

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

Injury No.: 00-165272

Employee: David Garrett

Employers: 1) Micro Innovations
2) Earthgrains Company

Insurers: 1) Missouri Employers Mutual Insurance Company
2) Pacific Employers Insurance Company

Date of Accident: February 5, 2001

Place and County of Accident: Greene 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 associate 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 associate administrative law judge dated May 24, 2005. The award and decision of Associate Administrative Law Judge L. Timothy Wilson, issued May 24, 2005, 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 October 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: David Garrett

Injury No. 00-165272

Dependents: N/A
Employer: Micro Innovations; Earthgrains Company
Additional Party: N/A
Insurer: Missouri Employers Mutual Insurance Company;
Pacific Employers Insurance Company
Hearing Date: March 16, 2005

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: LTW/mp

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? yes
2. Was the injury or occupational disease compensable under Chapter 287? yes
3. Was there an accident or incident of occupational disease under the Law? yes
4. Date of accident or onset of occupational disease: February 5, 2001
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? yes
9. Was claim for compensation filed within time required by Law? yes
10. Was employer insured by above insurer? yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
While performing repetitive work duties of lifting and stacking trays or dough or bread at Earthgrains Company, Claimant developed injuries to both upper extremities.
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: both upper extremities
14. Nature and extent of any permanent disability: 30% permanent partial disability body as a whole
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages: \$214.13
19. Weekly compensation rate: \$142.75
20. Method wages computation: stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

The claim against the employer, Micro Innovations, and its insurer, Missouri Employers Mutual

Insurance Company, is denied.

The employer, Earthgrains, and its insurer, Pacific Employers Insurance Co., are ordered to provide claimant with the following:

Unpaid medical expenses: (subject to a lien asserted by the Missouri Dept. of Social Services.)	\$24,943.09
16 3/7 weeks of temporary total disability	4,407.62
120 weeks of permanent partial disability	32,194.80
15 weeks of disfigurement from Employer	4,024.35

22. Second Injury Fund liability: No

TOTAL: \$65,569.86

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 hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Randall J. Reichard

FINDINGS OF FACT and RULINGS OF LAW:

Employee: David Garrett

Injury No: 00-165272

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: N/A

Employer: Micro Innovations; Earthgrains Company

Additional Party N/A

Insurer: Missouri Employers Mutual Insurance Company;
Pacific Employers Insurance Company

Checked by: LTW/mp

The above-referenced workers' compensation claim was heard before the undersigned Associate Administrative Law Judge on March 16, 2005. The parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about April 19, 2005.

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

- (1) On or about September 28, 2000, and continuing through December 1, 2000, Micro Innovations was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Missouri Employers Mutual Insurance Company.
- (2) On the alleged injury date(s) of September 28, 2000, through December 1, 2000, David Garrett was an employee of the employer, Micro Innovations, and was working under and subject to The Missouri Workers' Compensation Law. (The employee alleges that, as a consequence of the aforementioned employment, he sustained an incident of occupational disease.)
- (3) The above-referenced employment and alleged incident of occupational disease occurred in Christian County, Missouri. The parties agree to venue lying in Springfield (Greene County), Missouri. Venue is proper.
- (4) At the time of the claimed occupational injury, in regard to the employee's employment with Micro Innovations, the employee's average weekly wage was \$214.13, which is sufficient to allow a compensation rate of \$142.75 for temporary total disability compensation and permanent disability compensation.
- (5) Micro Innovations and MEMIC have not provided temporary disability compensation and medical care to the employee.
- (6) On or about December 14, 2000, and continuing through February 5, 2001, Earthgrains Baking Company, Inc., ("Earthgrains Company") was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Pacific Employers Insurance Co.
- (7) On the alleged injury date(s) of December 14, 2000, and continuing through February 5, 2001, David Garrett was an employee of the employer, Earthgrains Company, and was working under and subject to The Missouri Workers' Compensation Law. (The employee alleges that, as a consequence of the aforementioned employment, he sustained an incident of occupational disease.)
- (8) The above-referenced employment and alleged incident of occupational disease occurred in Green County, Missouri. Venue is proper.
- (9) At the time of the claimed occupational injury, in regard to the employee's employment with Earthgrains Company, the employee's average weekly wage was \$402.43, which is sufficient to allow a compensation rate of \$268.29 for temporary total disability compensation and permanent disability compensation.
- (10) Earthgrains Company and Pacific Employers Insurance Co. have not provided temporary disability compensation to the employee.
- (11) Earthgrains Company and Pacific Employers Insurance Co. have provided the employee with certain medical care, having paid \$554.00 in medical expenses.

The sole issues to be resolved by hearing include:

- (1) Whether the employee sustained an incident of occupational disease on or about September 28, 2000, through December 1, 2000; and, if so, whether the incident of occupational disease arose out of and in the course of his employment with Micro Innovations?
- (2) Whether the employee gave the employer, Micro Innovations, proper notice of the injury, if applicable?
- (3) Whether the alleged incident of occupational disease

- (employment with Micro Innovations) caused the injuries and disabilities for which benefits are now being claimed?
- (4) Whether the employer and insurer (Micro Innovations and MEMIC) are obligated to pay for certain past medical care and expenses?
 - (5) Whether the claimant is entitled to temporary disability benefits from Micro Innovations and MEMIC, payable for the period of February 5, 2001, through June 1, 2001?
 - (6) Whether the claimant sustained any permanent disability as a consequence of the alleged incident of occupational disease; if so, what is the nature and extent of the disability; and, whether Micro Innovations and MEMIC are liable for payment of permanent disability compensation?
 - (7) Whether the employee sustained an incident of occupational disease on or about December 14, 2000, through February 5, 2001; and, if so, whether the incident of occupational disease arose out of and in the course of his employment with Earthgrains Co.?
 - (8) Whether the employee gave the employer Earthgrains Company proper notice of the injury, if applicable?
 - (9) Whether the alleged incident of occupational disease (employment with Earthgrains Company) caused the injuries and disabilities for which benefits are now being claimed?
 - (10) Whether the employer and insurer (Earthgrains Company and Pacific Employers Insurance Co.) are obligated to pay for certain past medical care and expenses?
 - (11) Whether the employee is entitled to temporary disability benefits from Earthgrains Company and Pacific Employers Insurance Co., payable for the period of February 5, 2001, through June 1, 2001?
 - (12) Whether the claimant sustained any permanent disability as a consequence of the alleged incident of occupational disease; if so, what is the nature and extent of the disability; and, whether Earthgrains Company and Pacific Employers Insurance Co. are liable for payment.

EVIDENCE PRESENTED

The employee testified at the hearing in support of his claim. Also, the employee offered for admission the following exhibits:

- Exhibit 1 Employment and Wage Information
- Exhibit 2 Medical Provider and Expense Index (Demonstrative Exhibit)
- Exhibit 3 Deposition of Michael Grillot, M.D.
- Exhibit 4 Claim Summary (Demonstrative Exhibit)
- Exhibit 5 Medical Records from St. John's Urgent Care

Exhibits 1, 2, 3, and 4 were received and admitted into evidence, with Exhibits 2 and 4 serving only as demonstrative exhibits and not being admitted for the truth to the matter asserted. Exhibit 5 was received and admitted into evidence subsequent to the hearing by agreement of the parties.

The employer and insurer (Earthgrains Co. and Pacific Employers Insurance Co.) did not present any witnesses at the hearing of this case, but offered for admission the following exhibits:

- Exhibit A ... Medical Records from Allen J. Parmet, M.D., MPH, FACPM
- Exhibit B Deposition of Jeffrey Woodward, M.D. (Vol. I)
- Exhibit C Deposition of Jeffrey Woodward, M.D. (Vol. II)
- Exhibit D Deposition of Scott Quigg
- Exhibit E List of Jobs Performed by Employee (since 2000)

The exhibits were received and admitted into evidence.

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 notice of the documents contained in the Legal File which include: Report of Injury; Claim for Compensation (The Earthgrains Co. / Pacific Employers Insurance Co.); Answer of The Earthgrains Co. / Pacific Employers Insurance Co. to Claim for Compensation; Amended Claim for Compensation (The Earthgrains Co. / Pacific Employers Insurance Co. & Micro-Innovations, Inc. / Missouri Employers Mutual Insurance Company); Answer of Employer & Insurer (Micro-Innovations, Inc. / Missouri Employers Mutual Insurance Company) to Amended Claim for Compensation; Answer of (The Earthgrains Co. / Pacific Employers Insurance Co.) to Amended Claim for Compensation; Second Amended Claim for Compensation (withdrawn by the employee at the hearing); and Department of Social Services, Division of Medical Services Lien.

DISCUSSION

The employee, David Garrett, is 31 years of age, having been born on July 12, 1973. Mr. Garrett is a resident of Springfield, Missouri.

Mr. Garrett contends that, in or around 2000 to 2001, he sustained an occupational injury in the nature of carpal tunnel syndrome. Mr. Garrett further contends that this occupational injury is causally related to his employment with Micro Innovations or Earthgrains Company.

Summary of Employment:

In September 2000 Mr. Garrett obtained employment with Micro Innovations, working as a "prepper." The essential duties of his job, as a "prepper," were to look through and examine documents, primarily medical records, and to prepare the records for microfilm or digital scanning. According to Mr. Garrett, in performing this job he would lift a "banker's box" full of or partially filled with medical records onto his desk. He would then go through the records one by one to sort them and prepare them for scanning. Also, according to Mr. Garrett, these boxes weighed between two and three pounds at the lightest weight, and ten pounds at the heaviest weight. Additionally, Mr. Garrett would go through three to four boxes during an eight-hour workday.

Mr. Garrett continued uninterrupted in this employment until December 1, 2000, when he resigned to accept employment with Earthgrains Company, which offered him more money. Notably, according to Mr. Garrett, during his employment with Micro Innovations he never experienced any arm, wrist, or finger pain. Nor did he experience any numbness or tingling in his hands or fingers. Additionally, Mr. Garrett noted, he worked at Micro Innovations at a leisurely pace, with the employees enjoying the freedom to converse with each other while working.

On or about December 4, 2000, Mr. Garrett began working for Earthgrains Company, working in a position referred to as "racking." In this employment Mr. Garrett would stand near a conveyor belt that was about waist high, and he would lift trays of dough or bread off the conveyor belt and then stack the bread on a rack next to him. According to Mr. Garrett, the rack was approximately six feet high, and the trays were wider than his shoulder, which resulted in pressure being put on his wrist and elbow, as he lifted the trays from the conveyor belt and stacked them on the rack. Additionally, according to Mr. Garrett, the trays weighed between five and twenty pounds, depending on whether the trays were empty or filled with bread, buns, or dough.

Also, Mr. Garrett indicated that the trays continually came down the conveyor belt, leaving him with no time to rest after stacking a tray before a second tray arrived on the conveyor belt; and he would repeat the process of lifting and stacking each tray appearing on the conveyor belt. According to Mr. Garrett, he began his work shift shortly before 2:00 a.m., and ended his shift at different times, depending on the production levels and the availability of other employees. Generally, he worked six to twelve hours.

In discussing his wages, Mr. Garrett indicated that Exhibit 1, which provided a record of his employment and wages with Earthgrains Company, accurately reflected the amount of his gross wages, but the reflection of hours worked per week on the form was incorrect. Further, in the context of this discussion, Mr. Garrett testified that, throughout the period of his employment with Earthgrains Company, he earned an hourly wage of \$9.50. Additionally, Mr. Garrett testified that he frequently worked overtime, and on at least one occasion worked a twelve-hour shift.

Shortly after beginning his employment with Earthgrains Company, within "a week or two," Mr. Garrett began experiencing pain in his arms, wrists, and hands. Additionally, he began to experience tingling and numbness in his hands and his fingers. According to Mr. Garrett, he told his co-employees and supervisor that he was experiencing pain, numbness, and tingling; but they responded by stating that he "was not used to the work." Further, while he could not identify a specific date, Mr. Garrett indicated that, in or around Christmas 2000, he felt a "pop" in his right wrist while lifting one of the trays, and experienced additional pain and observed a small lump appearing on his wrist. Upon reporting this incident to his supervisor, he received instructions to take a 30-minute break and to put ice on his wrist. Mr. Garrett testified that he complied with this instruction, and then returned to work to complete the remainder of his work shift. Mr. Garrett continued to work for Earthgrains Company until February 5, 2001.

Summary of Medical Treatment & Symptoms:

According to Mr. Garrett, prior to his employment at Earthgrains Company, he never experienced any pain, numbness, or tingling in his arms, elbows, wrist, hands, or fingers. He testified that these symptoms first occurred within a week or two after he started his job at Earthgrains. There were no medical records admitted into evidence concerning arm, elbow, wrist, hand or finger pain, tingling or numbness prior to the time Mr. Garrett commenced employment at Earthgrains Company.

On or about December 18, 2000, Mr. Garrett presented to the Family Medical Walk-In Clinic with complaints of pain and numbness in the upper extremities. (The medical records indicate that this visit was the first time Mr. Garrett presented to physician with such complaints involving his upper extremities.) Notably, at the time of this December 18, 2000 evaluation, Mr. Garrett complained of left elbow pain radiating into the left hand, and that his left and right hand had been numb for about one week. Also, Mr. Garrett stated that he did a lot of lifting at work, but did not remember injuring it. Additionally, Mr. Garrett noted that he had recently begun a new job which required him to do a lot of lifting. The attending physician noted that Mr. Garrett exhibited left arm pain to palpitation, medial aspect left elbow, and pain to palpitation of left forearm ulnar side from elbow to hand and pain to percussion over left wrist. In light of his examination and findings, the attending physician diagnosed Mr. Garrett with a strain to left elbow and forearm and tingling of the left hand due to repetitive motion. Further, the attending physician prescribed Celebrex and Vicodin, and instructed Mr. Garrett to return in ten to twelve days if symptoms increased or new problems developed.

On December 26, 2000, Mr. Garrett returned to the Family Medical Walk-In Clinic and reported that there was "no improvement and worsening of pain in left elbow and arm" and "numbness/tingling in left hand." The examination at that time revealed his arm was tender to palpation in left antecubital fossa. Tentatively diagnosing Mr. Garrett with possible carpal tunnel syndrome, the attending physician provided Mr. Garrett with a forearm splint, prescribed Celebrex and Percocet, and referred him to Dr. Grillot.

Prior to seeing Dr. Grillot, Mr. Garrett returned to the Family Medical Walk-In Clinic on December 31, 2000, presenting with complaints of fever and nausea, and asked the doctor to recheck his wrist. Mr. Garrett's temperature at the time of the exam was 101.2°. The attending physician provided Mr. Garrett with another forearm splint for his right wrist for treatment of possible carpal tunnel. And, again prior to seeing Dr. Grillot, on January 8, 2001, Mr. Garrett presented to the Family Medical Walk-In Clinic on January 8, 2001, with complaints of bilateral wrist pain. The examination of January 8, 2001, revealed tenderness over the ventral side of the right wrist with a small ganglion palpable. The assessment at that time was ganglion on the right wrist and possible carpal tunnel syndrome. Mr. Garrett received a prescription for Celebrex and Percocet.

On or about January 30, 2001, Mr. Garrett presented to Michael B. Grillot, M.D., who is an orthopedic surgeon. At the time of this examination, Dr. Grillot records the following history, as provided to him by Mr. Garrett:

The patient is a 27 year old right handed white male who works for Colonial Bakery for the past two months. He presents with bilateral wrist pain and hand pain, with numbness. It started two months ago on the left, and one month ago on the right. His right hand hurt immediately after he was lifting a pan. He felt a pop. He had swelling on the palm side of the wrist and forearm. He was treated with rest and ice for 30 minutes. There was no medical care or evaluation performed. He was not sent to a company doctor. He has had numbness and pain in the left arm for two months with no immediate history of pain, but it has been hurting since he started working at Colonial Bakery. He denies any problems or injuries prior to working there. He was referred here by Dr. Ernest Hall for evaluation and treatment options. Up to this point, his job has not accepted this as a Work Comp injury. He states that on the left, he has pain and numbness with increased activity associated with tingling. It wakes him up at night on both hands. He has tried using hot water, pain medications. He feels he may have a circulation problem. He has tried braces which have helped a little bit.

At that time of this examination, Dr. Grillot diagnosed Mr. Garrett with bilateral wrist pain; bilateral cubital tunnel syndrome symptoms; and bilateral carpal tunnel syndrome symptoms. Additionally, Dr. Grillot noted that Mr. Garrett presented with possible tendonitis. In light of his examination and findings, Dr. Grillot prescribed Vioxx and provided Mr. Garrett with soft elbow pads and instructions to continue using wrist braces. Additionally, in addressing the question of causation, while noting that Mr. Garrett had no symptoms prior to working for Colonial Bakery (Earthgrains Company), Dr. Grillot opined that this injury "may be work related."

Following his visit with Dr. Grillot, Mr. Garrett provided his supervisor at Earthgrains Company with Dr. Grillot's note referencing his opinion of the injury being work related. Thereafter, in light of a referral by Dr. Woodward, on or about February 5, 2001, Mr. Garrett presented to Dr. Woodward at Springfield Physical Medicine and Rehabilitation, P.C., who diagnosed Mr. Garrett with acute severe wrist/hand pain and numbness symptoms most likely muscle/tendon pain from repetitive hand use, which he could not exclude as being carpal tunnel syndrome. In light of his tentative diagnosis, Dr.

Woodward recommended electrodiagnostic testing with further recommendations to be made after the nerve test.

The diagnostic studies were conducted on February 6, 2000, which revealed evidence of severe left median sensory neuropathy and mild to moderate left median motor conduction delay and mild right median neuropathy of the carpal tunnel noted. Thereafter, in light of these findings, on or about February 23, 2001, Dr. Woodward issued a special report in which he reviewed Dr. Grillot's notes from January 30, 2001; and the Family Medical Walk-In Clinic records from December 18, 26, and 31 of 2000; and the employer time sheet, which reference 29.75 hours worked the first week, 40 hours worked the second week, 33 hours worked the third week, and 31 hours worked the fourth week. (Mr. Garrett argues that, while the time sheet notes the aforementioned hours, the hours do not record the number of hours he actually worked, which would be higher.)

In addition, prior to issuing the February 23, 2001 report, Dr. Woodward visited the Earthgrains Company plant; and this visit is reflected in his report. According to Dr. Woodward, based on his visit to the company plant, Mr. Garrett's work activities correlate to Mr. Garrett's testimony at trial. Dr. Woodward stated that most of the time patient did "racking" work which involves lifting and moving various bread and bun pans to and from a conveyor belt about waist high to racks stacked ankle to above head level. About half the time lifting involved pans weighing ten to fourteen pounds empty. Maximum lifting was 23 pounds. The majority of Mr. Garrett's time at work was spent moving pans to and from conveyor belts onto racks with lifting about 18 trays per minute from floor to above head level.

Notably, in rendering his report of February 23, 2001, Dr. Woodward opines that Mr. Garrett suffers from bilateral carpal tunnel syndrome and is a surgical candidate. However, Dr. Woodward is of the opinion that the condition is not work related. In explaining his opinion, Dr. Woodward propounds the following comments:

My opinion is based primarily on the finding of significant median neuropathy, particularly left wrist on initial nerve conduction testing indicating significant pre-existing median neuropathy at the carpal tunnel bilateral... Also, of significance is the extremely rapid onset of marked arm symptoms within one week of the patient's employment, again very consistent with preexisting median neuropathy. In my opinion, the work activities were a triggering event. Since the injury on the left specifically is indicated as a repetitive overuse injury, in my opinion, one week physical activity as reviewed at the company is not adequate exposure to represent substantial contributor to the symptoms and objective left median neuropathy noted on the initial nerve conduction test.

Prior to the issuance of the February 23, 2001 report, on or about February 19, 2001, Mr. Garrett presented to see Dr. Grillot for further examination and evaluation. At the time of this examination, and having had an opportunity to review the nerve studies performed by Dr. Woodward, Dr. Grillot diagnosed Mr. Garrett with bilateral carpal tunnel syndrome. And, after discussing the medical options with Mr. Garrett, Dr. Grillot scheduled Mr. Garrett to undergo a left carpal tunnel release. In the scheduling and planning of this surgery, Dr. Grillot further indicated that, if Mr. Garrett did well with the left carpal tunnel release, he would then schedule a right carpal tunnel release, and continue to follow the radial and ulnar nerve symptoms.

On or about March 19, 2001, Mr. Garrett underwent surgery for left carpal tunnel release, which occurred by Dr. Grillot performed at Cox Hospital. Thereafter, Mr. Garrett proceeded with follow-up evaluations with Dr. Grillot, including an examination on April 24, 2001, at which time Mr. Garrett reported continuing numbness in the small ring and middle fingers of his left hand. Additionally, at the time of this follow-up examination, Dr. Grillot scheduled Mr. Garrett for ulnar nerve transposition on the left, with the understanding that he would later schedule the surgeries for the right upper extremity. On April 30, 2001, Dr. Grillot performed the left ulnar nerve transposition. Thereafter, he performed the right carpal tunnel release on June 18, 2001, and the right ulnar nerve transposition on December 17, 2001. All of these surgeries were performed at Cox Hospital.

In 2002 Dr. Grillot requested a functional capacity evaluation for Mr. Garrett, which Anita Shakany performed on June 24 and 25, 2002. In light of this evaluation, and taking into consideration his examination of Mr. Garrett on February 3, 2003, which continued to show unresolved symptoms but normal nerve studies, Dr. Grillot opined that Mr. Garrett had reached maximum medical improvement. Dr. Grillot further opined that, while Mr. Garrett demonstrated significant improvement from his preoperative nerve studies, he had nonetheless sustained 143 weeks of disability. In identifying specifically this disability, and referencing the AMA Guide to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Grillot states:

sensation decrease to the left hand is 15 weeks for the thumb, 7.5 weeks for the middle fingers, 8.75 weeks for the ring finger, and 5.5 weeks for the small finger. Right hand middle finger is 17.5 weeks. Ring finger is 8.75 weeks. Grip strength shows 20% strength index of both hands at the 175-week level which equals 35 weeks per each right and left hand. Totaling this up equals 143 weeks of disability.

In his deposition Dr. Grillot testified that all four of these surgeries were medically necessary to treat Mr. Garrett's injuries and condition. He further testified that he believed Mr. Garrett was permanently partially disabled as a result of the

bilateral carpal tunnel syndrome, with Mr. Garrett continuing to have numbness in both his hands and decreased sensation in his fingers. Additionally, Dr. Grillot testified that Mr. Garrett was exposed to the hazards of occupational disease during his employment at Earthgrains Company and that the employment at Earthgrains Company and his job duties there were an application or process in which the hazard of occupational disease or carpal tunnel syndrome existed. Furthermore, Dr. Grillot testified within a reasonable degree of medical certainty that Mr. Garrett's employment at Earthgrains Company was a substantial contributing factor to his carpal tunnel syndrome and the permanent partial disability rating of 143 weeks.

On cross-examination Dr. Grillot testified that the pressure in the carpal tunnel can be acute and could occur very quickly. Additionally, he testified that, based upon Mr. Garrett's history of not having any physical symptoms or complaints prior to beginning his work at Earthgrains Company, he did not believe that Mr. Garrett had any underlying physical changes in his nerves, tissues, and muscles prior to December 4, 2000.

During the taking of his first deposition, Dr. Woodward testified that, based on the nerve studies he performed on Mr. Garrett, on February 6, 2001, he was of the opinion that the physical damage to the median nerve was present long before December 2000, noting that the "degree of physical damage could not be attributed to a brief period, such as four weeks, of the work activity that was performed at [Earthgrains Company]." Further, in considering the employment activity at both Earthgrains Company and Micro Innovations, Dr. Woodward testified that he had independent knowledge of the type of work performed at Micro Innovations, in light of him having for the past five or six years provided medical care for employees suffering occupational injuries at Micro Innovations. And, in the context of examining Mr. Garrett's employment activity at Micro Innovations, and in rendering an opinion that addressed the question of causation, Dr. Woodward propounded the following comments:

... the patient's job activities at Micro Innovations which are – which involve highly repetitive bilateral hand gripping activities, that these specific activities do represent a substantial exposure to the causation of carpal tunnel syndrome and median neuropathy at the wrist. I have, in the past, treated at least a couple of patients employed at Micro Innovations in the past who presented with carpal tunnel syndrome directly related to those same job duties at Micro Innovations.

