

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

Injury No.: 05-067294

Employee: Bonnie Olson

Employer: Bass Pro, Inc.

Insurer: St. Paul Fire & Marine Insurance Company

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 15, 2009. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued April 15, 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 3<sup>rd</sup> day of November 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Bonnie Olson Injury No. 05-067294  
Dependents: N/A  
Employer: Bass Pro, Inc.  
Additional Party: N/A  
Insurer: St. Paul Fire & Marine Insurance Company  
Hearing Date: 1/12/09 Checked by: MEH

### 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: 7/20/05
5. State location where accident occurred or occupational disease was contracted: GREENE COUNTY, MO
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:  
EMPLOYEE WAS STRUCK BY A BOX DROPPED ON HER BY 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: RIGHT UPPER EXTREMITY
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
14. Compensation paid to-date for temporary disability: \$10,295.74
16. Value necessary medical aid paid to date by employer/insurer? \$106,289.53

Employee: Bonnie Olson

Injury No. 05-067294

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: \$211.61
- 20. Method wages computation: BY AGREEMENT

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses: N/A

10 2/7 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

6 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning 11/26/06, for Claimant's lifetime

**FUTURE MEDICAL TREATMENT**

22. Second Injury Fund liability: Yes No  Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:  
weekly differential (0) payable by SIF for 0 weeks, beginning N/A  
and, thereafter, for Claimant's lifetime

**TOTAL: SEE AWARD**

23. Future requirements awarded: PERMANENT TOTAL DISABILIITY AND FUTURE MEDICAL TREATMENT

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:

PATRICK PLATTER

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

Employee: Bonnie Olson Injury No. 05-067294  
Dependents: N/A  
Employer: Bass Pro, Inc.  
Additional Party: N/A  
Insurer: St. Paul Fire & Marine Insurance Company  
Hearing Date: 1/12/09 Checked by: MEH

The parties appeared before the undersigned administrative law judge on January 12, 2009, for a final hearing. The claimant appeared in person represented by Patrick Platter. The employer and insurer appeared represented by Robin Bullock. Memorandums of law were filed by February 2, 2009.

The parties stipulated to the following facts: On or about July 20, 2005, Bass Pro, Inc., was an employer operating subject to The Missouri Workers' Compensation Law. The employer's liability was fully insured by St. Paul Fire & Marine Insurance Company. On the alleged injury date of July 20, 2005, Bonnie Olson was an employee of the employer. The claimant was working subject to the Missouri Workers Compensation Law. On or about July 20, 2005, the claimant sustained an accident, which arose out of and in the course and scope of employment. This employment occurred in Greene County, Missouri. The claimant notified the employer of her injury as required by Section, 287.420 RSMo. The Claim for Compensation was filed within the time prescribed by Section 287.430 RSMo. At the time of the accident the claimant's average weekly wage was sufficient to allow a compensation rate of \$211.61 for

temporary total and permanent partial disability compensation. Temporary disability benefits have been paid to the claimant in the amount of \$10,295.74, from May 23, 2006, to November 25, 2006. Temporary partial disability has been paid in the amount of \$1,106.74, between the dates of September 9, 2005 and November 25, 2005. The employer and insurer have paid medical benefits in the amount of \$106,289.53. The attorney fee being sought is 25%.

A temporary hearing was held December 6, 2006; and an award was issued February 22, 2007.

#### ISSUES:

1. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.
2. Any temporary total benefits owed to the claimant between September 19, 2005, and October 11, 2005, and between November 21, 2005, and January 10, 2006.
3. The nature and extent of permanent disabilities, whether the claimant is permanently partially disabled or permanently totally disabled.
4. The amount of disfigurement assessed.

#### FINDINGS OF FACT and CONCLUSIONS OF LAW:

The claimant is 58 years old. She was a stay-at-home mother for 23 years. During this time she occasionally worked as a waitress, boxing TV dinners, and cashiering. She has a high-school education. Her work history includes primarily working as a secretary, cashier, and waiting tables. While she attended real estate school and became a licensed real estate agent in 1990, she has not been a real estate agent for many years. She also attended cosmetology school in 2000 but is no longer licensed. She testified that she did not believe she could work at this time as either a real estate agent or a cosmetologist.

