

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

Injury No.: 09-103087

Employee: Chad Keith
Employer: R. W. Andersohn Enterprises, Inc.
d/b/a Doll Services & Engineering, Inc.
Insurer: Cincinnati Insurance Company

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, heard the parties' arguments, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Medical causation

We agree with the administrative law judge's conclusion that employee failed to meet his burden of proof with respect to the issue of medical causation. We wish to make clear that we reach this result because employee's expert, Dr. Dwight Woiteshek, offered opinions that are simply not persuasive in light of his lack of pertinent information regarding employee's work duties, preexisting injuries to the upper extremities, hobbies, and alcohol abuse. We note that employee, in his brief, merely provides arguments why the opinions of employer's expert, Dr. Michele Koo, should be deemed lacking credibility, and fails to explain why we should find persuasive Dr. Woiteshek's testimony where he lacked pertinent factual information.

With that said, we wish also to make clear that we believe Dr. Koo, in issuing an opinion that compares employee's work exposure to a conglomeration of numerous non-work risk factors, has failed to provide an opinion that is relevant for the purposes of our analysis under the Missouri Workers' Compensation Law. Dr. Koo appears to have premised her medical causation opinion in this matter on her view that employee's non-work risk factors of obesity, smoking, and alcohol abuse, considered cumulatively, outweigh work as a causative factor. It thus appears that Dr. Koo relied on a definition of "prevailing factor" that departs from the plain language of Chapter 287.

As the parties are undoubtedly aware, the version of § 287.800 RSMo applicable to this claim requires that we strictly construe the language of the Missouri Workers' Compensation Law. Strictly construing the language of § 287.020.3(1) RSMo, we find no support for the proposition that employee's work exposures must prevail over a combination of each of employee's non-work risk factors. Section 287.020.3(1) does not define a prevailing factor as the primary factor "in relation to all other factors combined," but rather "in relation to any other factor." For this reason, we believe Dr. Koo's opinion in this matter is inapposite for purposes of resolving the question of medical causation under § 287.020.3(1).

Employee: Chad Keith

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In sum, although we do not find Dr. Koo's ultimate causation opinion to be particularly relevant to the issues involved in this matter, we deny employee's claim because he has failed to advance persuasive expert medical opinion evidence to meet his burden of proof as to the issue of medical causation.

Conclusion

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued April 16, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 11th day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee:	Chad Keith	Injury No.:	09-103087
Dependents:	N/A		Before the
Employer:	R.W. Andersohn Enterprises, Inc., d/b/a Doll Services & Engineering, Inc.		Division of Workers' Compensation
Additional Party:	N/A		Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Cincinnati Insurance Company		
Hearing Date:	February 14-28, 2013	Checked by:	EJK/lsn

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: April 1, 2009 (alleged)
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? No
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 heating and air conditioning technician, suffered bilateral carpal tunnel syndrome and cubital 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 and elbows (alleged)
14. Nature and extent of any permanent disability: 15% permanent partial disability to each wrist and elbow plus 8 weeks for disfigurement
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer: \$5,080.57

- 17. Value necessary medical aid not furnished by employer/insurer? \$1,955.65
- 18. Employee's average weekly wages: \$874.55
- 19. Weekly compensation rate: \$583.03/\$404.66
- 20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:

None

22. Second Injury Fund liability: No

TOTAL:

None

23. Future requirements awarded: None

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mark A. Cordes, Esq.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Chad Keith	Injury No.: 09-103087
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	R.W. Andersohn Enterprises, Inc., d/b/a Doll Services & Engineering, Inc.	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	Cincinnati Insurance Company	Checked by: EJK/lsn

This workers' compensation case raises several issues arising out of an alleged work related injury in which the claimant, a heating and air conditioning technician, suffered bilateral carpal tunnel syndrome and cubital tunnel syndrome. The issues for determination are (1) Occupational disease arising out of and in the course of employment, (2) Notice, (3) Medical causation, (4) Liability for Past Medical Expenses, (5) Temporary Disability, (6) Permanent disability and disfigurement, (7) Recoupment of medical expenses paid, (8) Statute of Limitations, and (9) the identity of the employer. The evidence compels an award for the defense.

At the hearing, the claimant testified in person and offered a medical report from Dwight Woiteshek, M.D., a first amended claim, and various medical records and bills. The defense offered depositions of the claimant, Michael Hemphill, Sue Straatmann, Dwight Woiteshek, M.D., and Michelle Koo, M.D., records from the Missouri Division of Employment Security, a motor vehicle accident report, a web screen shot, the claimant's termination of employment letter, payment record to ProRehab, Answers to the Claimant's First Amended Claim, and various medical records.

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. Any markings on the exhibits were present when offered into evidence.

SUMMARY OF FACTS

This 32 year old claimant, a heating and air conditioning technician, suffered bilateral carpal tunnel syndrome and cubital tunnel syndrome. On November 15, 2001, R.W. Andersohn Enterprises, Inc. hired the claimant as a heating and cooling systems installer. The claimant testified that his job in the field involved splitting about half of his time between working with sheet metal and half of his time doing pipefitting and installing air conditioning (A/C) units. His duties for sheet metal work included installation, fabrication, layout, design, bending, folding, cutting, hanging, hammering, and duct work. His job involved the use of power drills, power saws, band welder, pipe wrenches, hammer, screwdrivers, and impact gun. The claimant testified that a high percentage of his job involved putting in screws and that he used the impact

gun quite often, usually several times a day. On the other hand, various other routine aspects of his job did not require the use of hand tools: layout duties, office work, coordinating his subordinates, ordering materials and supplies, and customer relations.

The claimant testified that there were times when he did not work in the field. The claimant also worked in the office for a couple of weeks during October 2006 following a job-related hernia. The claimant fell through the ceiling while on the job and following that incident, the claimant worked in the office for a few days. The claimant did not file Workers' Compensation claims for either of the latter two injuries.

