

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 07-037873

Employee: Myra L. Jones
Employer: Meramec Group, Inc.
Insurer: Self-Insured/Cannon Cochran Management Services, Inc.
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 for review as provided by section 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated February 3, 2009.

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 Vicky Ruth, issued February 3, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of July 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Myra L. Jones

Injury No. 07-037873

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

Dependents: N/A

Employer: Meramec Group, Inc.

Additional Party: Second Injury Fund (left open)

Insurer: Self-insured/Cannon Cochran Management Services, Inc.

Hearing Date: October 29, 2008 and November 5, 2008

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: {Alleged?} April 25, 2007.
5. State location where accident occurred or occupational disease was contracted: Franklin County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes (employer is self-insured c/o Cannon Cochran Management Services, Inc.).
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
The claimant used her left hand and thumb in inspecting, weighing, and trimming the soles of shoes.
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: Left hand and thumb.

- 14. Nature and extent of any permanent disability: N/A.
- 15. Compensation paid to-date for temporary disability: None.
- 16. Value necessary medical aid paid to date by employer/insurer? \$3,243.98.
- 17. Value necessary medical aid not furnished by employer/insurer? N/A.
- 18. Employee's average weekly wages: N/A.
- 19. Weekly compensation rate: N/A.

- Method of wages computation: N/A.

COMPENSATION PAYABLE

- Amount of compensation payable: N/A.

- 22. Second Injury Fund liability: Left open.
- 23. Future medical awarded: Yes, additional medical treatment ordered (see award).

Said payments to begin immediately and to be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

The claimant's attorney, Mark Moreland, indicates that he is deferring his fee until the final award hearing.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Myra Jones

Injury No: 07-037873

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

Dependents: N/A

Employer: Meramec Group, Inc.
Additional Party: Second Injury Fund (left open)
Insurer: Self-insured (c/o Cannon Cochran Management Services, Inc.)

On October 29, 2008, the claimant and the employer/insurer appeared for a temporary award hearing. The hearing was continued until November 5, 2008, for the receipt of Employer/insurer's late-filed Exhibit 1. The claimant, Myra Jones, was represented by Mark E. Moreland. The employer/insurer was represented by Michael F. Banahan. Mary Ann Lindsey, also counsel for the employer/insurer, observed the hearing. The Second Injury Fund (SIF) did not participate in the hearing, and issues related to the SIF are deferred until the final award hearing. The claimant testified on her own behalf. Dr. Bruce Schlafly and Dr. David Brown testified by deposition. The employer/insurer submitted its brief on November 12, 2008. Counsel for the employee requested, and was granted, several extensions of time to submit a brief; the employee's brief was submitted on December 8, 2008.

STIPULATIONS

The parties stipulated to the following:

- On or about April 25, 2007, the claimant was an employee of Meramec Group, Inc. (the employer).
- The employer was operating subject to the Missouri Workers' Compensation Law.
- The employer's liability for workers' compensation was self-insured, in care of Cannon Cochran Management Services, Inc.
- The Missouri Division of Workers' Compensation has jurisdiction, and venue in Franklin County is proper.
- A Claim for Compensation was filed within the time prescribed by law.
- The employer has not paid any temporary total disability benefits to the employee.
- The employer paid \$3,243.98 in medical aid.

ISSUES

At the hearing, the parties agreed that the issues to be resolved in this proceeding are as follows:

- Whether the claimant sustained an accident or occupational disease that arose out of and in the course of employment.
- Medical causation.
- Whether the claimant's employment was a prevailing factor in her need for additional medical treatment.
- Notice.

EXHIBITS

On behalf of the claimant, the following exhibits were entered into evidence without objection:

Exhibit A	Dr. Schlafly's report.
Exhibit B	Dr. Schlafly's deposition.
Exhibit C	Medical records of Dr. Bobby Enkvetchakul.
Exhibit D	Records of ProRehab Physical Therapy.
Exhibit E	Missouri Baptist Hospital-Sullivan bone scan report.
Exhibit F	Employee's Injury Report.
Exhibit G	Supervisor's Incident Report.

The employer/insurer offered the following exhibits, and they were admitted into the record without objection:

Exhibit 1 Dr. Brown's deposition (late-filed on 11/05/08).
Exhibit 2 Washington County Hospital records.