In June 2005 claimant had been laid off her job as a secretary and went to work in the warehouse of the employer, Bass Pro Shops. She worked a 40-hour week in the "T" zone as order filler. The shelves in the area were approximately four feet high; the heights would vary. A ladder was necessary to reach the top shelf. The claimant's duties included pulling customer orders and orders for other stores. She would take items off the shelves and place in a cart, which she would roll to the packing area.

On July 20, 2005, claimant was retrieving merchandise. Another worker was moving a box approximately 10 feet above her. The box fell and hit the front of her. This box was approximately six feet long and 15 inches to 20 inches square. It brushed the front of her, hit her wrist hard, then hit her knee and shin hard. She felt a snap and instant burning pain in her right wrist.

Claimant reported the accident to her head leader and the HR director, David Bartelot. The employer sent her to Dr. David Pirotte that afternoon.

Claimant testified that the day of the accident she felt extreme pain, burning, numbness, and tingling. Dr. Pirotte ordered x-rays and prescribed pain medication. Dr. Pirotte imposed restrictions of no lifting over two pounds, no work above chest level, no power grip, no forceful pinching, and no power tools. Claimant was given medication and a splint to wear. Claimant could not take the medication while working, so she was sent home that day.

On July 25, 2005, Dr. Pirotte prescribed a sling as well as the brace. He continued the restrictions and ordered physical therapy. On August 3, 2005, he allowed modified duty with no use of the right hand and continued the sling and brace. Claimant returned to work on modified duty doing various jobs. The physical therapy gave her no relief.

On August 10, 2005, an MRI of the right forearm, wrist, and hand was performed which showed a ligament tear in her right arm. Dr. Pirotte referred her to an orthopedic surgeon, Dr. Kelly Holtkamp.

In late August 2005 claimant was dismissed from her employment at Bass Pro Shops. Her mother had had a stroke, and claimant was gone one week to visit her. When she returned she was dismissed.

Claimant was not paid temporary disability from September 19, 2005, to October 11, 2005.

Dr. Holtkamp performed a total of three surgeries on the claimant. On September 19, 2005, he performed arthroscopic surgery to repair the triangular fibro-cartilage complex ulnotriquetral ligament split tear. On October 11, 2005, he performed a right wrist scapholunate reconstruction with neurectomy and tendon transposition. Claimant was put in a cast from her hand past her elbow. Claimant testified that her hand and fingers were very swollen. When the cast was removed she described her hand as frozen and shriveled with a purple red color along her wrist and a blue color going up from it.

On October 24, 2005, Dr. Holtkamp noted that claimant was showing mild reflex sympathetic dystrophy symptoms and was concerned she was developing a pain disorder.

On November 7, 2005, Dr. Holtkamp performed a stellate ganglion block procedure. Dr. Holtkamp saw her again on the 21<sup>st</sup> of November. At this time he returned her to light duty with no pushing or pulling greater than 0 pounds. He stated that, if modified duty was unavailable, claimant would be off work. He found she had extremely limited motion of her hand and fingers and was developing a claw hand. Dr. Holtkamp noted the claimant had developed a claw and felt surgery was now complicated with what appeared to be the development of complex regional pain syndrome.

Claimant was not paid temporary disability from November 21, 2005, to January 10, 2006.

On December 1, 2005, Dr. Jason Marquis examined the claimant. His examination was consistent with complex regional pain syndrome, and he also suspected she had developed adhesive capsulitis of the right shoulder. He ordered a triple-phase bone scan which was performed on December 13, 2005. The triple-phase bone scan confirmed reflex sympathetic dystrophy of the right upper extremity.

Claimant had surgery on December 27, 2005, for removal of hardware.

Claimant continued to treat with Dr. Holtkamp with physical therapy and Dr. Marquis for pain management. On January 10, 2006, Dr. Marquis stated the claimant was unable to work.