In 2008, the claimant had knee surgery and spent all of his time working in the office from September through December 2008. The claimant testified that, during this time, he probably did not use any hand tools. From January through April 2009, the claimant spent 80% of his time in the office, gradually working his way back into the field. He testified that his field work at the time was similar to the field work performed by Brian Hackett. After this time period, the claimant resumed full-time work in the field.

The claimant testified that beginning in April 2009, his hands and arms started to feel sore and weak. He testified that he thought he was overworking them. The pain began in his hands then worked its way toward his elbows and shoulders and worked its way down his arms. The claimant testified that he did not inform his employer when his pain started, nor did he contact a medical professional at the time the pain began.

On September 4, 2009, the claimants, family physician, Dr. Tim Baker, examined the claimant for this condition, and this was the first time the claimant sought medical treatment for this condition. The claimant reported pain in his hands, wrists, elbows, and arms to Dr. Baker. Dr. Baker prescribed steroids to help regain strength in his hands, wrists, and arms. Dr. Baker diagnosed bilateral hand pain probable overuse. The claimant testified that he was aware that his condition was work related after his consultation with Dr. Baker on September 4, 2009, but also testified that he didn't know the condition was work related until late November or early December 2009. After taking the steroids for a few months he sought a nerve conduction specialist, Dr. Verdine.

On December 23, 2009, the claimant verbally reported his right and left hand/wrist/elbow pain to the employer's controller, Sue Straatmann, and she was the first agent of the employer to whom he reported the condition. He has never submitted a written notification to his employer that his work was causing his right and left hand/wrist/elbow pain. The claimant testified that Ms. Straatmann told him not to see the specialist, because she needed to check with the insurance company about how to proceed. As a result of Ms. Straatmann's request, the claimant cancelled the appointment with Dr. Verdine.

On February 3, 2010, Dr. Koo, a plastic surgeon, took a medical history, examined the claimant, and prescribed oral medication and physical therapy at ProRehab. On April 7, 2010, the claimant filed his claim for compensation with the Missouri Division of Workers' Compensation.

On May 24, 2010, and March 15, 2011, Dr. Woiteshek examined the claimant and took a medical history, however the claimant did not tell Dr. Woiteshek about the time he spent working 100% of the time in the office from September 2008 through December 2008 and 80% of the time in the office from January through April 2009. He denied any prior problems with his right and left hand/wrist/elbow.

On June 11, 2010, the employer discharged the claimant from employment alleging that the claimant had falsified his time sheets on multiple occasions and that numerous customers of Doll's had complained about Employee's attitude and work product. The claimant began working for his next employer, American Boiler, on October 26, 2010. In between, the claimant filed for, and received, unemployment benefits, asserting that he was ready, willing, and able to work. He was out of work for 19 weeks and received unemployment benefits from June 19 to October 26, 2010.

In the fall of 2010, the claimant had two surgeries on his hands and wrists. On September 10, 2010, Dr. Verdine performed surgery on his right hand and right radial nerve, and on October 1, 2010, Dr. Verdine performed a second surgery on his left hand and left radial nerve. Dr. Verdine did not provide a light duty workload restriction. The claimant now has scars on his hands and arms from the surgeries and displayed scars from the surgery measuring a total of 7 5/8 inches in length.

The claimant applied for employment at American Boiler and satisfactorily completed a physical examination on October 13, 2010. The claimant provided a medical history and initially marked on the intake form that he did not have any impairments to his hands and arms, and then changed the answer to reflect that he did have impairment to his hands and arms. He told the medical examiner that he drinks six to seven Budweisers per day. He passed that physical examination which included an examination of his hands and arms.

On October 26, 2010, the claimant returned to work at American Boiler. The claimant testified that he could have worked light duty for the employer in this case in the weeks following the surgeries, doing office work. The claimant's work at American Boiler involved the use of hand tools and manual labor and worked overtime at American Boiler in 2010, 2011, 2012, and 2013. His work duties at American Boiler differed from his duties with the employer in this case. At American Boiler, the claimant is mainly a service technician, as opposed to an installer. His work at American Boiler requires little fabrication for sheet metal, and some pipefitting.

The claimant underwent a second physical examination on November 13, 2012, and marked on the intake sheet that he had no impairments to his hands and arms. He signed the form certifying that the information was complete and true. At the hearing, the claimant testified that he lied to the medical examiner. He did not tell the medical examiner about any of his alcohol consumption, his numerous surgeries on his back, knee, wrists, and elbows and for a hernia or his spinal injury or disease. He again passed the physical examination.

On December 17, 2012, the claimant was involved in a highway motor vehicle accident involving a company truck from American Boiler. He ran into the back of a van, the van left the highway and careened into a grass ditch, and the truck was totaled. During the impact and

throughout the crash, both of his hands remained on the steering wheel. He estimated that he slid 50 feet before impact. The airbags deployed when he struck the van. The grass ditch was a gradual slope, and the truck came to rest in the ditch without further impact.

The claimant testified that his hobbies include riding dirt bikes, shooting clay birds, and bowling. He estimates that in 2009, he rode his dirt bike ten times and that sessions could last from 2-3 hours to 6-7 hours depending on the day. He rides on uneven terrain made up of dirt and rocks. The dirt bike vibrates on regular ground the entire time he is riding it. Usually he rides for about 1.5 hours in between filling up the dirt bike with gas. He believes that he rode it a total of 24 hours in 2012. The claimant owns a 2002 KTM 250SX, a 250cc dirt bike. He testified that he has been in numerous accidents and has been thrown from the dirt bike on at least one occasion. He usually rides dirt bikes with his brother in Viburnum, Mo. which is about 2.5 hours from the claimant's house. There is no paved track in Viburnum, just dirt and rocks. He usually takes two laps around the 16-mile route. The claimant also owns and rides ATVs. Both the dirt bike and the ATV vibrate when ridden and both vehicles require the constant use of both arms. The ATVs are ridden over uneven terrain including dirt and rocks. The claimant has fallen off of his dirt bike and ATV onto dirt and rocks. The claimant did not tell any of the doctors that he owns and rides ATVs.

