

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

Injury No.: 03-053791

Employee: Juanita Massey

Employer: Curators of the University of Missouri

Insurer: Self-Insured through Corporate Claims Management 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 (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 10, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued April 10, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 23rd day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Juanita Massey Injury No.: 03-053791
Dependents: N/A
Employer: Curators of the University of Missouri
Additional Party: Second Injury Fund (Open)
Insurer: Self-insured through Corporate Claims Management Inc.
Hearing Date: January 14, 2009

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: SC

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? Yes
4. Date of accident or onset of occupational disease: May 21, 2003
5. State location where accident occurred or occupational disease contracted: St. Louis, County
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
11. Describe work employee was doing and how accident happened or occupational disease contracted:
Claimant injured her right forearm and low back when she slipped and fell on a wet floor.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Parts of body injured by accident or occupational disease: Right forearm and low back
14. Compensation paid to-date for temporary disability: \$924.84
15. Value necessary medical aid paid to date by employer/insurer? \$3,534.75
16. Value necessary medical aid not furnished by employer/insurer? N/A

- 17. Employee's average weekly wages: \$462.40
- 18. Weekly compensation rate: \$308.27/\$308.27
- 19. Method wages computation: Stipulated

COMPENSATION PAYABLE

20. Amount of compensation payable: None

21. Second Injury Fund: Open

TOTAL: NONE

Each of said payments to begin immediately and 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 compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Harry Nichols

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Juanita Massey	Injury No.: 03-053791
Dependents:	N/A	Before the
Employer:	Curators of the University of Missouri	Division of Workers'
Additional Party: Second Injury Fund (Open)		Compensation
Insurer:	Self-insured through Corporate Claims Management Inc.	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri

Checked by: SC

STATEMENT OF THE CASE

A hearing for a temporary award was held at the Missouri Division of Workers' Compensation ("DWC") St. Louis office at the request of Juanita Massey, ("Claimant"), on January 14, 2009, pursuant to Section 287.450 RSMo (2000). Attorney Harry Nichols represented Claimant. Attorney George Floros represented Curators of University of Missouri, ("Employer") self-insured through Corporate Claims Management Inc. ("Insurer")¹. The Second Injury Fund remained open during the proceeding. The record closed after presentation of evidence. Venue is correct and jurisdiction properly lies with DWC.

Claimant's Exhibits A-G and Employer's Exhibits 1-12 are admitted. Claimant's Exhibits H and I are retained but not admitted.² The Courts' Exhibit I and II are admitted. Any notations contained in the records were present when admitted.

Claimant submitted five separate claims for disposition; 03-053791, 03-145481, 04-070381, 04-131626, and 04-148505. Although separate awards are issued for each claim, the facts and issues raised in each claim are closely related.

STIPULATIONS

The parties stipulate that on or about May 21, 2003:

1. Claimant was employed by Employer and sustained an accident in St. Louis County;
2. The accident arose out of and in the course of employment;
3. Claimant and Employer operated under the Missouri Workers' Compensation Law;
4. Employer's liability was self insured ;
5. Employer had notice of the injury;
6. A Claim for Compensation was timely filed;
7. Claimant's average weekly wage was \$462.40, the TTD and PPD rate is \$308.27;

¹ References to the Employer also include references to the Insurer.

² Prior to start of the hearing, the parties agreed in writing to submit records available as of November 14, 2008. On January 14, 2009, Employer objected to the admission of Exhibit H, a report to be prepared by Dr. Woiteshek, and to be admitted after completion. The report was in conjunction with an examination of Claimant about January 9, 2009. Employer also objected to the admission of Exhibit I, based on hearsay and lack of foundation. Employer's objections were sustained. Claimant made an offer of proof on the record for Exhibits H and I.

8. Employer and Insurer paid Temporary Total Disability (“TTD”) totaling \$924.84, representing 3 weeks and
9. Employer paid \$3,534.75 in medical benefits.

ISSUES

The parties identified the following issues for disposition:

1. Is Claimant’s low back condition medically causally related to the May 21, 2003 work accident?
2. If so, what is the nature and extent of Claimant’s permanent partial disability (“PPD”), if any?
3. Is Employer liable for additional medical care related to the May 21, 2003 work injury?

SUMMARY OF DECISION

Claimant did not meet her burden to show the May 21, 2003 accident caused her low back condition, based on the entire record, including Claimant’s testimony, demeanor, medical reports, and the applicable law of the State of Missouri.

FINDINGS OF FACT

All evidence was reviewed, but only evidence supporting this award is considered to establish the following facts based upon competent and substantial evidence. Any objections not addressed in this award are overruled.

While working for Employer, Claimant stripped, refinished, and mopped floors, lifted buckets and filled them with water, and used a floor stripping machine and twenty-four ounce mop.

On May 21, 2003, Claimant injured her right forearm and low back when she slipped and fell on a wet floor. Claimant treated at Concentra for a right forearm contusion and low back pain. After her release, Claimant treated with Dr. Brig Vaid. Forearm symptoms have resolved.

Pre-Existing Low Back Condition

Claimant injured her low back in 1997 when she fell down the steps at work. Dr. Brig Vaid treated her back. On August 3, 2004, Claimant informed Dr. Cantrell she had low back pain for four or five years, and consistent pain for the past three years. She told Dr. Hannaway her back problems began in 1997. Complaints since 1997 include daily back pain with occasional pain to the buttocks and knee.

Claimant takes Tylenol or Motrin for pain. She takes medication for diabetes and high blood pressure, and uses a cane to get around.

Employer terminated Claimant on August 18, 2004.

Subsequent Low Back Condition

Claimant filed a claim for compensation alleging a low back injury on July 12, 2004. She has not received treatment since 2004, but would like additional medical treatment for her back. Claimant believes she is unable to work at this time.

Medical Facts

Claimant received conservative treatment at Concentra from June 18, 2003 to October 1, 2003 for contusions to the lumbar spine and forearm. Claimant was placed on restricted duty; no repetitive lifting over 20 pounds, no pushing or pulling over 40 pounds.

On June 18, 2003, Claimant began conservative treatment with Concentra. Examination revealed right low back and leg pain with flexion, positive straight leg raise bilaterally, and forearm tenderness.

Dr. Janan Lane diagnosed right forearm contusion, lumbar contusion and strain with right sciatica, and right knee strain, and prescribed physical therapy and medication.

A September 22, 2003 MRI showed bilateral facet joint bursitis at L3-4, and bilateral degenerative facet joint changes at L4-5 and L5-S1. On October 1, 2003, **Dr. Jamil Muhammad** opined the condition was caused by degenerative changes, not work, and released Claimant to follow up with her personal physician.

Dr. Joseph Hanaway examined Claimant on June 30, 2005. Claimant reported a history of low back pain since 1997 that occasionally radiated to the buttock and knees. Examination revealed low back tenderness and a positive straight leg raise.

