

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

Injury No.: 04-147456

Employee: Richard M. Moeller
Employer: M. R. Bathe Electric Co.
Insurer: Federated Mutual Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 22, 2008. The award and decision of Administrative Law Judge Edwin J. Kohner, issued December 22, 2008, 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 18th day of June 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

SEPARATE OPINION FILED

John J. Hickey, Member

Attest:

Secretary

SEPARATE OPINION

(Concurring in Part and Dissenting in Part)

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be modified to award more benefits to employee.

First, there is no question that employee's carpal tunnel syndrome of the left wrist is compensable under Missouri Workers' Compensation Law. However, it is my opinion, based upon the medical, expert testimony, and lay testimony, that employee should be awarded 25% permanent partial disability benefits at the level of the left hand/wrist instead of the 17.5% permanent partial disability benefits awarded by the administrative law judge.

According to § 287.190.6 RSMo (2004), "[p]ermanent partial disability' means a disability that is permanent in nature and partial in degree...." The court in *Rana v. Landstar TLC*, 46 S.W.3d 614 (Mo. App. W.D. 2001) stated that "[t]he Labor and Industrial Relations Commission has discretion as to the amount of the award and how it is to be calculated." *Id.* at 626 (citations omitted), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

In this case, there is contradictory medical evidence as to the nature and extent of employee's permanent partial disability suffered as a result of his carpal tunnel syndrome. Dr. Poetz is of the opinion that employee has sustained 50% permanent partial disability of the left hand directly resultant from his work-related carpal tunnel syndrome. However, Dr. Sudekum is of the opinion that employee has sustained 8% permanent partial disability of the left hand due to his carpal tunnel syndrome.

The first record of employee's left wrist neurological abnormalities began in 1994. Dr. Koo examined employee on February 4, 1994 and diagnosed employee with bilateral carpal tunnel syndrome, clinically right greater than left. Dr. Koo later performed right carpal tunnel endoscopic release. Employee went back to work following this procedure and did not have any documented carpal tunnel syndrome problems again until 2004.

Employee developed numbness, pain, and loss of dexterity in his left hand in September 2004. On November 24, 2004, Dr. Sudekum performed a left endoscopic carpal tunnel release. Employee testified that he received no improvement in his left hand symptoms following this procedure. Despite these continued problems, employee was returned to work full duty on January 27, 2005. On March 10, 2005, a nerve conduction study revealed evidence of persistent left carpal tunnel syndrome. However, Dr. Sudekum did not perform a revision of the left carpal tunnel release on employee until September 8, 2005.

Dr. Poetz examined employee on September 5, 2006, and his records indicate that employee's chief complaints were numbness and tingling in his entire left hand with pain and that the employee's hand falls asleep at night and wakes him up at the same frequency it did as before the two surgeries. Dr. Poetz's records also show that employee complained of not having dexterity in his hand and that his hand seemed to contract and cramp up even when he was resting. Lastly, Dr. Poetz's records showed a decrease in employee's grip strength and decreased pinprick sensation in the median nerve distribution on the left.

Employee testified at the hearing (three years after the last surgery) that he had developed left hand

cramping in the ten months before the hearing. He further testified that at its worst, his pain is 4 to 5 out of 10, and on good days, the pain is 3 out of 10. The cramping seems to cause him to drop objects and slows his work. Employee went on to state that he has lost strength in his left hand, has ongoing numbness, lack of dexterity, and that his hand wakes him up at night.

In this case, the administrative law judge, in awarding employee only 17.5% permanent partial disability benefits, incorrectly relied on past decisions of the Commission involving similar fact patterns. The courts have repeatedly held that the extent and percentage of disability sustained by an injured employee is a finding of fact within the special province of the Commission. *Sellers v. Trans World Airlines, Inc.*, 776 S.W.2d 502, 505 (Mo. App. 1989), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003); *Quinlan v. Incarnate Word Hospital*, 714 S.W.2d 237, 238 (Mo. App. 1986); *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo. App. 1983), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003); *Barrett v. Bentzinger Brothers, Inc.*, 595 S.W.2d 441, 443 (Mo. App. 1980), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003); and *McAdams v. Seven-up Bottling Works*, 429 S.W.2d 284, 289 (Mo. App. 1968). There is no authority for the percentage of disability being established by a review of prior Commission decisions.

