

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

Injury No.: 08-104617

Employee: Danielle Johnson  
Employer: Nike IHM Manufacturer  
Insurer: Old Republic 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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 4, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued November 4, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 15<sup>th</sup> day of April 2010.

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:

\_\_\_\_\_  
Secretary

Employee: Danielle Johnson

### **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 and future medical care should be awarded.

The administrative law judge determined that employee failed to meet her burden of proving that she sustained an occupational disease arising out of and in the course and scope of her employment, and that her work was the cause of her medical condition. It is my opinion that the administrative law judge, in arriving at said decision, failed to properly weigh the evidence and, consequently, erred in denying employee future medical care.

Section 287.067.1 RSMo defines an occupational disease as:

[A]n identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

Section 287.067.2 RSMo provides that for an occupational disease to be compensable, it must be "the prevailing factor causing both the resulting medical condition and disability." Further, "[t]he '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."

In determining what the medical cause of employee's disability is, there are two issues: 1) the impact of employee's risk factors; and 2) the impact of employee's work activities. It is clear from the record that at 5'6" and 280 lbs. employee is overweight. Further, it has been proven that obesity increases the likelihood for individuals to develop carpal tunnel syndrome. However, there is nothing in the record to suggest that employee's obesity caused her carpal tunnel syndrome.

Dr. Brown took a history from employee relative to her day-to-day responsibilities with employer, reviewed her treatment records/nerve conduction studies, performed a physical examination, and diagnosed employee with chronic bilateral carpal tunnel syndrome. Dr. Brown concluded that based on the description of her job, her overall medical history, and her lack of non-occupational activity that would put her at risk for carpal tunnel syndrome, he believed "her work for employer for the past five years

Employee: Danielle Johnson

- 2 -

would be considered the prevailing cause for the need for further treatment for her bilateral carpal tunnel syndrome.”

Employer sent employee to Dr. Strecker. Dr. Strecker agreed with Dr. Brown that employee does indeed have bilateral carpal tunnel syndrome. However, Dr. Strecker opined that he “[d]id not find any evidence that her job was the primary or prevailing factor for her development of carpal tunnel syndrome.” Subsequent to Dr. Strecker’s examination of employee, Dr. Strecker toured the plant where employee had worked and produced a supplemental report reiterating that he did not believe that employee’s work activities were the prevailing factor in the cause of her bilateral carpal tunnel syndrome.

Although Dr. Strecker summarily concludes that employee’s work was not the prevailing factor for her development of carpal tunnel syndrome, he stops short of stating what he actually believes *did* cause her carpal tunnel syndrome. Dr. Strecker identifies that employee is obese, but he never states that her obesity caused her carpal tunnel syndrome.

It may not be the defense’s burden to prove that something other than employee’s work activities caused her carpal tunnel syndrome, but when there are two conflicting expert opinions, I believe the doctor that states, with specificity, what caused employee’s condition should be deemed more credible than a doctor that does not know what caused her condition. Dr. Brown definitively stated that employee’s work is the prevailing cause for the need for further treatment for her bilateral carpal tunnel syndrome. On the other hand, Dr. Strecker merely stated that he did not find any evidence that employee’s job was the primary or prevailing factor for the development of employee’s bilateral carpal tunnel syndrome. For the foregoing reasons, I believe Dr. Brown’s opinion should have been found more credible than Dr. Strecker’s.

Throughout the award, the administrative law judge weighs employee and employer’s expert opinions and ultimately decides that the evidence is essentially equal. Based on said finding, the administrative law judge concludes that employee did not satisfy her burden of establishing that her work was the prevailing factor in causing her bilateral carpal tunnel syndrome. However, in arriving at said conclusion, the administrative law judge implies an incorrect statement of law. The administrative law judge pointed out that neither expert cited any “scientific study” supporting their position or establishing scientifically determined factors that cause the employee’s medical condition. The administrative law judge goes on to state that “[o]ne might conclude that both positions rely on ‘junk science’” in establishing their positions. In so stating, the administrative law judge has basically made up a legal standard of proof. Under Missouri Workers’ Compensation Law there is no such requirement that an expert cite to a scientific study to support their position. The fact that the administrative law judge even took this into consideration in arriving at his conclusion further supports my opinion that the administrative law judge failed to properly weigh the evidence.

