

TEMPORARY OR PARTIAL AWARD DENYING COMPENSATION  
(Modifying Award and Decision of Administrative Law Judge)

Injury No.: 00-164998

Employee: Joy Ann Huffman

Employer: Rest Haven Convalescent Nursing Center

Insurers: 1) Missouri Employer's General Agency (1/1/00-12/31/01)  
2) Missouri Nursing Home Insurance Trust (1/1/02-present)

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

Date of Accident: N/A

Place and County of Accident: Alleged Sedalia, Missouri

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Pursuant to § 287.510 RSMo, we issue this temporary or partial award modifying the July 1, 2005 award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

#### Findings of Fact

We take administrative notice of the Division of Workers' Compensation (Division) file in this matter. In support of this temporary award, we find the following:

The Division scheduled this matter for hearing upon employee's request for hardship hearing. At the hearing, all parties agreed that the matter was heard for issuance of a temporary award. The issues stipulated for trial were:

1. Whether employee sustained an occupational disease involving her left hand arising out of and in the course of her employment and, if so, which insurer is liable.
2. Whether employer must provide employee with additional medical care.
3. Whether employer must reimburse employee the cost of the proceeding pursuant to § 287.560 RSMo.
4. Whether the November 5, 2002, dismissal of the claim filed on December 21, 2001, for Injury No. 97-482297 precludes employee from pursuing additional benefits related to her left wrist.

Employer and insurer Missouri Employer General Agency stipulate to the compensability of employee's right wrist condition and have provided medical care and temporary total disability benefits in relation to employee's right wrist condition. The hardship hearing was related solely to the compensability of employee's left wrist condition.

On July 1, 2005, the administrative law judge issued an award entitled "Final Award Denying Compensation." The award identifies two injury numbers in the caption: 00-164998 and 03-030318. Employee filed Applications for Review of the July 1, 2005 award for each injury number.

#### Conclusions of Law

Based upon the foregoing, we conclude that the July 1, 2005 award of the administrative law judge did not dispose of all issues. For example, there has been no hearing or award regarding permanent disability resultant from employee's right wrist condition. As such, the award is not properly characterized as a "final award." "A 'final award' is one which disposes of the entire controversy between the parties." *Hillenburg v. Lester E. Cox Medical Ctr.*, 879 S.W.2d 652, 655 (Mo. App. 1994).

We modify the award and decision of the administrative law judge solely to properly classify the award as a Temporary or Partial Award.

Pursuant to 8 CSR 20-3.040, no Application for Review may be made from a temporary or partial award except on the ground that applicant denies all liability. As such, we find it inappropriate to consider the issues raised by employee's Application for Review.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge R. Carl Mueller, Jr., issued July 1, 2005, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

Given at Jefferson City, State of Missouri, this 29<sup>th</sup> day of September 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary  
Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

TEMPORARY OR PARTIAL AWARD DENYING COMPENSATION  
(Modifying Award and Decision of Administrative Law Judge)

Injury No.: 03-030318

Employee: Joy Ann Huffman

Employer: Rest Haven Convalescent Nursing Center

Insurers: 1) Missouri Employer's General Agency (1/1/00-12/31/01)  
2) Missouri Nursing Home Insurance Trust (1/1/02-present)

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

Date of Accident: N/A

Place and County of Accident: Alleged Sedalia, Missouri

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Pursuant to § 287.510 RSMo, we issue this temporary or partial award modifying the July 1, 2005 award and decision of the administrative law judge. We adopt the findings,

conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

#### Findings of Fact

We take administrative notice of the Division of Workers' Compensation (Division) file in this matter. In support of this temporary award, we find the following:

The Division scheduled this matter for hearing upon employee's request for hardship hearing. At the hearing, all parties agreed that the matter was heard for issuance of a temporary award. The issues stipulated for trial were:

5. Whether employee sustained an occupational disease involving her left hand arising out of and in the course of her employment and, if so, which insurer is liable.
6. Whether employer must provide employee with additional medical care.
7. Whether employer must reimburse employee the cost of the proceeding pursuant to § 287.560 RSMo.
8. Whether the November 5, 2002, dismissal of the claim filed on December 21, 2001, for Injury No. 97-482297 precludes employee from pursuing additional benefits related to her left wrist.