Dr. Hanaway diagnosed chronic low back problems and found Claimant permanently and totally disabled due to chronic low back pain, bilateral shoulder joint impingement, knees, and bilateral carpal tunnel syndrome. Dr. Hanaway noted mild peripheral neuropathy, but did not have "an absolute definite diagnosis of what her problems are."

In 2006, Dr. Hanaway addressed chronic low back pain in a report. He noted Claimant had back complaints since 1997, and back injuries in August 2002, 2003 and 2004. He opined Claimant was unable to work and diagnosed discogenic low back problems. Dr. Hanaway did not review the 2003 MRI of the low back or review additional medical records.

ADDITIONAL FINDINGS of FACT and RULINGS OF LAW

Claimant asserts her back condition was caused by the May 2003 work accident. Employer contends Claimant's back condition is not caused by the accident. The parties were asked to submit proposed awards, however the Claimant did not.

After careful consideration of the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find Claimant did not meet her burden to establish her low back condition was caused by the May 21, 2003 accident for the reasons stated below.

The claimant in a workers' compensation case must prove all material elements of his claim. *Mielves v. Morris*, 422 S.W. 2d 335, 339 (Mo banc 1968). This includes the burden of establishing permanency to a reasonable degree of medical certainty. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697, 704 (Mo.App.1974). Claimant has the burden to establish she sustained an injury by accident arising out of and in the course of employment and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102, 105 (Mo.App. 1991). (*Overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo banc 2003)).³

Where two events, one compensable and one not compensable, contribute to alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job related injury. *Plaster v. Dayco*, 760 S.W.2d 911, 913 (Mo. App. 1988). Where the condition presented is a sophisticated injury that requires surgical intervention or highly scientific techniques for diagnosis, proof of causation is not within the realm of lay understanding, nor in the absence of proper expert opinion, is a finding of causation within the competence of the Commission. *Silman v. Wm. Montgomery & Associates*, 891 S.W.2d 173, 175 Mo.App. 1995).

I find Claimant failed to show she sustained PPD to the right forearm from the May 2003 accident. Claimant had no forearm complaints when released by Concentra. At the hearing, Claimant testified her forearm symptoms have resolved. Dr. Hannaway did not mention a right forearm injury or provide a rating in the 2005 and 2006 reports. Based on the medical records, reports, and Claimant's testimony, I find Claimant sustained no PPD to the right forearm.

I find Claimant failed to show her low back condition was caused by the May 2003 accident. MRI of the low back showed degenerative changes at three levels. Dr. Muhammad opined Claimant's low back condition was not work related. Claimant gave Dr. Hannaway a history of chronic back complaints since 1997, and a subsequent low back injury in 2004. The record contains no medical evidence that her low back condition increased because of the May 2003 accident. Dr. Hannaway did not provide a causation opinion, specific diagnosis other than discogenic back, or disability rating for the May 2003 back injury.

Claimant told Dr. Cantrell she had low back pain since 1997, continuous for at least three years before the May 2003 accident, and after she completed treatment, complaints returned to the level of pain she had prior to May 2003. Claimant testified she had regular, consistent back pain prior to May 2003 and she took medication to relieve symptoms.

Based on credible medical records, reports, and Claimant's testimony, I find Claimant failed to show her low back condition was caused by the May 2003 accident.

All other issues are moot.

³ Several cases herein were overruled by the *Hampton* case on unrelated grounds. No further reference will be made to *Hampton*

CONCLUSION

Claimant did not prove her low back condition was caused by the May 1, 2003 work accident. Employer is not liable for additional medical treatment or permanent partial disability. The Second Injury Fund claim remains open.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation

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

Injury No.: 03-145481

Employee: Juanita Massey

Employer: Curators of the University of Missouri

Insurer: Self-Insured through Corporate Claims Management 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 (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 10, 2009. The award and decision of Administrative Law Judge Suzette Carlisle, issued April 10, 2009, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 23rd day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Juanita Massey Injury No.: 03-145481
Dependents: N/A Before the
Employer: Curators of the University of Missouri **Division of Workers'**
Compensation
Additional Party: Second Injury Fund (Open) Department of Labor and Industrial
Relations of Missouri
Insurer: Self-insured through Corporate Claims Management Inc. Jefferson City, Missouri

Checked by: SC

Hearing date: January 14, 2009

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: November 24, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant injured her right middle finger when she hit her hand on an elevator door.
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: Right middle finger
14. Nature and extent of any permanent disability: 5% PPD at the 35 week level
15. Compensation paid to-date for temporary disability: \$1,411.14
16. Value necessary medical aid paid to date by employer/insurer? \$7,337.87

Employee: Juanita Massey

Injury No.:03-145481

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$510.90
- 19. Weekly compensation rate: \$340.60/\$340.60
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

1.75 weeks of permanent partial disability from Employer	\$596.05
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22. Second Injury Fund liability: Open

TOTAL:	\$596.05
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23. Future requirements awarded: None

Said payments to begin 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: Harry Nichols

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Juanita Massey	Injury No.:	03-145481
Dependents:	N/A		Before the
Employer:	University of Missouri		Division of Workers'
			Compensation
			Department of Labor and Industrial
Additional Party:	Second Injury Fund (Open)		Relations of Missouri
			Jefferson City, Missouri
Insurer:	Self-insured through Corporate Claims Management Inc.		Checked by: SC:

STATEMENT OF THE CASE

A hearing for a final award was held at the Missouri Division of Workers' Compensation ("DWC") St. Louis office at the request of Juanita Massey, ("Claimant"), on January 14, 2009, pursuant to Section 287.450 RSMo (2000). Attorney Harry Nichols represented Claimant. Attorney George Floros represented Curators of University of Missouri, ("Employer"), self-insured through Corporate Claims Management Inc. ("Insurer")¹. The Second Injury Fund did not participate in the proceeding and remained open. The record closed after presentation of evidence. Venue is correct and jurisdiction properly lies with DWC.

Claimant's Exhibits A-G and Employer's Exhibits 1-12 are admitted. Claimant's Exhibits H and I are not admitted, but are retained.² The Courts' Exhibit I and II are admitted. Any notations contained in the records were present when admitted.

Claimant submitted five separate claims for disposition; 03-053791, 03-145481, 04-070381, 04-131626, and 04-148505. Although separate awards are issued for each claim, the facts and issues raised in each claim are closely related.

STIPULATIONS

The parties stipulate that on or about November 24, 2003:

1. Claimant was employed by Employer and sustained an accident in St. Louis County;
2. The accident arose out of and in the course of employment;
3. Claimant and Employer operated under the Missouri Workers' Compensation Law;
4. Employer's liability was fully self insured;
5. Employer had notice of the injury;

¹ References to the Employer also include references to the Insurer.

