Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 05-079477

Employee: Michael Eye

Employer: GKN Aerospace

Insurer: Zurich American Insurance Co.

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

Date of Accident: April 19, 2005

Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 21, 2007. The award and decision of Administrative Law Judge Linda J. Wenman, issued September 21, 2007, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 6th day of March 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

_____
William F. Ringer, Chairman

DISSENTING OPINION FILED
Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

_____
Secretary

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed. I believe the administrative law judge erred in concluding that employee met the burden of proof regarding the contraction of an occupational disease.

The employee must prove by substantial and competent evidence that he has contracted an occupational disease and not an ordinary disease of life. *Kelley v. Banta & Stude Const. Co., Inc.*, 1 S.W.3d 43, 48 (Mo.App. E.D. 1999); *Hayes v. Hudson Foods, Inc.,* 818 S.W.2d 296, 299-300 (Mo.App. S.D. 1991). The employee must establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo.App. W.D. 1994). Work conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. *Id*.

It is employee's burden to establish workplace exposure. Employee has failed to do so in this case. Employee testified as to the extent he used his hands in his job as a team leader. Employee's testimony as to the repetitive nature of his job, with regard to the use of his upper extremities, differed from that of other employees who had worked in the same position for employer. Employee worked as a team leader for employer from 2001 until May 12, 2005. Prior to employee's employment with employer, he worked as a factory worker and machine operator for McDonnell Douglas and then Boeing for 14 years. Employee testified that as a team leader he spent approximately 2½ -3 hours on the computer. Employee testified that his duties as team leader also required that he assist or instruct other employees on the production procedures. Employee testified that he did not frequently lift heavy equipment as that would have been a violation of a union contract.

Marvin Beiter, operations manager for employer, testified that he worked as a team leader for about a year and that the position did not require physical labor because it would violate union contract. Mr. Beiter also testified that the team leader position consisted of minimal computer work and that he never noticed employee spending an excessive amount of time on the computer. Mr. Beiter was also unaware of any other team leaders who complained of similar problems with their hands. Amy Cornell, health and safety specialist for employer, testified that she also worked for two years as a team leader and that no other team leader has ever filed a claim for a repetitive motion injury to the upper extremity.

Dr. Schlafly and Dr. Howard provided opinions as to medical causation. I find the opinion of Dr. Howard more credible than that of Dr. Schlafly. Dr. Schlafly opined that employee's work for employer was the substantial and prevailing factor in causing employee's carpal tunnel syndrome; however, Dr. Schlafly did not review a written description of employee's job duties but based his opinion on employee's portrayal of his job duties. Employee's depiction of his job duties differs from that of other employees who worked in the same position. Employee testified that his job duties were more hand intensive than other employees that performed the same job. In addition, Dr. Schlafly testified that employee's work for a prior employer (Boeing) which involved manual labor was a contributing factor to the development of employee's carpal tunnel syndrome. Exposure to an occupational disease while working for a previous employer should not play a role in determining employer's liability. Employer's liability must be determined by whether its conditions of employment or employee's job duties while working for employer exposed employee to an occupational disease.

In contrast to Dr. Schlafly, Dr. Howard provided his opinion after both examining employee and reviewing a written description of employee's job duties pertaining solely to employer. Dr. Howard opined that

employee's work as a team leader for employer was not a substantial factor in causing employee's carpal tunnel syndrome. Dr. Howard believed that employee's work was not causally related to his carpal tunnel condition because employee's job duties were only occasionally, not repetitively, hand intensive. Dr. Howard testified that employee smoked a pack of cigarettes a day for the past 24 years which put him at a higher risk for the development of carpal tunnel syndrome. Dr. Howard felt that employee's carpal tunnel syndrome was more likely idiopathic.

I find the opinion of Dr. Howard to be most persuasive, credible and worthy of belief. Based on the medical evidence and testimony, it is reasonable to conclude that employee was not exposed to an occupational disease while working for employer.

There was insufficient evidence to establish that employee's work conditions exposed him to an occupational disease. Accordingly, I would reverse the decision of the administrative law judge and deny compensation in this case.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

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Alice A. Bartlett, Member

AWARD

Employee: Michael Eye

Dependents: N/A

Employer: GKN Aerospace

Additional Party: Second Injury Fund

Insurer: Zurich American Insurance Co.