Employer and insurer Missouri Employer General Agency stipulate to the compensability of employee's right wrist condition and have provided medical care and temporary total disability benefits in relation to employee's right wrist condition. The hardship hearing was related solely to the compensability of employee's left wrist condition.

On July 1, 2005, the administrative law judge issued an award entitled "Final Award Denying Compensation." The award identifies two injury numbers in the caption: 00-164998 and 03-030318. Employee filed Applications for Review of the July 1, 2005 award for each injury number.

#### Conclusions of Law

Based upon the foregoing, we conclude that the July 1, 2005 award of the administrative law judge did not dispose of all issues. For example, there has been no hearing or award regarding permanent disability resultant from employee's right wrist condition. As such, the award is not properly characterized as a "final award." "A 'final award' is one which disposes of the entire controversy between the parties." *Hillenburg v. Lester E. Cox Medical Ctr.*, 879 S.W.2d 652, 655 (Mo. App. 1994).

We modify the award and decision of the administrative law judge solely to properly classify the award as a Temporary or Partial Award.

Pursuant to 8 CSR 20-3.040, no Application for Review may be made from a temporary or partial award except on the ground that applicant denies all liability. As such, we find it inappropriate to consider the issues raised by employee's Application for Review.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge R. Carl Mueller, Jr., issued July 1, 2005, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

Given at Jefferson City, State of Missouri, this 29<sup>th</sup> day of September 2005.

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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John J. Hickey, Member

Attest:

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Secretary

## FINAL AWARD DENYING COMPENSATION

Employee: Joy Huffman Injury Nos: 00-164998  
03-030318

Dependents: N/A

Employer: Rest Haven Convalescent Nursing Center

Insurer 1: Missouri Employer's General Agency (1/1/00 – 12/31/01)

Insurer 2: Missouri Nursing Home Insurance Trust (1/1/02 – present)

Additional Party: State Treasurer, Custodian, Second Injury Fund (not appearing)

Hearing Date: May 17, 2005

Briefs Filed: June 6, 2005 Checked by: RCM/rm

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No (hearing involved left hand only)
2. Was the injury or occupational disease compensable under Chapter 287? No (hearing involved left hand only)
3. Was there an accident or incident of occupational disease under the Law? No (hearing involved left hand only)
4. Date of accident or onset of occupational disease: N/A (hearing involved left hand only)
5. State location where accident occurred or occupational disease was contracted: Sedalia, 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? No (hearing involved left hand only)
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurers? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Ms. Huffman alleged that her dishwashing and beverage pouring duties caused carpal tunnel syndrome in her left hand.
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: None. Claim for left hand denied.
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: \$243.11 for Injury No. 00-164998; \$0.00 for Injury No. 03-030318.
16. Value necessary medical aid paid to date by employer/insurer? \$11, 124.69 for Injury No. 00-164998; \$0.00 for Injury No. 03-030318.
17. Value necessary medical aid not furnished by employer/insurer? \$0
18. Employee's average weekly wages: \$262.17
19. Weekly compensation rate: \$174.78
20. Method wages computation: By Stipulation
21. Benefits Currently Due: none
22. Second Injury Fund Liability: N/A
23. Future requirements awarded: None

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Joy Huffman

Injury Nos: 00-164998  
03-030318

Dependents: N/A  
Employer: Rest Haven Convalescent Nursing Center  
Insurer 1: Missouri Employer's General Agency (1/1/00 – 12/31/01)  
Insurer 2: Missouri Nursing Home Insurance Trust (1/1/02 – present)  
Additional Party: State Treasurer, Custodian, Second Injury Fund (not appearing)  
Hearing Date: May 17, 2005  
Briefs Filed: June 6, 2005

Checked by: RCM/rm

On May 17, 2005, the employee and employer appeared for a temporary hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, Joy Huffman, appeared in person and with counsel, Steve Fritz. Rest Haven Convalescent Nursing Center and Missouri Employer's General Agency appeared by counsel, Bruce Levine. Rest Haven Convalescent Nursing Center and Missouri Nursing Home Insurance Trust appeared by counsel, Amy Young. The Second Injury Fund did not appear. The primary issues the parties requested the Division to determine were whether or not Ms. Huffman suffered an occupational disease arising out of and in the course of her employment involving her left hand and which insurer is liable if the claim is compensable. For the reasons noted below, I find that Ms. Huffman's left hand complaints are not compensable.