Note: All marks, handwritten notations, highlighting, or tabs on the exhibits were present at the time the documents were admitted into evidence.

FINDINGS OF FACT

Based on the above exhibits and the testimony presented at the hearing, I make the following findings:

- The claimant is a 55-year-old woman who is right hand dominant.
- The claimant began her employment with Meramec Group, Inc. (the employer), in 1989. She is currently a team leader in the PU molding unit. As a team leader, the claimant weighs shoe soles to check their weight, and inspects the soles for color and trim quality. The heaviest shoe sole she inspects or weighs is 300 grams (454 grams equals one pound).
- The claimant works on the first work shift, which runs between 7:00 a.m. and 3:00 p.m. She has a 20-minute lunch break and two 10-minute breaks. During the course of a year, the claimant is usually laid off for a period, often from November to February, or her hours are reduced.
- Every morning, the claimant weighs approximately 96 pairs of shoe soles. During this task, she takes pairs of shoe soles out of boxes and puts the soles on a scale, one at a time, to weigh them.
- The claimant is also responsible for inspecting shoe soles. To perform this task, she takes shoe soles out of a box and turns them all the way around to inspect the color. When inspecting shoe soles, if the claimant notices that the trim on a sole is not correct, she takes the sole and puts it on a trimmer. The trimmer has a round wheel on it. The claimant grips the shoe sole between her thumb and first forefinger, moving the sole across the trimmer in a semi-circle motion. When using the trimmer, the claimant has to put force on the shoe sole to hold it in place and to turn the sole. In an average day, she will re-trim about 50 pairs of soles.
- In addition, the claimant inspects boxes of shoe soles while they are still on the shelves. She pulls pairs of shoe soles out for inspection, looking for color, trim, and weight. She rejects a sole if it is defective and does not meet standards. The claimant usually audits one person a day by going through that worker's boxes. A box contains 18 to 20 pairs of shoe soles. On average, the claimant inspects 20 boxes a day.
- The claimant has problems in her left hand and thumb, including where the base of her thumb meets the hand and wrist. These complaints began around March 2007. Initially, the complaints subsided. By April 2007,

however, her complaints did not go away.

- On April 25, 2007, the claimant told her supervisor, Karen Flowers, that she had hurt her left hand. The claimant completed an Employee Injury Report, and Ms. Flowers completed a Supervisor's Incident Investigation Report. The employer sent the claimant to see Dr. Bobby Enkvetchakul.
- The claimant first saw Dr. Enkvetchakul on April 26, 2007. His diagnosis was left thumb pain. He provided her with a thumb splint and directed her to take Naprosyn, an anti-inflammatory medication. His records note that the pain is probably arthritic in nature but that it was not really clear. A radiology exam report from April 27, 2007, indicates that there are mild arthritic changes throughout the hand. The claimant again saw Dr. Enkvetchakul on May 3, 2007. The diagnosis was still left thumb pain. Dr. Enkvetchakul noted that the Naprosyn was not helping, so he switched her to Indomethacin and ordered a bone scan. Dr. Enkvetchakul's May 11, 2007 records indicate that a Finkelstein's test was equivocal and a Watson test was negative, as was the CMC grind test. He also noted that the results of the bone scan were completely normal. His diagnosis continued to be simply left thumb pain. He directed her to continue wearing the splint, and prescribed a Medrol dose pack.
- On May 18, 2007, the claimant returned for a follow-up visit with Dr. Enkvetchakul. The doctor diagnosed her with left-sided de Quervain's syndrome. He gave her an injection of Lidocain in the first extensor compartment of the wrist. Post-injection examination revealed 100% relief of her symptoms, so he performed a second injection of Lidocain with 20 mg. of Kenalog into the first dorsal extensor compartment of the wrist. He released her to full duty with no restrictions.
- The claimant again visited Dr. Enkvetchakul on May 30, 2007, due to a recurrence of her left thumb pain. She indicated that the May 18th injection helped for about two or three days, until she started using her hand again. The doctor noted that the Finkelstein's test was positive, but that essentially any type of movement or testing at the wrists produced her pain complaints. He diagnosed her with de Quervain's syndrome, and provided her with a thumb spica splint. He directed her to continue taking Naprosyn. He also injected the claimant with 2 cc of 2% Lidocain into the first dorsal extensor compartment. The post injection examination revealed 100% relief of pain. Dr. Enkvetchakul noted that the claimant's clinical picture is a bit confusing, given that her tenderness is somewhat diffuse over the radial aspect of the left wrist. However, the claimant's response to anesthetic injection was remarkable and was most strongly suggestive of de Quervain's syndrome.
- The claimant then attended all six scheduled sessions at ProRehab in early June 2007. A report, dated June 13, 2007, indicates that the claimant was able to improve left thumb range of motion. She continued to guard the thumb and presents with increased subjective complaints with the use of the thumb in certain directions, and if resting without the splint. The report indicates that the claimant put forth good effort during the treatment sessions, but was not able to resolve her pain.
- On June 15, 2007, the claimant followed up with Dr. Enkvetchakul. At this time, he noted that the Finkelstein test was distinctly negative, but that she did have pain with extension and abduction of the left thumb. The grind test produced some complaints of pain at the CMC joint. His diagnosis was left thumb and wrist pain of unknown etiology. He directed her to continue wearing the thumb spica splint. He gave her sample of