In March 2006, Dr. Holtkamp had the claimant on light duty for the right upper extremity and, if modified duty was unavailable, off work. Dr. Marquis recommended she be off work due to the amount of occupational therapy she was receiving.

Because claimant was not working and had no income, she had to move from her house in Ozark, Missouri, to Norwood, Missouri, where her youngest daughter lived. Claimant also lost her vehicle due to her lack of income. In the spring of 2006 the claimant moved to Lenexa, Kansas. Again, she moved because she was having financial difficulties and this is where her oldest daughter lived.

The employer and insurer authorized treatment with Dr. Vito Carabetta in Kansas City. Dr. Carabetta examined the claimant on April 5, 2006. He ordered an EMG and nerve conduction studies and recommended that the claimant be off work. These studies were performed on April 26, 2006. The findings were abnormal, showing significant prolongation of the sensory and motor distal latencies in the right median and ulnar nerve consistent with moderate compression neuropathy of both nerves in the right wrist. Surgery was suggested. Dr.

Carabetta issued restrictions of minimal use of the right upper extremity or an assist on the left side only and occasional lifting of five pounds. Claimant continued to receive physical therapy. Claimant has continued to see Dr. Carabetta about every six months to the present time. He prescribes pain medication.

On June 19, 2006, Dr. Scott Frankel performed median nerve decompression surgery to the right wrist and manipulation of the right shoulder under anesthesia. The claimant continued to receive physical therapy.

On August 23, 2006, Dr. Frankel issued restrictions of no repetitive grasping and/or lifting greater than four pounds with the right hand. He also prescribed work hardening. He returned her to work with restrictions and increased the lifting restriction to 5 pounds.

On December 5, 2006, Dr. Frankel found the claimant was at maximum medical improvement and released her from further treatment. His diagnosis remained right shoulder adhesive capsulitis, right carpal tunnel syndrome, and complex regional pain syndrome. He felt she could return to work at a sedentary level.

In March 2007 claimant got married to William Sanders. Shortly after they were married he was diagnosed with cancer and passed away in September 2007. She was hospitalized for emotional issues after his diagnosis. She is not seeking any benefits in this claim for emotional issues.

On April 23, 2007, Dr. Carabetta recommended the claimant continue her current medications, hydrocodone and Lunesta. He considered her prognosis to be fair at best and felt that what had occurred the past year was what her future situation would likely be. He felt she was stable and expected no further improvement or deterioration in her condition. In his opinion her right upper extremity should be viewed as only capable of assisting her left extremity. He felt she could use her right extremity for light activities, but that she could not use it for routine

activities. Although she was right handed, he indicated she would require reliance on her left side indefinitely into the future.

Dr. Norbert Belz evaluated the claimant on October 25, 2007, at the request of the employer and insurer. He testified by deposition. He believed that, according to the medical records, the claimant's condition had improved. Dr. Belz testified that between July 2005 and November 2006 all signs of reflex sympathetic dystrophy went away. He agreed the claimant was at maximum medical improvement when Dr. Frankel released her in December 2006 and that no further medical treatment was needed after this. He found the claimant has sustained permanent partial disability of 35 – 45 % permanent disability to the right wrist at the 175-week level; 5% permanent partial disability to the right elbow at the 210-week level; and 2.5 – 5% permanent disability to the right shoulder at the 232 –week level.

Dr. Belz imposed restrictions of no lifting in excess of 10-15 pounds with the right upper extremity; not to operate chipper, grinder, impact tools, jackhammer, or chainsaw; not to use a brace; no power grasps over 10 pounds or for over one-half of a work cycle; she was capable of writing and using a computer mouse and using a keyboard occasionally. She was not to work in temperatures below 45 degrees. She was not to function at or above the level of her right shoulder beyond occasionally to less than upon occasional basis. He did not believe she was permanently and totally disabled as a result of the accident and claimant could work within his restrictions. He believed there might be hardware that should be removed, and claimant was referred to Dr. Guinn.