Hearing Date: September 7, 2007

Injury No.: 05-079477

Before the
Division of Workers' Compensation
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Checked by: LJW:al

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes

- Was the injury or occupational disease compensable under Chapter 287? Yes

3. Was there an accident or incident of occupational disease under the Law? Yes

- Date of accident or onset of occupational disease: April 19, 2005

- State location where accident occurred or occupational disease was contracted: St. Louis 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? N/A

8. Did accident or occupational disease arise out of and in the course of the employment? Yes

- 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: Due to repetitive hand use, Employee developed bilateral carpal tunnel syndrome.

12. Did accident or occupational disease cause death? No

13. Part(s) of body injured by accident or occupational disease: Bilateral wrists

- Nature and extent of any permanent disability: 15% PPD referable to each wrist, and 15% multiplicity.

15. Compensation paid to-date for temporary disability: None

16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Michael Eye Injury No.: 05-079477

17. Value necessary medical aid not furnished by employer/insurer? None

- Employee's average weekly wages: Sufficient for maximum rates

19. Weekly compensation rate: $675.90 / $354.05

20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

60.375 weeks of permanent partial disability from Employer $21,375.77

22. Second Injury Fund liability: Yes

7.65 weeks of permanent partial disability from Second Injury Fund $2,708.48

Total: $24,084.25

23. Future requirements awarded: None

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

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

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Michael Eye	Injury No.:	05-079477
Dependents:	N/A	Before the **Division of Workers' Compensation** Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri	
Employer:	GKN Aerospace		
Additional Party:	Second Injury Fund		
Insurer:	Zurich American Insurance Co.	Checked by:	LJW:al

PRELIMINARIES

The above referenced Workers' Compensation claim was heard by the undersigned Administrative Law Judge on September 7, 2007. Post-trial memorandums were received, and the case was submitted on September 14, 2007. Attorney Richard Ameduri represented Michael Eye (Claimant). GKN Aerospace (Employer) was insured by Zurich American Insurance Company, and represented by Attorney Kenneth Alexander. Assistant Attorney General Da-Niel Cunningham represented the Second Injury Fund (SIF).

Prior to the start of the hearing the parties identified the issues for disposition in this case: occupational disease; arising out of and in the course/scope of employment; medical causation; application of the last exposure rule in regard to subsequent employers; and the liability of Employer and SIF for permanent partial disability (PPD) benefits. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

Claimant offered Exhibits A-E, and Employer offered Exhibits 1-4. The Court was asked to take Administrative Judicial Notice of the Division's file regarding this injury number. All exhibits were admitted into the record without objection. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

Findings of Fact

All evidence presented has been reviewed. Only testimony necessary to support this award will be reviewed and summarized.

1. Claimant worked for Boeing Aircraft as a parts manufacturer starting in 1987. In 1995, Claimant was promoted to a Team Leader, and worked in a supervisory capacity.

2. In 2001, Employer acquired a portion of Boeing, including Boeing's part manufacturing division. Claimant subsequently became an employee of Employer during the acquisition process. Claimant remained employed as a Team Leader following the acquisition until he was terminated by Employer on May 12, 2005. During his tenure, Claimant was a Team Leader for 7 different departments in 8 years.
3. As a Team Leader, Claimant's daily duties included: interacting with employees working the product line he was charged with overseeing; training employees as needed during production; using a computerized system to record attendance as employees clocked in/out of their shift, and recording employees time off status; pulling charts, which required downloading the lists of parts that his team would be working on in production that day, which Claimant estimated was approximately 300 items, then transferring those items to another computer to print and post the work to be completed by his team; and computerized preparation of spread sheets 1-2 times per week for presentation to Employer's managers. Preparation of the presentations took approximately 1-3 hours of computer time. Claimant estimated he spent a minimum of 2 ½-3 hours of his workday using his computer, but that time period increased if he had to cover for missing Team Leaders.

4. During 2003, Claimant and other Team Leaders were charged with creating a computerized parts data base for Employer. Claimant's work on this project required computerized data entry and creation of graphs, and took approximately 2 ½ months to complete.

5. In 2005, Claimant began to experience numbness and tingling in both hands. He initially sought chiropractic care in April 2005, but was informed by his chiropractor that he needed to be treated by a medical physician. Claimant reported his complaints to his family doctor, who referred Claimant to Dr. Peeples for diagnostic testing. On June 13, 2005, Dr. Peeples performed bilateral nerve conduction velocity (NCV) studies of Claimant's upper extremities, diagnosed bilateral carpal tunnel syndrome (CTS), and recommended bilateral CTS decompressions. Claimant was subsequently referred to Dr. Galakatos, who performed bilateral CTS releases on July 12, 2005. Several months post-operatively, Claimant developed a trigger finger of his right middle finger, which was treated with a cortisone injection.