Celebrex. He noted that her clinical picture is not clear, and he cannot localize where her complaints are coming from. He referred her for a second opinion. He also released her to return to work at full duty with no restrictions.

- The employer/insurer later sent the claimant to Dr. David Brown for an independent medical evaluation. The claimant saw Dr. Brown on August 1, 2007. Dr. Brown is board certified in plastic and reconstructive surgery, with the added certification in the subspecialty of hand surgery. In the history portion of his report, he indicates that the claimant told him that she first developed problems with her left thumb in January 2007. She stated that the base of her left thumb is very tender. She could not recall any specific traumatic injury. Dr. Brown noted that on examination, the claimant had a positive shoulder sign at the base of her left thumb. The grind test was positive and the Finkelstein test was negative. There was no triggering, and the Watson's test was negative. She had a negative Tinel's and direct compression test over the carpal tunnel. The Phalen's test was negative. He x-rayed both of her hands and noted that there was significant arthritic changes at the base of the left thumb compared to the right. His impression was osteoarthritis at the base of the left thumb at the trapeziometacarpal joint and STT joint. His recommendation was for her to wear a thumb spica splint, and that she might benefit from a steroid injection in the trapeziometacarpal joint. He also recommended that she take a non-steroidal anti-inflammatory medication. He noted that if her symptoms fail to improve after an extensive course of conservative treatment, an option would be surgical intervention in the form of a CMC arthroplasty.
- Dr. Brown noted that trapeziometacarpal joint osteoarthritis is very common in women in their fifties. He stated that this is a medical condition related to the natural aging process. He does not believe that the osteoarthritis at the base of her left thumb is related to her work, with her work being considered the prevailing causative factor. He noted that she could work without restrictions.
- Following her visit to Dr. Brown, the claimant did not treat with any other provider until February 2008. She testified credibly, however, that she continued to have left thumb pain during the period of August 2007 through February 2008.
- On February 9, 2008, the claimant treated at the Washington County Memorial Hospital Emergency Room for left thumb complaints. The records indicate that the claimant went to the emergency room after she rolled over in bed at her home, causing her left thumb to pop; this resulted in severe pain. The claimant thought that she had broken her thumb. X-rays indicated that there were no visible fractures.
- On June 27, 2008, the claimant saw Dr. Bruce Schlafly on her own. Dr. Schlafly examined the claimant and found that she had a positive Finkelstein test for de Quervain's tendonitis at the left wrist. He noted swelling in the region of the thumb CMC joint. He took x-rays of her left wrist and thumb, which showed subluxation and narrowing of the CMC joint at the base of the thumb metacarpal. His diagnosis was de Quervain's tendonitis of the left wrist and painful subluxation and osteoarthritis at the CMC joint at the base of the metacarpal of the left thumb. He noted that over the past year, the claimant had already tried the various methods of non-operative treatment, including the use of a splint, physical therapy, anti-inflammatory medication, and cortisone injections. He recommended surgery for pain relief. Specifically, he recommended a tendon interposition arthroplasty of the CMC joint, along with a de Quervain's tendon sheath release of the left wrist.