Dr. Carabetta wrote a letter on January 25, 2008, stating his opinions from previous reports remained unchanged. He felt her medication remained stable and relatively effective. He felt she would require monitoring twice a year to check the effectiveness of the medications.

Dr. Allen Guinn evaluated the claimant on April 17, 2008, and May 1, 2008, at the

request of the employer and insurer. He testified by deposition. Claimant was accompanied to these evaluations by the nurse case manager, Mavis Benner. Ms. Benner was sent by the insurance company. Dr. Guinn ordered an EMG. This was conducted on April 30, 2008. He felt the claimant's subjective symptoms were grossly disproportionate to the objective symptoms he found on examination. He felt that the claimant had areas of her right upper extremity that were genuinely painful for her, but in his opinion a generalized pain complaint was very difficult to diagnose.

Dr. Guinn testified that he did not believe claimant had reflex sympathetic dystrophy or complex regional pain syndrome. Rather, he felt she might have Volkmann's ischemic contracture of the forearm, resulting in muscle necrosis from too tight of a cast. Dr. Guinn recommended a further round of physical therapy with a certified hand therapist. He believed that she could have significant improvement with therapy. Dr. Guinn testified that he does not believe that complex regional pain syndrome is a condition that exists in and of itself. Rather, he stated that most problems that other physicians diagnose as complex regional pain syndrome could be more accurately diagnosed as other conditions. He testified that her present condition was caused either by the original injury or the TFCC repair. Dr. Guinn felt claimant could perform modified duty and imposed limitations of no lifting over five pounds, no climbing, and limit repetitive motion.

The claimant did not believe that further therapy would benefit her due to the extensive amount of physical therapy she had received previously. Claimant testified that this decision was based on conversations she had with Ms. Benner regarding the diagnosis of Dr. Quinn and his recommendations for treatment. Claimant testified that Ms. Benner indicated to her that she did not agree with Dr. Quinn and questioned whether further therapy would be beneficial.

Dr. Bernard Abrams evaluated the claimant at the request of her counsel on January 19, 2007. He testified by deposition. He noted she still had some claw hand when he saw her and her right hand was very weak. He also noted her right hand was colder and skin striations. Dr. Abrams believed that the claimant suffered complex regional pain syndrome type 1, carpal tunnel syndrome of the right wrist, and right canal of Guyon syndrome of her right upper extremity. This causes her severe pain and limitation in her range of motion, from her hand up to her shoulder. He believed she had very little use of her right hand, occasionally as an assist, and that her right upper extremity was useless. He further believed that this inability to use her right arm left her permanently and totally disabled as a result of the accident. Dr. Abrams also felt that claimant would benefit from continued medications.

Mary Titterington, a certified vocational counselor, evaluated the claimant on April 22, 2007, at the request of claimant's counsel. She concluded that the claimant could not perform sedentary work on a frequent or constant basis. She found claimant was unable to perform the essential requirements of work including staying on task during the workday and meeting production goals for quality or quantity of work. She did not believe the claimant could perform clerical, customer service, or security work. She further did not find vocational retraining an option for the claimant because of her low level of functioning. Ms. Titterington did not believe that any employer would be willing to hire her for any job customarily performed in the open labor market.

Michal Lala, a certified vocational counselor, evaluated the claimant at the request of the employer/insurer. He considered her a right-hand dominant person who really can only use their right hand as an assistive hand. In his report he felt she fell into the medium work category. He stated Dr. Guinn's 5-pound lifting restriction puts her in a sedentary category. In his report he defines sedentary work as "exerting up to 10 pounds force occasionally ... and/or negligible

amount force frequently.” In his opinion, the claimant is not permanently and totally disabled as she is both placeable and employable and could realistically compete in the open labor market.

Claimant’s current complaints are aching pain in the right extremity. She cannot lift her arm and it locks. It is more painful bringing her arm down than lifting it up. Her right hand is not as strong. She cannot type with her right hand. She does not try to use her right hand for the things such as using a cell phone or handling papers. She cannot lift over a pound with her right hand and arm. A 12-ounce water bottle would cause pain to pick up. She can push light weight with her hand. She cannot pull with her hand. She cannot pick up items with her right hand. She can carry items such as a pen, but not larger. She cannot lift her right arm very high which has required her to adjust how she gets dressed. When she drives she cannot put the finger of her right hand around the steering wheel. Her symptoms have not improved. Her right shoulder still has the same function as she had at the time of the functional capacity evaluation.

