

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

Injury No.: 04-054162

Employee: Kirk Porter
Employer: Johnson Controls, Inc.
Insurer: Self Insurer c/o Underwriters Safety & Claims
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: April 5, 2004

Place and County of Accident: St. Joseph, Buchanan County, Missouri

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 February 11, 2008. The award and decision of Administrative Law Judge Robert B. Miner, issued February 11, 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 20th day of November 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Kirk A. Porter

Injury No.: 04-054162

Employer: Johnson Controls, Inc.

Additional Party: Treasurer of the State of Missouri as Custodian of the Second Injury Fund

Insurer: Self-insured sco Underwriters' Safety & Claims

Hearing Date: December 18, 2007

Checked by: RBM

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: April 5, 2004.
5. State location where accident occurred or occupational disease was contracted: St. Joseph, Buchanan County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee performed repetitive work for Employer including typing causing injury to his right wrist and right hand.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: right wrist and right hand.

14. Nature and extent of any permanent disability: 10% permanent partial disability of the right hand at the 175 week level.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? \$5,413.99.
18. Employee's average weekly wages: Sufficient to qualify for maximum compensation rates pursuant to stipulation of parties.
19. Weekly compensation rate: \$662.55 for temporary total disability and \$347.05 for permanent partial disability.
20. Method wages computation: Stipulated by parties.

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses from Employer: \$5,413.99.

17 ½ weeks of permanent partial disability from Employer (.10 x 175 x \$347.05): \$6,073.38.

2 ½ weeks of disfigurement from Employer (2.5 x \$347.05): \$867.63.

TOTAL: \$12,355.00.

22. Second Injury Fund liability: Not determined.

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: John R. Boyd.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kirk A. Porter

Injury No.: 04-054162

Employer: Johnson Controls, Inc.

Additional Party: Treasurer of the State of Missouri as Custodian of the Second Injury Fund

Insurer: Self-insured sco Underwriters' Safety & Claims

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PRELIMINARIES

A final hearing was held in this case on Employee's claim against self-insured Employer on December 18, 2007 in St. Joseph, Missouri. Employee, Kirk A. Porter, appeared in person and by his attorney, John R. Boyd. Self-Insured Employer, Johnson Controls Inc., appeared by its attorney, Mark R. Bates. No one appeared on behalf of the Second Injury Fund. The Second Injury Fund is a party to this case but was not represented at the hearing since the parties agreed to bifurcate the Second Injury Fund claim. John R. Boyd requested an attorney's fee of 25% from all amounts awarded. It was agreed that proposed Findings of Fact and Conclusions of Law would be due on January 4, 2008.

STIPULATIONS

At the time of the hearing, the parties stipulated to the following issues:

1. On or about April 5, 2004, Kirk A. Porter ("Claimant") was an employee of Johnson Controls, Inc. ("Employer") and was working under the provisions of the Missouri Workers' Compensation Law.
2. On or about April 5, 2004, Employer was an employer operating under the provisions of the Missouri Workers' Compensation Law and was duly self-insured under the provisions of said Law.
3. Employer had notice of Claimant's alleged injury.
4. Claimant's Claim for Compensation was filed within the time allowed by law.
5. The rate of compensation for temporary total disability was \$662.55 for temporary total disability and the rate of compensation for permanent partial disability was \$347.05.
6. No compensation had been paid by Employer for temporary disability.
7. No medical aid had been paid or furnished by Employer.
8. The medical expenses incurred to treat Claimant's carpal tunnel condition were reasonable and customary, and the medical treatment Claimant received was necessary to treat his carpal tunnel condition.

ISSUES

The parties agreed that there were disputes on the following issues:

1. Whether on or about April 5, 2004, Claimant sustained an injury by accident or occupational disease arising out of and in the course of his employment.
2. Whether Claimant's current condition is medically causally related to the alleged work injury of April 5, 2004.
3. What is Employer's liability, if any, for past medical expenses?
4. What is Employer's liability, if any, for permanent partial disability benefits?
5. What is Employer's liability, if any, for disfigurement?

Claimant testified in person. In addition, Claimant offered the following exhibits which were admitted in evidence without objection:

- A. Claim for Compensation.
- B. Answer to Claim for Compensation.
- C. Contract of Employment.
- D. Medical records and reports pertaining to Claimant.
- E. Medical report of Dr. Gregory Walker dated October 2, 2007 and medical bills pertaining to Claimant.
- F. Resume of Claimant.
- G. Employer's job description for Safety Coordinator.
- H. Missouri Division of Workers' Compensation Report of Injury.
- I. Employer's pre-employment physical records pertaining to Claimant.