There is a large disparity between Drs. Sudekum and Poetz's opinions. The administrative law judge's decision to award employee 17.5% permanent partial disability benefits was based upon what the Commission had awarded similar claimants in the past.

It is my opinion that the administrative law judge placed too much emphasis on the prior Commission decisions and in doing so failed to properly assess the nature and extent of *employee's* permanent partial disability. Specifically, the administrative law judge gave too little weight to employee's current complaints of cramping pain, loss of strength, ongoing numbness, lack of dexterity, and that his hand wakes him up at night. Based upon the entire record, including, but not limited to the medical records, expert testimony, and lay testimony, I believe employee has sustained 25% permanent partial disability to his left hand/wrist as a result of his work-related carpal tunnel syndrome. As such, I would modify the award of the administrative law judge merely awarding employee 17.5% permanent partial disability benefits at the level of the left hand/wrist and award employee 25% permanent partial disability benefits at the level of the left hand/wrist.

For the foregoing reasons, I respectfully dissent from the majority's decision to affirm the extent of disability awarded by the administrative law judge.

John J. Hickey, Member

AWARD

Employee:	Richard M. Moeller	Injury No.: 04-147456
Dependents:	N/A	Before the
Employer:	M. R. Bathe Electric Co.	Division of Workers'
Additional Party:	Second Injury Fund (Open)	Compensation
Insurer:	Federated Mutual Insurance Company	Department of Labor and Industrial
Hearing Date:	November 12, 2008	Relations of Missouri
		Jefferson City, Missouri
		Checked by: EJK/ch

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
 - 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
 - Date of accident or onset of occupational disease: September 23, 2004
 - State location where accident occurred or occupational disease was contracted: St. Charles County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
 - 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 developed carpal tunnel syndrome in his left wrist while working as an electrician.
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 wrist
 - Nature and extent of any permanent disability: 17 ½% permanent partial disability of the left wrist and one week for disfigurement
15. Compensation paid to-date for temporary disability: \$6,179.69
16. Value necessary medical aid paid to date by employer/insurer: \$12,488.00
Employee: Richard M. Moeller Injury No.: 04-147456
17. Value necessary medical aid not furnished by employer/insurer? None
 - Employee's average weekly wages: \$809.22
19. Weekly compensation rate: \$675.90/\$354.05
20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:		
30.625 weeks of permanent partial disability from Employer		\$10,842.78
1 week of disfigurement from Employer		\$ 354.05
22. Second Injury Fund liability: Open		
	Total:	\$11,196.83
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: Jack J. Adams, Esq.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Richard M. Moeller	Injury No.: 04-147456
Dependents:	N/A	Before the
Employer:	M. R. Bathe Electric Co.	Division of Workers'
		Compensation
Additional Party:	Second Injury Fund (Open)	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Federated Mutual Insurance Company	Checked by: EJK/ch

This workers' compensation case arises out of a work related injury in which the claimant, an electrician, suffers from carpal tunnel syndrome in his left wrist. The sole issue for determination is permanent disability and disfigurement. The Second Injury Fund claim remains open pursuant to an agreement among the attorneys. The evidence compels an award for the claimant for permanent partial disability benefits. Both of the attorneys in this case presented the evidence and prepared briefs in an exemplary manner.

At the hearing, the claimant testified in person and the parties jointly offered medical reports from Robert P. Poetz, M.D., and Anthony E. Sudekum, M.D., and medical records from Michelle D. Koo, M.D., Northland MidAmerica Orthopedics, Midwest Special Surgery, P.C., Unity Corporate Health, ProRehab, Hand Therapy of Chesterfield, and Frontier Integrated Health Care.