The claimant testified that, although her skin on the right wrist and arm is very sensitive and light touch causes pins and needles sensation, she is able to wear a brace on her wrist if it is not too tight.

The claimant has not returned to work since she left employment with the employer. She does not believe she could work as a real estate agent because of the stress of it and that when she worked as one before she could not make enough money from it alone to live off of and had to work additional jobs to make enough money to live off of. She could not work as a cosmetologist with the use of only one hand. She also does not believe she could perform office and clerical work with one hand.

Claimant has scarring on her hand and wrist as a result of the surgeries. After examining the claimant’s right arm and hand at the hearing, I assess 6 weeks disfigurement.

Sara Lee Graf, a claims manager with Bass Pro, testified. She oversees civil litigation and some workers' compensation claims. Bass Pro Shops are self insured and use a TPA. She testified that she does not have any notes from nurse case managers. She has not seen and does not have Mavis Benner's reports. She testified that if she requested them from the administrative file she could get them but she has not requested them. She relies heavily on Travelers to manage the medical treatment for them under their direction. Ms. Graf testified that she had a conversation with the adjuster after she had received a subpoena, yet did not ask for Mavis Benner's reports. Although she knew that there is an issue of future medical treatment she has not spoken directly with Ms. Benner.

1. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.

The claimant has continued to treat with Dr. Cardetta for her injuries. Dr. Cardetta has stated that he thinks the claimant needs to continue her current medications and be monitored twice a year to check the effectiveness of her medications. Dr. Abrams agreed that future medications would be beneficial to the claimant. Dr. Guinn felt that additional physical therapy would be beneficial.

After carefully considering all of the evidence, I find the opinions of Dr. Cardetta and Dr. Abrams more persuasive regarding the need for future medical treatment in the form of medications and monitoring than the opinion of Dr. Guinn. I find that further therapy would not be reasonable or necessary in light of the substantial amount of therapy the claimant has had since the date of her injury and the more persuasive opinions of Dr. Cardetta and Dr. Abrams. I find that the claimant should not be penalized in any manner or for any reason, whether it is in regard to future medical treatment or permanent disability, for not following the recommendations of Dr. Guinn.

I find that the claimant will need future medical treatment to cure and relieve her of the effects of the injuries; and the employer shall provide this by Dr. Cardetta, her treating physician, or pursuant to his recommendations.

2. Any temporary total benefits owed to the claimant between September 19, 2005, and October 11, 2005, and between November 21, 2005, and January 10, 2006.

Claimant is awarded a total of 10  $\frac{2}{7}$  weeks temporary total disability for the time periods of September 19, 2005, and October 11, 2005, constituting 3  $\frac{1}{7}$  weeks, and November 21, 2005, and January 10, 2006, constituting 7  $\frac{1}{7}$  weeks. On January 10, 2006, Dr. Marquis found the claimant was unable to work. And I find that her condition had remained the same from September 10, 2005, to January 10, 2006. I find that the claimant was temporarily and totally disabled after leaving employment at the employer until the time she reached maximum medical improvement.

3. The nature and extent of permanent disabilities, whether the claimant is permanently partially disabled or permanently totally disabled.

There have been various restrictions assessed by the different treating or evaluating physicians in this case. These restrictions are summarized:

Dr. Cardetta: In his opinion her right upper extremity should be viewed as only capable of assisting her left extremity. He felt she could use her right extremity for light activities; she could not use it for routine activities. Although she was right handed, he indicated she would require reliance on her left side indefinitely into the future.

Dr. Frankel: Claimant could engage in sedentary work.

Dr. Belz: 35 – 45 % permanent disability to the right wrist at the 175-week level;  
5% permanent partial disability to the right elbow at the 210-week level;  
2.5 – 5% permanent disability to the right shoulder at the 232 –week level.