6. Claimant was terminated by Employer on May 12, 2005, obtained employment with Patriot Machinery for approximately 2 months, and performed work that was hand intensive. Dr. Galakatos noted in his July 11, 2005 medical report that Claimant was employed with Patriot Machinery. Claimant was terminated from his employment with Patriot Machinery while he was on medical leave following his bilateral CTS releases.

7. Claimant filed his claim for workers' compensation benefits on August 9, 2005, naming only Employer as the party responsible for his benefits, and the claim was received by the Division of Workers' Compensation on August 15, 2005.

8. Claimant was examined by Dr. Schlafly at the request of Claimant on June 20, 2006. Upon examination, Dr. Schlafly noted Claimant had weakness of his right hand, and attributed the weakness to a probable right tennis elbow; bilateral positive Tinnel's signs; and a positive Phalen's sign of Claimant's right wrist. Dr. Schlafly diagnosed bilateral CTS that had been surgically released. Dr. Schlafly rated Claimant's residual disability at 25% PPD of each wrist, and indicated Claimant should receive additional disability for multiplicity. Dr. Schlafly did not relate Claimant's right middle trigger finger to his CTS. Dr. Schlafly did opine Claimant's work as a laborer for 10 years prior to his supervisory duties were contributing factors to his development of bilateral CTS. Dr. Schlafly does not find smoking to be a risk factor associated with CTS.
9. Currently Claimant complaints include: hand fatigue when performing repetitive motion activities; decrease in grip strength; and morning stiffness of his wrists. Claimant no longer uses a computer at work or home. Claimant acknowledged a history of smoking, but stopped smoking 5 years before his surgery, although he recently resumed smoking.

10. Claimant has preexisting injuries to both knees. When Claimant was a teenager he underwent surgery on his right knee to remove a benign tumor. Following surgery, Claimant required no further treatment to the right knee, and was able to participate in sports. In 1998, Claimant underwent surgery to repair a torn meniscus in his left knee. Following surgery on his left knee, Claimant reports he experiences pain after standing for an 8 hour work shift, intermittent problems climbing stairs, and he takes ibuprofen approximately 4 times a week for his left knee. Claimant testified he

occasionally used a brace for his left knee when playing sports, but he quit bowling 3 years ago and quit playing softball last year. Upon examination, the only abnormal objective finding by Dr. Schlafly was minimal crepitation of each knee. Dr. Schlafly did note evidence of left knee puncture scars relative to arthroscopic surgery. Dr. Schlafly rated Claimant's knee disability as 15% PPD referable to each knee. Dr. Schlafly opined Claimant's preexisting injuries to his knees were a hindrance or obstacle to employment.

11. Claimant was examined on behalf of Employer by Dr. Howard on November 13, 2006. Upon examination, Dr. Howard noted normal muscle and sensation of Claimant's hands and wrists, and significant decreased right hand grip strength. Dr. Howard related Claimant's decreased right grip strength to his right middle finger triggering. Dr. Howard opined Claimant's work duties as a Team Leader for Employer were not a substantial factor in his development of bilateral CTS. Dr. Howard found Claimant's duties as a Team Leader were varied, occasionally grip intensive, but not repetitively grip intensive. Dr. Howard further opined if Claimant's work as a Team Leader was a causative factor, CTS should have occurred before 2005, as Claimant had held this position for a significant length of time. Dr. Howard identified smoking as a risk factor to development of CTS, and opined Claimant's development of bilateral CTS was idiopathic. Although Dr. Howard did not relate Claimant's bilateral CTS to his work as a Team Leader, Dr. Howard rated Claimant's post-operative disability at 5% PPD referable to each wrist. Dr. Howard confirmed he was provided a job description of Claimant's work duties, but he found Claimant's description of his job duties to be more complete when he formed his opinions.

12. Mr. Marvin Beiter, Jr., testified on behalf of Employer. Mr. Beiter is an Operations Manager for Employer, and supervised Claimant during his last year of employment. Mr. Beiter disputed the amount of time Claimant spent working with a computer during his work shift, and testified most computer work consists of pointing/clicking and printing of reports. Mr. Beiter testified no other Team Leader has developed CTS, and Claimant never notified him he was experiencing hand discomfort.

13. Ms. Amy Cornell testified on behalf of Employer. Ms. Cornell is Employer's Environmental Health & Safety Specialist. Ms. Cornell testified prior to August 2001, she worked as a Team Leader for Boeing for 2 years. Since she has assumed her current position, Ms. Cornell testified no other Team Leaders have reported hand/wrist injuries.

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RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to arising out of, occupational disease and medical causation

Claimant alleges an occupational disease involving bilateral carpal tunnel syndromes that arose from his work duties with Employer. Section 287.067 RSMo., defines 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 cases of alleged occupational disease, the disease must be occupationally induced, rather than an ordinary disease of life. *Hayes v. Hudson Foods, Inc.,* 818 S.W.2d 296 (Mo.App.1991) (overruled on other grounds). An occupational disease is not compensable if work is merely "a triggering or precipitating factor." §287.067.2 RSMo. The exposure to the disease must be greater or different from disease exposure to the general public, and there must be a disease/work link common to the specific job or profession. *Polavarapu v. General Motors Corp.,* 897 S.W.2d 63 (Mo.App. 1995). The work must be a substantial factor in the cause of the resulting medical condition or disability. §287.020.2 RSMo. A causative factor may be substantial even if it is not the primary or most significant factor. *Cahall v.Cahall,* 963

S.W.2d 368, 372 (Mo.App. 1998) (overruled on other grounds). Further, there is no minimum percentage set out in the Workers' Compensation Law defining "substantial factor." *Id.* Whether employment is a substantial factor in causing the injury is a question of fact. *Sanderson v. Porta-Fab Corp.,* 989 S.W.2d 599, 603 (Mo.App. 1999) (overruled on other grounds).

Determinations of this kind require the assistance of expert medical testimony. Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.,* 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.,* 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds). Dr. Howard does not find Claimant's work to be a substantial factor in his development of bilateral CTS. Dr. Schlafly reaches the opposite conclusion. Both physicians are highly qualified hand surgeons, yet only Dr. Schlafly takes into account the 18 year cumulative effect hand intensive duties played in Claimant's development of bilateral CTS. Dr. Schlafly testified Claimant's 10 year history of manual labor prior to becoming a Team Leader contributed to his development of CTS. When queried regarding why it would take 18 years for CTS to develop, Dr. Schlafly testified; "I think there's some individuals who will persist in an activity without symptoms for a long time and then eventually develop a problem related to that activity." Dr. Howard's testimony only focused on job duties performed by Claimant as a Team Leader.

A positive finding of occupational disease and medical causation solely based on Claimant's duties as a Team Leader is arguably a close call. However, as stated in *Cahall*, a causative factor may be substantial even if it is not the primary or most significant factor. Employer may argue Claimant's credibility is questionable given the nature of his termination, but I find Claimant's explanation surrounding his termination to be plausible, and more importantly, to have gone unchallenged by Employer or its witnesses. Claimant credibly testified regarding his job duties as a Team Leader over an 8 year period. Mr. Beiter was Claimant's supervisor for only Claimant's last year of employment, and his observations of Claimant's job duties can only extend to Claimant's last year of employment. The fact that no other Team Leader has developed hand/wrist injuries, while interesting, is not dispositive of this case. I find Claimant established by competent and substantial evidence he developed an occupational disease involving his bilateral wrists that arose out if and in the course of his employment with Employer due to the repetitive motion required of his job. I find Dr. Schlafly's opinion to be persuasive, and Claimant has met his burden to establish his injuries were occupational diseases that were medically causally related, and arose out of and in the course and scope of his employment with Employer.

Issues relating to last exposure

Employer argues it was not the last employer to expose Claimant to the occupational hazard of repetitive motion. Employer is correct in its assertion. Claimant clearly testified he went to work for Patriot Machinery after he was terminated by Employer on May 12, 2005. Claimant also testified his work at Patriot Machinery was hand intensive.

The starting point in applying the last exposure rule when subsequent employers have also exposed a worker to a repetitive motion injury, requires a determination of which employer last exposed the worker to the hazard prior to the filing of the worker's claim. *Johnson v. Denton Construction Co. et al.,* 911 S.W2d 286, 288 (Mo.banc 1985). In this case, Claimant's claim was received by the Division of Workers' Compensation on August 15, 20005. Claimant was last exposed to the hazard of repetitive motion by Patriot Machinery just prior to his carpal tunnel releases performed on July 12, 2005. While on medical leave, Claimant was terminated by Patriot Machinery. Based on the evidence presented, I find Patriot Machinery to have been the last employer to expose Claimant to the hazard of a repetitive motion injury.

However, although Patriot Machinery is presumptively liable for Claimant's benefits, the inquiry can not end here as there is an exception to the last exposure rule. Section 287.067.7 RSMo., provides:

With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence establishes that the exposure to repetitive motion with a prior employer was the substantial contributing factor to the injury, the prior employer shall be liable for such occupational disease.

Based on the evidence presented, Claimant began his employment with Patriot Machinery sometime after his termination by Employer on May 12, 2005, and was last exposed to bilateral hand repetitive motion just prior to his bilateral CTS releases on July 12, 2005. Claimant was on medical leave when terminated by Patriot Machinery, and when his claim was filed. Therefore, Patriot Machinery exposed Claimant to a repetitive motion injury for a period of approximately 2 months, and under §287.067.7, I find Employer's repetitive motion exposure to have been the substantial contributing factor to Claimant's development of bilateral CTS. Employer is the employer liable for Claimant's workers' compensation benefits.

Issues relating to Employer's liability for permanent partial disability

A permanent partial disability award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.,* 803 S.W.2d 641,646 (Mo.App. 1991) (overruled on other grounds). Dr. Howard rated Claimant's disability as 5% PPD referable to each wrist. Dr. Schlafly rated Claimant's disability at 25% PPD referable to each wrist, and due to the multiple injuries involved, Dr. Schlafly recommended additional compensation due to multiplicity be awarded. Neither physician provide an opinion regarding scarring.

With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis,* 663 S.W.2d 770, 773 (Mo.App. 1983) (overruled on other grounds). Based on the evidence presented, I find Claimant has sustained 15% PPD referable to each wrist, and an additional 15% multiplicity for which Employer is liable. In total, Employer is liable for $21,375.77 in PPD and multiplicity.

Issues relating to permanent partial disability owed by Second Injury Fund

Section 287.220.1 RSMo., provides that SIF is implicated in all cases of permanent partial disability where there has been previous disability that created a hindrance and obstacle to employment or re-employment, and the primary injury along with the pre-existing disability(s) reach a threshold of 50 weeks (12.5%) for a body as a whole injury or 15% of a major extremity. The combination of the primary and pre-existing conditions must produce additional disability greater than the simple sum of all the disabilities.

Claimant's previous disabilities include his right and left knee. SIF argues Claimant had worked without restrictions and has received no further medical care for his knees since medical treatment ended for those injuries; therefore, these disabilities could not have been a hindrance or obstacle to employment. I agree with SIF in regard to Claimant's right knee. Claimant had surgery on his right knee as a teenager, and the medical findings of Dr. Schlafly and Claimant's own testimony does not support a finding of hindrance or obstacle to employment regarding Claimant's right knee. But I disagree with SIF's assertion regarding Claimant's left knee. Claimant testified his left knee continues to be symptomatic after an 8 hour workday, he experiences problems climbing stairs, takes ibuprofen as often as 4 times per week due to pain, and when he previously played sports he would occasionally wear a left knee brace. I find Claimant's preexisting left knee injury rose to a level to produce a hindrance and obstacle to employment, and meets the statutory threshold needed for SIF liability. I further find at the time of Claimant's April 19, 2005 injury Claimant had 15% PPD referable to his left knee. I find when Claimant's last injury to his wrists is combined with his preexisting left knee injury, the combination creates a substantially greater disability than the simple sum, and a synergistic affect occurs. Applying a 10% load factor, Claimant is entitled to receive 7.65 weeks of compensation from SIF or $2,708.48.

CONCLUSION

In summary, Claimant sustained an occupational disease on April 19, 2005 that arose out of and in the course and scope of his employment with Employer. Claimant is awarded $21,375.77 in permanent partial disability from Employer. Claimant is also awarded $2,708.48 from SIF. Claimant's attorney is entitled to a 25% lien of any payments made to Claimant.

Date: _____ Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

_____

Jeffrey W. Buker
Director
Division of Workers' Compensation

Section 287.020.3(1) defines injury as that which has arisen out of and in the course of employment. Section 287.020.3(2) instructs that to arise out of and in the course of employment an injury must meet four requirements; (a) the employment is a substantial factor causing the injury, (b) the injury is a natural incident of the work/employment, (c) the employment was a proximate cause of the injury, and (d) the injury is not from risk unrelated to the employment to which other workers would be equally exposed outside of employment in normal life.
As noted in *Arbeiter v. National Super Markets, Inc.*, 990 S.W.2d 142 (Mo.App.E.D. 1999), the subsequent employer was not a party to the claim, did not assert a §287.067.7 right, but the Court applied §287.067.7 and found National Super Markets to be the employer liable for the employee's benefits. In the case at bar, the subsequent employer, Patriot Machinery, was also not a party to this case.