Employer called Brian Stewart as a witness. In addition, Employer offered the following Exhibits which were admitted in evidence without objection:

1. Medical reports of Dr. Anne Rosenthal.
2. Deposition of Dr. Gregory Walker taken on April 12, 2006.

A scar was viewed on Claimant's right wrist, and the Court advised that in the event that Claimant's Claim was found to be compensable, 2 ½ weeks of disfigurement would be assessed for the scar.

SUMMARY OF THE EVIDENCE

TESTIMONY OF CLAIMANT

Claimant testified that he was 49 years old. He graduated from Emporia State University in 1981. He obtained a Masters degree in Industrial Safety Management in 1991. He is a certified HASMAT tech. He took safety classes at Missouri Western State College and is certified in first aid,

CPR, and emergency response. Before he began working for Employer, he worked for several other Employers between 1981 and 2000, except when he was in school. He testified that he had no recollection of receiving treatment for carpal tunnel during that time. He was responsible for safety and health for Snorkel from 1996 to 2000 and for United Rail Anchor Company from 1992 to 1996.

Claimant testified that he worked for Employer from February 2000 to May 2004. He worked in safety at both plants for Employer in St. Joseph. The plants had approximately 300-400 employees. His job title was Industrial Hygiene and Safety Coordinator. He did a lot of lead monitoring and recorded information and sent it to corporate. He also worked in the respirator program and was involved in monthly blood monitoring of employees. He stated that he worked a lot of uncompensated overtime his first year and spent 1,000 hours on the blood monitoring program. His hours were flexible but he worked at least 40 hours each week. He stated he did a lot of auditing which involved clipboard writing. He also entered data into a computer and did monthly reports. He stated that he spent at least an hour or two per day performing data entry, and at the end of the month, he spent most of his time performing data entry.

An employee who helped him became ill and left work. Claimant said that he spent between four to six months performing both jobs, including the blood-monitoring previously performed by the employee who left. That job required winding up hoses on the monitors, hanging the monitors on employees, handling buckets of monitors, and cleaning monitors. Claimant stated that he is right-handed, and he sometimes used a screwdriver with his right hand.

Claimant identified Exhibit G, his job description, and said that it accurately described the hand-intensive nature of his work and accurately reflected his duties for Employer. He said after the employee who had helped him became ill and left, a new coworker helped him and did some of the work, including daily audits. Claimant said he also performed other duties as assigned. Exhibit G did not describe the data entry or how he was to perform that work. Claimant stated that he currently worked for his wife's accounting firm.

Claimant stated that on April 5, 2004 his right hand finally quit working. It got so numb he could not work. He stated he was typing a new procedure on the computer. His hand started tingling while he typed. He continued typing when his middle finger went numb. The palm under his thumb also went numb, and then all his fingers went numb. He stopped typing and shook his fingers. He said that sensation went on for 10 to 30 minutes. He then took a ten-minute break. He said that before this, he had never experienced that sensation in his right hand.

Claimant stated that after this happened, he saw Greg Klein, Employer's plant nurse. He stated he had been told when hired to report a work injury to the plant nurse. He told the nurse that his right hand went totally numb. The nurse said he should see his doctor. Dr. Cathcart was Claimant's personal doctor. Claimant stated that he called Dr. Cathcart's office for an appointment after his conference with Greg Kline. He went to Dr. Cathcart's office on April 6, 2004. Dr. Cathcart was not at the office, and Claimant saw Dr. Cathcart's physician's assistant, who did an EMG test in the office. The physician's assistant referred Claimant to Dr. De Priest.

Claimant returned to Employer and talked to David Glidewell, the plant superintendent, before he went to Dr. De Priest. Claimant told Mr. Glidewell that his right hand had gone numb and that Dr.

Cathcart's physician's assistant had referred him to Dr. De Priest. Claimant said he was told by Employer to take care of this through his personal insurance. He stated that no one at Employer sent him for medical treatment for his right wrist.

Claimant stated that Dr. De Priest performed a test that came out bad, and he scheduled Claimant for carpal tunnel release surgery. Surgery was first set on May 17, 2004. Dr. De Priest did not do the surgery. The surgery was canceled because Claimant was unemployed and he was not sure he could afford the surgery. Claimant stated he was terminated by Employer on May 6, 2004. He stated that before his termination, he had never been reprimanded by Employer. He stated that during his tenure with Employer, the plant was number one in safety and employee blood-lead levels had dropped dramatically.

Claimant had a pre-employment physical in 2000, which was admitted as Exhibit I. Nerve conduction studies were done on his left and right hands. He was cleared for duty by Dr. Cathcart, the company doctor, after the tests. He was not told that he had carpal tunnel, and he was given no restrictions. Claimant stated he had no injury to his right arm or right hand since April 5, 2004. He saw Dr. Walker and gave him an accurate history. He gave him his best effort and did not limit his performance on the tests.

