

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

Injury No.: 03-024741

Employee: Damon B. Hosick  
Employer: Little Tykes Commercial Play Systems, Inc.  
Insurer: Self-Insured (TPA: Corporate Claims Management, Inc.)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: March 10, 2003  
Place and County of Accident: Farmington, St. Francois County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated March 3, 2008. The award and decision of Administrative Law Judge Carl Strange, issued March 3, 2008, 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 4th day of November 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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

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

Attest:

\_\_\_\_\_  
Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**AWARD**

Employee: Damon B. Hosick

Injury No. 03-024741 and 03-088603

Dependents: N/A

Employer: Little Tykes Commercial Play Systems, Inc.

Additional Party:

Insurer: Self-insured

(TPA: Corporate Claims Management, Inc.)

Hearing Date: December 11, 2007

Checked by: CS/kh

**SUMMARY OF FINDINGS**

1. Are any benefits awarded herein? Yes (03-024741); No (03-088603)
2. Was the injury or occupational disease compensable under Chapter 287? Yes (03-024741); No (03-088603)
3. Was there an accident or incident of occupational disease under the Law? Yes (03-024741); No (03-088603)
4. Date of accident or onset of occupational disease? March 10, 2003 (03-024741) & July 22, 2003 (03-088603)
5. State location where accident occurred or occupational disease contracted: Farmington, St. Francois 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 (03-024741); Denied (03-088603)
8. Did accident or occupational disease arise out of and in the course of the employment? Yes (03-024741); No (03-088603)
9. Was claim for compensation filed within time required by law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted:  
In injury #03-024741, the employee alleged that he was emptying water from the parts washer when his wrist popped. In injury #03-088603, the employee was pulling a heavy mold when his wrist popped.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Right Wrist

14. Nature and extent of any permanent disability: See Findings (03-024741); Denied (03-088603)
15. Compensation paid to date for temporary total disability: \$0.00
16. Value necessary medical aid paid to date by employer-insurer: \$220.80 (03-024741) & \$3,226.06 (03-088603)
17. Value necessary medical aid not furnished by employer-insurer: None (See Findings)
18. Employee's average weekly wage: \$663.24 (03-024741) and \$553.20 (03-088603)
19. Weekly compensation rate:

#03-024741: \$442.16 for temporary total disability & \$340.12 for permanent partial disability

#03-088603: \$368.80 for temporary total disability & \$347.05 for permanent partial disability

20. Method wages computation: By Agreement

21. Amount of compensation payable:

Permanent partial disability (03-024741): \$4,464.08 (See Findings)

22. Second Injury Fund liability: Denied (See Findings)

23. Future requirements awarded: None

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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: Attorney Ray Gerritzen

## **FINDINGS OF FACT AND RULINGS OF LAW**

On December 11, 2007, the employee, Damon B. Hosick, appeared in person and by his attorney, Ray Gerritzen, for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, R. Scott Reid. The Second Injury Fund was represented at the hearing by Assistant Attorney General Gregg Johnson. Prior to beginning the hearing, the employee dismissed his claim against the employer and the Second Injury Fund in injury #02-150403. The parties proceeded to the hearing on injury #03-024741, #03-088603 & #03-115266. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows.

### **UNDISPUTED FACTS:**

#### Injury #03-024741

1. On or about March 10, 2003, Little Tykes Commercial Play Systems, Inc. was operating under and subject to the provisions of the Missouri Workers' Compensation Act and was a self-insured employer with a third party administrator of Corporate Claims Management, Inc.
2. On or about March 10, 2003, the employee was an employee of Little Tykes Commercial Play Systems, Inc. and was working under and subject to the provisions of the Missouri Workers' Compensation Act.
3. On or about March 10, 2003, the employee sustained an accident or occupational disease during the course of his employment.