#### STIPULATIONS

The parties stipulated that:

1. From January 1, 2000 through the present Rest Haven was an employer operating subject to Missouri's Workers' Compensation Law;
2. Ms. Huffman was Rest Haven's Employee working subject to the Law;
3. Kansas City, Missouri is the proper venue for this case to be heard?
4. Missouri Employer's Mutual Insurance Company - through its subsidiary Missouri Employer's General Agency - insured the Employer from January 1, 2000 through December 31, 2001 pursuant to its reinsurance agreement (Employer's Exhibit 4). The Missouri Nursing Home Insurance Trust insured the Employer from January 1, 2002 through the hearing date;
5. Ms. Huffman sustained an occupational disease arising out of and in the course of employment for the claim filed for injury number 00-164998 involving her right wrist only;
6. Ms. Huffman notified Rest Haven of her alleged occupational disease as required by law (§287.420) for both injury numbers 00-164998 and 03-030318;
7. Ms. Huffman filed her claims for both injury numbers 00-164998 and 03-030318 within the time allowed by law (§ 287.430);
8. Neither party requested that the nature and extent of disability be addressed by this temporary hearing; and,
9. The parties stipulated to the following medical and benefits information:

Injury Number	AWW	Rates TTD/PPD	Medical Paid	TTD Paid	Period Paid
00-164998	\$262.17	\$174.78/\$174.78	\$11,124.69	\$234.11	3/4- 3/17/2003 <sup>[1]</sup>
03-030318	\$262.17	\$174.78/\$174.78	\$0.00	\$0.00	-

## ISSUES

The parties requested the Division to determine:

1. Whether Ms. Huffman sustained an occupational disease arising out of and in the course of her employment involving her left hand and determining which insurer is liable if the claim is compensable?
2. Whether Rest Haven must provide Ms. Huffman with additional medical care for her left hand?
3. Whether Rest Haven must reimburse to Ms. Huffman the cost of this proceeding for defending the claim without reasonable ground pursuant to Section 287.560?
4. Whether the November 5, 2002 dismissal of the claim filed on December 21, 2001 for Injury No. 97-482297 precludes Ms. Huffman from pursuing additional benefits related to her left wrist?

## FINDINGS

Ms. Huffman testified on her own behalf and presented the following exhibits, all of which were admitted into evidence without objection:

- Exhibit A – Medical report, James Hopkins, MD April 27, 2004
- Exhibit B – Medical report, P. Brent Koprivica, MD November 20, 2004
- Exhibit C – Medical records, Gary Baker, MD
- Exhibit D – Medical records, Bothwell Regional Center
- Exhibit E – Medical records, Arturo Gonzalez, D.O.
- Exhibit F - Medical records, Joy Grondstedt, D.O.
- Exhibit G - Medical records, University Hospital & Clinics
- Exhibit H - Medical records, Surgicenter
- Exhibit I - Medical records, Healthsouth
- Exhibit J - Note from Dr. Baker to employee
- Exhibit K - Wage statement

Although the employer did not call any witnesses, Missouri Nursing Home Insurance Trust did present the following exhibits:

- Exhibit 1 – Medical report, Matthew Concannon, MD, August 18, 2004
- Exhibit 2 – Division of Workers' Compensation Records
- Exhibit 3 – Missouri Nursing Home Insurance Trust Certificate of Insurance
- Exhibit 4 – Quota Share Reinsurance Agreement

Exhibits 1, 3, and 4 were admitted without objection. Employee objected to Exhibit 2 on the basis that they are beyond the scope of the pleadings.