Although the administrative law judge states in his award that the evidence was basically equal for employee and employer, by denying employee benefits, he, in

Employee: Danielle Johnson

- 3 -

essence, found a doctor that could not state what caused employee's bilateral carpal tunnel syndrome more credible than a doctor that definitively pointed to employee's work activities as the prevailing cause of her bilateral carpal tunnel syndrome. In my opinion, this is an illogical conclusion. Further, it is worth noting that this administrative law judge has repeatedly decided carpal tunnel syndrome cases by supplementing the evidence with his own medical assumptions and by imposing new burdens of proof upon employees. The judge usurps the role of medical experts by substituting his opinions for those of the medical experts. Such usurpation is contrary to the dictates of the Missouri Supreme Court and should not be condoned.

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

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John J. Hickey, Member

## AWARD

Employee: Danielle Johnson Injury No.: 08-104617  
Dependents: N/A Before the  
Employer: Nike IHM Manufacturer **Division of Workers'**  
Additional Party: Second Injury Fund (Open) **Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Insurer: Old Republic Insurance Company Jefferson City, Missouri  
Hearing Date: October 5, 2009 Checked by: EJK/ch

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. 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
4. Date of accident or onset of occupational disease: November 10, 2008 (alleged)
5. 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? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
The claimant, a plastic component operator, developed bilateral carpal tunnel syndrome.
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
14. Nature and extent of any permanent disability: Not determined
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer: None

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$1,006.58
- 19. Weekly compensation rate: \$671.08/\$404.66
- 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Attorney D. Andrew Weigley, Esq. represented the claimant, but waived any attorney's fee pertaining to this aspect of the proceeding.

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Danielle Johnson

Injury No.: 08-104617

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Nike IHM Manufacturer

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Checked by: EJK/ch

Additional Party: Second Injury Fund (Open)

Insurer: Old Republic Insurance Company

This workers' compensation case raises several issues arising out of an alleged work related injury in which the claimant, a machine operator, suffers from carpal tunnel syndrome and requires surgery of the condition. The issues for determination are (1) Occupational disease arising out of and in the course of employment, (2) Medical causation, and (3) Future medical care. The Second Injury Fund claim remains open pursuant to an agreement among the attorneys. The evidence compels an award for the claimant for future medical care.

At the hearing, the claimant and Jeff Turner, the employer's production manager, testified in person, and the claimant offered a deposition of David M. Brown, M.D., a diagram of the claimant's working area, and medical records from Michael L. Williams, M.D., St. Charles Clinic Medical Group, and St. Joseph Hospital West. The defense offered a deposition of William B. Strecker, M.D., and medical records from Dr. Williams, the employer's report of injury, and records from the employer.

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 alleged occupational disease was alleged to have been contracted in Missouri.

### **SUMMARY OF FACTS**

This 29-year-old claimant, a plastic components operator, is 5'6" and has weighed 280 pounds since she graduated high school. She began working for this employer as a temporary employee in January 2004 and began working full-time in April 2005 in a full-time capacity. The claimant's relevant job duties in the production of the air soles involve various stages of cutting the air soles out of plastic, welding them, inflating them, and inspecting them. When she became a full-time, permanent worker in 2005, she worked on the thermoforming machines from 2005 through 2007 and first started noticing problems with her hands in 2007.

At the time of the occurrence, the claimant worked twelve-hour shifts on Friday, Saturday, and Sunday from 5:12 p.m. and finished at 5:12 a.m. with overtime during the summer when more shoes are being made to gear up for the new school year. The claimant's overtime in 2009 was minimal. During summer 2008, she worked substantial overtime. During each twelve-hour shift, the claimant had three 15-minute breaks and one 30-minute break.

The claimant's job title is plastic components operator. From late 2005 to early 2009, she worked in the thermoforming cell that has four different stations. She worked 90% of her time in this thermoforming cell area as of November 10, 2008. The cell has four stations, but the claimant worked in only three of the stations. The first station is a thermoforming machine where a twin sheet of plastic is mechanically placed in a thermoformer and is heated up molding the plastic into whatever styles of soles are being produced that day. A sheet will come out of the thermoformer and will have anywhere from 12 to 144 different parts on it depending on the size of the sheet and the shoes being made. The claimant did not operate this machine, but she operated the three machines that processed the product after the thermoformer.

The second station is the plaque trim station. The sheet produced by the thermoformer machine arrives at a plaque trim station with two areas for work to be done. First, at the plaque trim machine, the operator picks up the two feet by three feet molded sheet that weighs up to ten pounds and places it on the plaque trim machine. The operator touches two buttons in the front of the plaque trim machine. The buttons have heat sensors, and therefore, no physical force is required to operate them. As soon as the heat sensors feel the fingers on the buttons, the machine is operated. Once the buttons are engaged, the machine cuts the sheet that had been placed into the machine into six separate smaller panels that are still connected. Once the cutting is done, the claimant pulls the large panel out of the plaque trim machine to remove excess scrap around the outside of the panel by hand. The excess material is then thrown into a scrap bin to the right of the plaque trim machine. The smaller panels are pulled apart and placed in a trim die on the perimeter trim machine. The buttons on the machine are also operated by heat sensor buttons. The panel is placed in the trim die, and the machine automatically cuts the perimeter of the panel. This is done six times. The claimant then places all six panels on the stocking table to the right of the perimeter trim machine. This is the first job that is done in the thermoforming cell by the claimant and is done for one hour at a time.

All three stations in the thermoforming cell are rotated every hour so that each employee works each station three to four times during a twelve-hour shift. The cycle time for each sheet at the plaque trim/perimeter trim area is 120 seconds to 150 seconds. There is some dispute as to exactly how long the cycle time is, in other words, how long the claimant has to run the large sheet through the plaque trim and perimeter machines. However, it appears that the time ranges from 120 seconds to 150 seconds. During a one-hour rotation, the claimant moves between 24 and 28 sheets.

The third station is the RF welder area that has a large circle with four different areas to place panels. The panels are loaded and unloaded onto this machine. When the sheet is placed in the RF welder, it is one foot by one foot and has anywhere from four to twelve different soles on a sheet. Each sheet weighs one pound. When the circle is rotated, welds are placed on the air soles so that they can hold air. In addition, the air soles are filled with air before being welded shut. A finger is placed on a switch in order to run the machine. Twelve parts on a panel can be inflated at once. The blow tube is held down by the operator onto the turntable once for each panel and all parts on the panel are inflated. As the machine rotates, the already welded, inflated, and cut pieces are presented for removal. There are twelve parts on a tray. These are picked up like a deck of cards and placed on an inspection table, which is the last station. During a 120 second to 150 second cycle, six sheets go through the RF welder and are placed on the inspection table. This entails connecting the air blower to a sheet six times during that cycle.

The final station is the inspection table, where the claimant picked up a stack of six air soles at a time, rotated the stack around, and looked at each item. She made certain that all of the holes were poked out with no imperfections in the soles. The stack was placed in a box. Each sole is two to three inches by two to three inches, the size of an average shoe sole.

The claimant began noticing left hand numbness in late 2007. The numbness began in her left hand and then later began appearing in her right hand as well. She first noted numbness, which became worse over time. She is right-hand dominant. She also started to notice tingling and difficulties with hand intensive activities. She started noticing these symptoms while sleeping and driving. These complaints were worse in the morning and improved throughout the day. See Exhibit E. She went to Dr. Williams on October 23, 2008, who examined the claimant for complaints of numbness in both hands, diagnosed carpal tunnel syndrome, and treated her conservatively. See Exhibit E. In October 2008, he ordered a nerve conduction study revealing electro-diagnostic evidence of median nerve entrapment at both carpal tunnels, worse on the right than left. See Exhibit E. After the nerve conduction study, she reported her condition to this employer. She has not had any treatment since November 2008 although she has been taking Tramadol for inflammation. She currently feels numbness, tingling, and pain in both hands and wrists. She also has forearm pain and any type of pressure makes it worse. She applied for FMLA and has taken that periodically piecemeal over the past eleven months. The claimant gave notice to her employer in November or December 2008 after Dr. Williams completed all testing and additional treatment. The claimant testified that she has missed 100 hours from work over the past year but has been paid for virtually all of it by using personal time off.

#### Dr. Brown

Dr. Brown, a board certified hand surgeon, examined the claimant on January 20, 2009, and found that the claimant had a good active range of motion in her elbows and wrists, a negative Tinel's sign in her elbows, a positive Tinel's in both wrists and a positive Phalen's Test on the right but a negative on the left. Dr. Brown took a medical history of numbness and tingling in both hands and fingers with primarily night symptoms beginning in late 2007, and a family history of diabetes. (Id.) Dr. Brown diagnosed chronic bilateral carpal tunnel syndrome for which conservative treatment failed to resolve her complaint and recommended a carpal tunnel release. See Dr. Brown deposition, pages 6, 7, 10. He opined that she had no medical history that would put her at risk for developing this condition and that therefore her job duties were the prevailing cause for the need for further treatment for the bilateral carpal tunnel syndrome, based on her job description. (Id.)

Based on her medical history, her job duties, the nerve conduction studies, and his physical examination, Dr. Brown concluded:

“Based on her description at Nike since January, 2004, she described a fairly repetitive type of job. She would stack soles, rotate them, flip them, check them, and put them in a box. There would be anywhere from four hundred (400) to eight hundred (800) soles per box. She would do three (3) or four (4) boxes per hour. These boxes weighed about forty five (45) to fifty (50) pounds. Once they were full, she would take them and put them on a skid. So based on that description, she describes a repetitive job in my opinion, hand-intensive. That

combined with the duration of exposure since January, 2004, combined with a lack of medical problems such as diabetes, hypothyroidism, arthritis, would put her at risk for carpal tunnel syndrome. Combined with her young age, being in her twenties, it is my opinion in this particular case that the most likely, most important or prevailing factor in the development of her carpal tunnel syndrome is her work at Nike since January 2004.” See Dr. Brown deposition, pages 9-10.

Dr. Brown testified that some factors that may predispose a patient to carpal tunnel syndrome including gender and a high body mass index. He also testified that the claimant had a family history of diabetes and that diabetes is more common in individuals who are significantly overweight, and that he saw no evidence that the claimant had diabetes. See Dr. Brown deposition, pages 20-21. He testified that the claimant’s increased body mass index would be a risk factor for developing carpal tunnel syndrome. See Dr. Brown deposition, page 17. Dr. Brown testified that females have a higher risk of carpal tunnel syndrome than males in that an increased body mass index can increase the risk for carpal tunnel syndrome. See Dr. Brown deposition, pages 18-19. Neither attorney inquired whether the claimant’s gender or body mass index were the prevailing factors causing the claimant’s carpal tunnel syndrome. Dr. Brown has not been to the Nike plant to actually see the claimant perform the jobs and has never viewed a video of these job duties being performed. See Dr. Brown deposition, page 23. Dr. Brown did not know how many hours the claimant worked per shift or how often the rotation between jobs occurred. See Dr. Brown deposition, page 25. In addition, he did not know the weight composition of the sheets that the claimant placed in the machines, nor how she came up with the calculation of doing a cycle every 122 seconds. See Dr. Brown deposition, page 26, 28.

#### Dr. Strecker

Dr. Strecker, a board certified hand surgeon, evaluated the claimant on May 5, 2009, and found that the claimant was 5’6” and weighed 280 pounds. See Dr. Strecker deposition, page 9. The claimant had positive median nerve compression and a positive Phalen’s test. See Dr. Strecker deposition, page 10. Dr. Strecker diagnosed bilateral carpal tunnel syndrome and recommended surgical treatment. See Dr. Strecker deposition, pages 10, 11. Based on her description of her job as well as the description provided by Nike, he opined that her job was not the primary or prevailing factor for the development of carpal tunnel syndrome. See Dr. Strecker deposition, page 11. He testified that, for somebody the claimant’s height, the ideal weight range would be between 135 and 155 pounds and that the claimant is considered morbidly obese. See Dr. Strecker deposition, page 9. Morbid obesity is considered a risk factor for the development of carpal tunnel syndrome, and morbidly obese people have two to four times’ higher incidence of carpal tunnel syndrome than the general population. See Dr. Strecker deposition, page 9.

On June 4, 2009, Dr. Strecker went to the claimant’s work site to observe the jobs that the claimant performed. See Dr. Strecker deposition, page 11. Dr. Strecker toured the plant, watched the production of air cushions, and also performed each of the three stations in the thermoforming cell. See Dr. Strecker deposition, page 12. Dr. Strecker testified that he did not change any of his forensic opinions after visiting the plant and reviewing this job task analysis. See Dr. Strecker deposition, pages 13-14.

#### Jeff Turner

Jeff Turner, an engineer, has worked at this facility since 1999 as a manufacturing manager performing operations management, daily production, and goal setting. He is very experienced in working with the thermoforming machines. He is involved with setting up the various cells and the stations at each cell. During his time as manufacturing manager, he was not aware of any workers at the facility that ever received Workers' Compensation benefits for carpal tunnel syndrome while working in the thermoforming cell.

He testified that the work stations are built all at the same elevation in order to ensure that, ergonomically speaking, as little stress as possible is placed on the workers' bodies. He testified that employees were rotated every hour on the thermoforming cell in order to keep them engaged in the process and to avoid having to do the same job activity for any excessive period of time. Exhibit 4 is a packet of information provided by Mr. Turner showing cycle times for machine operations and pictures of the work area.

He also testified that the employer ordered two internal ergonomic studies since 1995 to ensure that everything possible was being done to prevent injury to employees. Mr. Turner disputed the claimant's assertions regarding how fast each cycle runs and testified that each typical cycle runs about 135 seconds. He testified that the pace could sometimes be slow depending upon the items being produced and whether or not there are any breakdowns on the line. He testified that 33% of the claimant's time in thermoforming was spent doing inspection.

### **COMPENSABILITY**

There is no dispute that the claimant developed bilateral carpal tunnel syndrome in 2008. The claimant alleges that her work using her hands as a plastic components operator for this employer producing shoes was the prevailing factor causing her bilateral carpal tunnel syndrome. Her allegations are supported by a medical opinion from a qualified hand surgeon, Dr. Brown. The defense denies that the claimant's performance of duties at work were the substantial factor causing her left carpal tunnel syndrome. The defense position is supported by a medical opinion from a qualified hand surgeon, Dr. Strecker, who found no evidence that the claimant's work was the prevailing factor causing her bilateral carpal tunnel syndrome.

An employee's claim for compensation due to an occupational disease is to be determined under Section 287.067, RSMo Supp. 2008. That section defines an occupational disease as:

[A]n identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

Compensability of carpal tunnel syndrome is determined under subsection 3 of that section:

3. 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.

A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. Dawson at 716; Sellers v. Trans World Airlines Inc., 776 S.W.2d 502, 504 (Mo. App. 1989); Sheehan at 797. The opinion may be based on a doctor's written report alone. Prater v. Thorngate, Ltd., 761 S.W.2d 226, 230 (Mo. App. 1988). "A medical expert's opinion must be supported by facts and reasons proven by competent evidence that will give the opinion sufficient probative force to be substantial evidence." Silman v. Montgomery & Associates, 891 S.W.2d 173, 176 (Mo. App. 1995); Pippin v. St. Joe Minerals Corp., 799 S.W.2d 898, 903 (Mo. App. 1990). Where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible. Hawkins v. Emerson Electric Co., 676 S.W.2d 872, 877 (Mo. App. 1984). Where there are conflicting medical opinions, the fact finder 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. George v. Shop 'N Save Warehouse Foods, 855 S.W.2d 460 (Mo. App. 1993); Webber v. Chrysler Corp., 826 S.W.2d 51, 54 (Mo. App. 1992); Hutchinson v. Tri-State Motor Transit Co., 721 S.W.2d 158, 163 (Mo. App. 1986). An administrative law judge may not constitute himself or herself as an expert witness and substitute his or her personal opinion of medical causation of a complicated medical question for the uncontradicted testimony of a qualified medical expert. Wright v. Sports Associated, Inc., 887 S.W.2d 596 (Mo. 1994); Bruflat v. Mister Guy, Inc., 933 S.W.2d 829, 835 (Mo. App. 1996); Eubanks v. Poindexter Mechanical, 901 S.W.2d 246, 249-50 (Mo. App. 1995). However, even uncontradicted medical evidence may be disbelieved. Massey v. Missouri Butcher & Cafe Supply, 890 S.W.2d 761, 763 (Mo. App. 1995); Jones v. Jefferson City School Dist., 801 S.W.2d 486, 490 (Mo. App. 1990).