4. The employer had notice of employee's accident.
5. The employee's claim was filed within the time allowed by law.
6. The employee's average weekly wage was \$663.24, his rate for temporary total disability is \$442.16, and his rate for permanent partial disability is \$340.12.
7. The employee's injury is medically causally related to the work injury on or about March 10, 2003.
8. The employer has furnished \$220.80 in medical aid to employee.
9. The employer has paid no temporary total disability benefits.

Injury #03-088603

1. On or about July 22, 2003, Little Tykes Commercial Play Systems, Inc. was operating under and subject to the provisions of the Missouri Workers' Compensation Act and was a self-insured employer with a third party administrator of Corporate Claims Management, Inc.
2. On or about July 22, 2003, the employee was an employee of Little Tykes Commercial Play Systems, Inc. and was working under and subject to the provisions of the Missouri Workers' Compensation Act.
3. The employee's claim was filed within the time allowed by law.
4. The employee's average weekly wage was \$553.20, his rate for temporary total disability is \$368.80, and his rate for permanent partial disability is \$347.05.
5. The employer has furnished \$3,226.06 in medical aid to employee.
6. The employer has paid no temporary total disability benefits.

**ISSUES:**

Injury #03-024741

1. Previously Incurred Medical Aid;
2. Additional Medical Aid;
3. Additional Temporary Total Disability;
4. Nature and Extent; and
5. Liability of the Fund.

Injury #03-088603

1. Accident;
2. Notice;
3. Medical Causation;
4. Previously Incurred Medical Aid;
5. Additional Medical Aid;
6. Additional Temporary Total Disability;
7. Nature and Extent; and
8. Liability of the Fund.

**EXHIBITS:**

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A1. Deposition of Dr. Bruce Schlafly with Exhibits A-F dated September 1, 2004;
- A2. Deposition of Dr. Bruce Schlafly with Exhibits A-B dated July 13, 2006;
- B. Medical Records of Hand Therapy of Chesterfield;
- C. Medical Records of Orthopedic Associates, L.L.C.; and
- D. Medical Records of Parkland Health Center.

Employer-Insurer's Exhibits

1. Deposition of Dr. Evan Crandall;
2. Deposition of Dr. David B. Fagan dated August 21, 2004;
3. Deposition of Dr. David B. Fagan dated October 3, 2006;
4. None;
5. MRI Report;
6. EMG Report;
7. 02-150403 Claim for Compensation;
8. 03-024741 Claim for Compensation;
9. 03-088603 Claim for Compensation;
10. 03-115266 Claim for Compensation;
11. Timeline;
12. Employee Payroll Records; and
13. Calendar.

## **FINDINGS OF FACT:**

Based on the testimony of Damon B. Hosick (“employee”), the testimony of the witnesses, the medical records and evidence admitted, I find as follows:

The employee graduated from High School in 1992 with 2 years of vocational training in electrical studies. Prior to starting work for Little Tykes Commercial Play Systems, Inc. (“employer”) in 2000, the employee worked for Huffy as a line hanger and a paint stripper. Before being employed at Huffy, the employee worked for Wal-Mart, County Mart, Karsch’s Grocery Store, County Mart, Eagle Lake and B & T Pallet. On cross examination, the employee admitted that he had changed 7 jobs in 9 years prior to starting work with the employer. As part of his job duties with the employer, the employee was required to hang metal parts on the line. While the weight of these parts ranged from a few ounces to 150 pounds, their size ranged from a few inches to 6 feet. The employee typically worked five to six days a week at eight hours per day as needed to complete the orders of playground equipment. On March 10, 2003, the employee was dumping excess water from the parts washer when his wrist snapped and popped. At that time, Marty Allen, the supervisor over paint and weld, was present and witnessed the accident from approximately 20 to 30 feet away. The injury was reported to the employee’s supervisor, Kenny Stricklin, and the employee was taken to Parkland Health Center. After examination and testing, the employee was diagnosed with a sprained right wrist and given Motrin and a split. The employee was initially released with a temporary weight restriction of lifting of no more than 30 pounds and then authorized to return to full work duty on March 15, 2003 (Employee Exhibit D).