- In his June 2008 report, Dr. Schlafly opined that her repetitive work with her hands at the shoe factory is “the substantial and prevailing factor” in the cause of the de Quervain’s tendonitis of the left wrist and the painful subluxation and osteoarthritis at the base of the left thumb, and in the need for the treatment that she has already received and in the need for the surgical treatment.
- On September 5, 2008, Dr. Brown, at the request of the employer/insurer, reviewed Dr. Schlafly’s June 2008 report. In a supplemental report, dated September 5, 2008, Dr. Brown noted that Dr. Schlafly also diagnosed osteoarthritis at the base of the thumb (also known as the CMC joint of the thumb and trapeziometacarpal joint). Dr. Brown stated that the “painful subluxation” that Dr. Schlafly mentions is not a separate diagnosis, but simply a manifestation of osteoarthritis at the base of the thumb. Dr. Brown did not agree with the diagnosis of left de Quervain’s tendinitis. He stated that when he examined the claimant, she was not tender over the first dorsal compartment, and that provocative testing for de Quervain’s (Finkelstein’s testing) was negative. Dr. Brown further stated that patients with osteoarthritis at the base of the thumb are often misdiagnosed with de Quervain’s tendinitis since the first dorsal compartment is adjacent to the base of the thumb. In his opinion, the fact that her previous steroid injection in the first dorsal compartment failed to relieve her pain is also consistent with her pain not being due to tendonitis of the first dorsal compartment (de Quervain’s tendonitis). Dr. Brown also indicated that osteoarthritis at the base of the thumb is more common in women, and that the incidence increases with age. He stated that osteoarthritis at the base of the thumb is common in women in their fifties.
- Dr. Schlafly’s deposition, taken October 16, 2008, indicates that he is board certified in hand surgery and orthopedic surgery, although he limits his practice to the hand and upper extremity. In Dr. Schlafly’s opinion, the claimant has de Quervain’s tendinitis, which is a type of tendinitis that occurs at the wrist near the base of the thumb and involves tendons cross the wrist going to the thumb. In his opinion, the claimant’s repetitive work and use with her left hand in her employment caused her de Quervain’s tendinitis. Specifically, he believes that the Claimant’s repetitive gripping, grasping, and pinching with her left hand lead to the development of de Quervain’s tendinitis. Dr. Schlafly also indicated that the claimant suffers from a subluxation and narrowing of the CMC joint at the base of the thumb. He explained that the subluxation is a partial dislocation of the metacarpal of the thumb opposite the trapezium bone on which the thumb metacarpal rests. Dr. Schlafly pointed out, on the x-rays, how the claimant’s thumb metacarpal is not anatomically aligned as in a normal thumb CMC joint; instead, the thumb metacarpal is resting somewhat off center. He stated that stretching out of the ligaments causes the joint to rest somewhat off center. As for the cause of this stretching out or attenuation of the ligament, he stated that progressive repetitive forces placed on the thumb progressively stretch out the ligament – such as the repetitive work that the claimant described doing at the shoe factory. Dr. Schlafly further testified that when a subluxation of a joint occurs, the cartilage wears out and causes arthritic changes and narrowing. Dr. Schlafly clarified that repetitive grasping of items, applying forces to the thumb numerous times during the workday, caused the attenuation of the ligament. Dr. Schlafly acknowledged that this condition is more likely to be found in someone claimant’s age (fifties) than in a teenager, and that it is more likely to be found in a woman of this age than in a man of this age. In his opinion, however, neither claimant’s age nor her gender is the prevailing factor in the cause of her condition.
- Dr. Schlafly testified that the pain that the claimant is experiencing comes from the subluxation and arthritis at the CMC joint, and the wrist pain relates to the tendinitis. He stated that repetitive work would aggravate the pain.
- Dr. Schlafly did not x-ray the claimant’s right hand as she had no complaints with the right hand. He acknowledged that he does not know why she did not develop pain in the right hand. Dr. Schlafly testified that it is more common to develop de Quervain’s tendinitis from repetitive usage as opposed to one single episode of

trauma, but that episode of trauma could cause it. However, he has never heard of an incident like the one where the claimant rolled over in bed as causing de Quervain's tendinitis.