Dr. Vaniver performed the surgery on Claimant's right wrist. Claimant was not employed when he had his surgery and missed no time from work as a result of the surgery. Claimant's complaints since surgery are that he does not have the strength that he had before. He now drives with his left hand. He cannot use his right hand for as long as before. He cannot use a chain saw as much as before. It is hard to use his right thumb on the throttle of his four-wheeler. Claimant stated he lives on a farm. He hardly used his weed whacker because the throttle is on the right. He has not used his bow since the surgery because he does not have enough strength. Claimant stated that he had no objection to his attorney's request for fees. He stated his medical treatment was paid for by his personal health insurance through COBRA.

Claimant testified on cross-examination that Dr. Cathcart had been his personal physician before 2000. He had a nerve conduction study in January 2000 at Dr. Cathcart's office. Exhibit I, a note of Dr. Cathcart's office dated April 7, 2004, stated that Claimant had a four year history of symptoms. Dr. De Priest's record dated April 8, 2004 in Exhibit D stated that Claimant had had trouble with his hand for four to eight years. He had tried splinting before. He did not remember going to a chiropractor. The record noted that Claimant did not recall Dr. Cathcart diagnosing carpal tunnel in January 2000.

Claimant stated that when he worked for Employer, he did handwriting on a clipboard. He wrote checkmarks and numbers. He filled out forms, made notes and entered information into a program in the computer with a regular keyboard. He stated that he attended safety meetings and had other duties, and that his workday was interrupted. He also stated that he was diagnosed with diabetes in December 2000. He said he took insulin and gave himself a shot daily.

Claimant stated on redirect that when he met with Dr. Cathcart, he told Dr. Cathcart that sometimes when he slept on his hands, they would end up hurting. He said he had not lost any time from work with any Employer before April 2004 due to numbness or tingling. He also stated that the doctor who treats him for his diabetes had not said that he had peripheral neuropathy.

Claimant's supervisor was Herm Bauer, the Human Resources Manager. Claimant stated that the June 21, 2004 date that was shown on the Report of Injury, Exhibit H, as the date that Employer was notified of his injury, was not accurate. Claimant stated he was terminated in May 2004. He said Greg Kline filled out the Report of Injury. Claimant testified that at the time of the hearing, he worked for his wife's accounting firm as vice-president of operations. He began working there in late 2004. I find that Claimant was a credible witness.

TESTIMONY OF BRIAN STEWART

Brian Stewart testified for Employer/Insurer. He said he was the Industrial Hygiene and Safety Coordinator for Employer, and had been since January 2007. He said that Exhibit G, a job description, was a fair and accurate description of the job duties for that position. He said his job was the same as Claimant's, except he had some added responsibilities that Claimant did not have. Mr. Stewart was asked about using his hands in his job. He said he did some auditing of hygiene findings. Mostly, however, he observed employees working and identified items they did wrong and identified unsafe work conditions. Information is entered into an audit. He said it takes about one minute per audit to enter. In a month, he does five to ten audits. He said his supervisors are required to do weekly audits.

Mr. Stewart said that the amount of e-mailing and typing that he does varied from day to day but was less than one hour per day. He said the typing is interrupted during the day. He said that no more entering information into the computer is done at the end of the month. He has an employee who does the majority of the work with the monitors. He helps some, but does not use rapid or forceful hand movements. He testified that the work is hardly repetitious. He stated that he mainly coordinated and managed.

JOB DESCRIPTION

Exhibit G is Employer's Position Description for Safety Coordinator dated September 8, 1999. It identifies the following Typical Duties of the Safety Coordinator: developing and administering effective occupational health, safety, ergonomics and industrial hygiene programs; being knowledgeable in Employer's Best Business Practices and incorporating in programs; educating, motivating and training line supervisors and production personnel in good housekeeping practices, safe work procedures, PPE, etc.; using specialized testing equipment, sampling measuring and evaluating employee exposures to in-plant chemical contaminants, administering the audiometric testing and hearing conservation programs, and monitoring, analyzing and recording performance of the plant exhaust and make-up air ventilation systems; assisting Occupational Health Nurse in administration of medical surveillance and biological monitoring programs according to OSHA standards and company policies and procedures; managing the plant personal protective equipment, work clothing and safety equipment programs according to company standards and operating budget, administering the respiratory protection program, including quantitative fit testing, respirator distribution, cleaning and sanitizing; assisting Occupational Health Nurse in administration of the workers compensation program, including effective medical case management, reporting, record maintenance and follow-up; developing and implementing effective plant programs for the identification, prevention and control of occupational injuries and illnesses, developing and coordinating plant health and safety education and training programs, and serving on the plant safety committee as Co-Chairperson; maintaining current awareness of applicable federal, state and local health,