At the time of the hearing, the employee testified that he was off work for 10 days due to the March 10, 2003 accident. However, the employee’s time records only indicate that he missed three days of work following the accident and took vacation for the following week (Employer-Insurer Exhibit 12). After his return to work on March 24, 2003, he worked as a line hanger until there was a mass lay off on April 7, 2003. The employee filed his claim for compensation with the Division of Workers’ Compensation regarding the March 10, 2003 injury on April 17, 2003. This claim was assigned injury #03-024741 (Employer-Insurer Exhibit 8). The following day, the employee was examined by his own physician, Dr. Bruce Schlafly, who found no Tinel’s sign over the median nerve. In addition to noting that the Phalen’s test for carpal tunnel was negative at the right wrist, Dr. Schlafly found that all of the flexor tendons of the right hand were working properly despite the employee’s complaints of pain. As a result of the examination, Dr. Schlafly opined that the employee had a case of tendonitis of the right wrist with no definite diagnosis of carpal tunnel established. Finally, Dr. Schlafly noted that the employee had an additional complaint of a click in his shoulder but did not have time to investigate it (Employee Exhibit A-1, Deposition Exhibit B, page 3). Upon his return to work with the employer around the end of May 2003, the employee was placed in a temporary position on the roto line. As part of his job duties on the roto line, the employee was required to pry parts out of molds and scrap off excess plastic from small and large playground parts. Each part on the roto line was approximately 8 to 10 feet wide and was suspended from a chain and hoist. In order to perform his job, the employee would have to lift and pull the parts while they were suspended in the air.

On July 22, 2003, the employee was working for the employer on the roto line. The employee testified at the

hearing that on that date around 6:30 to 7:00 p.m. he pulled a heavy mold that caused his wrist to pop and shoot pain to his elbow. Further, the employee testified that he reported the accident immediately to his supervisor, Mike Debert, who sent him home. On July 29, 2003, the employee was terminated by the employer (Employer-Insurer Exhibit 11). Around September 20, 2003, the employee's deposition was taken and he testified that he had some pain but the clicking was the main problem in his shoulder. At that time, the employee did not mention range of motion problems or grinding in his shoulder. On September 22, 2003, the employee filed his claim for compensation with the Division of Workers' Compensation regarding the July 22, 2003 injury to his right wrist. This claim was assigned injury #03-088603 (Employer-Insurer Exhibit 9). On September 24, 2003, the employee returned to Dr. Schlafly for examination and reported that "the right wrist pain became worse after he performed lifting of heavy molds" at the employer shortly before he was fired. After examining the employee, Dr. Schlafly opined that the employee is in need of further evaluation and treatment and that his work at the employer was a substantial factor in the cause of the right wrist complaints with tendonitis and carpal tunnel syndrome. Finally, Dr. Schlafly noted that the employee still had right shoulder complaints that have not been evaluated (Employee Exhibit A-1, Deposition Exhibit C). On November 17, 2003, the employee filed his claim for compensation with the Division of Workers' Compensation regarding the July 31, 2003 occupational injury to his right shoulder. This claim was assigned injury #03-115266 (Employer-Insurer Exhibit 10). At the time of the hearing, the employee testified that he reported his shoulder complaints and problems to the lead man, Danny Russell. However, Danny Russell testified at the hearing that he did not remember any report of injury made to him by the employee and that he would be the one to file any report of injury when they worked together.

The employer then sent the employee to Dr. David B. Fagan, an orthopedic specialist, on December 4, 2003 for evaluation of his wrist shoulder and wrist. After examining the employee, Dr. Fagan recommended cortisone injections and further testing for his shoulder tendonitis and acromioclavicular arthritis. As for the employee's wrist complaints, Dr. Fagan doubted that the employee still suffered from tendonitis due to the length of time that had past and then recommended further testing (Employer-Insurer Exhibit 2, Deposition Exhibit 2, page 2). On January 16, 2004, Dr. Daniel Philips performed a nerve conduction study and EMG report that were within normal limits and not impressive for carpal tunnel (Employer-Insurer Exhibit 6). At his deposition, Dr. Fagan testified that he did not have a firm diagnosis on the employee's right wrist since he just had wrist pain. After noting that the employee did not need surgery on his wrist, Dr. Fagan opined that the employee's problems with his shoulder were degenerative in nature and not related to his work at the employer (Employer-Insurer Exhibit 1, Deposition Pages 12-14).