Additionally, during the taking of his second deposition, Dr. Woodward opined specifically that the 8 ½ weeks of work performed by Mr. Garrett at Micro Innovations constituted a substantial contributing factor to the development of his carpal tunnel syndrome. (This latter opinion differs from the initial opinion provided by Dr. Woodward.)

Yet, Dr. Woodward acknowledged that that, through his employment at Earthgrains Company, Mr. Garrett suffered exposure to the hazards of occupational disease, carpal tunnel syndrome in particular. Similarly, Dr. Woodward acknowledged that that the longer Mr. Garrett performed the work activity at Earthgrains Company, the more extensive the damage would be to his nerves; and the nerve studies he performed on February 6, 2001, were conducted after Mr. Garrett had been working at Earthgrains Company for eight or nine weeks. Responding to this issue, however, Dr. Woodward opined that Mr. Garrett could not have developed the type of nerve damage he experienced, by simply performing during the eight- or nine-week period his employment activity at Earthgrains Company, which involved the racking work -- lifting the pans, 18 trays per minute, eight hours per day.

Also, Dr. Woodward acknowledged that subacute carpal tunnel syndrome could result from work within just a few months time; and, if Mr. Garrett had been working at Earthgrains Company for several or a few months, it might be possible for him to develop subacute carpal tunnel syndrome. Further, Dr. Woodward acknowledged that lifting or gripping repetitively 20-25 pounds or more would cause a patient to develop carpal tunnel syndrome more rapidly than an eight- to twelve-week period. Additionally, Dr. Woodward acknowledged that carpal tunnel syndrome could develop in less than eight to twelve weeks, depending upon "the specific job duties and the physical position of the wrist and hands at the time those duties are done". And, Dr. Woodward testified that he recalled seeing the trays that Mr. Garrett was lifting and stacking at Earthgrains Company, and acknowledged that they were wider than a typical person's shoulders.

In addition, Alan Parmet, M.D. testified in behalf of Earthgrains Company through the submission of his complete medical report. Although never treating, or even seeing, Mr. Garrett, Dr. Parmet opined that, while Mr. Garrett suffered from bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, these medical conditions were not causally related to Mr. Garrett's employment at Earthgrains Company. Similarly, Dr. Parmet opined that Mr. Garrett had a chronic condition that developed over a long period of time and was not due to any specific acute injury or repetitive activity within the work place, and specifically not at Earthgrains Company. Nor does Dr. Parmet causally relate the bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome to the work activity at Micro Innovations either.

Although Dr. Parmet acknowledges that the work activity at Micro Innovations required Mr. Garrett to engage in frequent handling of up to 40-pound loads for eight-hour periods, and this would meet the requirement for a high repetition, high load to represent cause for carpal tunnel syndrome, he remained steadfast in his opinion that the medical condition suffered by Mr. Garrett was not occupationally related. Preeminently, regardless of the findings relevant to this specific case, Dr. Parmet appears to be of the opinion that carpal tunnel syndrome is a medical condition that is not causally related to repetitive use. In rendering this opinion, Dr. Parmet states:

... scientific studies have not demonstrated a sound epidemiologic connection between repetitive use and the development of carpal tunnel syndrome. Median nerve entrapment at the wrist has many causes, and none of the others appear to have been evaluated. The work performed at Micro Innovations, by description, appears to have been extremely vigorous and repetitive, but the information provided is insufficient to conclude that there was a significant repetitive injury which occurred at that employment either. The electrodiagnostic indications was not due to any specific acute injury or repetitive activity within the work place and, specifically, not at Earthgrains.

Summary of Medical Expenses:

Mr. Garrett testified that he incurred medical expenses in the amount of \$24,943.09 in order to treat the bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. This testimony was uncontradicted. Furthermore, the parties stipulated that the medical expenses were fair and reasonable.

FINDINGS AND CONCLUSIONS

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. Williamette 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).

I.

Accident / Occupational Disease

The employee, David Garrett, argues that the evidence is supportive of a finding that, because of his employment with Earthgrains Company and/or Micro Innovations, which involved repetitious use and movement of his upper extremities, he suffered an injury in the nature of an occupational disease – referable to bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Mr. Garrett further argues that, based on the evidence and the applicable governing law, he is entitled to receipt of workers' compensation benefits and the responsible employer is Earthgrains Company, who was insured by Pacific Employers Insurance Co. Mr. Garrett relies upon the medical opinion of Dr. Grillo.

Earthgrains Company and Pacific Employers Insurance Co., however, argue that Mr. Garrett's medical conditions (bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome) are not conditions of an occupational nature, and rely upon Dr. Parmet. Alternatively, Earthgrains Company and Pacific Employers Insurance Co. argue that, if the medical conditions are deemed to be occupational in nature, the medical conditions are not causally related to Mr. Garrett's employment at Earthgrains Company. Earthgrains Company and Pacific Employers Insurance Co. further suggest that, to the extent the medical conditions are deemed to be an occupational injury, liability should attach to Micro Innovations – the employment of which constituted a substantial contributing factor and cause in the development of the bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Earthgrains Company and Pacific Employers Insurance Co rely upon the medical opinion of Dr. Woodward.

Micro Innovations and its insurer, Missouri Employers Mutual Insurance Company, argue that Mr. Garrett's employment with Earthgrains Company is causally related to the development of his bilateral carpal tunnel syndrome and

bilateral cubital tunnel syndrome and, as the last employer to expose him to the condition causing the carpal tunnel syndrome and bilateral cubital tunnel syndrome, Earthgrains Company and Pacific Employers Insurance Co. are liable to the employee for providing him with the requisite workers' compensation benefits. Micro Innovations and Missouri Employers Mutual Insurance Company further argue that, while the employment with Earthgrains Company was less than three months, the evidence is not supportive of a finding that liability should be shifted to it as an earlier employer, insofar as the employment with Micro Innovations was not "the substantial contributing factor to the injury." Micro Innovations and Missouri Employers Mutual Insurance Company rely primarily upon the medical opinion of Dr. Grillot, but additionally note the absence of any medical opinion stating that Mr. Garrett's employment with Micro Innovations was the substantial contributing factor to the injury.

In Missouri, as the law presently exists, repetitive trauma may be analyzed under two theories of compensation – accident or occupational disease, and generally "[w]hether an injury is an accident or an occupational disease is a question of fact. . . ." *Holaus v. William J. Zickell Company*, 958 S.W.2d 72, 79 (Mo.App. E.D. 1997). Nevertheless, carpal tunnel syndrome, cubital tunnel syndrome and thoracic outlet syndrome have been treated by Missouri courts as occupational diseases almost as a matter of law. As stated in *Hunsicker v. J.C. Industries, Inc.*, 952 S.W.2d 276, 381 (Mo.App. W.D. 1997), "[c]arpal tunnel syndrome and cubital tunnel syndrome, which [claimant] experienced, are known occupational diseases. *Weniger v. Pulitzer Publ'g Co.*, 860 S.W.2d 359, 360 (Mo.App.1993); *Elgersma v. DePaul Health Ctr.*, 829 S.W.2d 35, 36 (Mo.App.1992)."

The one case that seems to be an exception is the Court of Appeals for the Eastern District case of *Smith v. Climate Engineering*, 939 S.W.2d 429 (1996 Mo.App. E.D.), which found that it made no difference whether repetitive trauma cases be considered as accidents or occupational diseases under Missouri law. However, for an accidental injury to be compensable the claimant must establish a causal connection between the accident and the injury. *Martin v. City of Independence*, 625 S.W.2d 940, 942 (Mo.App. 1981). And, if an employee is injured through an occupational disease, compensability of that injury or medical condition is not based upon a pure finding of causation since the last exposure rule applies.

Notably, in examining liability among multiple employers, in cases of occupational disease, consideration must be given to Section 287.063, RSMo and Section 287.067, RSMo. Section 287.063.1 and .2, RSMo states:

1. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he [or she] is employed in an occupation or process in which the hazard of the disease exists, subject to the provisions relating to occupational disease due to repetitive motion, as is set forth in subsection 7 of Section 287.067, RSMo.

2. The employer is liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease for which claim is made regardless of the length of time of such last exposure.

Section 287.067.7, RSMo, in pertinent part, states:

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 demonstrates that the exposure to the repetitive motion with a prior employer was the substantial contributing factor to the injury, the prior employer shall be liable for such occupational disease. . . .

In examining the application of these provisions in the context of a dispute among multiple employers, the court in *Maxon v. Leggett & Platt*, 9 S. W. 3rd 725, 729-340 (Mo.App. S.D. 2000) propounded the following comments.

In order to determine the employer liable for a particular occupational disease, under Section 287.063, it is first necessary to evaluate the nature of the claim at issue. *Johnson v. Denton Constr. Co.*, 911 S.W.2d 286, 288 (Mo.banc 1995). The starting point in applying the last exposure rule is that the employer liable for compensation is the last employer to expose the employee to the occupational hazard prior to the filing of the claim. *Johnson* at 288; *Kelley v. Banta & Stude Constr. Co., Inc.*, 1 S.W.3d 43, 49 (Mo.App.1999).

"Section 287.063.2 fixes liability for occupational disease on the employer who last exposed the employee to the hazard for which the claim is made," *Kelley*, 1 S.W.3d at 52, "regardless of the length of time of such last exposure." Section 287.063.2. "[M]ere exposure is not enough to shift liability to a subsequent employer. Instead, the subsequent employer must expose the employee to repetitive motion capable of producing [claimant's ailment]." *Coloney [v. Accurate Superior Scale Co.]*, 952 S.W.2d [755] at 763 [(Mo.App.1997)].

"In determining application of the rule [§ 287.063, RSMo1986], the time frame of employment, injury and filing of the claim become critical." *Anderson v. Noel T. Adams Ambulance District*, 931 S.W.2d 850, 853 (Mo.App.1996). Section 287.067.7 was added in 1993, and did not apply retroactively to the facts in *Anderson*. "Pursuant to the last exposure rule, determination of liability is not dependent upon the date of disability. The last exposure rule is not a rule of causation. Instead, ... liability falls on the last employer to expose Claimant to the occupational hazard for which claim is made." *Crabil [v. Hannicon]*, 963 S.W.2d [440] at 444 (Mo.App.1998)], citing *Johnson*.

These principles were affirmed by the Missouri Supreme Court in *Endicott v. Display Technologies*, 77 S.W.3d 610 (Mo. Banc. 2002).

The enactment of Section 287.063, RSMo affirms the general belief that, in cases of occupational disease, any effort on the part of a claimant to search for positive proof of causation among several employers is futile. This principle was first recognized in the courts, who, in seeking to address this concern, settled on a "rule of convenience", which placed liability on the last employer. (This rule is thus commonly known as the "last exposure rule.") See, *Tunstill v. Eagle Sheet Metal Works*, 870 S.W.2d 264, 269 (Mo. banc 1995); and *White v. Scullin Steel Company*, 435 S.W.2d 711, 716 (Mo. App., St. L. D. 1968). Accordingly, Section 287.063, RSMo may be viewed as a rule of convenience, with the intended purpose of alleviating the necessity of searching for proof of causation by placing liability on the last employer in whose employment the claimant suffered an occupational exposure.

Section 287.063, RSMo, therefore, necessitates a finding of liability against the employer in whose employment the employee was last exposed to the hazards of an occupational disease for which claim is made regardless of the length of time of that exposure, unless the employment was for less than three months when the occupational disease was due to repetitive motion. Yet, as noted, this rule is subject to a limited exception.

Pursuant to Section 287.067.7, RSMo, if exposure in the last employment was for less than three months, and if the prior employment was found to be "the substantial contributing factor to the injury," then the prior employer would be liable for the occupational disease. The legislature did not define "the substantial contributing factor." However, the Southern District in *Mayfield v. Brown Shoe Company*, 941 S.W.2d 31, 37 (Mo.App. S.D. 1997), held that that phrase meant "that factor which is the more responsible of the two contributing factors." Moreover, as stated in *Maxon*, 9 S.W.3rd at 732, in quoting the administrative law judge's decision:

[I]t is only when there are competing contributing factors between employers and the exposure at the last employment is for less than three months that §287.067.7 would apply. Otherwise, under the statute dealing with occupational disease, exposure to the hazards of an occupational disease for a period of time no matter how short is all that is required. Actual causation under those circumstances is of no consequence. Such is the situation in this case since claimant worked more than three months for

In light of the foregoing, and after consideration and review of the evidence, I find and conclude that the employee sustained an incident of occupational disease, which arose out and in the course of his employment with Earthgrains Company, and this occupational injury in the nature of bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. I further find and conclude that this injury is causally related to his employment with Earthgrains Company.

Notably, in the present case, it is undisputed that Mr. Garrett sustained an injury or medical condition in the nature of bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Further, this medical condition is an occupational disease under The Missouri Workers' Compensation Law. The "racking" work performed by Mr. Garrett at Earthgrains Company, which consisted of lifting pans that weighed 10 – 14 pounds when empty to 23 pounds when full, from a conveyor belt to a rack ankle high to above his head, 18 times per minute, is not an ordinary activity of life to which the general public is exposed outside of employment. Also, Dr. Grillot, the employee's treating physician, testified that Mr. Garrett's work at Earthgrains Company was a substantial contributing factor to the development of his bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, which necessitated surgical intervention.

Under the Last Exposure Rule, the last employer before the date of claim is filed with the Division of Workers' Compensation is liable, if that employer exposed the employee to the hazard of the occupational disease. *Endicott v. Display Technologies*, 77 S.W.3d 610 (Mo. Banc. 2002). Because Earthgrains was the last employer to expose Mr. Garrett to the hazard of occupational disease (bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome), Earthgrains Company is solely liable. *Id.*

Although Earthgrains Company urges the undersigned to apply the three-month provision of Section 287.067.7 R.S.Mo, the Supreme Court in *Endicott* held that "this provision shifts liability to a prior employer *only* if the employee's exposure at a later employer is less than three months *and* exposure with a prior employer was *the* substantial contributing factor to the injury." *Id.* (emphasis in original). Further, while Mr. Garrett's exposure at Earthgrains Company was less than three months, the employment activity and exposure to such hazard occurring at Micro Innovations do not constitute the

substantial contributing factor to the injury. Significantly, in the context of this issue, there is not any medical opinion that states Mr. Garrett's employment with Micro Innovations was the substantial contributing factor to the injury; and, without such medical evidence, there can be no such finding.

Yet, if there was to be a finding identifying an employment constituting the substantial contributing factor, I am persuaded that the evidence supports a finding that the employment with Earthgrains Company would constitute the substantial contributing factor to the injury. In the context of this discussion, Dr. Woodward initially opined that eight or nine weeks of work at Earthgrains Company would not be sufficient amount of time to cause the amount of nerve damage identified in the nerve conduction studies performed on February 6, 2001. However, in his second deposition, Dr. Woodward opined that 8 ½ weeks of work at Micro Innovations constituted a substantial contributing factor to the claimant's carpal tunnel syndrome. Dr. Woodward added that the forceful lifting and gripping of 20 to 25 pounds or more would cause a patient to develop carpal tunnel syndrome more rapidly than eight to twelve weeks. Dr. Woodward testified that it would depend upon the specific job duties and the physical position of the wrist and hands at the time the duties were done.

In the present case, Mr. Garrett's work at Earthgrains Company consisted of more forceful lifting or gripping than the work at Micro Innovations. At Earthgrains, Mr. Garrett repeatedly lifted trays weighing from 10 to 23 pounds, 18 times per minute. And the trays are wider than the typical person's shoulder; and the shoulders and elbows and wrist joints would have to move in order to grasp the sides of the trays, according to Dr. Woodward's testimony.

In contrast, this forceful and heavy lifting was not present at Mr. Garrett's job at Micro Innovations. Although Mr. Garrett occasionally lifted a box of medical records weighing between 5 to 25 pounds, there was no evidence that this occurred repeatedly during the workday, as Mr. Garrett testified that he was never able to meet his goal of four boxes per day. Additionally, Mr. Garrett testified that he would lift a box onto his work station and then work through all of the records in that box; and then he would get another box. There was no evidence of repeated lifting of boxes by Mr. Garrett and his employment at Micro Innovations.

Dr. Woodward's analysis that carpal tunnel syndrome can develop more rapidly with more forceful lifting or gripping supports a finding that Mr. Garrett's work at Earthgrains Company was the substantial contributing factor to the development of his carpal tunnel syndrome, rather than his work at Micro Innovations. Moreover, Mr. Garrett testified that he never experienced any symptoms such as pain in his hands, arms or fingers, or numbness or tingling in his hands or fingers until he started working at Earthgrains Company. Mr. Garrett did not suffer from any of these symptoms during his employment at Micro Innovations.

Accordingly, in light of the foregoing, I find and conclude that the employee, David Garrett, sustained an injury by occupational disease. I further find and conclude that, prior to the filing of his claim, Earthgrains Company was the last employer to expose him to the disease producing conditions. Therefore, Earthgrains Company, as the last employer to expose Mr. Garret to the disease producing conditions for his occupational disease disability prior to the filing of the claim, is responsible for all of the employee's bilateral upper extremity problems associated with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Similarly, its insurer, Pacific Employers Insurance Co., is liable to the employee for providing the employee with workers' compensation benefits.

II. Notice

The notice requirement in Section 287.420 R.S.Mo. does not apply to occupational diseases. *Endicott v. Display Technologies*, 77 S.W.3d, 612 (Mo. Banc. 2002). *Endicott* held that the plain language of Section 287.420 R.S.Mo. "does not encompass occupational diseases" and "the statutes do not require an employee to notify the employer of occupational diseases." *Id.* Accordingly, having found the employee to suffer an injury in the nature of an occupational disease, as compared to an accident, he need not satisfy the requirement set forth in Section 287.420, RSMo.

Yet, Mr. Garrett testified that he repeatedly complained to his supervisor about the pain in his arms and hands, and the tingling and numbness in his fingers. And, on one occasion he was taken to the break room, and given an ice pack with instructions to rest for 30 minutes and then return to work. Additionally, Dr. Grillot provided Mr. Garrett with a note indicating his opinion that the condition involved a work-related injury in the nature of carpal tunnel syndrome; and Mr. Garrett provided the note to the employer, Earthgrains Company, which resulted in the referral to Dr. Woodward. Accordingly, while notice is not a requirement that the employee must satisfy in the present case, such notice was timely and actually provided in writing to the employer.

Therefore, this issue is resolved in favor of the employee.

III. Medical Care

The parties do not readily dispute that Mr. Garrett suffered from bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, and these conditions necessitated receipt of medical care, including four separate surgeries. Nor do the parties readily dispute that, in the course of receiving treatment for the bilateral carpal tunnel syndrome and bilateral cubital

tunnel syndrome, Mr. Garrett incurred medical expenses in the amount of \$24,943.09. And, the parties stipulated that the medical expenses were fair and reasonable.

Accordingly, after consideration and review of the evidence, I find and conclude that the medical care provided to Mr. Garrett and for treatment of the bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome was reasonable, necessary, and causally related to the incident of occupational disease, which he suffered in his employment with Earthgrains Company. I further find and conclude that the medical expenses incurred by Mr. Garrett in the amount of \$24,943.09, is fair and reasonable. Further, there is no evidence of this liability having been extinguished. Therefore, the employer, Earthgrains Company, and its insurer, Pacific Employers Insurance Co., is ordered to pay to the employee the sum of \$24,943.09, subject to payment and satisfaction of the lien asserted by the Missouri Department of Social Services, Division of Medical Services, pursuant to Section 287.266, RSMo. The payment of \$24,943.09 which represents payment of past medical expenses. *Farmer- Cummings v. Personnel Pool of Platte County*, 110 S.W.3d 818 (Mo. Banc. 2003).

IV. Temporary Disability Compensation

The evidence is supportive of a finding that, as a consequence of suffering the incident of occupational disease referable to his employment with Earthgrains Company and the development of his bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, Mr. Garrett was temporarily and totally disabled for the period of February 6, 2001, through June 1, 2001 (16 and 3/7 weeks). Notably, in the context of this discussion, Mr. Garrett last worked for Earthgrains Company on February 5, 2001; and he remained off work, and did not return to any employment, until June 1, 2001.

Although Mr. Garrett reported to work with Earthgrains Company on February 6, 2001, the company sent him home, stating that it could not accommodate Dr. Woodward's work restrictions. (These restrictions included modified duty with occasional lifting, pushing and pulling no greater than five pounds, and the recommendation that Mr. Garrett continuously wear a splint.) Mr. Garrett did not return to any form of employment until June 1, 2001, when he began a short stint working for the Ozark Mountain Ducks. During this period of temporary disability, Mr. Garrett was under the care and treatment of Dr. Grillot, and underwent two surgeries: left carpal tunnel release on March 19, 2001, and left ulnar nerve transposition on April 30, 2001. Restrictions imposed by Dr. Grillot after each of these surgeries included no lifting with the left hand.

Accordingly, after consideration and review of the evidence, I find and conclude that, as a consequence of suffering the incident of occupational disease on or about February 5, 2001, Mr. Garrett was temporarily and totally disabled for the period of February 6, 2001, to June 1, 2001. Therefore, the employer, Earthgrains, and its insurer, Pacific Employers Insurance Co., are ordered to pay to the employee the sum of \$4,407.62, which represents 16 and 3/7 weeks of temporary total disability compensation, payable for the period of February 6, 2001, to June 1, 2001.

V. Permanent Disability Compensation

The evidence is supportive of a finding that, as a consequence of suffering the incident of occupational disease on or about February 5, 2001, Mr. Garrett sustained an injury in the nature of bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. The evidence is further supportive of a finding that, as a consequence of this occupational injury, Mr. Garrett suffers residual permanent disability and symptoms in his upper extremities, associated with continuing pain, numbness, and loss of motion and strength. Also, the evidence is supportive of a finding that, as a consequence of this occupational injury, and the four surgeries to Mr. Garrett's upper extremities, Mr. Garrett sustained permanent scarring and disfigurement to his right and left upper extremities.

In addressing the nature and extent of this permanent disability, and recognizing that Mr. Garrett is governed by permanent restrictions and limitations, Dr. Grillot opined that, while Mr. Garrett demonstrated significant improvement from his preoperative nerve studies, he had nonetheless sustained 143 weeks of permanent disability, referable to the right and left upper extremities. The parties did not offer any medical opinion challenging Dr. Grillot's opinion of disability.

Accordingly, after consideration and review of the evidence, I find and conclude that, as a consequence of the occupational disease of February 5, 2001, and the resulting occupational injury in the nature of bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, Mr. Garrett sustained a permanent partial disability of 30 percent to the body as a whole, referable to both upper extremities (120 weeks). This assessment of disability takes into consideration the opposite extremities combining to cause a synergistic effect or enhancement of disability; and it takes into consideration a credit relative to the wrist / hand injury (carpal tunnel) being part of the injury to the elbow (cubital tunnel). Additionally, I find and conclude that, as a consequence of this occupational injury, Mr. Garrett sustained scarring and disfigurement, and is entitled to 15 additional weeks for disfigurement.

Therefore, the employer Earthgrains, and its insurer, Pacific Employers Insurance Co., are ordered to pay to the

employee, David Garrett, the sum of \$36,219.15, which represents 135 weeks of permanent partial disability and disfigurement, payable at the applicable weekly compensation rate of \$268.29.

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable.

The Claim for Compensation, as filed against the employer, Micro Innovations, and its insurer, Missouri Employers Mutual Insurance Co., is denied.

The award is subject to modifications as provided by law.

Date: May 24, 2005

Made by: /s/ L. Timothy Wilson
L. Timothy Wilson
Associate Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secrest
Patricia "Pat" Secrest
Director
Division of Workers' Compensation