The claimant also uses a 12-gauge pump shotgun to shoot clay birds, which requires a firm grip to hold the shotgun, maintain control while firing, and to pump it in order to reload. He estimates that he shot clay 6 times in 2012. The shooting outings could last up to 10-11 hours. He also owns a deer rifle, which he has used for hunting. He did not tell any doctors about shooting clay birds and hunting. He and his wife joined a bowling league which was in session for 33 weeks, from September 2009 to April 2010. The claimant bowls right-handed and owns a fifteen-pound bowling ball.

In 2005, the claimant purchased a house which he spent 2-3 years rehabbing with the help of friends. The rehab projects included building a deck, moving an air conditioner unit, trim work, replacing doors, and installing and updating the shower and bathroom. The claimant consumes, on average, twelve Budweisers each night and drinks up to one case of beer in a day the previous ten years. He quit smoking in October 2005.

The claimant did not tell Dr. Woiteshek about rehab work that he did on his home, about the extent of his alcohol consumption and about his history of crashing and falling off dirt bikes and ATVs. The claimant told Dr. Woiteshek that he had no problems with his right or left arm before April 2009.

The claimant could not recall all of the injuries to his right and left hand/wrist/elbow that have occurred over his lifetime. He testified that he has occasionally had lacerations, had broken fingers as a kid, including a broken left hand in junior high school, and injured himself on a motorcycle when he was younger. In October 2011, after both of the surgeries, the claimant broke his left wrist in a motorcycle accident and was in a cast for four weeks. He also hit a wall with his hand on purpose, causing a traumatic injury to his hand. In 1993, the claimant was in a motorcycle crash which required surgery and the insertion of metal pins.

The claimant stopped seeing Dr. Verdine on December 27, 2010, but returned on June 11, 2012, with pain in his elbows. He last saw Dr. Verdine on June 29, 2012. At the hearing, the claimant testified that he still experiences pain, numbness, tingling, and loss of strength in both hands that occasionally wakes him up at night. He estimated that he has experienced a 20% improvement since the pair of surgeries by Dr. Verdine. At the time of the hearing, the claimant was not on any regular medications, but he occasionally took Aleve. He had not recently taken any Aleve, though, because he had a light load at work.

The claimant never told Dr. Verdine about his hunting, his clay shooting, or his hobby of riding ATVs. The claimant testified that Dr. Verdine told him that riding dirt bikes could be contributing to his right and left hand/wrist/elbow symptoms. The claimant continued to ride dirt bikes after the surgeries in 2010. From April 1, 2009 to June 11, 2010, the claimant never received a light duty workload restriction.

The claimant's paychecks did not have the name "Doll Services and Engineering" anywhere on them. His paychecks contained the name "R.W. Andersohn." His W-2 also stated "R.W. Andersohn," though it arrived in an envelope with the name Doll Services and Engineering. The claimant's uniforms said Doll Services and Engineering, as well as his work truck, the invoices given to clients, and his email address. The claimant testified he did not know if the trucks were titled under R.W. Andersohn.

Brian Hackett

Brian Hackett, the employer's general manager for twenty years and the claimant's supervisor, testified that he learned about the claimant's injury in March 2010 from another employee and terminated the claimant's employment on June 11, 2010, alleging falsifying time sheets and complaints from customers about his attitude and work product. The termination sheet reflecting the employee's termination had the name of Doll Services and Engineering on it. The name Doll is also on correspondence, time sheets, invoices, and the phone is answered as "Doll Services and Engineering." In conversation, depending on with whom he is speaking, he will say that he works for either Doll or R.W. Andersohn. Mr. Hackett testified that his paychecks and W-2s all refer to R.W. Andersohn.

Mr. Hackett also testified that he performed an analysis to determine how many screws were being used each year and calculated that an installer used 12,400 screws per year, divided by 49 work weeks left 243 screws per week used by each technician. He concluded that an installer uses approximately 6.3 screws per hour or 51 per day for each technician. The analysis for seven installers yielded a count of 36 screws per day, or 4.5 screws per hour for each technician. He estimated that 5% of screws are dropped, so the figures calculated represent the high end of the range of screws used per day by technician. On March 14, 2010, Mr. Hackett sent Dr. Koo an email estimating that the claimant had spent 71% of his time in the field over the previous 11 months.

Mr. Hackett testified that he assigned the claimant to 100% office work while he recovered from a knee injury from September through December 2008, to help the claimant earn a paycheck which he was recovering from surgery. He testified that from January to May 2009,

the claimant spent about 80% of his time in the office doing office work making notes, using a tape measure, limited use of hand tools, and mostly talking with employees and clients. During the 20% of the time that the claimant was in the field between January and May 2009, he did the same type of work that he did at the office.

John Cole

John Cole, a senior Workers' Compensation specialist for Cincinnati Insurance Company for 13 years testified that the last medical payment made by Cincinnati Insurance on behalf of R.W. Andersohn Enterprises, Inc. for the claimant was to ProRehab on April 16, 2010. The check was paid and cleared a few days later, on April 19, 2010. The company name on the invoice was R.W. Andersohn Enterprises, Inc.

Michael Hemphill

Mike Hemphill, the president of American Boiler and Mechanical, testified that the claimant began working for his firm on October 26, 2010, and worked 29.5 hours of overtime in 2010, 91.5 hours of overtime in 2011, 114 hours of overtime in 2012, and 13 hours of overtime in 2013. He testified that the claimant injured one of his wrists between October 3 and October 7, 2011, and was off work because of that injury.

Deborah Saunders

Deborah Saunders, the office manager for SLUCare-Washington since 1988, testified about the claimant's medical records from her facility. Record number 43 showed a motorcycle accident from June 7, 1993, with a severe displaced fracture of the hand that required surgery. Fifteen different sets of x-ray films involving the hands, wrists, elbows, and arms are as follows:

- a. June 25, 2002 – right thumb
- b. May 9, 2002 – left third digit
- c. April 13, 1998 – right hand and wrist
- d. December 4, 1997 – third digit of left hand, right hand, and left hand
- e. October 8, 1997 – right and left wrist
- f. January 24, 1996 – right hand
- g. December 8, 1994 – left thumb and hand
- h. October 16, 1989 – left lower arm
- i. June 4, 1992 – right hand and thumb
- j. June 12, 1992 – right hand and thumb
- k. November 21, 1991 – right index finger
- l. July 2 and 14, 1992 – right thumb and hand
- m. April 1, 1993 – right and left hand
- n. June 7, 1993 – left hand
- o. February 28, 2012 – right hand
- p. September 4, 2009 – both hands
- q. August 23, 1997 – right hand and wrist.

Susan Straatmann

Susan Straatmann, the employer's controller is responsible for handling Workers' Compensation claims and prepared a First Report of Injury on December 24, 2009, regarding the claimant's condition as a result of a conversation with the claimant on December 23, 2009, in which the claimant reported that he had seen his personal physician and that he had been experiencing numbness in his hands for approximately eight to nine months. He reported that his mother encouraged him to call this employer. She listed "R.W. Andersohn Enterprises" as the employer on the First Report of Injury. She filled in the claimant's date of hire as November 15, 2001, and the date of alleged injury beginning on April 1, 2009.

The annual registration report for the State of Missouri for 2008 and 2009 lists R.W. Andersohn Enterprises, Inc., and a registration of fictitious name for "Doll Services and Engineering, Incorporated" filed on 9/17/08 owned by R.W. Andersohn Enterprises, Inc. The claimant's 2008 and 2009 W-2s listed R.W. Andersohn Enterprises, Inc. as his employer. The service vans are titled in R.W. Andersohn Enterprises Inc.'s name but bear the name of Doll on the side. The receptionist answers the phone by stating "Doll Services." There is a large sign by the front door that says Doll. R.W. Andersohn had Workers' Compensation insurance through Cincinnati Insurance Company covering July 1, 2008, through July 1, 2009. The primary insured was R.W. Andersohn Enterprises, Inc., located at 1860 Larkin Williams Road, Fenton, Missouri. The policy covering April 1, 2009, also listed "R.W. Andersohn Enterprises, Inc. at 115 West Flier Street, Pacific, MO 63069" as an additional insured. The same was the case with the insurance policy covering July 1, 2009 through July 1, 2010.

Dwight Woiteshek, M.D.

Dr. Woiteshek, an orthopedic surgeon, examined the claimant on May 22, 2010, and took a verbal history that the claimant was employed by the employer as a pipefitter laying ductwork and working on heating and cooling systems. He reported doing repetitious gripping and handling with both wrists and hands for the last ten years. On about April 1, 2009, the claimant started experiencing an "achy" type of pain in both hands with pins and needles radiating to the finger. He also started developing pain in the forearms radiating up his arms from the hands. The claimant denied any problems with his elbows, arms and wrists prior to this, though he noted that he had surgery on his left thumb growth plate in the past. The claimant reported his hobbies of riding a dirt bike and bowling.

On physical examination, the claimant was 6'1" and weighed 250 pounds. There was a positive Tinel's over the medial aspect of the right elbow and decreased range of motion. Similarly, there was a positive Tinel's over the medial aspect of the left elbow and decreased range of motion. In addition, tennis elbow test was positive. The claimant had pain and tenderness in the right hand and forearm. Phalen's, reverse Phalen's and Tinel's were positive. Range of motion of the right wrist was decreased. Phalen's, reverse Phalen's and Tinel's were positive at the left wrist. Range of motion of the left wrist was decreased. Dr. Woiteshek reviewed x-rays of the hands taken on September 4, 2009 and EMG/ nerve conduction studies performed on February 17, 2010.

Dr. Woiteshek reexamined the claimant on March 12, 2011. On physical examination, the claimant was 270 pounds. There was a positive Tinel's over the medial aspect of the right

elbow. Range of motion of the right elbow was somewhat restricted. The claimant had slight pain and tenderness in the right hand. Phalen's and reverse Phalen's were slightly positive. Tinel's was positive. Range of motion of the right wrist was restricted. There was mild tenderness to deep palpation over the left elbow. There was a positive Tinel's over the medial aspect of the left elbow. Range of motion of the left elbow was restricted, but improved over the prior examination. The claimant had slight pain and tenderness in the left hand. Phalen's and reverse Phalen's were slightly positive. Tinel's was positive. Range of motion of the left wrist was restricted. Grip and pinch strength were improved bilaterally from the prior examination.

Based on his evaluation, Dr. Woiteshek diagnosed overuse syndrome of the right upper extremity with subsequent carpal tunnel syndrome of the right wrist status post surgery, subsequent radial tunnel syndrome and medial epicondylitis of the right elbow status post surgery, and overuse syndrome of the left upper extremity with subsequent carpal tunnel syndrome of the left wrist status post surgery and subsequent radial tunnel syndrome of the left elbow status post surgery. Dr. Woiteshek opined that the claimant's job duties for this employer were the prevailing factor causing the diagnoses and the need for treatment, as well as permanent disability to the affected body parts. Dr. Woiteshek opined that the claimant sustained a 35% permanent partial disability of the right wrist, a 35% PPD of the right elbow, a 30% permanent partial disability of the left wrist, and a 35% permanent partial disability of the left elbow, with multiplicity.