On March 10, 2004, the employee returned to Dr. Bruce Schlafly for further examination. After providing the employee with a cortisone injection, Dr. Schlafly continued his diagnosis of right carpal tunnel syndrome with flexor tenosynovitis and secondary compression of the ulnar nerve. With regard to the right shoulder, Dr. Schlafly recommended further evaluation and care with an orthopedic surgeon. Finally, he opined that the employee's work with the employer was the substantial factor in causing the condition in the employee's right wrist and shoulder and the subsequent need for treatment. On March 17, 2004, Dr. Schlafly spoke with the employee regarding the shot wearing off and opined that the employee's wrist condition required surgery (Employee Exhibit A-1, Deposition Exhibit D). The employee was then examined by Dr. R. Evan Crandall, a plastic surgeon, on April 27, 2004. At his deposition, Dr. Crandall admitted that 99% of his practice is hand surgery with 80% of that being limited to carpal tunnel (Employer-Insurer Exhibit 1, Deposition Page 5). After reviewing the medical evidence and examining the employee, Dr. Crandall opined that the employee did not have carpal tunnel syndrome but recommended an MRI of the wrist and shoulder (Employer-Insurer Exhibit 1, Deposition Exhibit 2). The MRI was completed by Dr. John P. Crotty on May 12, 2004 and showed no abnormality of the right wrist (Employer-Insurer Exhibit 5). After reviewing the MRI, Dr. Crandall opined that he would not recommend any surgery since the objective tests do not show any evidence of injury (Employer-Insurer Exhibit 1, Deposition Exhibit 2, page 6).

On October 20, 2004, Dr. Fagan reviewed the medical records and reports of Dr. Crandall. Regarding the employee's right shoulder, Dr. Fagan opined that if the employee complained of shoulder pain months after he was working then it was not related to his work. If the employee did complain of pain during his work, the shoulder problem possibly could be work-related (Employer-Insurer Exhibit 3, Deposition Exhibit 3). The employee returned to Dr. Schlafly on January 25, 2005 for examination. At that time, Dr. Schlafly recommended a right carpal tunnel release with flexor tenosynovectomy on the wrist and an MRI with cortisone injections on the right shoulder. Further, Dr. Schlafly opined that if the employee was unable to get treatment, then the employee had suffered a 35% permanent

partial disability of the right wrist due to the work injury of March 10, 2003 and a 35% permanent partial disability of the right shoulder due to impingement syndrome and tendonitis from lifting at work with the employer (Employer-Insurer Exhibit A-2, Deposition Exhibit B, page 4). On March 22, 2005, Dr. Fagan repeated x-rays which indicated Type II acromion and spurring of the acromioclavicular joint. After Dr. Fagan reviewed the MRI scan brought by the employee, he opined that the employee had some impingement, some acromioclavicular arthritis and a possible partial rotator cuff thickness tear or tendinitis (Employer-Insurer Exhibit 3, Deposition Exhibit 3).

At the time of the hearing, the employee complained that he had constant popping, pain, and cramping in his wrist. As a result of these problems, the employee testified that he has difficulty lifting more than 25 pounds, carrying bags of groceries, driving long distances and holding things. With regard to his right shoulder, the employee noted that he had grinding in the joint, pain and difficulty lifting things overhead. The only prior injury to the employee's hand was a boxer fracture to the 5th metacarpal in September of 2001 (Employee Exhibit C). While he worked for the employer, he was written up for 3 violations of the employer's policies. In July of 2000, the employee was cited for falling asleep at work. The employee was counseled for unsatisfactory performance in December of 2002. Finally, the employee was written up for improper positioning of his hands due to the March 10, 2003 injury.