- When discussing why the claimant might have had a positive result on one Finkelstein's test and a negative result on another, Dr. Schlafly testified that tendinitis conditions "can come and go, wax and wane.... Dr. Schlafly also testified that it is possible that a cortisone injection could have a beneficial effect two weeks later or even tow months later, or even permanently. When asked whether a cortisone injection on May 18, followed by an anesthetic injection on May 30, have affected the outcome of a Finkelstein's test on June 15, Dr. Schafly indicated that it could.
- As for future treatment, Dr. Schlafly believed that conservative measures had failed and therefore it would be appropriate to do surgery for pain relief. He agreed that it would not be unreasonable to try more injections or non-steroidal anti-inflammatory medications, but that he did not think that these measures would be successful.
- In his deposition, taken October 27, 2008, Dr. Brown further explained his findings. He noted that when he examined the claimant, she had fairly classic signs of osteoarthritis at the base of the thumb or the trapeziometacarpal joint. She had what is called a positive shoulder sign, which is a squared-off looking joint at the base of the thumb. Instead of a smooth slope, she had a squared-off look to the based of the thumb, which is due to degeneration of the joint. He noted that the base of the metacarpal "kind of subluxes or kicks out," and it gives the joint a squared-off look. The claimant also had tenderness directly over the trapeziometacarpal joint, which is also called the basal joint of the thumb. And the grind test, where he grabs the thumb metacarpal and compresses it and rotates it at the joint (or grinds it), induced pain. He stated that this is typical of an arthritic joint. In Dr. Brown's opinion, it was clear that the claimant had osteoarthritis at the base of the left thumb. He pointed out that he took x-rays of both hands, and that the x-rays showed significant arthritic changes at the base of the left thumb at the trapeziometacarpal joint with narrowing of the joint and osteophyte or spur formation. There were also some associated arthritic changes at the surrounding joint called the STT joint. In addition, she had arthritic changes at the articulation between the trapezium and the scaphoid and the trapezoid. Thus, there were arthritic changes on all three joint surfaces. Dr. Brown testified that the claimant had similar findings on the right thumb, but not as severe.
- Dr. Brown testified that in his opinion, the claimant's diagnosis was osteoarthritis at the base of the left thumb at the trapeziometacarpal joint and STT joint. As for future treatment, he recommended continued conservative treatment in the form of a steroid injection in the joint, anti-inflammatory medications, and continued splinting. Then, if she failed to improve, surgery would be an option. He stated that the claimant's work for the employer was not the prevailing or primary cause of her underlying condition. Dr. Brown testified that the main reason for this opinion is that the claimant is in a high risk population for that condition. He stated that osteoarthritis at the base of the thumb is extremely common in women in their fifties. He further testified that "if I take that information and I compare it to her potential occupational factors, it's clear in my mind that the science, the studies, the facts lead me to the opinion that relative to all other factors, the work in this condition is not the most important single factor that has lead to this condition. I think it's the fact that she's in this very high risk category is the prevailing, underlying cause of her condition." Dr. Brown, however, does not actually state what potential occupational factors he is using in this comparison.
- Dr. Brown testified as to why he disagreed with Dr. Schlafly's diagnosis of de Quervain's tendinitis. He indicated that he examined the claimant for this condition and that she was non-tender over the area where

patients have de Quervain's tendinitis, and provocative testing (Finkelstein's testing) was negative. Also, the history of having no significant improvement following a steroid injection for de Quervain's tendinitis is consistent with that not being the problem. He stated that patients with de Quervain's tendinitis will at least have temporary improvement following a steroid injection. He testified that if work activities were the single most important cause of the claimant's condition, that he would expect the condition to be more severe, more symptomatic, and more advanced in the dominant hand as opposed to the non-dominant hand – and that was not the case here. In his opinion, the fact that the claimant's symptoms and her arthritic changes are more advanced in the non-dominant hand is an indirect indication that this is not related to her job activities.

- On cross-examination, Dr. Brown acknowledged that the type of repetitive work that the claimant described doing at work may have contributed to her symptoms. He also admitted that tendinitis, like de Quervain's tendinitis, is commonly seen if one does certain repetitive, hand-intensive types of jobs.
- The claimant testified that if her left thumb is not completely straight, it is painful. As a result of her left thumb complaints, she has changed the way she works. She holds her index finger beneath her left thumb to keep the thumb from moving. She cannot use her left thumb without pain. Anything that requires grabbing or clutching with her left thumb aggravates her thumb complaints. She generally does not take pain medications, but on rare occasions she will take Tylenol.
- She testified that she never experienced left hand or thumb complaints before 2007. She is not a smoker; she has not been diagnosed with rheumatoid arthritis or with a thyroid condition.
- In 2002, the claimant had work-related left shoulder problems. She did not remember being told that she had arthritic or degenerative changes in her left shoulder at that time. She did not recall being told that she had arthritis in her neck and back. Her left shoulder problems resolved, and she did not file a claim for this condition.