² On November 14, 2008, the parties agreed in writing to submit records at the hearing that were available on that date. On January 14, 2009, Employer objected to the admission of Exhibit H, a report to be prepared by Dr. Woiteshek, and to be admitted after completion. The report would be written in conjunction with Claimant's examination on January 9, 2009. Employer objected to the admission of Exhibit I, based on hearsay and lack of foundation. Employer's objections were sustained. Claimant made an offer of proof for Exhibits H and I.

6. A Claim for Compensation was timely filed;
7. Claimant's average weekly wage was \$510.90, resulting in a rate of \$340.60 for Temporary Total Disability ("TTD") and Permanent Partial Disability ("PPD");
8. Employer paid TTD totaling \$1,411.14 for 4 1/7 weeks; and
9. Employer paid \$7,337.87 in medical benefits.³

The sole issue to be decided is the nature and extent of PPD.

FINDINGS OF FACT

All evidence was reviewed but only evidence supporting this award is considered to establish the following facts based on competent and substantial evidence. Any objections not addressed in this award are overruled.

When Claimant worked for Employer, she stripped, refinished, and mopped floors, lifted buckets filled with water, and used a floor stripping machine and a twenty-four ounce mop.

On November 24, 2003, Claimant injured her right long finger when she hit her hand on an elevator door. She requested treatment several months later.

Dr. Rotman performed a trigger finger release. The right long finger continues to ache and "stick," if she holds it in one position too long. It is difficult to twist tops. Claimant takes Motrin for pain.

Employer terminated Claimant on August 18, 2004.

Medical Facts

Concentra treated Claimant's finger from June 3, 2004 until June 10, 2004 when she was released to work light duty, with no repetitive lifting, pushing or pulling over 30 pounds, and no reaching above the shoulders. She was referred to a physiatrist when she failed to significantly improve.

Claimant initially saw Dr. Rotman on June 22, 2004, with a history of pain and popping to the right middle finger. Dr. Rotman found "obvious trigger finger," injected it, and prescribed physical therapy.

After conservative treatment failed, Dr. Rotman performed a right middle finger trigger release on October 6, 2004. Following surgery, Dr. Rotman noted triggering had resolved but the finger was swollen. He restricted lifting to ten pounds, and limited pushing, pulling, and grasping and prescribed therapy. However, Claimant was discharged from physical therapy on December 3, 2004 for non-compliance.

Medical Opinions

³ Employer noted there may be an overlap of medical payments made on injury numbers 03-145481 and 04-131626.

On December 30, 2004, Dr. Rotman rated 5% PPD of the right middle finger and discharged Claimant after she missed three appointments.

On June 30, 2005, Dr. Hannaway noted the trigger finger release “worked and the patient has no complaints now.” Dr. Hannaway did not provide a rating and no findings were made during examination.

On October 30, 2006, Dr. Rotman found her digits had full range of motion and no atrophy. The trigger finger scar was not visible. Dr. Rotman did not recommend additional medical treatment.

ADDITIONAL FINDINGS OF FACTS AND RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find Employer is liable for 5% PPD of the right middle finger at the 35 week level for the reasons stated below.

Burden of Proof: Claimant has the burden to establish that she sustained an injury by accident arising out of and in the course of employment, and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809 S. W. 2d 102, 105 (Mo. App. 1991).

Claimant asserts she sustained PPD from the November 2003 injury. Employer contends Claimant sustained no PPD based on Dr. Hanaway’s report that surgery “worked and the patient has no complaints now.”

A permanent partial award is intended to cover claimant’s permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991).

The determination of the specific amount or percentage of disability is a finding of fact within the special province of the [fact finder]. When the [fact finder] makes the determination of disability, it is not strictly limited to the percentages of disability testified to by the medical experts. The Commission is free to deviate from the exact disability percentages that medical experts estimate. *Quinlan v. Incarnate Word Hospital*, 714 S.W.2d 237, 238 (Mo.App.1986). This is especially true when there is additional testimony as to claimant's reduced ability to function. *Id. Jost v. Big Boys Steel Erection, Inc.* 946 S.W.2d 777, 779 (Mo.App. 1997) (*Overruled in part by Hampton*).

I find Claimant sustained permanent partial disability from the trigger finger injury. After conservative treatment failed, Dr. Rotman released the A-1 pulley, ordered therapy, and rated 5% PPD. I find credible Claimant’s testimony that she has symptoms related to the finger injury; however, she missed the last three appointments with Dr. Rotman; and Drs Rotman and Hanaway did not find any triggering. Based on the medical records and Claimant’s testimony, I find Claimant sustained 5% PPD of the right middle finger at the 35 week level.

CONCLUSION

Claimant sustained permanent partial disability from the November 24, 2003 work accident. The Second Injury Fund claim remains open.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation

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

Injury No.: 04-070381

Employee: Juanita Massey

Employer: Curators of University of Missouri

Insurer: Self-Insured through Corporate Claims Management 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 (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 10, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued April 10, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 23rd day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Juanita Massey Injury No.: 04-070381
Dependents: N/A Before the
Employer: Curators of University of Missouri **Division of Workers'
Compensation**
Industrial Department of Labor and
Additional Party: Second Injury Fund (Open) Relations of Missouri
Jefferson City, Missouri
Insurer: Self-insured through Corporate Claims Management Inc.
Hearing Date: January 14, 2009 Checked by: SC

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? Yes
4. Date of accident or onset of occupational disease: July 12, 2004
5. State location where accident occurred or occupational disease contracted: St. Louis County
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
11. Describe work employee was doing and how accident happened or occupational disease contracted:
Claimant injured her back while emptying trash at work.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Parts of body injured by accident or occupational disease: Low back
14. Compensation paid to-date for temporary disability: \$1,093.47
15. Value necessary medical aid paid to date by employer/insurer? \$1,661.89
16. Value of necessary medical aid not furnished by employer/insurer? N/A

- 17. Employee's average weekly wages: \$395.89
- 18. Weekly compensation rate: \$263.93/\$263.93
- 19. Method wages computation: Stipulated

COMPENSATION PAYABLE

20. Amount of compensation payable: None

21. Second Injury Fund: Open

TOTAL: NONE

Each of said payments to begin immediately and 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 compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Harry Nichols

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Juanita Massey	Injury No.: 04-070381
Dependents:	N/A	Before the
Employer:	Curators of University of Missouri	Division of Workers' Compensation
Additional Party:	Second Injury Fund (Open)	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-insured through Corporate Claims Management Inc.	Checked by: SC

STATEMENT OF THE CASE

A hearing was held for a temporary award at the Missouri Division of Workers' Compensation ("DWC") St. Louis office at the request of Juanita Massey, ("Claimant"), on January 14, 2009, pursuant to Section 287.450 RSMo (2000). Attorney Harry Nichols represented Claimant. Attorney George Floros represented Curators of University of Missouri, ("Employer"), self-insured through Corporate Claims Management Inc. ("Insurer")¹. The Second Injury Fund did not participate and remained open during the proceeding. The record closed after presentation of evidence. Venue is correct and jurisdiction properly lies with DWC.