Dr. Woiteshek testified that he did not have details regarding the claimant's hobbies of bowling and dirt bike riding, though Dr. Woiteshek opined that the amount of time spent with these activities probably would not have any significance. Further, if bowling had been the cause of the claimant's complaints, Dr. Woiteshek opined that he would expect the claimant to only have complaints in his right arm. Similarly, the details of the claimant's alcohol consumption would not have any significance to Dr. Woiteshek. Dr. Woiteshek testified that he did not agree that obesity, high body mass index, smoking, alcohol consumption, and genetics were risk factors for overuse syndrome of the upper extremities, regardless of journal articles stating this. He based this on his 30 years of practice as an orthopedic surgeon. Dr. Woiteshek testified he did not think the claimant's dirt bike riding had much of an impact as a risk factor for the overuse syndrome in the upper extremities. Dr. Woiteshek admitted that his reports did not contain a detailed description of the claimant's job duties or the amount of time spent working in the field as opposed to in the office, though he indicated he discussed these details with the claimant at the time of the evaluations. Dr. Woiteshek testified that the claimant's tolerance for lifting, carrying, reaching, pushing, pulling, climbing, and kneeling could also be affected by his prior low back and left knee injuries, as well as his prior hernia.

Dr. Woiteshek testified that, at the time of his initial evaluation, the claimant was 6'1" and weighed 250 pounds. Based on this, Dr. Woiteshek was of the opinion that the grip strength findings were in the low range of what would be expected for someone his size. Dr. Woiteshek denied that excessive daily alcohol consumption would cause swelling, clumsiness, or numbness in the hands, writing problems or loss of grip strength. Dr. Woiteshek testified that the claimant's condition improved as a result of Dr. Verdine's treatment. Dr. Woiteshek denied that the claimant's continuing complaints during the second evaluation in wrists and elbows were related to alcoholic peripheral neuropathy. Dr. Woiteshek opined that the EMG performed by Dr. Wayne did not show any evidence of peripheral neuropathy. Based on his review of Dr.

Wayne's report, he did not see any evidence of alcoholic neuropathy. Attached to the deposition were the two intake forms that the claimant completed stating that he consumed 8-10 alcoholic drinks per night and denied smoking.

Michele Koo, M.D.

Dr. Koo, a plastic surgeon, first evaluated the claimant after reviewing the claimant's completed medical questionnaire and taking a verbal medical history on February 3, 2010. The claimant reported that he quit smoking five years before the evaluation and that he had previously smoked one pack per day for 6-7 years. In the written intake form, the claimant reported that he drank 6 beers a day, though Dr. Koo noted no drinking on her examination form. The claimant reported that he rode a 250 cc motorcycle five times a year. At the time of the initial evaluation, the claimant reported that he started having aching in his hands and pins and needles in all the fingers of both hands starting in April 2009. Dr. Koo went over the claimant's job duties with him. The claimant reported he was 6'1" and weighed 250 pounds.

Based on her initial evaluation, Dr. Koo opined that the claimant had a probable bilateral carpal tunnel syndrome and bilateral lateral epicondylitis. Dr. Koo recommended electrodiagnostic studies and physical therapy. Dr. Koo opined that the claimant could work full duty without restrictions. At that time, Dr. Koo opined that the claimant's bilateral carpal tunnel syndrome and lateral epicondylitis were related to his work for this employer. On February 17, 2010, the claimant underwent electrodiagnostic studies, which showed mild right carpal tunnel syndrome and mild to moderate left carpal tunnel syndrome, without any evidence of peripheral neuropathy. The claimant stated he felt his elbows were feeling a little bit better. He also advised Dr. Koo that the numbness and the grip were still symptomatic. The claimant also reported significant pain in his elbows and dorsal forearms. Based on her evaluation that day, Dr. Koo opined that the claimant still had some bilateral lateral epicondylitis, mild bilateral carpal tunnel syndrome, and some radial nerve entrapment. Dr. Koo provided injections into both wrists and elbows. Dr. Koo recommended that the claimant continue his physical therapy and could continue to work full duty.

On March 8, 2010, Dr. Koo laid out treatment options including continued physical therapy, injecting both elbows or going forth with surgery, which would involve a right endoscopic carpal tunnel release, a right posterior interosseous nerve release, and a right lateral epicondyle release and debridement, followed later by the same procedures on the left. On that date, Dr. Koo testified she was provided additional information from the nurse case manager, Julie Livingston. This information included that the claimant was not working full time as a pipefitter, that the claimant had spent some time working in the office, that the claimant had been performing construction at his home, and that he rode his dirt bike more than 5 times a year. At that point, Dr. Koo changed her opinion that the diagnoses were related to the claimant's job duties and recommended he pursue treatment under his private insurance. Dr. Koo noted that the claimant would be termed obese based on his height and weight. The claimant did not report he was smoking. He did not report drinking on average 12 beers per day. According to Dr. Koo, the claimant did not report the time he spent working in the office versus the time he worked in the field. The claimant did advise Dr. Koo of his prior surgeries, including back surgery, knee surgery and hernia surgery. The claimant also advised Dr. Koo that he fell off a roof, which she

determined occurred when he was rehabbing a house or helping a friend, though Dr. Koo could not recall the timeframe.