CONCLUSIONS OF LAW

Based upon the findings of fact, I find the following:

The claimant contends that she sustained a repetitive trauma injury to her left thumb as a result of her work activities in April 2007. Thus, this case is governed by the amendments to the Workers' Compensation Act (the Act) that became effective on August 28, 2005.

In considering the issues, it must be noted that Section 287.800, RSMo. 2005, requires administrative law judges . . . and any reviewing court to construe the provisions of this chapter strictly, and weigh the evidence impartially, without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

Issues 1, 2, and 3: Accident/occupational disease arising out of and in the course of employment; medical causation; and prevailing factor in the need for additional medical treatment

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim. Proof is made only by competent and substantial evidence, and may not

rest on speculation. Medical causation not within lay understanding or experience requires expert medical evidence. When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.

In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it. Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant's expert.

Section 287.067.1 (RSMo. 2005) defines the term "occupational disease" as an identifiable disease arising with or without human fault, out of and in the course of employment. Ordinary diseases of life to which the general public is exposed outside of employment shall not be compensable, except where the diseases follow as an incident of an occupational disease, as defined in the Act. The occupational disease need not 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 risk as a rational consequence.

Section 287.067.3 (RSMo. 2005) provides that 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 the disability. The "prevailing factor" is defined as the primary factor, in relation to any other factor, that causes both the resulting medical condition and the disability. This statute also provides that "[o]rdinary, gradual deterioration, or progressive deterioration of the body caused by aging or by the normal activities of day-to-day life shall not be compensable."

Medical aid is component of the compensation due to an injured worker under the Act. Pursuant to Section 287.140, an employer is required to furnish such medical, surgical, and hospital treatment as is necessary to cure and relieve the effects of a work-related injury of disability. For medical care to be awarded, the medical care must of necessity flow from the occupational disease, via evidence of a medical-causal connection between the compensable injury and the medical condition for which treatment is sought, before the employer is to be held responsible. The employee must prove beyond speculation and by competent and substantial evidence that his or her work-related injury is in need of treatment. Conclusive evidence is not required. However, evidence that shows only a mere possibility of the need for future treatment will not support an award.

Dr. Brown repeatedly emphasized that the most important factors leading to the claimant's condition are that she is female and she is in her fifties. He offered no clear explanation as to why the claimant's condition is caused by progressive degeneration of the body (due to her age and gender) as opposed to her repetitive work history. Dr. Brown simply opines that the claimant is female; she is in her fifties, and thus she is in a high risk group for this condition – and then he concludes that her age and gender are the primary or prevailing factors leading to her condition. Dr. Brown fails to carefully analyze and compare what role the repetitive work played in claimant's injury. His analysis is cursory and incomplete, and therefore carries little weight.

Dr. Schlafly, however, provided a well-reasoned opinion as to what factors in the claimant's work caused the changes in the joint that ultimately led to the resulting condition and disability. He opined that the claimant's repetitive work - specifically, her repetitive gripping, grasping, and pinching with her hand with her left hand - caused her de Quervain's tendinitis. He also noted that the progressive repetitive forces placed on her thumb stretched out the ligament, causing attenuation of the ligament of the thumb; this in turn caused the cartilage to wear out and caused arthritic changes and narrowing. He testified specifically that neither the fact that the claimant was a woman nor that she was in her fifties were the prevailing factors in causing her condition. I find that Dr. Schlafly's opinion and findings are more thorough, more credible, and more convincing than those of Dr. Brown. As such, I find in favor of the claimant on the issues of whether her occupational disease arose out of and in the course of her employment, and on the issue of medical causation. Likewise, I find in favor of the claimant on the issue of whether her employment was the prevailing factor in her need for additional medical treatment. Again, Dr. Schlafly's opinion on this issue was more thorough and credible than that of Dr. Brown. Dr. Schlafly recommended a tendon interposition arthroplasty of the CMC joint, along with a de Quervain's tendon sheath release of the left wrist; I find that the employer/insurer shall be directed to provide treatment consistent with the recommendations of Dr. Schlafly.