Based on the above exhibits and the testimony of Ms. Huffman, I make the following findings. Joy Ann Huffman has worked at Rest Haven Convalescent Nursing Center for approximately 11 years, and still worked there at the time of the hearing. She is employed as a dietary dishwasher. Her shift is from 5:30 a.m. to 1:30 p.m. She begins her shift by preparing the dining area for breakfast for the residents. Her duties include starting the coffee, pouring juice, milk, etc, placing juice

and milk on trays, setting glasses of water on the tables, setting trays up for people, loading up the serving cart, and putting cloths on the tables.

After the residents finish lunch, Ms. Huffman picks up the glasses and plates, busses the tables, pours the glasses out into a bucket then turns them over, scrapes the plates into a bucket, and loads the trays for the dishwasher. She does not wash the dishes by hand. The trays are moved under a sprayer that is pulled down from above. After the dishes are washed under the sprayer and put away, the whole process is repeated for lunch.

Ms. Huffman testified that she also passes out 10:00 a.m. and 2:00 p.m. snacks. This requires pouring juice or pop and taking it around to the residents. In the afternoons she will roll silverware and wrap up the leftover bread. There are anywhere from forty-five to seventy residents living at the facility. Ms. Huffman admitted that up until a few weeks before the hearing, another employee assisted her in performing the above-mentioned duties. Ms. Huffman is right handed and uses her right hand to pour drinks, load carts, pick up dishes and glasses, and to operate the sprayer. Ms. Huffman takes two fifteen-minute breaks during her shift. She spends less than 2 hours per day bussing tables, scraping dishes, pouring glasses and washing dishes. She has not been given any restrictions for her left wrist and is able to perform all job duties.

Ms. Huffman began experiencing symptoms as early as 1997. She first complained of bilateral wrist pain to Dr. Gronstedt on December 23, 1997. At that time the assessment by Dr. Gronstedt was possible bilateral wrist inflammation, possibly secondary to carpal tunnel syndrome versus related to lupus or inflammatory condition. (Exhibit F, p. 25) She treated conservatively with Dr. Gronstedt until June 30, 2000, when Dr. Gronstedt referred her to a rheumatologist for evaluation of her wrist pain. (Exhibit F, p. 9) On September 7, 2000 she was evaluated at University Hospital by Dr. Folzenlogen. (Exhibit F, p. 19) That doctor noted her left wrist exam was unremarkable and her Tinel's sign was negative. The assessment was possible early osteoarthritis, which may be due to overuse of hands related to work or to her hypermobility of the joints. *Id.*

She was evaluated again by Dr. Komatireddy on October 17, 2000. Her x-rays showed mild degenerative changes in both hands. Her Tinel's sign was negative on the left. His impression was that she had systemic lupus erythematosus most likely involving the skin and joints. She also had carpal tunnel syndrome, probably related to work. (Exhibit F, p. 21)

On December 3, 2001, Dr. Gronstedt recommended an EMG and stated the claimant may need surgery. (Exhibit F, p. 7) Dr. Baker evaluated Ms. Huffman on September 11, 2002 at the request of the employer and MEGA. On physical exam, Dr. Baker found positive Phalens and Tinel's on each wrist. (Exhibit C at 40). However, an EMG and nerve conduction velocity (NCV) study also dated September 11, 2002 was negative. *Id.* at 15. Dr. Baker recommended physical therapy. *Id.* at 39. Upon reviewing the Employee's negative EMG and NCV, Dr. Baker released the employee to full duty without any restrictions. *Id.* at 38. Moreover, Dr. Baker re-evaluated Mrs. Huffman on October 23, 2002 and concluded, based on his examination, that:

Ms. Huffman continues to work at regular duty. . . . therapy has helped reduce her symptoms by at least fifty percent. She also feels that she is stronger. . . . There is no evidence of muscle atrophy. . . . I predict that Ms. Huffman will reach maximal medical improvement by the end of this calendar year (2002). (Emphasis added)

*Id.* at 34.

On January 8, 2003 Dr. Baker noted a positive Tinel's test on each wrist, but negative Phalen's test. Despite his conclusion less than three months earlier, Dr. Baker did an "about-face" and now recommended operating on Ms. Huffman's right wrist. (Exhibit C, p. 28) Dr. Baker performed a right wrist tenosynovectomy and release on March 4, 2003. (Exhibit H, p.7) Ms. Huffman filed on April 7, 2003 a second Claim for Compensation with her attorney's assistance (Injury number 03-030318). (Exhibit 2 at 54) On June 20, 2003, Dr. Baker released Ms. Huffman at maximum medical improvement. (Exhibit C, p. 2) On August 1, 2003, he noted that he had sent Ms. Huffman for an EMG that was normal. He wrote that his June 20, 2003 opinion had not changed and he had no additional treatment recommendations. (Exhibit C, p. 1)

Dr. Hopkins evaluated Ms. Huffman on April 27, 2004 at her attorney's request. He opined that work tasks were repetitive and a substantial factor in developing bilateral carpal tunnel syndrome. However, he did not indicate what "repetitive tasks at work" he was referring to. Dr. Hopkins believed that Ms. Huffman would require

surgery on her left wrist at some point in the future. (Exhibit A, p. 8)

Ms. Huffman had a third EMG on August 16, 2004 that was also normal. See, Employer's Exhibit 1 at 1-2. Her August 18, 2004 evaluation under Dr. Concannon's supervision failed to reveal any evidence of carpal tunnel neuropathy. Her Tinel and Phalen signs both were negative. There neither was a definite diagnosis of her complaints or a recommendation for more treatment.. *Id.*

Dr. Koprivica evaluated Ms. Huffman on November 20, 2004 at her attorney's request. He concluded the claimant was at risk for developing a repetitive injury due to her preexisting hypermobility syndrome and lupus. He felt her job activities were a substantial factor in the development of chronic flexor tenosynovitis bilaterally. He opined that she was at significant risk of needing surgical release on the left wrist. (Exhibit B, p. 10) He did not describe what repetitive tasks at work could cause a "repetitive injury."

Ms. Huffman was diagnosed with lupus in the 1990s. Lupus has caused her skin irritation and fatigue. She is sensitive to the sun. Her treatment for lupus includes Prednisone. Her problems with her left wrist did not start until after she was diagnosed with lupus.

## RULINGS

The employee has the burden of proving a causal connection between the accident and the claimed injuries. *Davies v. Carter Carburetor Div.*, 429 S.W.2d 738, 751 (Mo. 1968); *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697, 703 (Mo. Ct. App. 1974). The quantum of proof of the cause of an injury is reasonable probability. *Davies* at 749; *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo. Ct. App. 1995). Such proof is made only by competent and substantial evidence. It may not rest on speculation. *Griggs* at 703. Expert testimony may be required where there are complicated medical issues. *Goleman v. MCI Transporters*, 844 S.W.2d 463, 466 (Mo. Ct. App. 1993); *Griggs* at 704; *Downs v. A.C.F. Industries, Inc.*, 460 S.W.2d 293, 295-296 (Mo. Ct. App. 1970). Expert testimony is required where the cause and effect relationship between a claimed injury or condition and the alleged cause is not within the realm of common knowledge. *McGrath v. Satellite Sprinkler Systems*, 877 S.W.2d 704, 708 (Mo. Ct. App. 1994); *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo. Ct. App. 1991). Where the condition presents itself as a sophisticated injury that requires surgical intervention or other highly scientific technique for diagnosis, proof of causation is not within the realm of lay understanding. *Silman v. William Montgomery & Associates*, 891 S.W.2d 173, 175-176 (Mo.App. E.D., 1995).

Missouri law states, in pertinent part, that an occupational disease is:

. . . an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section.

MO.REV.STAT. §287.067.1 (1994)

An occupational disease is compensable if it is clearly work related and meets the requirements of an injury, which is compensable as provided by subsections 2 and 3 of §287.020. Subsection 2 of §287.020 defines an injury as clearly work related, "if work was a substantial factor in the cause of the resulting medical condition or disability." §287.020.2 RSMo. (1994). An occupational disease is not compensable merely because work was a triggering or precipitating factor. MO.REV.STAT. §287.067.2 (1994).

Dr. Concannon evaluated Ms. Huffman on July 17, 2004 and he recommended a repeat EMG. (Exhibit G, p. 1) Repeat EMG studies were performed on August 16, 2004 and were negative. See, Employer's Exhibit 1 at 3-7. Ms. Huffman was seen on August 18, 2004 at the University of Missouri Plastic Surgery Clinic, apparently by a resident physician, Dominic Patillo, MD. See, Employer's Exhibit 1 at 1. However, the clinic note lists Dr. Concannon as the supervisor and "provider". *Id.* The clinic note reflects that:

Her sensation appears to be intact bilaterally and symmetric. She had no thenar or hypothenar atrophy, and her pinch strength is symmetric. Her grip strength is slightly

weakened. Otherwise, her hand is neurovascularly intact.

*Id.* at 1.

The clinic note concludes:

After reviewing the patient's EMG as well as her physical exam there is little evidence to suggest that she has carpal tunnel syndrome in either of her hands. We explained this to the patient and also explained that we did not have a definite diagnosis for her and that we could not fully explain the pain and the numbness that she was having in her wrists because it did not correlate well with her physical exam or her pain. She currently has no work restrictions, and we cannot recommend surgery at this time as she does not have a definitive diagnosis.

Based on this comprehensive examination and EMG testing it cannot be concluded that Ms. Huffman's left hand complaints even constitute carpal tunnel syndrome - much less that they are work related; therefore I find that her left hand complaints - whatever they may be - are not compensable.

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 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 set forth in subsection 7 of Section 287.067 RSMo. Section 287.063.1 RSMo.

Based on the above, the employee must first prove, that she was exposed to the type of work that can cause an occupational disease. Where a medical expert does not describe the nature of the claimant's work activities, much less how the claimant's work duties may or may not have aggravated her injury, the requisite quantum of proof regarding causation is not met. *Putnam-Heisler v. Columbia Foods*, 989 S.W.2d 257, 260-261 (Mo. Ct. App. 1999). Where there is no description of what hand motions were, what type of grasping, pulling, carrying or lifting was required, what weights or other stressors were involved, or any indication of the nature and frequency of the hand motions, other than the claimant's testimony, the employee fails to meet her burden of proving an injury caused by occupational disease due to repetitive motion. *Putnam-Heisler* at 260-261.

Dr. Baker diagnosed the claimant with cumulative trauma disorder and bilateral inflammatory tenosynovitis. He describes the cumulative trauma disorder as a work-related overuse syndrome, but does not identify any work activities that could cause a "cumulative trauma disorder", the frequency of her work activities, which hand she used to perform her activities, and he does not specifically address whether Ms. Huffman's work activities were a substantial factor versus a triggering factor in causing her symptoms. (Exhibit C, p. 30) Therefore, his opinions are of no assistance on the issue of what caused Ms. Huffman's left hand complaints.

The claimant relies on the opinions of Dr. Hopkins and Dr. Koprivica. Dr. Hopkins evaluated Ms. Huffman at the request of the claimant's attorney on April 27, 2004. Contrary to Dr. Concannon's opinion, he did believe the claimant showed clinical signs of carpal tunnel syndrome in the left wrist and concluded that the "heavily repetitive tasks that Ms. Huffman was obligated to perform as dietary dishwasher at Rest Haven commencing in 2000 is the substantial factor in her developing bilateral carpal tunnel syndrome . . ." Dr. Hopkins did not order repeat nerve conduction studies. Dr. Hopkins fails to state specifically what work activities were a substantial factor in causing the carpal tunnel syndrome. (Exhibit A, p. 8)

One can only assume that the work activities Dr. Hopkins was referring to were those described by Ms. Huffman in his report:

I had told them that I had to start out each day by lifting pitchers of mild and juice and pouring them into many glasses, and then having to later bus the dirty plates from the tables using a cart on wheels . . . Then I would have to scrape all the plates off and load them into a dishwasher . . . Afterwards, I would have to remove each of the plates and the utensils and stack them on the shelves . . . The heaviest lifting job that I was assigned to do was carrying boxes out of freezers to the coolers which weighed up to 20 to 25lbs. a piece . . . All of these jobs were repetitive throughout my 8 hour day, 5 days a week shift . . ."

See, Claimant's Exhibit A at 2.

Dr. Hopkins fails to ask how many pitchers the claimant had to lift or how many glasses she had to pour. He did not ask how many plates she had to lift and scrape and load into the dishwasher or how many she had to put away. He did not ask how many boxes she had to carry out of the freezer. He did not ask if the claimant had anyone assisting her in performing these job duties. Most importantly, he did not ask which hand was used in performing each of these activities. Ms. Huffman testified that she used her right hand to pour pitchers of juice into glasses. She used her right hand to scrape the dishes. She used her right hand to load plates and glasses into the dishwasher and she used her right hand to put the plates and glasses on the shelf. She is right-handed. It is not clear from her testimony or from Dr. Hopkin's report what activities were performed with her left hand, if any. Dr. Hopkin's opinion on causation should be given no weight as his report does not establish the elements necessary to prove causation of an occupational disease.

Dr. Koprivica also concluded that the claimant's upper extremity use activities as a kitchen aide to be a substantial factor in developing repetitive injury, but his report does not contain any description of the claimant's job activities. That alone should render his opinion meaningless. Like Dr. Hopkins and Dr. Baker, Dr. Koprivica fails to explain specifically what job activities the claimant performed with her left hand that would cause repetitive injury or the frequency of those activities. He also states in his report that,

Prior to the development of the repetitive injury from her employment, it is my opinion that Ms. Huffman was at risk for developing overuse from repetitive upper extremity use activities in her employment. I would specifically point out that in my opinion, she does have a hypermobility syndrome . . . Separate from this, she does have biopsy proven lupus as well.

See, Claimant's Exhibit B at 10

He also states that "based on the history of lupus has had problems with arthralgias with intermittent synovitis limiting her tolerances to activities." *Id.* at 11. If Dr. Koprivica thought the claimant was at risk for developing overuse from repetitive activities at work, it would also follow that she was at risk for developing overuse from non-work related repetitive activities. Her activities at work were varied in nature and there's no evidence that she used her left hand in a repetitive manner. Where there exists more than one possible cause of the claimant's injury and need for treatment, at least one of which the employer cannot be held responsible, the claimant fails to meet her burden of proof. *Russell v. Southwest Grease & Oil Co.*, 509 S.W.2d 776, 781 (Mo. Ct. App. 1974); *Banner Ironworks v. Mortus*, 663 S.W.2d 770, 773 (Mo. Ct. App. 1983); *Miller v. G.O. Wefelmeyer*, 890 S.W.2d 372, 376 (Mo. Ct. App. 1994).

"A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate." *Kelly v. Banta & Stude Constr. Co. Inc.*, 1 S.W.3d 43, 48 (Mo. App. 1999). "Where the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is the most credible . . .," and may "reject all or part of one party's expert testimony, which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert." *Id.* Dr. Concannon is a hand specialist, certified by the American Board of Plastic Surgery. He is an associate professor at the University of Missouri Health Sciences Center, Division of Plastic Surgery and the Chief of Plastic Surgery at Ellis Fischel Cancer Center, Columbia, Missouri. (Exhibit 1, p. 8-9) Dr. Hopkins was a plastic surgeon, but has performed disability evaluations on a full time basis since approximately 1992. (Exhibit 1, p. 9-13) Dr. Koprivica specializes in occupational medicine. He is not a hand specialist or surgeon. (Exhibit B, p. 13) I find Dr. Concannon's opinion to be more credible based on his qualifications. I find that the claimant has not sustained a compensable occupational disease.

Of course, since I find that Ms. Huffman did not sustain a compensable injury to her left wrist, the Claimant's request that her costs be reimbursed pursuant to §287.560 is denied. Certainly, the defense not only was not unreasonable, it was correct. The remaining issues presented are moot.

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

Made by: \_\_\_\_\_

R. Carl Mueller, Jr.  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*

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