### **APPLICABLE LAW:**

· The burden is on the employee to prove all material elements of his claim. *Melvies v Morris*, 422 S.W.2d, 335(Mo.App.1968). The employee has the burden of proving that not only he sustained an accident that arose out of and in the course of his employment, but also that there is a medical causal relationship between his accident and the injuries and the medical treatment for which he is seeking compensation. *Griggs v A.B. Chance Company*, 503 S.W.2d 697(Mo.App.1973).

· Under Section 287.020.2 RSMo. as effective at the time of the injury, the term accident is defined to only include injuries that are "clearly work related". Under this section, an injury is "clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor". A number of cases have also established that a pre-existing but non disabling condition does not bar recovery under the Workers' Compensation Act, if a work related accident causes the pre-existing condition to escalate to a level where it becomes disabling. *Winebauer v Gray Eagle Distributors*, 661 S.W.2d 652 (Mo.App.1983); *Avery v City of Columbia*, 966 S.W.2d 315 (Mo.App.1998); and *Indelicato v Missouri Baptist Hospital*, 960 S.W.2d 183 (Mo.App.1985).

· Although the workers' compensation law must be liberally construed in favor of the employee, the burden is still on the claimant to prove all material elements of his claim. *Melvies v Morris*, 422 S.W.2d 335 (Mo. App.1968), and *Marcus v Steel Constructors, Inc.*, 434 S.W.2d 475 (Mo.App.1968). Therefore the employee has the burden of proving not only that he sustained an accident, which arose out of and in the course of his employment, but also that there is a medical causal relationship between his accident and the injuries and the medical treatment for which he is seeking compensation. *Griggs v A. B. Chance Company*, 503 S.W.2d 697 (Mo.App.1973).

· Section 287.420 RSMo., requires the employee to give notice of the time, place and nature of his injury and the name and address of the person injured within 30 days after the accident in order to bring a compensable proceeding. The report to the employer is intended to give the employer a timely opportunity to investigate whether an accident occurred, and, if it did, to promptly furnish medical attention to the employee to minimize the injury. *Martin v. Lindbergh Cadillac*, 772 S.W. 2d 12, 13 (Mo. App. 1989). The statute excuses the requirement of written notice if the claimant makes a showing of good cause or if the employer is not prejudice by the lack of such notice. Although the claimant has the burden of showing that the employer was not prejudiced, a prima facie case of no prejudice is made if the claimant can show the employer had actual notice of the injury. *Pattengill v. General Motors Corporation*, 820 S. W.2d 112, 113, (Mo. App. 1991). Notice or knowledge is imputed to an employer when it is given to a supervisory employee. *Malcomb v. Lazy Boy Midwest Chair Company*, 618 S.W. 2d 725, 727 (Mo. App. 1981). On the question of "good cause", Missouri case law has found the existence of good cause only where the injury was latent or the claimant did not realize the extent of the injury until after the 30 day period had passed. *Willis v. Jewish Hospital*, 854 S.W. 2d 82, 85 (Mo. App. 1993).

· The standard of proof for entitlement to an allowance for future or additional medical aid cannot be met simply by offering testimony that it is "possible" that the claimant may need future medical treatment. *Modlin v Sunmark, Inc.*, 699 S.W.2d 5, 7 (Mo.App.1995). This case establishes, however, that it is not necessary for the claimant to present "conclusive evidence" of the need for future medical treatment. *Sifferman v Sears Roebuck & Company*, 906

S.W.2d 823, 838 (Mo.App.1995). To the contrary, numerous cases have made it clear in order to meet their burden; claimants are required to show by a “reasonable probability” that they will need further medical treatment. *Dean v St. Luke’s Hospital*, 936 S.W.2d 601 (Mo.App.1997). In addition, employees must establish through competent medical evidence that the medical care requested “flows from the accident”, before the employer is responsible. *Landers v Chrysler Corporation*, 963 S.W.2d 275 (Mo.App.1997).