Issue 4: Notice

The employer/insurer argues that the claimant did not provide timely notice of her occupational disease, as required by section 287.420, RSMo. 2005. This section provides, in relevant part, as follows: “No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove that the employer was not prejudiced by failure to receive the notice.”

The purpose of Section 287.420 is to give the employer timely opportunity to investigate the facts surrounding the accident or occupational disease, and to provide the employee with medical attention in order to minimize the disability.

I find that the claimant gave actual, written notice of her hand/thumb injury to the employer on April 27, 2007. She testified that her pain began in March 2007, but by late April 2007 it had become worse and more constant. Although the claimant *may* have had some occasional, intermittent hand pain a few months before March 2007, as noted in some of the medical records, the claimant testified credibly that her condition did not become bothersome enough to seek medical treatment until April 2007 – **at which time she promptly reported it**. I find the issue of notice in favor of the claimant.

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Summary

The claimant prevails on the issues of whether the claimant sustained an occupational disease arising out of and in the course of employment; medical causation; and whether the claimant’s employment was the prevailing factor in her need for additional medical treatment. I also find in favor of the claimant on the issue of notice.

Any pending objections not expressly ruled on in this award are overruled.

The claimant’s attorney, Mark Moreland, indicates that he is deferring his fee until the final award hearing, so no award of attorney’s fee is made at this time.

Date: _____

Made by: _____

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Peter Lyskowski
Acting Division Director
Division of Workers' Compensation

The claimant withdrew her initial objection to this exhibit and it was admitted on November 5, 2008.

- Claimant’s Exh. F.
- Claimant’s Exh. G.
- Claimant’s Exh. C.
- Claimant’s Exhs. C and E.
- Claimant’s Exh. B, p. 7.

Claimant's Exh. B, p. 12.
Claimant's Exh. B, p. 13.
Claimant's Exh. B, pp. 13-14.
Claimant's Exh. B, p. 14.
Claimant's Exh. B, p. 18.
Claimant's Exh. B, p. 23.
Claimant's Exh. B, p. 31.
Claimant's Exh. B, pp. 31-32.
Claimant's Exh. B, pp. 36-37.
Claimant's Exh. B, p. 45.
Claimant's Exh. B, p. 46.
Claimant's Exh. B, pp. 38-40.
Claimant's Exh. B, pp. 39-40.
Employer/insurer's Exh. 1.
Employer/insurer's Exh. 1, p. 9.
Employer/insurer's Exh. 1, p. 12.
Employer/insurer's Exh. 1, p. 13.
Employer/insurer's Exh. 1, p. 20.
Employer/insurer's Exh. 1, p. 22.
Fischer v. Archdiocese of St. Louis, 793 S.W.2d 195, 198 (Mo. App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).
Griggs v. A.B. Chance Company, 503 S.W.2d 697, 703 (Mo. App. W.D. 1974).
Wright v. Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo. banc 1994).
Hawkins v. Emerson Elec. Co., 676 S.W.2d 872, 977 (Mo. App. 1984).
Cole v. Best Motor Lines, 303 S.W.2d 170, 174 (Mo. App. 1957).
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).
Section 287.067.1 (RSMo. 2005).
Id.
Section 287.067.3 (RSMo. 2005).
Id.
Mathia v. Contract Freighters, 929 S.W.2d 271, 277 (Mo. App. S.D. 1996).
Section 287.140, RSMo. 2005.
Bock v. Broadway Ford Truck Sales, 55 S.W.3d 427, 437 (Mo. App. E.D. 2005).
Williams v. A.B. Chance, 676 S.W.2d 1 (Mo. App. W.D. 1984).
Dean v. St. Luke's Hospital, 936 S.W.2d 601, 603 (Mo. App. 1997); *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 278 (Mo. App. S.D. 1996); *Sifferman v. Sears, Roebuck and Co.*, 906 S.W.2d 823, 828 (Mo. App. 1995).
Messersmith v. University of Missouri-Columbia, 43 S.W.3d 829, 832 (Mo. banc 2001).
Claimant's Exhs. F and G.