On June 30, 2010, Dr. Koo reviewed an article entitled "Tobacco, Caffeine, Alcohol and Carpal Tunnel Syndrome in American Industry, a Cross-section Study of 1,464 Workers," found in the Journal of Occupational Environmental Medicine. Based on the information she had, Dr. Koo opined that significant alcohol use could definitely contribute to peripheral neuropathies. In discussing the alcohol use, Dr. Koo described it as a systemic problem, like thyroid or diabetes. On July 30, 2010, Dr. Koo opined that she could not relate the claimant's diagnoses to his work duties. She opined that the claimant's alcohol consumption and smoking were factors for current pathologies. Dr. Koo prepared another supplemental report on April 29, 2011, after reviewing additional medical records. Dr. Koo noted from reviewing Dr. Verdine's operative reports that there was no note of visual compression or flattening of the median nerve. Dr. Koo issued a final supplemental report on April 23, 2012. At that time, Dr. Koo opined that individuals suffering from peripheral neuropathy as a result of chronic alcohol consumption would experience symptoms including numbness in the arms, abnormal sensations, and pain in the arm. Upon reviewing an article, "Alcohol Ethanol Related Neuropathy," Dr. Koo noted that, in addition to peripheral nerve disease, the lifestyle of someone engaged in chronic alcohol use further affects diet and can cause vitamin deficiency. From another article, Dr. Koo testified that the most consistent risk factors with regard to nerve compression pathologies were female gender, high body mass index, age over 30 years and systemic diseases. In another article, "Predictors of Carpal Tunnel Syndrome: An Eleven Year Study of Industrial Workers," the factors listed are greater age, female gender, relative overweight, cigarette smoking and vibrations associated with job tasks. Dr. Koo opined that the claimant's chronic heavy alcohol use was a risk factor for his peripheral neuropathies. Although she is not a neurologist, Dr. Koo testified that, with multiple nerves being involved, a neurologist would assume this to be an alcoholic neuropathy. She testified that if she had all the additional information provided to her at the time of her initial evaluation, she probably would not have rendered this to be a work-related issue. Dr. Koo testified she would expect improvement in the claimant's symptoms if he was not performing the work in the field. Further, if claimant's work was the cause, she would expect improvement after surgery. Dr. Koo opined that the claimant's smoking, his obesity, his chronic alcohol consumption, his own activities, all would be enough to cause or aggravate, be the contributing factor or the cause of his pathologies. She opined that the job duties involving office work would not cause the pathologies. Dr. Koo testified that she gave the claimant the benefit of the doubt.

Dr. Koo testified she was familiar with some of the above articles but did not review the claimant's deposition. From review of the medical records, the claimant's first mention of his complaints was to Dr. Baker on September 4, 2009. Dr. Koo initially opined that the claimant's complaints were work-related. Dr. Koo offered surgery as an option for treatment on March 8, 2010. Dr. Koo testified she changed her opinions on causation after reviewing additional information from Brian Hackett and Julie Livingston. Given the time off from working in the field, Dr. Koo opined that the presentation of symptoms was not consistent with a work-related cause, noting that the claimant alleged his symptoms started in April, even though he did not first go to a doctor with these complaints until September, or three to four months after returning to the field full time. Dr. Koo opined that alcohol use did not have any type of effect on the development of lateral epicondylitis.

Dr. Koo testified that the job duties as described by the claimant at the first evaluation were the type of activities that could cause carpal tunnel syndrome. The claimant reported to Dr. Koo that he consumed 6 beers per day. In reviewing one of the articles, Dr. Koo further testified that the article stated individuals that have as few as 15 alcoholic drinks per week were at increased risk for alcoholic neuropathy. Dr. Koo was aware that the claimant was obese at the time of the initial evaluation. Dr. Koo stated that the claimant's apparent smoking would be a big factor, probably the biggest factor as compared to obesity and alcohol consumption. Dr. Koo testified that bilateral carpal tunnel releases would be reasonable and necessary.

COMPENSABILITY

A claim for compensation due to an injury due to repetitive motion is recognized as an occupational disease and is to be determined under Section 287.067, RSMo Supp. (2005), defining 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.

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 is not compensable. Section 287.067.3, RSMo Supp. (2005).

An informative legal analysis of occupational diseases pursuant to Missouri law is found in Kelley v. Banta and Stude Const. Co., Inc., 1 S.W.3d 43 (Mo. App. E.D. 1999), from which the following legal principles are cited:

In order to support a finding of occupational disease, employee must provide substantial and competent evidence that he/she has contracted an occupationally induced disease rather than an ordinary disease of life. The inquiry involves two considerations: (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort.

Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. Claimant must prove "a direct causal connection between the conditions under which the work is performed and the occupational disease." However, such

conditions need not be the sole cause of the occupational disease, so long as they are [the prevailing] factor to the disease. A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. The opinion may be based on a doctor's written report alone. Where the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is the most credible. 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.

The claimant in this case alleges that his work activities as an installer and technician of heating and cooling units, over time, caused him pain, numbness, and weakness in his hands, wrists, elbows, shoulders and arms and specifically focused on the vibratory nature of his job activities, as well as the grip and flexion required by the use of tools in his job. He testified that using a screw gun was a high percentage of his job activities. The claimant testified about the specific duties required by his job. They included installation, fabrication, layout, design, bending, folding, cutting, hanging, hammering, and duct work. His job involved the use of power drills, power saws, band welder, pipe wrenches, hammer, screwdrivers, and impact gun.

This employer hired the claimant on November 15, 2001, as an installer for heating and cooling units. In about 2008, the employer promoted him to be a lead technician which required more administrative and supervisory duties and reduced the extent of manual labor required. He testified that he began to notice discomfort, pain, and weakness in April 2009.

Dr. Woiteshek took a medical history, examined the claimant, and concluded that the claimant's injuries were the result of his occupation and repetitive movement of his job. Dr. Koo also took a medical history and examined the claimant. She initially opined that the claimant's conditions were related to his work activities; however, her medical causation opinion changed once she received different information regarding the claimant's activities both at work and outside of work. Based on a conglomeration of factors, she concluded that the claimant's pathologies were due to a systematic problem. She testified that if the claimant had only one peripheral nerve involved, that would speak more to an anatomic entrapment but since he has multiple nerves involved speaks more of a systemic peripheral neuropathy that could definitely be caused by alcoholism, tobacco consumption, and obesity.

The evidentiary facts established at the hearing undercut the claimant's contention that his condition is work related. For instance, the claimant's symptoms began during a period when he was performing office work rather than intensive installation work in the field. In addition, Dr. Koo's understanding of the claimant's body mass index, heavy alcohol consumption, and person hobbies, such as bowling, and ATV and dirt bike riding strongly suggest other credible contributors to his condition. Overall, Dr. Woiteshek's conclusion that the claimant's work activities were the prevailing factor or primary factor causing the claimant's upper extremity conditions does not consider all of these other factors as well as the claimant's absence from the work conditions for several months immediately before the onset of the condition all of which reduces the probative value of Dr. Woiteshek's forensic conclusions. Based on the weight of the credible evidence in the record, the claimant's work as an installer was not the prevailing factor

causing his bilateral upper extremity conditions, although it may have been a contributing factor with many others. Based on this finding, the claim for compensation is denied.