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 occupational disease was contracted in Missouri.

SUMMARY OF FACTS

This claimant, an electrician, has had a long history of left hand pain and neurological abnormalities that began in the mid-1990's. The claimant's left hand condition appears to have better periods and worse periods. Sorting out the relationship between the claimant's changing conditions and his employment with this employer requires a detailed chronological presentation.

The claimant's first record of left wrist neurological abnormalities began in 1994. On February 4, 1994, Dr. Koo, a plastic surgeon, examined the claimant and rendered an impression of bilateral carpal tunnel syndrome, clinically right greater than left. See Exhibit 1. She recommended bilateral carpal tunnel releases. See Exhibit 1. On February 10, 1994, Dr. Koo performed a right carpal tunnel endoscopic release. See Exhibit 1. The claimant had no further care to his left hand until 2004.

The claimant worked for this employer for six years, from 1999 to December 2005, as an electrician in charge of pulling wires, wiring junction boxes, and twisting wire nuts. The claimant's duties involved grasping continuously to pull on wires, strip wires, and to screw wire nuts on. The claimant frequently used hand tools, screwdrivers, and strippers. The claimant performed his work for 40 hours per week and developed numbness, pain, loss of dexterity in his left hand in September 2004. The left hand problems caused the claimant to wake at night.

The claimant went to Unity Corporate Health on October 1, 2004, with a complaint of left wrist pain. See Exhibit 4. The clinical impression was acute overuse of the left wrist, and the claimant received Ibuprofen. On October 6, 2004, an EMG/Nerve Conduction Study revealed: Left focal median neuropathy at the wrist consistent with carpal tunnel syndrome.

Dr. Sudekum

On November 8, 2004, Dr. Sudekum examined the claimant, diagnosed severe left carpal tunnel syndrome, and recommended surgery. On November 8, 2004, Dr. Sudekum opined that the claimant's EMG with a distal motor latency of 7.3 milliseconds indicated "longstanding and/or severe compression of the left median nerve at the carpal tunnel". Dr. Sudekum opined that, "within a reasonable degree of medical certainty, that his work at Bathe Electric is a substantial causal factor in the etiology of his left carpal tunnel syndrome" See Exhibit 3. See Exhibit 3.

Dr. Sudekum performed a left endoscopic carpal tunnel release on November 24, 2004. The claimant testified that he received no improvement in his left hand symptoms after the endoscopic procedure. The claimant returned to light one-handed duty on December 9, 2004, and returned to full duty on January 27, 2005. He continued to have left hand problems and on March 10, 2005, a Nerve Conduction Study revealed evidence of persistent left carpal tunnel syndrome See Exhibit 3. On June 9, 2005, Dr. Sudekum prescribed Vitamin B and anti-inflammatory medications. See Exhibit 3. The claimant continued to have left hand complaints. On September 8, 2005, the Claimant underwent a revision of his left carpal tunnel release and with an open procedure. The post-operative diagnosis was left carpal tunnel syndrome.

The claimant left the employ of this employer in December 2005, but continued to work as an electrician. On March 6, 2006, he returned to unrestricted duty. See Exhibit 3. On March 6, 2006, Dr. Sudekum found that the pain and paresthesias the claimant had been experiencing in his left hand preoperatively had improved. He found that the claimant had no significant pain but complained of persistent, intermittent paresthesias of his left hand. Dr. Sudekum opined that the claimant sustained an 8% permanent partial disability of the left hand due to his carpal tunnel syndrome. At that point, Dr. Sudekum returned him to unrestricted duty at work.

Dr. Poetz

Six months later, on September 5, 2006, Dr. Poetz examined the claimant and noted that the claimant's chief complaints were numbness and tingling in his entire left hand with pain and that the claimant's hand falls asleep at night and wakes him up at the same frequency it did as before the two surgeries. See Exhibit A. The claimant also complained to Dr. Poetz that he did not have dexterity in his hand and "even when I am resting the hand it seems to contract or cramp up." See Exhibit A. In the physical examination, Phalen's & Tinel's signs were equivocal on the left and grip strength was decreased to 3/5 left and 4/5 right. See Exhibit A. There was a decreased pinprick sensation in the median nerve distribution on the left. Dr. Poetz diagnosed left carpal tunnel syndrome, status post endoscopic left carpal tunnel release, recurrent left carpal tunnel syndrome, and status post revision left open carpal tunnel release. See Exhibit A. Dr. Poetz opined that the claimant suffered a 50% permanent partial disability through the upper left extremity measured at the left hand and wrist directly resultant from the September 23, 2004 work-related injury. See Exhibit A.

Dr. Lenk

On January 8, 2008, Dr. Lenk conducted a nerve conduction test and concluded that the claimant had test results consistent with residual right carpal tunnel syndrome, bilateral cubital tunnel syndrome, and prolonged median F-waves "on the left, suggestive of a left C5 radiculopathy." See Exhibits 7, 8. Dr. Lenk found no suggestion of carpal tunnel syndrome in the claimant's left hand. See Exhibits 7, 8.

At the hearing in November 2008, the claimant testified that he had developed left hand cramping in the ten months before the hearing. None of the experts linked the increased cramping to the claimant's work for this employer. He also testified that at its worst, his pain is 4 to 5 out of 10 and on good days, the pain is 3 out of 10. The cramping seems to cause him to drop objects and slows his work. He testified that he has some loss of strength and dexterity.

PERMANENT DISABILITY

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. Missouri courts have routinely required that the permanent nature of an injury be shown to a reasonable certainty, and that such proof may not rest on surmise and speculation. Sanders v. St. Clair Corp., 943 S.W.2d 12, 16 (Mo.App. S.D. 1997). A disability is "permanent" if "shown to be of indefinite duration in recovery or substantial improvement is not expected." Tiller v. 166 Auto Auction, 941 S.W.2d 863, 865 (Mo.App. S.D. 1997).

In this case, the claimant has a long history of left hand abnormalities from over the past fourteen years, beginning in 1994. By 2004, the claimant's condition became severe, and Dr. Sudekum diagnosed work related carpal tunnel syndrome. In 2004 and 2005, Dr. Sudekum performed two carpal tunnel release surgeries to reduce the claimant's wrist pain. One was endoscopic and the other an open procedure.

Starting in March 2006, the claimant's medical condition seemed to vary widely over time. In March 2006, six months after the last surgery, Dr. Sudekum reported that the claimant "appears to be making a good

recovery from his ... surgery. The pain and paresthesias ... have improved. He no longer has any significant pain but does complain of persistent, intermittent paresthesias of his left hand. He currently has full, normal strength, range of motion and sensation of the left hand and no objective evidence of significant ongoing left median neuropathy." Dr. Sudekum also reported negative Phalen's and Tinel's signs. See Exhibit D.

However, six months later, in September 2006, Dr. Poetz reported that the claimant had "a pain level of 8 out of 10 on his worst days and 6 out of 10 on his better days." See Exhibit A. He also found, "Phalen's and Tinel's signs are equivocal on the left. Grip strength is decreased bilaterally to 3/5 on the left and 4/5 on the right. There is decreased pinprick sensation in the median nerve distribution on the left." The claimant reported that his pain was over his entire hand, and that his hand at rest tended to contract and cramp up. See Exhibit A.

On January 8, 2008, two years after the last surgery, Dr. Lenk conducted a nerve conduction test and concluded that the claimant had test results consistent with residual right carpal tunnel syndrome, bilateral cubital tunnel syndrome, and prolonged median F-waves "on the left, suggestive of a left C5 radiculopathy." See Exhibits 7, 8. Dr. Lenk found no suggestion of carpal tunnel syndrome in the claimant's left hand from the nerve conduction test. See Exhibits 7, 8.

At the hearing, three years after the last surgery, the claimant testified that he had developed left hand cramping in the ten months before the hearing. The claimant left the employ of this employer in December 2005, and his cramping developed sometime later. None of the experts linked the cramping to the claimant's work for this employer. He also testified that at its worst, his pain is 4 to 5 out of 10, and on good days, the pain is 3 out of 10. The cramping seems to cause him to drop objects and slows his work. He testified that he has some loss of strength. He also testified that he currently has ongoing numbness, lack of dexterity, and that his hand wakes him up at night.

Dr. Poetz opined that the claimant suffered a 50% permanent partial disability to his left wrist. See Exhibit A. Dr. Sudekum opined that the claimant suffered from an 8% permanent partial disability. None of the evidence suggests that the claimant suffered from any preexisting permanent partial disability. The fact finder is not bound by the percentage estimates of a medical expert and is free to find a disability rating higher or lower than that expressed in medical testimony. Patchin v. National Super Markets, Inc., 738 S.W.2d 166, 167 (Mo.App. E.D. 1987), see also Wiedower vs. ACF Industries, Inc., 657 S.W.2d 71, 74 (Mo.App. 1983); Quinlan vs. Incarnate Word Hospital, 714 S.W.2d 237, 238 (Mo.App. 1986); and Sellers vs. TWA, 776 S.W.2d 502, 505 (Mo.App. 1989).

Although the claimant had two left wrist surgeries, his left wrist bears residual disability. Two forensic experts, Dr. Poetz and Dr. Sudekum, so opined. The claimant reported impaired functioning at work and in the ordinary affairs of life. Although the claimant works full time without restrictions in the same occupation he held before the occurrence, his testimony and the medical reports suggest pain, weakness, and loss of dexterity. However, the difficulty in this case results from inconsistent medical reports and records.

More specifically, the reports from Dr. Sudekum suggest much less impairment than Dr. Poetz' findings suggest. In addition, Dr. Lenk's nerve conduction test finds no trace of carpal tunnel syndrome but suggest an additional medical condition (a left C5 radiculopathy) that may result in disability to the claimant's left hand.

Looking at the claimant's specific complaints that he detailed at the hearing, he testified that he had: loss of strength, ongoing numbness, lack of dexterity, and his hand wakes him up at night. At its worst, his pain is 4 to 5 out of 10, and on good days, the pain is 3 out of 10. In addition, he testified that he had developed left hand cramping in the ten months before the hearing, and he cramping seems to cause him to drop objects and slows his work.

The claimant's level of pain (on a scale of 10) at the hearing (3 to 5) is about half of the level reported in September 2006 by Dr. Poetz (6 to 8). Dr. Poetz reported that the claimant had cramping in his hand, but the claimant testified that he developed cramping in his hand over the last 10 months (January 2008 to November 2008). Dr. Poetz apparently considered both of those aspects of the claimant's condition, severe and constant pain and cramps in arriving at his evaluation of a 50% permanent partial disability. Thus, Dr. Poetz' opinion are based on a more severe level of pain than the claimant has today and a medical condition (hand cramps) that are not clearly linked to the work related carpal tunnel syndrome. None of the experts linked the cramping to the claimant's work for this employer. Dr. Lenk suggested that the cramps are a product of a left C5 radiculopathy. Thus, Dr. Poetz' evaluation may overstate the claimant's disability as it relates to the claimant's work related carpal tunnel syndrome.

The claimant's testimony at the hearing in this case is more consistent (although not exactly the same) with Dr. Sudekum's findings:

The pain and paresthesias ... have improved. He no longer has any significant pain but does complain of persistent, intermittent paresthesias of his left hand. He currently has full, normal strength, range of motion and sensation of the left hand and no objective evidence of significant ongoing left median neuropathy." Dr. Sudekum also reported negative Phalen's and Tinel's signs. See Exhibit D.

This level of symptoms appears to be consistent throughout the medical records and reports. In addition, the evidence supports a finding that the claimant has not been forced to change occupations due to the condition and is not taking medication on a consistent basis due to the condition. In addition, the claimant has no medical restrictions on activities from any physician. Finally, the most recent nerve conduction test from Dr. Lenk shows no finding of residual carpal tunnel in the claimant's left hand.

To be clear, the conditions in the preceding two paragraphs document the claimant's condition pertaining to his work related carpal tunnel syndrome. Both of the forensic experts opined that the claimant suffered permanent partial disability from the occurrence, and the issue is the extent of that disability.

In determining the claimant's disability, the Missouri Labor and Industrial Relations Commission is the final decision maker regarding issues of credibility and disability. Section 287.495, RSMo 2000. Given the disparity of the ratings of the forensic experts in this case, a review and evaluation of Commission cases pertaining to work related carpal tunnel syndrome provides a framework to evaluate the extent of permanent partial disability to be awarded.

In 2007 and 2008 to date, the Missouri Labor and Industrial Relations Commission has reviewed and approved seventeen cases involving a determination of permanent partial disability from carpal tunnel syndrome. The range of permanent partial disability in the awards was from 10% to 25%. The median was 17 ½%, and one half of the decisions find that the injured employee suffered a 17 ½% permanent partial disability. Five decisions reflect a value less than 17 ½% and four decisions reflect a value greater than 17 ½%. In almost all cases, even the most severe, the claimant had no restrictions from a physician. However, the three cases reflecting a 20% disability and in the sole case reflecting a 25% disability, the claimant suffered from substantial loss of strength and constant pain. The numerical ratings from Dr. Poetz (50%) and Dr. Sudekum (8%) in this case appear to be far from the range of other decisions approved by the Commission in the last two years. Some of the Commission cases detail the claimant's condition in the cases that the Commission reviewed.

In Boyer v. Kuenze Heating and Sheet Metal, Slip Op. 05-041331 (Mo. LIRC January 31, 2008), the claimant's rating physician imposed the following restrictions: Minimizing repetitive tasks, no lifting of weights greater than 1-3 pounds with either hand alone, and not handling weights over 5-10 pounds. The claimant

was unable to return to her prior employer due to the restrictions. The claimant was awarded a 20% permanent partial disability.

In Lewis v. Gerstner Electric Inc., Slip Op. 04-145940 (Mo. LIRC June 24, 2008), the claimant's rating physician found: "He complained ... of extensive symptoms in each hand. He complained both wrists hurt all the time. [The] physical examination revealed equivocal Tinel's signs, positive reverse Phalen's tests, and positive pressure tests." The claimant had settled his case for a 20% permanent partial disability, which was approved by the Commission.

In Barron v. Johnson Controls Battery Group, Slip Op. 04-041234 (Mo. LIRC February 27, 2007), the claimant had severe carpal tunnel syndrome, had an open carpal tunnel release, lost 20% of his grip strength, and was awarded a 25% permanent partial disability. The Findings of Fact reflect:

Claimant testified that his hands and mainly his wrists felt like a sprain. He said that when he has that feeling he cannot function and has no grip in his hands. He said that lasts between twenty-four and seventy-two hours. When that happens he applies cold packs and heat. Activities that cause his hands to flare include lifting logs, pulling brush, and even opening the refrigerator door. He said he could not predict when it would happen. He said his current occupation is lawn and tree service.

Claimant said that both of his arms were the same. He is right-handed. His pain depends on how much he uses his arms. He uses both about the same. He walks behind mowers, which puts a lot of strain on his hands and it is hard to do. He tries to stay with riding lawn mowers. Weed eaters put pressure on his hands. His right hand is a little worse. He has occasional problems dropping things. He did some cement work at his home and dropped fifty-pound bags of cement. The majority of his pain is in his wrists. He has some problems with his fingers. He said his right elbow had recovered pretty well, and he has had no major pain there since his last day at work at Johnson Controls. He got a cortisone shot that pretty much took care of the pain, though it still is a little sore with a lot of use. Pushing, pulling, dragging brush, and pushing mowers cause some problems. He coaches his son and daughter's baseball teams. If he does a lot of throwing, fielding, and hitting, he has problems that affect his work. He gave up bowling and softball. He practices with his bow one hour, three times each week, but he cannot do that nearly as much. When his wrists are acting up he cannot do any squeezing and cannot open a bottle of pop. He cannot do weight lifting when his wrists are acting up.

In Atkins v. Schreiber Foods, et al., Slip Op. 05-029562 (Mo. LIRC April 8, 2008), the Commission approved an award finding that the claimant had a 17 1/2% permanent partial disability. The Findings of Fact reflect:

Since her surgery Claimant has decreased grip strength. Her hands go numb and she gets cramps. She is unable to peel potatoes or lift a gallon of milk, and has some problems with thumb soreness.

Claimant was laid off while on medical leave for her carpal tunnel syndrome. She attempted to find a job by submitting applications, making phone calls, and sending out her resume. Following her layoff Claimant received unemployment compensation for five months. Claimant was able to find some jobs, but did not take them because they only paid minimum wage.

Claimant currently has a lot of difficulty sleeping, and invested in a hospital bed. She has difficulty lifting or carrying things, and her back prevents her from standing too long. She is only able to walk about one and one-half block. Claimant also has difficulty sitting over an hour. She has to get up and stretch if she sits too long. Claimant has difficulty going to sleep, and gets approximately four to five hours of sleep a night.

Currently Claimant takes aspirin daily for pain. She takes the aspirin for her back, hands, hip, and knees. In a typical day, Claimant watches television or sits on her front porch. She reads a little bit and does some housework. She is

able to fold her clothes, take care of her birds, and cook a little. She is unable to sweep. Claimant has to sit down or lay down during the day because her back bothers her. She occasionally drives, but her hands go to sleep when she drives. It is difficult for her to get in and out of the car because of her back and hips, and she has trouble with steps.

In Maier v. Hannibal Clinic, Slip Op. 00-112981 (Mo. LIRC May 29, 2008), the claimant received an award of 17 ½% permanent partial disability on her left hand and 15% permanent partial disability on her right hand after bilateral carpal tunnel releases. The Findings of Fact reflect:

At the hearing, employee testified that the surgeries did provide some relief, but she still has problems with dropping things, decreased sensation to hot and cold, left hand complaints radiating up to the elbow, mild loss of feeling in the right palm with some swelling and numbness. Her left hand ring and middle finger still go numb on occasion. ... Dr. Volarich noted pain and loss of feeling in the right palm and into the small and ring finger on the right. With respect to the left hand, he noted more severe pain and loss of feeling from the palm into the ring and small fingers. He also noted her fingers occasionally would feel stiff and swollen upon arising in the morning; severe loss of sensation to extremes of hot and cold water and that her hands would still cause her to awaken at night.

In summary, in the Barron case, the claimant had an open carpal tunnel release to relieve his severe carpal tunnel syndrome. In that case, the lowest expert rating was 23%, and the claimant was awarded a 25% permanent partial disability. In the Boyer case, the claimant had severe medical restrictions requiring a change in occupation and was awarded a 20% permanent partial disability. On the other hand, the claimant's symptoms in this case appear to be less severe than those in the Boyer case, because the claimant did not have to change occupations due to work restrictions from his carpal tunnel syndrome. In this case, the claimant's condition more closely resembles those in the Atkins and Maier cases, in which the Commission approved a 17 ½% permanent partial disability.

CONCLUSION

Based upon the substantial evidence in the record, including the claimant's testimony, forensic medical evidence, and the claimant's medical records, the claimant is awarded a 17 ½% permanent partial disability. In addition, the claimant is awarded one (1) week for disfigurement based on a two centimeter scar.

Date: December 22, 2008

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

A true copy: Attest:

/s/ JEFFREY W. BUKER
Jeffrey W. Buker
Director
Division of Workers' Compensation