Restrictions: no lifting in excess of 10-15 pounds with the right upper extremity; not to operate chipper, grinder, impact tools, jackhammer, or chainsaw; not to use a brace; no power grasps over 10 pounds or for over one-half of a work cycle; she was capable of writing and using a computer mouse and using a keyboard occasionally. She was

not to work in temperatures below 45 degrees. She was not to function at or above the level of her right shoulder beyond occasionally to less than upon occasional basis.

He did not believe she was permanently and totally disabled as a result of the accident and claimant could work within his restrictions.

Dr. Guinn: Modified duty and imposed limitations of no lifting over five pounds, no climbing, and limit repetitive motion.

Dr. Abrams: Very little use of her right hand, occasionally as an assist, and that her right upper extremity was useless. He further believed that this inability to use her right arm left her permanently and totally disabled as a result of the accident.

The physicians disagree as to whether the claimant has reflex sympathetic dystrophy or complex regional pain syndrome. Dr. Holtkamp, Dr. Marquis, Dr. Frankel, Dr. Carabetta, and Dr. Abrams felt she did. Dr. Belz felt she did, but that it had resolved. Dr. Guinn did not believe she did, but also did not believe complex regional pain syndrome is a condition that exists in and of itself. He felt she had a different condition such as muscle necrosis. Regardless of whether the claimant has had or currently has reflex sympathetic dystrophy or complex regional pain syndrome or not, both Dr. Belz and Dr. Guinn have imposed significant restrictions to the use of her right upper extremity.

Mary Titterington testified that the claimant was permanently and totally disabled. She concluded that the claimant could not perform sedentary work on a frequent or constant basis. Ms. Titterington did not believe that any employer would be willing to hire her for any job customarily performed in the open labor market.

Michal Lala testified that, although he considered her a right-hand dominate person who really can only use their right hand as an assistive hand, he felt she was not permanently and totally disabled. I do not find his testimony as credible as Ms. Titterington's because in his report he felt she fell into the medium-work category. I find this is not supported by the

evidence. Further, he stated Dr. Guinn's 5-pound lifting restriction puts her in a sedentary category. This is contrary to his definition of sedentary.

Dr. Belz was the only physician who imposed restrictions that would fall within the categories of either light or sedentary work. He also testified that the claimant's condition had resolved. I do not find this persuasive after reviewing all of the medical records. Nevertheless, given his restrictions and the significance of the disability reflected in his ratings, I still am not persuaded that the claimant would be able to compete in the open labor market.

Based on all of the evidence, and relying specifically on the medical opinions set forth in the reports and records of Dr. Carabett,; the reports, records and testimony of Dr. Abram,; and the work and activity restrictions set forth in the records and testimony by the Dr. Guinn, I find the claimant is permanently and totally disabled as a result of the injury she sustained on July 20, 2005. Dr. Carabetta and Dr. Abrams find that the claimant has no use of her right arm other than in an assistive role to the left. Dr. Guinn imposes a 5-pound lifting restriction on the right arm. All of these put her at less than a sedentary level of "exerting up to 10 pounds force occasionally ... and/or negligible amount force frequently" as set out in Mr. Lala's report. If she cannot work at a sedentary level, I do not find she could compete in the open labor market.

I further find that the claimant has been permanently and totally disabled since November 25, 2006, the date temporary total disability was last paid. Therefore, the employer and insurer are to pay past benefits from November 25, 2006, to the date of the hearing and future benefits from the date of the hearing into the future as long as the claimant remains thus disabled.

4. The amount of disfigurement assessed.

At the time of hearing, 6 weeks of disfigurement was assessed by the undersigned after observing the claimant's right upper extremity. Therefore, I award the claimant 6 weeks of disfigurement consistent with my assessment.

Attorney for the claimant, Patrick Platter, is awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Date: April 15, 2009

Made by: /s/ Margaret Ellis Holden  
Margaret Ellis Holden  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest

/s/ Naomi Pearson  
Naomi Pearson  
*Division of Workers' Compensation*