Claimant's Exhibits A-G and Employer's Exhibits 1-12 are admitted. Claimant's Exhibits H and I are not admitted, but are retained.² The Courts' Exhibit I and II are admitted. Any notations contained in the records were present when admitted.

Claimant submitted five separate claims for disposition; 03-053791, 03-145481, 04-070381, 04-131626, and 04-148505. Although separate awards are issued for each claim, the facts and issues raised in each claim are closely related.

STIPULATIONS

The parties stipulate that on or about July 12, 2004:

1. Claimant was employed by Employer and sustained an accident in St. Louis County;
2. The accident arose out of and in the course of employment;
3. Claimant and Employer operated under the Missouri Workers' Compensation Law;
4. Employer's liability was fully self insured;
5. Employer had notice of the injury;
6. A Claim for Compensation was timely filed;

¹ References to the Employer also include the Insurer.

² On November 14, 2008, the parties agreed in writing to submit records at the hearing that were available on that date. On January 14, 2009, Employer objected to the admission of Exhibit H, a report to be prepared by Dr. Woiteshek, and to be admitted after completion. The report would be written in conjunction with Claimant's examination on January 9, 2009. Employer objected to the admission of Exhibit I, based on hearsay and lack of foundation. Exhibits H and I were not available when the parties reached agreement on November 14, 2008. Exhibits H and I were not available when the parties reached agreement on November 14, 2008. Employer's objections were sustained. Claimant made an offer of proof for Exhibits H and I.

7. Claimant's average weekly wage was \$395.89, resulting in a rate of \$263.93 for Temporary Total Disability ("TTD") and Permanent Partial Disability ("PPD");
8. Employer paid TTD benefits totaling \$1,093.47, representing 4 1/7 weeks; and
9. Employer paid \$1,661.89 in medical benefits.

ISSUES

The parties identified the following issues for disposition:

1. Is Claimant's low back condition medically causally related to the July 12, 2004 work accident?
2. If so, does Claimant require current medical care for the low back?
3. What is the nature and extent of PPD, if any?
4. Is Employer liable for future medical care related to the July 12, 2004 accident?

SUMMARY OF DECISION

Claimant did not meet her burden to show the July 12, 2004 accident caused her low back condition, based on the entire record, including Claimant's testimony, demeanor, medical reports, and the applicable law of the State of Missouri.

FINDINGS OF FACT

All evidence was reviewed but only evidence considered to establish the following facts is discussed below. Any objections not addressed in this award are overruled.

When Claimant worked for Employer, she stripped, refinished, and mopped floors, lifted buckets filled with water, and used a floor stripping machine and a twenty-four ounce mop.

On July 12, 2004, **Claimant** injured her back while emptying trash at work. She treated at St. Louis University Emergency Room.

Concentra prescribed physical therapy and referred Claimant to Dr. Cantrell. Dr. Cantrell prescribed more physical therapy. She has not received medical treatment since 2004 but would like more treatment.

Claimant is five feet five inches tall and weighs 220 pounds. She takes medication for diabetes, high blood pressure and Motrin for pain. Claimant uses a cane and believes she is unable to work. Claimant receives Social Security Disability and Medicare.

Employer terminated Claimant on August 18, 2004.

Pre-Existing Conditions

Claimant injured her back in 1997 when she fell down steps at work. Dr. Brig Vaid treated Claimant's back. Claimant has taken medication for daily back pain since 1997 but continued to work until Employer terminated her on August 18, 2004. Complaints include occasional pain to the buttocks and knee. Claimant has not worked since she was terminated in 2004 and believes she cannot work.

Claimant injured her back when she slipped and fell on a wet floor on May 21, 2003. After conservative treatment ended, Claimant told Dr. Cantrell her complaints had returned "back to baseline," and "I've had this pain for so many years I'm used to it."

Medical Facts

On July 16, 2004, **St. Louis University Hospital Emergency Department** treated Claimant with a history of injuring her mid and low back when she threw a trash bag into a bin over head. X-rays revealed mild lumbar spondylosis, with end plate spurs from L1 through L5.

On July 29, 2004, **Dr. Jimil Muhammad** treated Claimant at Concentra. She exhibited pain with pressure at the L5 sacrum. Dr. Muhammad diagnosed a lumbar strain. He released Claimant to work with no repetitive lifting, pushing or pulling over 30 pounds.

Dr. Russell Cantrell treated Claimant twice in August 2004. Claimant reported a four to five year history of back pain, with constant pain for the past three years. Claimant described her current pain as similar to the symptoms she had before the accident, but stronger. Examination revealed 50% decrease in flexion and extension with pain and tightness.³

Dr. Cantrell prescribed medication; two weeks of physical therapy, limited lifting to 30 pounds, and recommended Claimant avoid repetitive bending.

During therapy, Claimant reported falling "at least 7 times since 1997." When therapy ended on August 13, 2004, Claimant gave an update regarding her back; "It is better, I am not having any pain in my back. I still get a little stiff, I feel it when I do excessive bending, and when I wake up in the morning, I feel a little stiff. It is 75% better and my back bothers me all the time. I still go and do what I have to do; I am ready to go back to work."

Medical Opinions

On August 2, 2004, Dr. Cantrell opined Claimant's "current complaints are not "substantially" caused by the July 2004 accident, but are secondary to chronic lumbar pain complaints which may in part be mechanical in nature, unrelated to degenerative arthritis in her lumbar spine."

On August 13, 2004, Claimant informed Dr. Cantrell her complaints were "back to their baseline," and "I've had this pain for so many years I'm used to it." Dr. Cantrell renewed his opinion that Claimant's current complaints were not "substantially" caused by the July 2004 accident, and discharged Claimant.

³ Dr. Cantrell's report stated "Extension is increased by 50% as well, with associated pain complaints." This is interpreted as a typographical error based on the context of his preceding sentence.

After discharge, Dr. Cantrell reviewed Claimant's medical records from 1994 to 2003. In August 2002, medical records show Claimant gave a history of left sided pain after falls in 2000 and 2001; weight gain contributing to back pain in December 2001, low back pain in 2002, including chronic low back pain with neuropathy in both legs,⁴ right sacroiliac joint diagnosis in August 2002, and back pain in June and August 2003. Dr. Cantrell noted Claimant did not provide this medical history when she sought low back treatment in July 2004. On October 8, 2004, Dr. Cantrell reiterated his opinion that Claimant's symptoms were not "substantially caused by" the July 2004 accident.

Dr. Joseph Hanaway examined Claimant on June 30, 2005. Claimant gave a history of "daily bilateral low back pain at the belt line with occasional pain down the buttock to the knees. It has bothered her since 1997." Dr. Hanaway noted "longstanding low back pain since 1997, aggravated in May 2003, May 2004 and July 2004." Examination revealed low back tenderness and a positive straight leg raise. He did not provide a causation opinion about Claimant's low back condition.

Dr. Hanaway diagnosed chronic low back problems and found Claimant permanently and totally disabled due to chronic low back pain and other conditions. Dr. Hannaway noted mild peripheral neuropathy, but concluded "she does not have an absolute definite diagnosis of what some of her problems are." He recommended an MRI of the low back and both shoulders, a spiral CT of the lumbar spine, and a fasting blood sugar and two hour GTT to diagnose the cause of the peripheral neuropathy. The record contains no evidence these tests were performed.

In 2006, Dr. Hanaway again noted Claimant's back complaints since 1997, and back injuries in 2002, 2003 and 2004. Dr. Hanaway wanted to review the 2003 MRI of the low back before rendering a diagnosis and recommending treatment. Nevertheless, he diagnosed a discogenic low back problem and found Claimant unable to work due to her back and multiple injuries to other body parts. Dr. Hanaway did not review the 2003 MRI of the low back or additional medical records prior to reaching his decision in 2006.

ADDITIONAL FINDINGS of FACT and RULINGS OF LAW

Claimant seeks medical treatment for her back and asserts the condition was caused by the July 2004 work accident. Both parties agree Claimant sustained an accident that arose out of and in the course of employment. The question is whether the accident caused her current back condition, and the need for additional medical treatment. Employer contends it does not. The parties were asked to submit proposed awards; however no proposed award was received from Claimant.

The claimant in a workers' compensation case must prove all material elements of his Claim, including Second Injury Fund liability. *Mielves v. Morris*, 422 S.W. 2d 335, 339 (Mo banc 1968). This includes the burden of establishing permanency to a reasonable degree of medical certainty. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697, 704 (Mo.App.1974). Claimant has the burden to establish she sustained an injury by accident arising out of and in the course of employment and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809

⁴ Claimant's pre- 2003 medical records are not in evidence.

S.W.2d 102, 105 (Mo.App. 1991). (*Overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo banc 2003)).⁵

Where two events, one compensable and one not compensable, contribute to alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job related injury. *Plaster v. Dayco*, 760 S.W.2d 911, 913 (Mo. App. 1988). Where the condition presented is a sophisticated injury that requires surgical intervention or highly scientific techniques for diagnosis, proof of causation is not within the realm of lay understanding, nor in the absence of proper expert opinion, is a finding of causation within the competence of the Commission. *Silman v. Wm. Montgomery & Associates*, 891 S.W.2d 173, 175 (Mo.App. 1995).

I find Claimant failed to show the July 2004 accident caused the condition of her low back. At the hearing, Claimant testified she hurt her back in 1997, and it has hurt since that time. Since 1997, she has taken pain medicine. Claimant injured her low back in May 2003 which Dr. Muhammad found unrelated to Claimant's work activities. After the July 2004 accident, Dr. Muhammad diagnosed a lumbar sprain and opined Claimant reached maximum medical improvement by August 5, 2004. Claimant testified she received no additional treatment for her low back.

I find Dr. Hanaway's report is not credible. Dr. Hanaway said he needed to see the 2003 MRI before he could make a diagnosis and recommend treatment. However, he diagnosed discogenic low back problems, without reviewing the 2003 MRI, or medical records for back treatment before 2004. Also, Dr. Hanaway found Claimant permanently and totally disabled, due to a number of physical conditions, including the back, but did not relate the back condition to the July 12, 2004 accident.

Claimant gave Dr. Hannaway a history of chronic back pain since 1997. Claimant said she had taken pain medication for her back since she fell in 1997. MRI results showed degenerative changes at multiple levels of Claimant's low back and Dr. Hannaway did not identify any pre-existing low back disability.

I find credible Dr. Cantrell's opinion that Claimant's symptoms were caused by chronic lumbar pain and not the July 2004 accident. Dr. Cantrell reviewed Claimant's medical records related to pre-existing low back problems and found numerous low back complaints. Claimant told Dr. Cantrell she had low back pain "four to five years, and the past three years, her symptoms have been constant." Also, Claimant testified she routinely took Ascriptin leading up to the July 2004 accident. At discharge, Claimant reported symptoms were "back to baseline" and "I've had this pain for so many years I am used to it."

Claimant gave inconsistent statements to the therapists; stating she had no back pain but was stiff in the morning and when she lifted a lot. She also said her back was 75% better, but bothered her all the time. She reported pain of 1/10, which indicated mild discomfort. During Claimant's testimony, I observed her walk with a cane, stand, appear uncomfortable, and sigh.

⁵ Several cases herein were overruled by the *Hampton* case on unrelated grounds. No further reference will be made to *Hampton*.

Based on Dr. Cantrell's credible medical reports, medical records, and Claimant's testimony, I find Claimant did not meet her burden to show her low back condition was caused by the July 2004 accident or required additional medical treatment.

All other issues are moot.

CONCLUSION

Claimant's low back condition is not related to the July 12, 2004 work accident. Employer is not liable for additional medical treatment or permanent partial disability. The Second Injury Fund claim remains open.

Date: _____

Made by: _____

Suzette Carlisle

Administrative Law Judge

Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson

Division of Workers' Compensation

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

Injury No.: 04-131626

Employee: Juanita Massey

Employer: Curators of University of Missouri

Insurer: Self-Insured through Corporate Claims Management 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 (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 10, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued April 10, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 23rd day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Juanita Massey Injury No.: 04-131626
Dependents: N/A Before the
Employer: Curators of University of Missouri **Division of Workers'**
Compensation
Additional Party: Second Injury Fund (Open) Department of Labor and Industrial
Relations of Missouri
Insurer: Self insured through Corporate Claims Management Inc. Jefferson City, Missouri
Hearing Date: January 14, 2009 Checked by: SC:

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? Yes
4. Date of accident or onset of occupational disease: May 19, 2004
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant injured her left shoulder when she lifted a buffer with the help of a co-worker.
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 shoulder
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$1,881.92
16. Value necessary medical aid paid to date by employer/insurer? \$3,383.34

Employee: Juanita Massey

Injury No.:04-131626

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$506.64
- 19. Weekly compensation rate: \$337.76/\$337.76
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: Open

TOTAL: NONE

23. Future requirements awarded: N/A

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

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Harry Nichols

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Juanita Massey	Injury No.: 04-131626
Dependents:	N/A	Before the
Employer:	Curators of University of Missouri	Division of Workers'
Additional Party: Second Injury Fund (Open)		Compensation
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Self-insured through Corporate Claims Management Inc.	Checked by: SC

STATEMENT OF THE CASE

A hearing for a final award was held at the Missouri Division of Workers' Compensation ("DWC") St. Louis office at the request of Juanita Massey, ("Claimant"), on January 14, 2009, pursuant to Section 287.450 RSMo (2000). Attorney Harry Nichols represented Claimant. Attorney George Floros represented Curators of University of Missouri, ("Employer"), self-insured through Corporate Claims Management Inc. ("Insurer")¹. The Second Injury Fund did not participate but remained open during the proceeding. The record closed after presentation of evidence. Venue is correct and jurisdiction properly lies with DWC.

Claimant's Exhibits A-G and Employer's Exhibits 1-12 are admitted. Claimant's Exhibits H and I are not admitted, but are retained.² The Courts' Exhibit I and II are admitted. Any notations contained in the records were present when admitted.

Claimant submitted five separate claims for disposition; 03-053791, 03-145481, 04-070381, 04-131626, and 04-148505. Although separate awards are issued for each claim, the facts and issues raised in each claim are closely related.

STIPULATIONS

The parties stipulate that on or about May 19, 2004:

1. Claimant was employed by Employer and sustained an accident in St. Louis County;
2. The accident arose out of and in the course of employment;

¹ References to the Employer also include references to the Insurer.

² On November 14, 2008, the parties agreed in writing to submit records at the hearing that were available on that date. On January 14, 2009, Employer objected to the admission of Exhibit H, a report to be prepared by Dr. Woiteshek, and to be admitted after completion. The report would be written in conjunction with Claimant's examination on January 9, 2009. Employer objected to the admission of Exhibit I, based on hearsay and lack of foundation. Both Exhibits H and I were not available when the parties reached agreement on November 14, 2008. Employer's objections were sustained. Claimant made an offer of proof for Exhibits H and I.

3. Claimant and Employer operated under the Missouri Workers' Compensation Law;
4. Employer's liability was fully self insured;
5. Employer had notice of the injury;
6. A Claim for Compensation was timely filed;
7. Claimant's average weekly wage was \$506.64, resulting in a rate of \$337.76 for Temporary Total Disability ("TTD") and Permanent Partial Disability ("PPD");
8. Employer paid \$1,881.92 in TTD benefits for 5 4/7 weeks, and
9. Employer paid medical benefits totaling \$3,383.34.

ISSUES

The parties identified the following issues for disposition:

1. Is Claimant's left shoulder condition related to the May 19, 2004 accident?
2. If so, what is the nature and extent of PPD?

SUMMARAY OF DECISION

Claimant did not meet her burden to prove her left shoulder condition was caused by the May 19, 2004 accident based on the entire record, including Claimant's testimony, demeanor, medical reports, and the applicable law of the State of Missouri.

SUMMARY OF EVIDENCE

All evidence was reviewed, but only evidence supporting this award is discussed below. Any objections not addressed in the award are overruled.

When Claimant worked for Employer, she stripped, refinished, and mopped floors, lifted buckets filled with water, and used a floor stripping machine and a twenty-four ounce mop.

On May 19, 2004, Claimant injured her left shoulder while lifting a buffer with the help of a co-worker. Concentra provided initial treatment and referred Claimant to Dr. Rotman. Dr. Rotman prescribed physical therapy and injected the shoulder.

Dr. Hanaway examined Claimant in June 2006. Claimant testified her shoulder symptoms have increased over time, to include stiffness, achiness, and limited range of motion. She takes Motrin for pain.

Judicial notice is taken of DWC records which show the Claim for Compensation listed injury to the left shoulder only.

Pre-existing Injuries

Claimant testified she was diagnosed with a "semi-tear" of the rotator cuff in left shoulder in 2002. No surgery was performed or recommended, but she missed two months from work. No medical records are in evidence.

Medical Facts

On June 3, 2004, Claimant gave **Concentra Medical Center** a history of injury consistent with her trial testimony. Claimant's main symptoms involved the left shoulder. Testing was limited due to pain and "giving way" with shoulder resistance. Concentra diagnosed bilateral shoulder strains, prescribed medication, physical therapy, and kept Claimant off work from June 3, 2004 to June 10, 2004. Claimant was referred to a physiatrist on June 10, 2004 due to decreased range of motion and pain in the left shoulder. Dr. Jamil Muhammad released Claimant to return to work with no lifting, pushing, or pulling over 20 pounds, and no reaching above shoulders.

June 22, 2004, Claimant gave **Dr. Mitchell Rotman** a history of injury to both shoulders. Dr. Rotman found weakness, a positive impingement, and pain over the AC joint, anterior lateral acromion, and biceps. He noted pain was magnified with movement.

Dr. Rotman diagnosed impingement/possible rotator cuff tear and injected the left shoulder. Dr. Rotman recommended physical therapy for both shoulders. MRI results of the left shoulder revealed AC joint arthritis, undersurface spurring of the AC joint, with minimal impingement on the supraspinatus tendon.

By August 31, 2004, Claimant reported left shoulder improvement but increased right shoulder problems. On October 6, 2004, Claimant refused a right shoulder injection on the advice of legal counsel.

Medical Opinions

On October 28, 2004, Dr. Rotman found Claimant had reached maximum medical improvement ("MMI") for the left shoulder injury and diagnosed bilateral strains. By December 30, 2004, Claimant had missed three appointments, and Dr. Rotman discharged Claimant with no permanent partial disability.

During an Independent Medical Examination on October 30, 2006, Dr. Rotman noted left shoulder movement was "smooth" with pain on the top of the shoulder. Dr. Rotman opined Claimant's subjective complaints could not be relied on based on symptom magnification, "obvious lack of effort on grip strength testing," and similar findings by the physical therapist. Therefore, he only relied on objective findings.

Dr. Rotman concluded the 2004 MRI did not reveal left shoulder injury and Claimant's symptoms were relieved with an injection. He opined that a tear was possible. However, he opined Claimant's shoulder complaints were not related to work activities because she had not worked in two years. His rating did not change.

On June 30, 2005, **Dr. Joseph Hanaway** diagnosed bilateral shoulder impingement, right greater than left. However, the report contains no examination of the left shoulder.

Dr. Hanaway found Claimant permanently and totally disabled due to her "shoulder" and other medical conditions. Dr. Hanaway found no "absolute definite diagnosis of what some of her problems are."

On January 19, 2006, Dr. Hanaway opined Claimant was unable to work due to bilateral shoulder problems and other medical conditions. He noted Claimant's left shoulder was aggravated by a work accident in May 2004.

Dr. Hanaway did not address disability for pre-existing shoulder complaints or provide a permanent partial disability opinion about the primary work injury.

FINDINGS OF FACTS AND RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find Claimant did not prove her left shoulder condition is related to the May 19, 2004 work accident for the reasons stated below.

Claimant asserted her left shoulder problems are related to the May 2004 work accident. Employer contends Claimant sustained no permanent partial disability from the accident. The parties stipulated Claimant sustained an accident which arose out of and in the course of her employment. The issue is whether the May 2004 accident caused Claimant's left shoulder condition.

Burden of Proof: Claimant has the burden to establish that she sustained an injury by accident arising out of and in the course of employment, and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809 S. W. 2d 102, 105 (Mo. App. 1991) (*Overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo banc 2003)).³

The claimant in a workers' compensation case must prove all material elements of the claim. *Mielves v. Morris*, 422 S.W. 2d 335, 339 (Mo banc 1968). This includes the burden of establishing permanency to a reasonable degree of medical certainty. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697, 704 (Mo.App.1974).

Where two events, one compensable and one not compensable, contribute to alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job related injury. *Plaster v. Dayco*, 760 S.W.2d 911, 913 (Mo. App. 1988). Where the condition presented is a sophisticated injury that requires surgical intervention or highly scientific techniques for diagnosis, proof of causation is not within the realm of lay understanding, nor in the absence of proper expert opinion, is a finding of causation within the competence of the Commission. *Silman v. Wm. Montgomery & Associates*, 891 S.W.2d 173, 175 (Mo.App. 1995).

I find Dr. Rotman's opinion credible that he cannot relate Claimant's left shoulder condition to her work activities. Dr. Rotman did not rely on Claimant's subjective complaints, and stated she magnified her symptoms. He did not find an injury on the 2004 MRI. After an injection, Claimant's symptoms improved. In fact, the focus turned to treating the right shoulder. However, Claimant did not file a right shoulder claim, and testified the left shoulder is the only shoulder she injured. Also, Claimant had not worked for two years when Dr. Rotman

³ Several cases herein were overruled by the *Hampton* case on unrelated grounds. No further reference will be made to *Hampton*.

saw her in October 2006. At that time, he noted smooth shoulder movement, and symmetric external and internal rotation. He also noted symptom magnification. Dr. Rotman opined the pain on top of the shoulder was not caused by specific movement in a specific area. Dr. Rotman found Claimant had no disability when he released her at maximum medical improvement in October 2004.

I find Dr. Hanaway's report not credible. Dr. Hanaway diagnosed bilateral shoulder joint impingement syndrome but did not relate it to the May 2004 accident. He did not find Claimant sustained permanent partial disability from the accident. Also, Dr. Hanaway did not provide an opinion about the condition of Claimant's left shoulder before May 19, 2004.

During Claimant's testimony, I observed her walk with a cane, stand, appear uncomfortable, and moan. I find not credible Claimant's testimony that over time she developed more stiffness, achiness, and inability to lift. I find expert opinion was needed to show proof of causation. I find Claimant did not prove her left shoulder condition was related to the May 2004 accident.

CONCLUSION

Claimant did not prove she sustained an injury to her left shoulder that is medically causally related to the May 19, 2004 work injury. The Second Injury Fund Claim remains open.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation

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

Injury No.: 04-148505

Employee: Juanita Massey

Employer: Curators of University of Missouri

Insurer: Self-Insured through Corporate Claims Management 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 (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 10, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued April 10, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 23rd day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Juanita Massey Injury No.: 04-148505
Dependents: N/A Before the
Employer: Curators of University of Missouri **Division of Workers'**
Compensation
Additional Party: Second Injury Fund (Open) Department of Labor and Industrial
Relations of Missouri
Insurer: Self-insured through Corporate Claims Management Inc. Jefferson City, Missouri
Hearing Date: January 14, 2009 Checked by: SC

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: Allegedly July 12, 2004
5. State location where accident occurred or occupational disease contracted: St. Louis County
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 happened or occupational disease contracted:
Claimant alleged she developed bilateral carpal tunnel syndrome from her work activities with Employer.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Parts of body injured by accident or occupational disease: Bilateral hands
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$395.89
- 19. Weekly compensation rate: \$263.93/\$263.93
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

- 21. Amount of compensation payable: None

- 22. Second Injury Fund liability: Open

TOTAL: **None**

Each of said payments to begin immediately and 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 compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Harry Nichols

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Juanita Massey	Injury No.: 04-148505
Dependents:	N/A	Before the
Employer:	Curators of University of Missouri	Division of Workers'
Additional Party: Second Injury Fund (Open)		Compensation
Insurer:	Self-insured through Corporate Claims Management Inc.	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri

Checked by: SC

STATEMENT OF THE CASE

A hearing for a temporary award was held at the Missouri Division of Workers' Compensation ("DWC") St. Louis office at the request of Juanita Massey, ("Claimant"), on January 14, 2009, pursuant to Section 287.450 RSMo (2000). Attorney Harry Nichols represented Claimant. Attorney George Floros represented Curators of University of Missouri, ("Employer"), self-insured through Corporate Claims Management Inc. ("Insurer")¹. The Second Injury Fund did not participate and remained open during the proceeding. The record closed after presentation of evidence. Venue is correct and jurisdiction properly lies with DWC.

Claimant's Exhibits A-G and Employer's Exhibits 1-12 are admitted. Claimant's Exhibits H and I are not admitted, but are retained.² The Courts' Exhibit I and II are admitted. Any notations contained in the records were present when admitted.

Claimant submitted five separate claims for disposition; 03-053791, 03-145481, 04-070381, 04-131626, and 04-148505. Although separate awards are issued for each claim, the facts and issues raised in each claim are closely related.

STIPULATIONS

The parties stipulate that on or about July 12, 2004:

1. Claimant was employed by Employer in St. Louis County;
2. Claimant and Employer operated under the Missouri Workers' Compensation Law;
3. Employer's liability was fully self insured;
4. A Claim for Compensation was timely filed;
5. Claimant's average weekly wage was \$395.89, resulting in a rate of \$263.93 for Temporary Total Disability ("TTD") and Permanent Partial Disability ("PPD"); and

¹ References to the Employer also include references to the Insurer.

² On November 14, 2008, the parties agreed in writing to submit records for hearing that were available on that date. On January 14, 2009, Employer objected to the admission of Exhibit H, a report to be prepared by Dr. Woiteshek, and to be admitted after it is completed. The report would be written in conjunction with Dr. Woiteshek's examination on January 2009. Also, Employer objected to the admission of Exhibit I, based on hearsay and lack of foundation. Exhibits H and I were not available when the parties reached agreement on November 14, 2008. Employer's objections were sustained. Claimant made an offer of proof for Exhibits H and I.

6. Employer paid no TTD or medical benefits.

ISSUES

The parties identified the following issues for disposition:

1. Did Claimant's injury arise out of and in the course of employment?
2. Did Claimant sustain an occupational disease?
3. If so, did Employer receive proper notice of the occupational disease?
4. Is Claimant's condition medically causally related to her work activities?
5. Is Employer liable for medical treatment related to a work injury?
6. What is the nature and extent of permanent partial disability, if any?

SUMMARY OF DECISION

Claimant did not meet her burden to show carpal tunnel syndrome (CTS) was caused by her work activities for Employer based on the entire record, including Claimant's testimony, demeanor, medical reports, and the applicable law of the State of Missouri.

SUMMARY OF EVIDENCE

All evidence was reviewed but only evidence supporting this award is discussed below. Any objections not addressed in this award are overruled.

When Claimant worked for Employer, she stripped, refinished, and mopped floors, lifted buckets filled with water, and used a floor stripping machine and a twenty-four ounce mop.

At the hearing Claimant testified she repeatedly told her supervisor her hands hurt. The supervisor told her a she needed to complete an incident report, if she wanted treatment, but Claimant did not complete the report.

However, during deposition, Claimant testified she did not request treatment because she didn't think anything was wrong with her hands, she just knew they ached all the time. Also, she thought the problem was with her shoulders.

Claimant has problems with both wrists, but has not had surgery. Claimant is five feet five inches tall and weighs 220 pounds. She takes medication for diabetes, high blood pressure and pain. Claimant walks with a cane and believes she is unable to work. She has not worked since Employer terminated her on August 18, 2004. Claimant receives Social Security Disability and Medicare.

Medical Opinions

On June 22, 2004, **Dr. Mitchell Rotman** treated Claimant for complaints to the right middle finger and bilateral shoulders; worse on the left. Claimant reported no CTS symptoms and CTS testing was negative.

On June 30, 2005, **Dr. Joseph Hanaway** examined Claimant and noted “signs and symptoms at night and ... working with tingling in the fingertips, hands and forearms to the elbows. Her hands wake her ...at nighttime.” Examination revealed positive Tinel’s and Phalen’s signs in both wrists. Based on clinical examination, Dr. Hanaway diagnosed bilateral CTS, but did not relate the condition to Claimant’s work activities.

On January 19, 2006, Claimant reported pain extending from all fingers to both shoulders. Dr. Hanaway performed a nerve conduction study, reconfirmed bilateral CTS, and referred Claimant to **Dr. Susan McKinnon**.

On October 30, 2006, Dr. Rotman provided an Independent Medical Examination. Claimant gave a history of CTS symptoms while employed by Employer, but did not know it was CTS. Symptoms included numbness and tingling into her fingers, pain into the forearm, stronger with cloudy weather. Claimant reported symptoms increased after she stopped working.

During examination, Claimant reported intermittent bilateral wrist numbness and tingling with tapping over the clavicles, lateral elbows, dorsal wrists, and compression of the median nerve and Phalens.

Dr. Rotman found Dr. Hanaway’s nerve conduction study results confusing. Dr. Hanaway’s results showed elevated latency on the right and left. Velocities on the right were worse, while other numbers were worse on the left.

Dr. Rotman conducted a motor latency test with a neurometrix device, and concluded significant differences existed between his results and Dr. Hanaway’s nerve conduction study. Dr. Rotman found motor latency was normal on the right at 3.4 and borderline for CTS on the left at 3.8.

Dr. Rotman concluded he could not rely on Claimant’s subjective complaints because she displayed pain magnification, “give way weakness,” “obvious lack of effort on grip strength testing,” and non physiologic findings during examination in 2004 and 2006.

Dr. Rotman opined Claimant may have mild CTS on the left, but CTS is not likely on the right. However, Dr. Rotman concluded Claimant’s numbness and tingling are not related to her work activities for Employer. He noted Claimant had no complaints of numbness and tingling when Dr. Rotman examined her in 2004. Also, Claimant reported hand symptoms increased although she had not worked in over two years.

FINDINGS of FACT and RULINGS OF LAW

Arising Out of and in the Course of Employment

Claimant asserts work activities performed for Employer caused bilateral CTS. Employer contends Claimant's work activities did not cause CTS.

Claimant must prove her hand symptoms resulted from an accident "arising out of and in the course of employment." Section 287.120.1 RSMo (2000).³ Section 287.020.3 (2) provides that an injury arises out of and in the course of the employment "only if (a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury, and; (b) It can be seen to have followed as a natural incident of the work; and (c) It can be fairly traced to the employment as a proximate cause; and (d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life."

An accident arises out of the employment relationship "when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury." *Abel By and Through Abel v. Mike Russell's Standard Service*, 924 S.W.2d 502,503 (Mo. 1996) (citations omitted). An injury occurs 'in the course of' employment "if the injury occurs within the period of employment at a place where the employee reasonably may be fulfilling the duties of employment." *Shinn v. General Binding Corp.* 789 S.W.2d 230, 232 (Mo. App.1990). "Arising out of" and "in the course of" are two separate tests. "[B]oth must be met before [an employee] is entitled to compensation." *Automobile Club Inter-Insurance Exchange v. Bevel*, 663 S.W.2d 242, 245 (Mo banc 1984).

The claimant bears the burden of proving a direct causal relationship between the conditions of employment and an occupational disease. *Jacobs v. City of Jefferson*, 991 S.W.2d 693, 696 (Mo.App.1999). A worker who seeks compensation for carpal tunnel syndrome must submit a medical expert who can establish the probability that working conditions caused the disease. *Decker v. Square D Co.*, 974 S.W.2d 667, 669 (Mo.App.1998).

The standard of proof is reasonable probability. *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 199 (Mo. App. 1990) (*overruled by Hampton v. Big Boy Steel Erection*, 121 S.W. 3d 220, 223 Mo banc 2003). "Probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt." *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 329 (Mo. App. 1986).

I find Claimant's hand symptoms did not arise out of and in the course of employment. I find the record contains no medical evidence of a connection between Claimant's work activities and her hand complaints. Claimant treated for a number of work-related injuries in 2003 and 2004 but did not report hand complaints.

I find credible Dr. Rotman's opinion that Claimant's symptoms were not work related. Claimant did not report hand problems when Dr. Rotman treated her from June 2004 to October

³ All references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

2004. In 2006, Claimant reported increased symptoms despite not working for more than two years. Dr. Rotman provided the only medical opinion in evidence regarding causation. I find Claimant's testimony not credible that she experienced bilateral hand numbness and tingling while working for Employer.

I find Claimant's work activities were not the substantial factor that caused her hand symptoms. Claimant gave contradictory testimony about reporting hand complaints to Employer. At the hearing, Claimant testified she repeatedly told her supervisor that her hands hurt. But she did not complete the incident report, which was needed in order to obtain medical treatment. However, during deposition, Claimant testified she did not report hand complaints to Employer or request treatment because she thought her shoulders were the problem, although her hands hurt all the time.

Dr. Hanaway's opinion is not credible that Claimant developed CTS. Dr. Rotman found Dr. Hanaway's nerve conduction results were "confusing." Dr. Rotman opined Claimant may have marginal CTS on the left but found no CTS on the right.

I find Claimant's hand symptoms were not caused by a risk or hazard related to work. Even assuming Claimant has CTS, Dr. Hanaway did not relate the condition to Claimant's work activities. I find Claimant's hand complaints are not traced to her employment. I find the Claimant's hand complaints are not a natural incident of her work for Employer.

Based on medical records and Claimant's testimony, I find Claimant did not meet her burden to prove by a reasonable probability that CTS arose out of and in the course of her employment.

All other issues are moot.

CONCLUSION

Claimant did not sustain an injury that arose out of and in the course of employment. Employer is not liable for medical treatment or permanent partial disability. The Second Injury Fund claim remains open.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation