employer/insurer presented the deposition of Dr. Anthony Sudekum. His deposition was taken on February 21, 2011.

Dr. Sudekum is board certified in plastic and reconstructive surgery and in upper extremity surgery. These are two separate board certifications (Exhibit 11, Page 4). He limits his practice to hand and upper extremity treatment (Exhibit 11, Page 4). He estimated that approximately 95% to 98% of his practice involves treatment of individuals with hand, wrist, and elbow conditions (Exhibit 11, Page 5).

Dr. Sudekum evaluated the claimant on August 9, 2010 (Exhibit 11, Page 6). In connection with his evaluation, Dr. Sudekum reviewed Dr. Straubinger's office note of February 19, 2009 (Exhibit 11, Page 7). Therein, Dr. Straubinger obtained x-rays which demonstrated significant degenerative changes of the interphalangeal joints of the thumb and carpal joints of the left wrist (Exhibit 11, Page 8). Dr. Straubinger also noted osteoarthritic deformities of the left wrist and hand (Exhibit 11, Page 8).

Dr. Sudekum reviewed the medical record of Dr. Trueblood dated February 25, 2009 (Exhibit 11, Page 8). Dr. Sudekum commented that Dr. Trueblood also noticed significant radiographic abnormalities of the wrists and hands (Exhibit 11, Page 8).

Finally, Dr. Sudekum reviewed the medical records of Dr. Deisher and, in particular, his office note of March 18, 2009 (Exhibit 11, Page 9). Therein, Dr. Deisher noted a history of arthritic changes in the region of the IP joint and wrist (Exhibit 11, Page 9).

In addition to reviewing all of the treatment records, Dr. Sudekum also conducted a physical exam (Exhibit 11, Page 11). In the physical exam, Dr. Sudekum noted that the employee had a history of congenital abnormalities and arthritic conditions involving both hands and wrists (Exhibit 11, Page 11). Specifically, he stated that the employee had shortening of the bones of each finger on the left wrist (Exhibit 11, Page 11). The employee's fingernails on the left hand and wrists were either small or completely absent (Exhibit 11, Page 11). He had clubbing of all fingers on the right and left hand (Exhibit 11, Page 11).

In addition to conducting the physical examination of the left wrist and hand, Dr. Sudekum also ordered x-rays in his office (Exhibit 11, Page 13). He performed the x-rays himself (Exhibit 11, Page 13). These x-rays showed abnormalities of the distal phalanges of the left wrist (Exhibit 11, Page 14). The x-rays also showed significant arthritic changes of the left wrist (Exhibit 11, Page 14). Finally, he noted that the claimant had shortening of the bones in the carpus which were the results of congenital abnormalities (Exhibit 11, Page 14).

Based upon his review of the medical records, his examination, and the x-rays which were performed in his office, Dr. Sudekum diagnosed multiple congenital abnormalities of both hands (Exhibit 11, Page 14). Dr. Sudekum commented that the employee had severe bilateral wrist arthritis in both hands (Exhibit 11, Page 15). The employee had attenuated and deformed interphalangeal joints of both hands and had a history of left carpal tunnel syndrome for which he underwent surgical treatment (Exhibit 11, Page 15).

Based upon his review of the entire treatment records, x-rays taken in his office, his physical examination of the claimant, review of the job description, and review of Mr. Enderle's deposition testimony, Dr. Sudekum was of the opinion that the employee's employment at Leggett & Platt was not the prevailing factor in the development of his left carpal tunnel syndrome (Exhibit 11, Page 15). Rather, Dr. Sudekum attributed the employee's left carpal tunnel syndrome to the severe arthritis and congenital anomalies affecting both hands and wrists. He stated it was also significant to note that the claimant's carpal tunnel had developed in the non-dominant left hand. He stated this was important because in a situation where use or overuse or work activities would be considered a factor, one would typically expect the dominant hand to be affected more significantly than the nondominant hand (Exhibit 11, Page 16). Dr. Sudekum opined that the employee's employment at Leggett & Platt was not the prevailing factor in the need for surgical treatment for the left carpal tunnel syndrome (Exhibit 11, Page 17). Irrespective of the issues as to medical causation, Dr. Sudekum found the employee to have a 2% permanent partial disability to the left wrist due to his non-work-related carpal tunnel surgery (Exhibit 11, Page 17).

Finally, as of the date of his evaluation, he found the employee to be at maximum medical improvement stating that no further medical treatment was needed (Exhibit 11, Page 18).

Moreover, the employee did not have any work restrictions as of the date of his evaluation (Exhibit 11, Page 18).

On cross-examination, Dr. Sudekum conceded that he took into consideration Employee's emphasis on the pushing of the elevator button with his left wrist and index finger. He also conceded that the claimant's employment at Leggett & Platt as a forklift operator may have been a minor contributing factor in his carpal tunnel syndrome, but did not rise to the level of even being a contributing factor (Exhibit 11, Page 33). Importantly, Dr. Sudekum reiterated his direct examination testimony that the claimant's employment was the not prevailing or predominant factor in the development of his left carpal tunnel syndrome (Exhibit 11, Page 33).

In order to resolve any potential issue as to Dr. Sudekum's understanding of the claimant's job at Leggett & Platt, the claimant's description of his job duties as given in his deposition transcript was read into evidence (Exhibit 11, Page 36). Dr. Sudekum stated that based upon the employee's deposition testimony, regardless of any written job description that he reviewed, his opinion remained that the claimant's work at Leggett & Platt was not the prevailing factor in the development of his left carpal tunnel syndrome (Exhibit 11, Page 37).

Medical Records of Dr. Straubinger, St. Francis Medical Center, Orthopaedic Associates and Dr. David Deisher

The employee first received medical treatment for his left hand and wrist complaints at the office of Dr. Straubinger on February 19, 2009. In this office note, the employee reported an onset of numbness to the left hand, left thumb, and index finger occurring three days earlier (Exhibit 1). The employee stated that he did not know of any incident or event that triggered the numbness to his left hand and finger (Exhibit 1). Dr. Straubinger refers to the employee's onset of complaints as "insidious" (Exhibit 1).

The employee did not mention any work-related cause for his complaints nor did he specifically reference any vibration from driving the forklift or discomfort as a result of pushing in the elevator button with respect to his left index finger (Exhibit 1). Dr. Straubinger diagnosed an insidious onset of left non-dominant fingers of the index, long, and thumb without a specific incident or event (Exhibit 1). He also diagnosed significant degenerative osteoarthritis changes of the left hand and fingers with deformity which is non-work-related (Exhibit 1). It was Dr. Straubinger's opinion that the progressive degeneration was most likely causing a neuropathy (Exhibit 1). Dr. Straubinger stated that the numbness of the left non-dominant fingers and thumb was not work-related (Exhibit 1). Given his diagnosis, Dr. Straubinger referred the claimant back to his family physician, Dr. Lastrapes (Exhibit 1).

In connection with his evaluation, Dr. Straubinger ordered x-rays completed at St. Francis Medical Center on February 19, 2009 (Exhibit 2). These x-rays showed degenerative changes at the second through fifth metacarpal joints of the left hand.

The employee was next seen by his family physician, Dr. Lastrapes, on March 5, 2009 (Exhibit 3). Dr. Lastrapes diagnosed left wrist pain-probable carpal tunnel syndrome complicated by vascular necrosis of the carpalunate (Exhibit 3).

On February 25, 2009, the employee was seen by Dr. Trueblood on a referral from Dr. Lastrapes (Exhibit 5). The claimant reported numbness of his left index finger and his left thumb. The numbness was "spontaneous and not associated with any trauma that he knows of." (Exhibit 5).

Dr. Trueblood noted degenerative changes and deformities of the fingers of the left hand (Exhibit 5).

Dr. Burns, at the request of Dr. Trueblood, conducted nerve conduction studies and confirmed that the Employee had carpal tunnel syndrome in the left wrist.

The employee was seen by Dr. Lents on March 6, 2009 because of a referral by Dr. Trueblood. He recommended a left carpal tunnel release (Exhibit 5).

As noted earlier in the brief, the employee decided to treat on his own at Dr. David Deisher's office. He was initially seen on March 18, 2009 complaining of numbness in his left hand, thumb, index, and middle fingers. He denied any specific history of trauma to the area. Dr. Deisher stated that the employee had an injury many years ago to the left hand (Exhibit 6). There is no mention made of any work-related cause for his problems and the claimant does not reference any difficulty either with driving the forklift or pushing in the elevator control button. Dr. Deisher recommended that the claimant undergo left carpal tunnel release (Exhibit 6). The left carpal tunnel release was performed on April 3, 2009.

Post-operatively, the claimant was seen by Dr. Deisher on May 6, 2009. It was on this date that the claimant mentioned to Dr. Deisher that he used the elevator control button at work (Exhibit 6). On this day, Dr. Deisher stated that the issue is whether his work is the predominant factor in the development of his carpal tunnel syndrome. He stated that the employee felt that his job as a fork lift operator and having to push those buttons 30-40 times a day and hold them in place is the predominant factor for the development of carpal tunnel syndrome. Dr. Deisher also stated that at this point in time it is hard to say with certainty whether his work is the predominant or provocative factor for the development of carpal tunnel syndrome. He stated that he would much rather see a good job description of his role as a fork lift operator or a video of how much pressure is required to push this button to make the elevator go before he renders his opinion. He stated that he would hold off on making a final decision regarding the potential relationship to his work status until I have had a good job description either from him or his employer regarding his role as a fork lift and the various activities that he has done.

In addressing whether or not the employee's complaints were work-related, Dr. Deisher authored a report dated June 10, 2009. He addressed the issue as follows:

"Again, he brought up the issue about whether this was a Work Comp or health insurance issue. Based upon the information that I have seen in the past, I do

think it is more appropriate to see him under his health insurance as opposed to this being a Work Comp matter.” (Exhibit 6, Office Note of June 10, 2009).

The employer/insurer also submitted the Leggett & Platt disability claims forms which were signed by Kenneth Enderle on February 23, 2009 and April 13, 2009, marked as Employer’s Exhibits 8 and 9. On both claims, the claimant signed the disability claim forms indicating that his condition was not related to his employment.

APPLICABLE LAW:

- §287.067.1 defines “occupational disease” 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 diseases 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.
- §287.067.2 states that an injury by occupational disease 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 the normal activities of day-to-day living shall not be compensable.

RULINGS OF LAW:

Issue 1. Occupational disease and Issue 2 Medical causation

The employee is claiming that his job driving a fork lift caused his left carpal tunnel syndrome.

Dr. Straubinger diagnosed an insidious onset of left non-dominant fingers of the index, long, and thumb without a specific incident or event. He also diagnosed significant degenerative osteoarthritis changes of the left hand and fingers with deformity which is non-work-related. Dr. Straubinger opined that the progressive degeneration was most likely causing a neuropathy. Dr. Straubinger stated that the numbness of the left non-dominant fingers and thumb was not work-related. Furthermore, x-rays completed at St. Francis Medical Center on February 19, 2009 showed degenerative changes at the second through fifth metacarpal joints of the left hand.

The employee was next seen by his family physician, Dr. Lastrapes, on March 5, 2009 (Exhibit 3). Dr. Lastrapes diagnosed left wrist pain-probable carpal tunnel syndrome complicated by vascular necrosis of the carpalunate.

On February 25, 2009, the employee was seen by Dr. Trueblood on a referral from Dr. Lastrapes. The employee reported numbness of his left index finger and his left thumb. The

numbness was “spontaneous and not associated with any trauma that he knows of.” Dr. Trueblood noted degenerative changes and deformities of the fingers of the left hand. Dr. Trueblood suggested that he be seen by Dr. Lents in his office.

The employee was seen by Dr. Lents on March 6, 2009. He recommended a left carpal tunnel release.

Dr. Deisher, the employee’s treating physician, never specifically stated whether he thought the prevailing factor for the employee’s carpal tunnel syndrome was. However, he did state I do think it is more appropriate to see him under his health insurance as opposed to this being a Work Comp matter.”

The employer-insurer sent the employee to Dr. Sudekum for an independent medical evaluation. Based upon his review of the entire treatment records, x-rays taken in his office, his physical examination of the employee, review of the job description, and review of employee’s deposition testimony, Dr. Sudekum was of the opinion that the employee’s employment at Leggett & Platt was not the prevailing factor in the development of his left carpal tunnel syndrome. He opined that the employee’s left carpal tunnel syndrome was caused by the severe arthritis and congenital anomalies affecting both hands and wrists. He stated it was also significant to note that the claimant’s carpal tunnel had developed in the non-dominant left hand. He stated this was important because in a situation where use or overuse or work activities would be considered a factor, one would typically expect the dominant hand to be affected more significantly than the nondominant hand. Dr. Sudekum opined that the employee’s employment at Leggett & Platt was not the prevailing factor in the need for surgical treatment for the left carpal tunnel syndrome.

Dr. Woiteshek opined that employee’s carpal tunnel syndrome was caused by repetitious traumatic injuries leading up to May 23, 2009 while the employee worked at Leggett & Platte as a forklift driver.

He stated that employee was required to push a button with his left index finger and hold his left thumb in an awkward position. Dr. Woiteshek also attributed the employee’s carpal tunnel syndrome to his driving the forklift in which he used his left arm. He stated that there was “probably some vibration coming up from the forklift on that”. Dr. Woiteshek does not mention the pre-existing deformities and what role, if any, they play in the issue of medical causation and the development of employee’s left carpal tunnel syndrome.

Based on all of the evidence presented, I find that the opinions of Dr. Straubinger and Dr. Sudekum are more credible than the opinion of Dr. Woiteshek on the issue of medical causation.

I find that the employee did not meet his burden of proof on the issue of medical causation. I further find that the employee did not prove that his work as a forklift driver at Leggett & Platt was the prevailing factor in causing his left carpal tunnel syndrome.

Therefore, based on all of the evidence presented, I find that the employee did not meet his burden of proof that his left carpal tunnel syndrome was an occupational disease arising out of and in the course of his employment at Leggett & Platt.

Based on the denial of occupational disease and medical causation, the remaining issues are moot and shall not be ruled upon.

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation