

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

Injury No.: 07-005816

Employee: Rose L. Gordon  
Employer: Lear Corporation  
Insurer: Zurich American Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence, read the briefs, heard oral argument, 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 October 20, 2008, as supplemented herein.

The instant claim involves a request for workers' compensation benefits for an alleged occupational disease arising out of and in the course of employment. The administrative law judge found that employee did not prove that her work was the prevailing factor causing her medical conditions (bilateral carpal tunnel syndrome and left cubital tunnel syndrome). The administrative law judge found Dr. Crandall's findings to be more credible than Dr. Schlafly. We agree with this conclusion.

Section 287.063, RSMo. Supp. 2008, provides:

- An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.
- An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

The Commission agrees that claimant did not establish an injury by occupational disease. Employee failed to prove that her work duties were the prevailing factor causing her bilateral carpal tunnel and left cubital tunnel syndrome. The competent and substantial evidence shows that the work for employer did not expose claimant to the hazard of carpal tunnel syndrome or cubital tunnel syndrome.

The Commission agrees with the ultimate conclusion reached by the administrative law judge that employee failed to meet her burden of proof that she sustained an occupational disease arising out of and in the course of her employment.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued October 20, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22nd day of May 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

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Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed.

The ultimate determination of credibility of witnesses rests with the Commission. The Commission is not bound to yield to an administrative law judge's findings, though, including those relating to credibility; and the Commission is authorized to reach its own conclusions. The law only requires the Commission to take into consideration the credibility determinations of an administrative law judge and not give those determinations deference. *Kent v. Goodyear Tire & Rubber Co.*, 147 S.W.3d 865 (Mo.App. W.D. 2004).

The administrative law judge found the opinion of Dr. Crandall to be more credible than the opinion of Dr. Schlafly. I disagree. Dr. Crandall's opinion regarding whether employee's work duties caused the conditions giving rise to employee's symptoms is simply not credible. The award founded upon Dr. Crandall's opinion is not supported by competent and substantial evidence.

Under Section 287.063.2 RSMo, employee must prove that the “occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor[.]”

Therefore, the question is whether employee presented sufficient evidence to support a finding that the work she performed for employer was the prevailing factor in causing her medical conditions, carpal tunnel syndrome and cubital tunnel syndrome. I believe the evidence supports that her work was the prevailing factor causing her conditions.

Claimant testified to the repetitive nature of her work, entered a video depicting such repetition, and offered medical expert testimony supporting her claim. Employee provided testimony as to how she performed her work as a seat labeler. Employee’s duties predominately consisted of labeling and scanning seats, requiring constant and repetitive use of her hands. She testified that she began experiencing numbness and tingling in her hands and that she reported her symptoms to her supervisor and prepared an incident report. Employee was treated conservatively without improvement. Employee was sent to Dr. Cantrell who ordered nerve conduction studies which confirmed employee had bilateral carpal tunnel syndrome. Employee then saw Dr. Crandall who recommended surgery, but employer denied treatment. Employee sought treatment from Dr. Schlafly who performed bilateral carpal tunnel surgeries as well as surgery for left cubital tunnel syndrome. Employee testified that she saw improvement following the surgeries.

Dr. Schlafly testified that employee used her hands repetitively in performing her work duties which included labeling, scanning, and pushing seats. Dr. Schlafly noted the repetitive nature of employee’s job required constant use of both hands. Dr. Schlafly opined that employee's work was the prevailing factor causing employee’s conditions and the need for bilateral carpal tunnel and left cubital tunnel surgeries.

Dr. Crandall opined that employee’s work was not the prevailing factor causing her conditions; however, the opinion of Dr. Crandall is not credible. Dr. Crandall did not specifically witness employee performing her duties, but based his opinion in part on a brief video prepared by employer showing only a portion of employee’s job duties. The ten second video did not depict all aspects of employee’s work for employer and therefore did not accurately portray the work. Dr. Crandall also believed that employee was embellishing her work duties even though her description of her duties was not contradicted by employer’s job description. Dr. Crandall agreed that employee’s work required repetitive use of her hands, but opined that her job was not hand intense enough to cause her conditions. Under 287.063.3 RSMo, repetitive motion is recognized as an occupational disease; there is no requirement that the job be of a certain hand intensity.

Furthermore, there is not evidence suggesting employee engaged in activities that would expose her to the risk of an occupational disease, specifically carpal tunnel syndrome or cubital tunnel syndrome, outside of her employment life. Dr. Schlafly testified that employee did not suffer from diabetes, hyperthyroidism, or another medical condition that would cause her symptoms. Dr. Schlafly opined that employee’s bilateral carpal tunnel syndrome was not idiopathic in nature. Dr. Crandall did not offer any other cause for employee’s conditions. Prior to working for employer, employee did not experience numbness or tingling or any problems with her hands. The evidence clearly demonstrates that employee's conditions, both bilateral carpal tunnel syndrome and left cubital tunnel syndrome, were directly caused by her work for employer.

Employee met her burden of proof establishing that her work for employer was the prevailing factor causing her medical conditions and need for surgery. Accordingly, I would reverse the award of the administrative law judge and award benefits.

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

## AWARD

Employee:	Rose L. Gordon	Injury No.:	07-005816
Dependents:	N/A	Before the	
Employer:	Lear Corporation	<b>Division of Workers'</b>	
Additional Party:	Second Injury Fund (Open)	<b>Compensation</b>	
Insurer:	Zurich American Insurance Company	Department of Labor and Industrial	
Hearing Date:	September 15, 2008	Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	EJK/cmh

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
  - Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
  - Date of accident or onset of occupational disease: January 26, 2007 (alleged)
  - State location where accident occurred or occupational disease was contracted: St. Charles 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
  - 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:  
The claimant, a seat labeler, developed bilateral carpal tunnel syndrome and elbow pain.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Both wrists and left elbow

- Nature and extent of any permanent disability: 17% permanent partial disability of the right wrist, 15% permanent partial disability of the left wrist, and 17% of the left elbow.

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

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

Employee: Rose L. Gordon

Injury No.: 07-005816

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

- Employee's average weekly wages: \$781.60

19. Weekly compensation rate: \$521.09/\$376.55

20. Method wages computation: By agreement

#### COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: Open

Total: None

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: Timothy P. O'Mara, Esq.

### FINDINGS OF FACT and RULINGS OF LAW:

Employee: Rose L. Gordon

Injury No.: 07-005816

Dependents: N/A

Before the

Employer: Lear Corporation  
Additional Party: Second Injury Fund (Open)  
Insurer: Zurich American Insurance Company

**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Checked by: EJK/cmh

This workers' compensation case requires a determination of compensability relative to the claimant's bilateral carpal tunnel syndrome and pain in her left elbow. The sole issue for determination is whether the claimant's employment exposed her to an occupational disease that created permanent disability. The Second Injury Fund claim remains open pursuant to an agreement among the attorneys. The evidence compels an award for the defense.

At the hearing, the claimant testified in person and offered a deposition of Bruce Schlafly, M.D., and a DVD with a video showing the claimant performing elements of her job. The defense offered a deposition of R. Evan Crandall, M.D., and a DVD showing a video of the performance of the position performed by the claimant and a verbal description of the position.

The parties stipulated and agreed that if the claim is compensable, the defense will hold the claimant harmless from any liability for medical expenses related to the injury, the employer will pay the claimant \$1,818.00 for temporary total disability, and permanent disability benefits as follows: 17% permanent partial disability of the right wrist (\$11,202.36), and 15% permanent partial disability of the left wrist (\$9,884.44). In addition, if the claimant's left elbow condition is compensable, the claimant will be entitled to permanent partial disability benefits of 17% (\$13,442.83), but the employer will receive a credit resulting in a liability of \$11,762.48.

All objections not previously sustained are overruled as waived. Jurisdiction in the forum is authorized under Sections 287.110, 287.450, and 287.460, RSMo 2000, because the occupational disease was alleged to have been contracted in Missouri.

### **SUMMARY OF FACTS**

This 58 year old automobile seat labeler has worked for this employer at least forty hours per week with some mandatory overtime since February 14, 2000. As a labeler, she worked on six seats positioned on one rack. She stated that the seats were about waist high. The claimant takes labels from a printer, peels them off a sheet, and sticks them onto the front of each of the six seats in the rack. On the center and right rear seats, uses one hand to tilt the seats backwards to place the sticker on the upper front portion of the seat. The claimant testified that she did not have to use her hand to tilt the seat backwards with the four other seats in the rack. For those, she was able to simply walk around the racks and place the stickers on the seat backs. The claimant takes an ultra red scanning gun and scans her computer screen, and then scans two separate labels on each seat. The scanning gun weighs one pound, the force required to pull the trigger of the gun was very slight, and that there is no forceful gripping required while using the gun.

After scanning the labels/stickers, the rack of seats would automatically be taken away from her, and a new rack of seats would be automatically transferred to her. The claimant testified that she would wait a total of approximately ten minutes per hour between one rack being completed and the next rack being provided.

The claimant testified that her job also involved four additional ancillary duties. One such duty was that the claimant occasionally had to remove a seat from the rack if it was out of sequence in relation to the other five seats on the rack. The claimant stated that the majority of the time this job was done by a forklift driver taking the seat off of the rack with the forklift and placing the seat on the floor. Occasionally the claimant would have to take the seat off of the rack by hand. The claimant indicated that the seat and pallet weighed

approximately 60 pounds. Mr. Bob Draft testified that the vast majority of the time, if this had to be done at all, it was done with a forklift. He also testified that despite the PDA which stated if there was a lack of forklifts at night an individual would have to take this down by hand, there were the same number of forklift drivers on duty at night as there were on duty during the day.

The claimant also had to occasionally use a hammer to unlock "T-locks." Each rack has four locks. Sometimes these locks would be stuck, and the claimant would have to strike the lock with a hammer. Although the claimant testified that she had to use a big "wop" to release the lock, and that this occurred frequently, Mr. Draft testified that this occurred only approximately ten times per shift. Furthermore, the video footage of the claimant's job being performed showed no locks in need of tapping to release the T-locks. Mr. Draft testified that the "hammer" was merely a rubber mallet, and that the force needed was not as intense as the force similar to a carpenter driving a nail into a stud, but was more of a tapping at a certain angle to release the lock. This tapping only had to be done approximately once every hour and 45 minutes, or approximately ten times per shift, at a maximum.

Another ancillary duty involved using a "J-hook," a long piece of pipe that has a hook on the end. The J-hook was used to pull pallets that were jammed on a conveyor belt. It was also used to push seats back or toward each other before coming off onto the rack. The claimant stated that she did this approximately ten times per night. Mr. Draft testified that the pallets only weigh approximately eight pounds and are on rollers in an assembly line. Therefore, not much force at all is required to pull the pallets forward with the J-hook.

The claimant also was seen in the video pulling foam off of the bottom of the seat, which takes only two or three seconds. The claimant does this approximately 20 times per night. The extra foam is simply a portion of foam that has extruded out of the mold. Mr. Draft explained that pulling the foam is similar to tearing a sheet of perforated paper with one hand.

Mr. Draft explained that using the rubber mallet, lifting the seats off the rack, using the J-hook, and pulling foam is approximately 2% of the claimant's entire job duties in terms of time in a work shift. The remaining 98% of the time involved doing the labeling and scanning job, or being on a break or lunch break. The video footage of the claimant performing her job was shot by the claimant's friend, and was edited, condensing the amount of time the claimant was simply waiting in between racks. Nevertheless, the video footage demonstrates that although the job required use of the hands, intense hand straining was not required to perform the various tasks.

In addition to her work at Lear, the claimant testified that she enjoys a variety of hobbies. The claimant enjoys gardening, camping, and drives a boat for recreation approximately two times a month. In addition to her hobbies, the claimant also does all of the work around her house, including vacuuming, cleaning, mopping, dusting, and sweeping.

The claimant testified that she first began to have problems in June or July of 2006. The claimant stated that she noticed her hands falling asleep as she would drive home from work. The claimant testified that her hands would become numb and she would feel a tingling sensation at night, which would often wake her from sleep. The claimant testified that her symptoms were worse on her left hand on the small and ring finger.

The claimant was first diagnosed by nerve conductions with mild bilateral carpal tunnel syndrome in 2006. However, when Dr. Schlafly sent the claimant back for nerve conduction tests, the tests showed normal nerve conduction at the wrists and at the elbows bilaterally.

Dr. Crandall

Dr. Crandall examined the claimant on November 15, 2006. See Dr. Crandall Deposition, page 5. The

claimant reported stiffness, numbness, tingling, and night numbness in her hands since July 2006. See Dr. Crandall Deposition, page 5. Dr. Crandall reviewed the claimant's medical history, job duties, and medical records from Dr. Phillips and Dr. Cantrell revealing a history of high blood pressure and depression, a 2003 back injury, previous neck pain, and previous chiropractic treatment. See Dr. Crandall Deposition, page 6.

After a physical examination, Dr. Crandall diagnosed right and left carpal tunnel syndrome. See Dr. Crandall Deposition, page 8. Dr. Crandall reviewed an Essential Job Function job description, photographs of individuals performing the claimant's job duties, video footage of the sticker labeling position, the claimant's deposition testimony of her job description, and visited the employer's plant observing various individuals at Lear performing this job. See Dr. Crandall Deposition, pages 10, 18. Dr. Crandall opined that the claimant's carpal tunnel syndrome was not caused by the claimant's work for this employer, because there was not enough repetition, intensity, frequency, or awkward positions to have caused the claimant's carpal tunnel syndrome. See Dr. Crandall Deposition, page 9. Dr. Crandall testified that that the claimant's job duties for this employer were not the prevailing cause of the claimant's carpal tunnel syndrome. See Dr. Crandall Deposition, page 9. In January 2007, Dr. Crandall reviewed video footage of the sticker labeling position, demonstrating how the job was performed and came to the same conclusion. See Dr. Crandall Deposition, page 10. Dr. Crandall testified that it is a "gross mischaracterization" to say the claimant's labeling job involved frequent hand intensive work. See Dr. Crandall Deposition, page 20.

Dr. Crandall testified that he has had more than 20 cases with Lear. See Dr. Crandall Deposition, page 14. Dr. Crandall testified that this is the only case where he has not found causation, because this case involves a non hand intensive position. Id.

#### Dr. Bruce Schlafly

Dr. Schlafly examined the claimant on February 14, 2007. See Dr. Schlafly deposition, page 19. Dr. Schlafly treated claimant's carpal tunnel syndrome, and performed surgical procedures at both wrists and the left elbow. See Dr. Schlafly deposition, pages 12, 13. Dr. Schlafly diagnosed left carpal tunnel syndrome and left cubital tunnel syndrome, and recommended surgery for both conditions. See Dr. Schlafly deposition, pages 12, 13. Dr. Schlafly performed left carpal tunnel release and ulnar nerve transposition at the left elbow on April 12, 2007. See Dr. Schlafly deposition, pages 12, 13. Dr. Schlafly released the claimant to work on July 9, 2007. See Dr. Schlafly deposition, page 13. The operations were successful, although the claimant noted some areas of pain and tenderness at the scars, but nevertheless is working full duty and not taking any prescription pain medication. See Dr. Schlafly deposition, page 14.

Dr. Schlafly concluded that the claimant's repetitive work with her hands and upper extremities at her job for this employer was the substantial and prevailing factor in the cause of her bilateral carpal tunnel syndrome and left cubital tunnel syndrome, and in the need for surgical treatment, including her time off of work post-operation. See Dr. Schlafly deposition, pages 14 - 16. Dr. Schlafly did not recommend any additional treatment for the claimant, but rated her disability at 20% permanent partial disability of each hand measured at the level of the wrist joint, due to work related bilateral carpal tunnel syndrome and releases. See Dr. Schlafly deposition, page 15. Dr. Schlafly rated the claimant at 25% permanent partial disability of the left elbow, due to work related left cubital tunnel syndrome and ulnar nerve transposition. See Dr. Schlafly deposition, page 15.

In reaching his conclusions, Dr. Schlafly reviewed a job description for the claimant's employment at the Lear factory, and the claimant's own description of the job duties. See Dr. Schlafly deposition, page 7. Dr. Crandall reviewed an Essential Job Function job description, as well as photographs of individuals performing the claimant's job duties, video footage of the sticker labeling position, the claimant's deposition testimony of her job description, and personally visited the employer's plant to view the job being performed. See Dr. Crandall deposition, pages, 8, 10, 18.