EMPLOYER- EMPLOYEE RELATIONSHIP AND STATUTE OF LIMITATIONS

At the hearing, the defense alleged that the claimant's employer had not been named in the Claim for Compensation. The issue is whether the Claim for Compensation filed against Doll on April 5, 2010 was proper and sufficient to put employer/ insurer on notice. The Division of Workers' Compensation acknowledged the Claim for Compensation on April 8, 2010, and sent the acknowledgement to Doll, R.W. Andersohn Enterprises Inc., and Cincinnati Insurance Company. On April 12, 2010, the defense filed an Answer on behalf of Doll and Cincinnati Insurance Company denying the claim on the basis of insufficient knowledge. On April 13, 2010, the defense filed an amended answer on behalf of the alleged employer Doll Services & Engineering, Inc. and Cincinnati Insurance Company alleging that no employer/employee relationship existed.

The claimant testified that his employer was Doll Services and that R.W. Andersohn Enterprises, Inc. was the "father company." He acknowledged that his paychecks and W-2's had R.W. Andersohn Enterprises printed on them, but the envelopes in which they came had Doll printed on them. The claimant wore work shirts and jackets that had Doll on them and drove a service van that also had Doll on the side. Brian Hackett testified that he was employed by R.W. Andersohn Enterprises, but his e-mail address incorporates Doll Mechanical, not R.W. Andersohn. To customers, Mr. Hackett represents he is employed by Doll Services. Invoices and other correspondence also identify the company as Doll. Mr. Hackett did not testify to any prejudice experienced in defending this claim because R.W. Andersohn Enterprises, Inc. was not originally listed as a party. Susan Straatmann testified that she was employed by R.W. Andersohn Enterprises, Inc. She further testified regarding the filing of a fictitious name of Doll Services & Engineering on behalf of R.W. Andersohn Enterprises, Inc. Ms. Straatmann acknowledged that in the building she works there is a sign or lettering stating Doll. Further, the receptionist at her office answers the phone "Doll Services." Ms. Straatmann also provided workers' compensation insurance policies from Cincinnati Insurance Company, which had listed as a covered entity Doll Services & Engineering.

It is clear from the record that R.W. Andersohn Enterprises, Inc. and Doll Services & Engineering, Inc. are not separate entities. Mr. Hackett uses the names interchangeably, depending upon to whom he is speaking. "Both" entities are covered by the same insurance policy for workers compensation. Notice of the initial claim was sent to R.W. Andersohn Enterprises, Inc. and Doll Services & Engineering, Inc. as well as Cincinnati Insurance Company. A defense for almost three years was tendered on their behalf. Defense counsel advised he did not need a continuance of the hearing when R.W. Andersohn Enterprises, Inc. was added as a party at the day of the hearing nor did he indicate a need to clear any potential conflicts of interest in representing two separate clients. Thus, the claim filed was sufficient pleading to provide adequate notice of the claim for compensation to the employer in this case.

When the claim for compensation was amended on the day of the hearing prior to presentation of evidence, counsel for employer/ insurer asserted a statute of limitations defense. Counsel may amend a claim at any time with or without leave of the court. The issue then is

whether the amendments add new parts of the body or raise other new theories leading to the possibility that the statute of limitations has run. An amendment to the claim that merely elaborates on the original injury does not constitute a new claim against which the statute of limitations will have run. Ford v. Am. Brake Shoe Co., 252 S.W.2d 649 (Mo. App. E.D. 1952).

In this case, no new parts of the body or theories were added. The claims were amended to reflect the allegations that the proper entity was not named in the original claim. As stated above, R.W. Andersohn Enterprises, Inc. was sent a copy of the original claim for compensation, as reflected in the Division's acknowledgment. Thus, R.W. Andersohn Enterprises, Inc. had actual notice of this claim since that date and was not prejudiced. Counsel for R.W. Andersohn Enterprises and Cincinnati Insurance Co. was offered a continuance of the hearing to defend this claim, but declined. In addition, Brian Hackett testified that he was employed by R.W. Andersohn Enterprises, Inc. and was present at the proceedings as a corporate representative of the employer. As the amended claim filed on February 14, 2013, was not a new claim, but merely an elaboration of the original claim and relates back to the original claim. Therefore, the statute of limitations defense is denied.

NOTICE

Employer/ insurer allege that they did not receive proper notice of employee's occupational disease. Under Section 287.420 of the Missouri Workers' Compensation Act (2005):

“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 employer was not prejudiced by failure to receive the notice.”

The claimant first noticed complaints in his upper extremities in April 2009, but did not seek evaluation of these complaints until he consulted Dr. Baker on September 4, 2009. After initial x-rays and treatment, on December 16, 2009, Dr. Baker referred the claimant to a neurologist for nerve conduction studies and to Dr. Verdine for treatment of bilateral hand and arm pain. On December 23, 2009, the claimant reported his complaints to Sue Straatmann, who subsequently completed and filed the report of injury on December 24, 2009. When reporting his complaints, the claimant provided the date he first noticed the complaints, April 2009. Based on this report, the insurer scheduled an evaluation with Dr. Koo on February 3, 2010. Dr. Koo referred the claimant to Dr. Wayne, who performed the nerve conduction studies and confirmed the “diagnosis” of bilateral carpal tunnel syndrome on February 17, 2010. This appears to be the first “diagnosis” as opposed to a listing of symptoms and suspicions of “overuse”. Thus, the defense had actual notice of the injury 56 days before the diagnosis. The diagnoses and opinions regarding work-relatedness were a product of the well qualified physicians selected by the defense.

Based on a strict construction of the statute and facts of this case, the defense received proper notice of employee's occupational disease as required by law.

PAST MEDICAL EXPENSES

The statutory duty for the employer is to provide such medical, surgical, chiropractic, and hospital treatment ... as may be reasonably required after the injury. Section 287.140.1, RSMo 1994.

The intent of the statute is obvious. An employer is charged with the duty of providing the injured employee with medical care, but the employer is given control over the selection of a medical provider. It is only when the employer fails to do so that the employee is free to pick his own provider and assess those against his employer. However, the employer is held liable for medical treatment procured by the employee only when the employer has notice that the employee needs treatment, or a demand is made on the employer to furnish medical treatment, and the employer refuses or fails to provide the needed treatment. Blackwell v. Puritan-Bennett Corp., 901 S.W.2d 81, 85 (Mo.App. E.D. 1995).

The method of proving medical bills was set forth in Martin v. Mid-America Farmland, Inc., 769 S.W.2d 105 (Mo. banc 1989). In that case, the Missouri Supreme Court ordered that unpaid medical bills incurred by the claimant be paid by the employer where the claimant testified that her visits to the hospital and various doctors were the product of her fall and that the bills she received were the result of those visits.

We believe that when such testimony accompanies the bills, which the employee identifies as being related to and are the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records and evidence, a sufficient, factual basis exists for the Commission to award compensation. The employer, may, of course, challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question. Id. at 111, 112.

The claimant in this case seeks recovery of \$1,955.65 in past medical expenses for medical treatment as a result of his injuries. The claimant testified regarding the treatment he received as a result of his upper extremity complaints. Dr. Koo initially opined that the claimant's upper extremity conditions were medically causally related to the claimant's employment and recommended surgery. When Dr. Koo subsequently changed her opinions based on additional information, the defense denied surgery. The claimant submitted his medical bills to his wife's group health insurer. At the hearing, the claimant submitted the outstanding balances and amounts he paid from Dr. Verdine (\$467.90), Patients First Surgery (\$1,001.50), Physician Anesthesia (\$137.28), Pro Rehab (\$251.03), and Heartland Discount Pharmacy (\$98.54). Based on the claimant's testimony and the medical records, these bills relate to treatment reasonable and necessary to cure and relieve from the effects of the injury. However, no benefits are awarded, because the injury is not compensable.

TEMPORARY DISABILITY

When an employee is injured in an accident arising out of and in the course of his employment and is unable to work as a result of his or her injury, Section 287.170, RSMo 2000,

sets forth the TTD benefits an employer must provide to the injured employee. Section 287.020.7, RSMo 2000, defines the term "total disability" as used in workers' compensation matters as meaning the "inability to return to any employment and not merely mean[ing the] inability to return to the employment in which the employee was engaged at the time of the accident." The test for entitlement to TTD "is not whether an employee is able to do some work, but whether the employee is able to compete in the open labor market under his physical condition." Thorsen v. Sachs Electric Co., 52 S.W.3d 611, 621 (Mo.App. W.D. 2001). Thus, TTD benefits are intended to cover the employee's healing period from a work-related accident until he or she can find employment or his condition has reached a level of maximum medical improvement. Id. Once further medical progress is no longer expected, a temporary award is no longer warranted. Id. The claimant bears the burden of proving his entitlement to TTD benefits by a reasonable probability. Id.

Had the claimant been working at the time he had his surgeries, he would have been off work for 8 3/7 weeks. After he was terminated by Doll Services & Engineering, the claimant filed for unemployment benefits. After he began working for American Boiler, the claimant retroactively received unemployment benefits for 18 of the 19 weeks he wasn't working. However, an employee cannot receive temporary total disability benefits for a period of time when he was receiving unemployment benefits and since he had to represent that he was able to work, available for work, and seeking work during that time, no temporary total disability benefits can be awarded.

PERMANENT DISABILITY AND DISFIGUREMENT

Workers' compensation awards for permanent partial disability are authorized pursuant to section 287.190. "The reason for [an] award of permanent partial disability benefits is to compensate an injured party for lost earnings." Rana v. Landstar TLC, 46 S.W.3d 614, 626 (Mo. App. W.D. 2001). The amount of compensation to be awarded for a PPD is determined pursuant to the "SCHEDULE OF LOSSES" found in section 287.190.1. "Permanent partial disability" is defined in section 287.190.6 as being permanent in nature and partial in degree. Further, "[a]n actual loss of earnings is not an essential element of a claim for permanent partial disability." Id. A permanent partial disability can be awarded notwithstanding the fact the claimant returns to work, if the claimant's injury impairs his efficiency in the ordinary pursuits of life. Id. "[T]he Labor and Industrial Relations Commission has discretion as to the amount of the award and how it is to be calculated." Id. "It is the duty of the Commission to weigh that evidence as well as all the other testimony and reach its own conclusion as to the percentage of the disability suffered." Id. In a workers' compensation case in which an employee is seeking benefits for PPD, the employee has the burden of not only proving a work-related injury, but that the injury resulted in the disability claimed. Id.

The claimant has been diagnosed with bilateral carpal tunnel syndrome, bilateral radial tunnel syndrome, and right medial epicondylitis, with bilateral carpal and radial tunnel releases being performed. He still has residual complaints of stiffness, soreness, weakness, and tingling his bilateral wrists and elbows. These complaints are improved from before the surgeries, but are still present. Dr. Woiteshek provided the only opinions regarding the claimant's permanent disability, stating that employee sustained 35% permanent disability to the right elbow, 35%

permanent disability to the right wrist, 35% disability to the left elbow, and 30% permanent disability to the left wrist, with an appropriate loading factor to be added.

Based on the evidence, the claimant suffered a 15% permanent partial disability to both wrists and elbows and his overall disability exceeds the simple sum of his individual disabilities by 15%. The claimant now has scars on his hands and arms from the surgeries and displayed scars from the surgery measuring a total of 7 5/8 inches in length. However, no benefits are awarded, because the injury is not compensable.

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