Temporary total disability benefits are intended to cover the healing period and are unwarranted beyond the point in which the employee is capable of returning to work. Temporary total disability benefits are not intended to compensate the employee after his condition has reached the point where further progress is not expected. *Brookman v Henry Transportation*, 924 S.W.2d, 286 (Mo.App.1996). See also *Williams v Pillsbury Company*, 694 S.W.2d 488, 489 (Mo.App.1985). In *Brookman* the Court of Appeals noted that the “pivotal question in determining whether an employee is totally disabled is whether any employer in the usual course of business, would reasonably be expected to employ the claimant in his physical condition. *Brookman Id.* at 290.

Under Section 287.220.1 RSMo., the employee has the burden of proving that her pre-existing injuries were of such a serious nature as to constitute a hindrance or obstacle to employment or re-employment. The employee also has the burden of proving that her last injury and pre-existing disabilities exceed the applicable statutory threshold of 12 ½% for body as a whole rating or 15% of an extremity. Further, the Second Injury Fund is only liable if the combination of the employee’s pre-existing injuries and the last injury had a synergistic affect which causes the employee’s total disability to exceed the sum of the disabilities from the pre-existing injuries and the last injury.

## **RULINGS OF LAW:**

### ***Issue 1. Accident & Issue 3. Medical Causation (03-088603)***

The employee has claimed that he injured his right wrist on July 22, 2003 and reported the accident immediately to his supervisor, Mike Debert, who sent him home. However, no report of injury was filed by the employer at that time, and the employer disputes that the employee gave them notice. Further, the employee did not immediately seek any additional treatment for his injury to his right wrist. In an effort to explain this lack of treatment, the employee contended that he was waiting on the employer to set up his treatment. The employee was subsequently fired on July 29, 2003. On September 22, 2003, the employee filed his claim for compensation with the Division of Workers’ Compensation regarding the July 22, 2003 injury to his right wrist as injury #03-088603. The employee then sought additional treatment on his wrist from Dr. Schlafly two days later. At that time, the employee’s only reference to a July 22, 2003 injury was that “the right wrist pain became worse after he performed lifting of heavy molds” at work shortly before he was fired. Dr. Schlafly’s reports do not mention any specific event or occurrence happening on July 22, 2003. At his deposition, Dr. Schlafly opined that the July 22, 2003 event probably created some type of internal swelling from the strain and then caused pressure on the median nerve (Employee Exhibit A-1, Deposition Page 10). Further, Dr. Schlafly admits that over time the employee’s wrist problems are getting progressively worse despite not working for the employer since July 29, 2003, but he continues to attribute the origin of the wrist condition to March of 2003 (Employee Exhibit A-1, Deposition Pages 33-34).

After reviewing the employee’s medical history and completing further medical testing, Dr. Crandall, a plastic surgeon with 99% of his practice in hand surgery, opined that he would not recommend any surgery since the objective tests do not show any evidence of injury. On December 4, 2003 Dr. Fagan, an orthopedic specialist, examined the employee and doubted that the employee could still suffer from tendonitis due to the length of time that had past. However, he did recommend further testing (Employer-Insurer Exhibit 2, Deposition Exhibit 2, page 2). At his deposition, Dr. Fagan testified that he did not have a firm diagnosis on the employee’s right wrist since the employee just had wrist pain. Based on the evidence, I find that Dr. Bruce Schlafly’s opinions are primarily based on subjective complaints of the employee and not the objective testing. Consequently, I find that Dr. Bruce Schlafly’s opinion regarding the employee’s right wrist is not credible. However, I do find the opinions of each of the specialists, Dr. Crandall, Dr. Crotty and Dr. Fagan, to be credible and based on objective testing.

After reviewing all of the evidence and observing the employee testify, I find that the employee is not credible regarding his case and complaints of pain, numbness and problems with regard to his right wrist. In addition to not receiving any additional treatment regarding the alleged July 22, 2003 accident, the employee’s wrist complaints grew progressively worse after he was fired from his employment by the employer. There appears to be an exaggeration of

symptoms by the employee, subsequent deterioration and/or an ulterior motive for his claims against the employer. Based on these facts and the medical evidence submitted, I find that the employee has failed to satisfy his burden of proof on the issue of accident and medical causation for his July 22, 2003 claim. The evidence does not support a finding that the employee had an accident on July 22, 2003 and that the accident was a substantial factor in causing his current wrist problems or any disability related to his wrist. The employee's claim for compensation must therefore be denied.

Given this denial of the employee's claim #03-088603, the remaining issues for claim #03-088603 are moot and shall not be ruled upon.

***Issue 1. Previously Incurred Medical Aid (03-024741)***

The employee is seeking payment of \$160.00 in previously incurred medical expenses. These costs are alleged to be from Dr. Bruce Schlafly, but the employee has not offered the bills into evidence or provided sufficient evidence concerning said bills. The employer-insurer has challenged the payment of these bills on the issues of authorization, reasonableness, necessity, and causal relationship.

I therefore find that the employee failed to meet his burden that the \$160.00 medical costs was authorized, reasonable, causally related and necessary. Therefore, the employee's claim for previously incurred medical expenses must be denied.

***Issue 2. Additional Medical Aid (03-024741)***

The employee has requested additional medical treatment regarding his right wrist. The issue of additional medical aid rests on the credibility of the doctors. Based on my credibility findings above in injury #03-088603, I find that Dr. Fagan and Dr. Crandall provide the most credible opinions regarding the employee's need for additional treatment. Both doctors have performed extensive testing on the employee and have found virtually no objective proof requiring additional medical aid for the employee as a result of the work related injury to his right wrist. Thus, the employee has failed to offer competent medical evidence to prove that the need for additional medical treatment for the right wrist "flowed from" the March 10, 2003 injury. Based on the evidence, I find that the employee has failed to meet his burden of establishing that he requires additional medical aid to cure and relieve the effects of his work related injury of March 10, 2003.

***Issue 3. Additional Temporary Total Disability (03-024741)***

Based on the testimony, payroll records and the supporting medical evidence, I find that the employee only missed three days of work as a result of the March 10, 2003 injury. The rest of the time that he missed immediately following the accident was at his own request for vacation. The employer is not required to pay and the employee is not entitled to any temporary total disability benefits pursuant to 287.160.1. Therefore, no order for employer to pay temporary total disability benefits is necessary with regard to employee's March 10, 2003 injury.

***Issue 4. Nature and Extent of Disability (03-024741)***

Based on the testimony and the medical evidence admitted, I find that the employee, as a direct result of his March 10, 2003 accident, has suffered a 7.5% permanent partial disability of his right wrist at the 175 week level. The employer is therefore directed to pay to the employee the sum of \$340.12 per week for 13.125 weeks for a total award of permanent partial disability equal to \$4,464.08.

***Issue 5. Liability of the Fund (03-024741)***

The employee has also requested an award against the Second Injury Fund for permanent partial disability. Based on my findings above, I find that the employee has failed to meet his burden of proof that his March 10, 2003 injury to his right wrist meets the applicable statutory threshold of 12 ½% for body as a whole rating or 15% of an extremity. The employee's claim for permanent partial disability against the Second Injury Fund is therefore denied.

**ATTORNEY’S FEE:**

Ray Gerritzen, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney’s fee shall constitute a lien on the compensation awarded herein.

**INTEREST:**

Interest on all sums awarded hereunder shall be paid as provided by law.

Date: \_\_\_\_\_

Made by:

\_\_\_\_\_  
Carl Strange  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Mr. Jeff Buker  
*Director*  
*Division of Workers' Compensation*