## OCCUPATIONAL DISEASE

An occupational disease is an identifiable disease arising without human fault out of and in the course of the employment. § 287.067, RSMo. Supp 2007. The employee must provide substantial and competent evidence that he has contracted an occupationally induced disease rather than an ordinary disease of life. Kelley v. Banta & Stude Constructions Co., 1 S.W.3d 43, 48 (Mo.App. E.D. 1999). The inquiry involves two considerations: (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. Id. The claimant has the burden to prove causation of an occupational disease. Townser v. First Data Corp., 215 S.W.3d 237, 241 (Mo.App. E.D. 2007).

The primary issue to be decided is one of medical causal connection. Medical causation must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. Shelby v. Trans World Airlines, 831 S.W.2d 221, 222 (Mo.App. W.D. 1992). Questions regarding causation are issues of fact to be decided by the Commission. Sanderson v. Porta-Fab Corp., 989 S.W. 2d 599 (Mo. App. 1999). It is agreed by all of the physicians that the employee has carpal tunnel syndrome. Carpal tunnel syndrome is a known occupational disease. Wiele v. National Supermarkets, 948 S.W. 2d 142 (Mo. App. 1997).

Because the decision hinges on the medical causal relationship the credibility of the medical experts is the crucial deciding factor. Where the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is the most credible. Townser, 215 S.W.3d at 242. In this case, Dr. Schlafly opined that the claimant's work was the prevailing factor causing the claimant's bilateral carpal tunnel syndrome and her left elbow condition, because the claimant's work was repetitious, based on his experience as a board certified hand surgeon since 1986. On the other hand, Dr. Crandall opined that the claimant's work was not the prevailing factor causing her bilateral carpal tunnel syndrome, because he contended that the claimant's work was not hand intensive. See Dr. Crandall deposition, page 9. "It didn't have enough repetition, intensity, frequency, or awkward position to be able to exceed OSHA guidelines to be considered a biological risk factor to cause the condition such as carpal tunnel syndrome." See Dr. Crandall deposition, page 9.

In briefing the case, the attorneys attacked the foundation of the opposing expert, claiming that the opposing expert had not reviewed a portion of the evidence or had some particular bias. However, both experts are qualified as board certified plastic or hand surgeons with many years of experience in hand surgery. Each expert appeared to have a firm grasp regarding the details of the claimant's occupational activities. The record discloses no bias from either expert. Any allegation of bias would reflect bias of the forum. However, neither expert cited any scientific study supporting his position or establishing scientifically determined factors that cause the claimant's medical conditions. Dr. Schlafly relied exclusively on his experience as a hand surgeon for twenty-two years. See Dr. Schlafly deposition, page 35. Dr. Crandall referred to vague risk factors of an administrative agency, OSHA, without stating what the actual criteria are and how those factors were determined. See Dr. Crandall deposition, pages 9, 19, 20. One might conclude that both positions rely on "junk science", however our Supreme Court has directed this forum to give due consideration to experts in determining technical points:

As a general rule, courts defer to the findings on technical matters within the expertise of administrative agencies. ... In line with the general tendency of administrative law to recognize the expertise of specialized tribunals, compensation boards may rely to a considerable extent on their own knowledge and experience in uncomplicated medical matters, and in such cases awards may be upheld without medical testimony or even in defiance of the only medical testimony. Medical causation of a herniated disc of the spine cannot be

considered uncomplicated. The commission may not substitute an administrative law judge's personal opinion on the question of medical causation of a herniated disc for the uncontradicted testimony of a qualified medical expert. Of course, it is possible that the existence or absence of injury and causation are so obvious from the physical facts that one of ordinary understanding may reject even unchallenged medical expert testimony to the contrary. In addition, an administrative law judge may have the expertise to know that a herniated disc may result from a cause other than trauma. However, the specific medical conclusion that a herniated disc in the neck due to trauma will always have immediate noticeable symptoms is not clear, simple or well recognized by lay persons and is not a matter within the expertise of an administrative law judge. Wright v. Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo. Banc 1994).