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. Brown opined that the claimant's work was the prevailing factor causing the claimant's bilateral carpal tunnel syndrome, because the claimant's work was repetitious. On the other hand, Dr. Strecker opined that the claimant's work was not the prevailing factor causing her bilateral carpal tunnel syndrome, because he found no evidence that the claimant's work was the primary or prevailing factor causing the condition. See Dr. Strecker deposition, page 11. Neither attorney asked him for his opinion on the primary factor causing the condition in the claimant's hands.

In briefing the case, the defense attacked the foundation of the claimant's expert, claiming that Dr. Brown was disadvantaged by not having reviewed the claimant's work site or reviewing video tapes of the process. Notwithstanding, Dr. Brown's description of the claimant's work seems to be consistent with those described by the claimant, Jeff Turner, and Dr. Strecker. The claimant also contends that the claimant's personal physician opined that the claimant's condition resulted from her working conditions. However, Dr. Williams, the claimant's personal physician offered no opinion whether the claimant's working conditions were the prevailing factor causing the claimant's medical condition. In addition, the record does

not disclose the qualifications of Dr. Williams or whether his qualifications are equal to or exceed those of the two very qualified hand surgeons that offered forensic medical opinions. Finally, the defense looks to Jeff Turner's testimony that the employer engineered the work stations to eliminate the hand intensive and repetitive trauma that can cause carpal tunnel syndrome. He testified that the employer had two ergonomic studies of the work station in question. Certainly, the employer's intention was to eliminate dangerous conditions and ensure the safety of its work force. Whether those objectives were met is more of a question for the forensic medical experts rather than the employer's production manager. In addition, Jeff Turner did not disclose the findings of the two ergonomic studies.

The defense contends that Dr. Strecker had superior knowledge of the claimant's work related activities and was in a better position to evaluate the claimant's working conditions regarding the intensity of the claimant's work, because its expert visited the employer's plant, witnessed the activities at the work site, and performed some of the functions.

Certainly, 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. However, neither expert cited any scientific study supporting his position or establishing scientifically determined factors that cause the claimant's medical conditions. Dr. Brown relied exclusively on his experience as a hand surgeon since 2003 and his contention that the claimant's work was repetitious and hand intensive based on the claimant's description. Dr. Strecker relied on his experience as a hand surgeon since 1989 and found no evidence that the claimant's work was not the primary or prevailing factor causing the claimant's condition. 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 condition in this case cannot be considered uncomplicated. Dr. Brown opined that the claimant's work duties were repetitive, hand intensive, and were, therefore, the prevailing factor causing the claimant's medical conditions. He opined that the claimant's gender and body mass index predisposed her to carpal tunnel syndrome. 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 and hand intensive. 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. Brown testified that the claimant's work was hand intensive.

On the other hand, Dr. Strecker did not elaborate on what he found to be the prevailing factor causing the claimant's condition, and neither attorney asked him to so opine. The implication is that he contends that the occurrence is idiopathic.

The claimant's evidence clearly related that the claimant performed tasks in her work of manufacturing athletic shoe soles. 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. Dr. Strecker's tour of the employer's facility, review of the functions performed, and performance of the claimant's work supports a finding that the claimant's work appears to be repetitive but not intense, frequent or awkward. The work done with the hands appears to be 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 an 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 other than the idiopathic occurrence of the conditions. Both experts suggested that the claimant may be predisposed to carpal tunnel syndrome due to gender and body mass index, but neither expert identified those conditions as the prevailing factor causing the claimant's medical condition and disability. The weight of each expert's opinion appears relatively equal, except for Dr. Strecker's personal evaluation of the claimant's work site. The presence of other factors that predispose the claimant to carpal tunnel suggests that other explanations for the cause of the claimant's carpal tunnel syndrome exist, but neither expert attached any weight to those factors in relative importance to the claimant's work duties.

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 2008. 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.

### **FUTURE MEDICAL CARE**

The evidence is clear that the claimant requires bilateral carpal tunnel release, but the defense has no liability for these medical procedures, because the claim is not compensable under the Missouri Workers' Compensation statute.

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

This award is dated and attested to this 4<sup>th</sup> day of November, 2009.

/s/ NAOMI L. PEARSON  
*Naomi L. Pearson*  
*Division of Workers' Compensation*