The claimant's medical conditions in this case cannot be considered uncomplicated. Dr. Schlafly opined that the claimant's work duties were repetitive and were, therefore, the prevailing factor causing the claimant's medical conditions. He cited no scientific studies nor did he state which features of her job caused the condition. The sole criterion he used was whether the claimant's job duties were repetitive. Many tasks in life are repetitive, whether they are performed once every second, once every day, or once every week. They can be repetitive regardless of the intensity and pressure on the wrists. Dr. Crandall appears to contend that the claimant's work duties must also be hand intensive. See Dr. Crandall deposition, page 9. "It didn't have enough repetition, intensity, frequency, or awkward position ... to cause the condition such as carpal tunnel." See Dr. Crandall deposition, page 9.

The claimant's evidence clearly related that the claimant performed tasks in her work of labeling automobile seats 600 to 700 times per shift. Both experts agree that repetition is a key criterion for the work to cause the claimant's medical conditions. Dr. Schlafly contends that repetition alone is the key criterion. Dr. Crandall contends that the criteria must also include intensity. See Dr. Crandall deposition, page 9. After reviewing the evidence, the evidence supports a finding that the claimant's activities are not intense. Hand intensity connotes activities such as rapid assembly line work, constant keyboarding, or jack hammering. The video of the claimant's work appears to be repetitive but not intense, frequent or awkward. The work done with the hands appears very low impact and with little resistance.

On balance, the claimant's job duties appear well documented in the evidence, and each party submitted expert opinion evidence from a well qualified surgeon that had a firm understanding of the claimant's job duties. Neither expert provided any scientific studies to support his conclusions. Neither expert offered any other cause of the claimant's medical condition than the idiopathic occurrence of the conditions. The claimant's medical conditions can occur idiopathically. See Dr. Schlafly deposition, pages 42, 43. The weight of each expert's opinion appears relatively equal.

However, under the workers' compensation statute, the burden of proving an entitlement to compensation is on the employee and in asserting any claim based on a factual proposition, the claimant must establish that such proposition is more likely to be true than not true. See Section 287.808, RSMo Supp 2007. The evidence must be weighed impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts. See Section 287.800, RSMo Supp 2007. In this case, the relatively equal balance of the evidence supports a finding that the claimant has not proven that her work was the prevailing factor causing her medical conditions, because she has not established that proposition is more likely to be true than not true. Therefore, the claim is denied.

Another issue that must be addressed is whether the claimant suffered from cubital tunnel syndrome as a result of her work duties for this employer. Dr. Schlafly diagnosed cubital tunnel syndrome based on the claimant's clinical presentation and performed an ulnar nerve transposition on the left elbow on April 12, 2007. See Dr. Schlafly deposition, page 12. Electrical studies were negative for cubital tunnel syndrome. See Dr. Schlafly deposition, page 12. He based his diagnosis on the claimant's report of numbness in her left small finger. See Dr. Schlafly deposition, page 10. Dr. Schlafly opined that the claimant's work duties at

work were the substantial factor and prevailing factor causing her left elbow condition and need for surgery. See Dr. Schlafly deposition, pages 14, 15. Based on Dr. Crandall's examination and the test results, Dr. Crandall opined that the claimant did not have an abnormal ulnar nerve condition. See Dr. Crandall deposition, pages 7, 8.

Determinations of compensability are addressed by the statute:

In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures. Section 287.190.6(2), RSMo Supp 2007.

Dr. Crandall's findings that the claimant did not suffer from an abnormal ulnar nerve condition are supported by objective testing. Dr. Schlafly's findings are based on the subjective reports of the claimant with no support from the electrical testing, which were negative. Based on the statutory mandate, Dr. Crandall's findings are more credible, because they are supported by objective medical findings. The claim for workers' compensation benefits for the claimant's left elbow condition is denied.

Date: October 20, 2008

Made by: /s/ EDWIN J. KOHNER  
EDWIN J. KOHNER  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ JEFFREY W. BUKER  
*Jeffrey W. Buker*  
*Director*  
Division of Workers' Compensation