industrial hygiene and safety regulations, maintaining legal, governmental and company environmental, health, medical and safety-related records according to standards, including confidentiality, maintaining an accurate OSHA 200/300 log, and accompanying visiting inspectors and reporting findings; administering the plant hazard communication program, including maintaining up-to-date MSDS's, effective identification of all chemicals, chemical inventory and related training and education programs; reviewing all manufacturing and support operations to assure ongoing safety, assisting the line organization in developing job safety analyses and safe operating procedures for all tasks and in investigating incidents, and developing and implementing audit programs to review and insure compliance with applicable health and safety standards; accumulating, preparing and entering health, industrial hygiene, medical and safety data into the IHS computer system and analyzing data and preparing standard and other requested reports for plant management; maintaining professional competency through participation in professional education and training programs and completion of any necessary requirements to maintain professional credentials; and performing other duties as assigned. Exhibit G noted that the Position Description was a general overview of the job duties and not a complete list of essential job functions.

MEDICAL RECORDS, REPORTS AND DEPOSITION

Exhibit D included Employer's medical exam records for Claimant from January 12, 2000 to February 2, 2004. It included Employer Notification Form dated January 18, 2000 and signed by Dr. Cathcart that noted that Claimant was qualified for full participation in job duties as described. The comments noted evidence of symptomatic carpal tunnel syndrome. The Physical Examination Form dated January 18, 2000 and signed by Dr. Cathcart noted a normal exam. A Nervepace Nerve Conduction Amonitor Motor Latency Evaluation dated January 18, 2000 of the median noted average latency of 4.7 on the left and 4.95 on the right with upper limit of normal shown to be 4.2 mS.

Exhibit D also included records of Heartland Occupational Medicine, Dr. David Cathcart, from May 17, 1996 to September 23, 2003. Dr. Cathcart's record dated November 4, 1999 noted that Claimant stated that he felt the Lipitor was causing some numbness and tingling in his arms, and he had quit taking the medication a few months before for that reason. Claimant saw Dr. Cathcart on June 29, 2001 for shortness of breath. Dr. Cathcart's impressions at that time included diabetes mellitus. Lipitor was resumed. Claimant saw Dr. Cathcart on October 26, 2001. The chief complaint was noted to be hypertension, hyperlipidemia and diabetes follow-up. Claimant was noted to be doing well with no complaints. Claimant saw Dr. Cathcart on September 12, 2002. The record of that visit did not mention any complaints relating to his right upper extremity. Claimant saw Dr. Cathcart on March 10, 2003 for follow-up for hypertension, diabetes, and hyperlipidemia. The record of that visit noted that Claimant was doing well and had no specific complaints. That record did not mention any complaints relating to his right upper extremity.

Dr. Cathcart's records in Exhibit D included the notes of Dr. Cathcart's RN, Richard Campbell, dated April 7, 2004 relating to his examination of Claimant for hand pain. The record noted that the problems began four years ago and since the problem started, the symptoms had gradually worsened. It was noted to come on gradually and had been progressive since its onset. The record noted that Claimant was doing nothing particular when the problem came on. The pain was located in his right hand. It radiated up the arm on occasion. The pain was described as moderate. Claimant was noted to have problems with activity of daily living. Claimant complained of pain and numbness in the hand with

gripping objects such as the steering wheel of the car, the telephone, and other objects. The record noted that treatment so far included OTC meds, moist heat packs and wrist brace. Those modalities had not resulted in improvement. The symptoms were improved by rest and worsened by repetitive use of the hands. Sleeping usually caused numbness in the hand. Claimant reported associated tingling in his fingers and weak grip. The record noted that Claimant had a past medical history significant for diabetes mellitus and HTN.[1]

The April 7, 2004 record also noted in the Review of Systems that Claimant denied limitation on motion and complained of paresthesia, tingling, numbness, and radiating pain. The right upper extremity was normal on inspection. Range of motion was normal. Phalen's test was weakly positive at 60 seconds. Tinel's sign was negative. There was dorsal and volar tenderness and no swelling or crepitus noted on the right wrist. A nerve conduction reported the right median nerve latency was elevated at 5.4 mS. The ulnar nerve latency at the right wrist was normal at 2.5 mS. The ulnar nerve latency at the right elbow was normal at 7.6 mS. The diagnosis was carpal tunnel syndrome; Htn, hypertension, essential; diabetes mellitus type I insulin; and calculus of kidney. Claimant was instructed to wear cock-up wrist brace at night and only for severe pain during the day. He was also told to take anti-inflammatory medications as directed. Moist heat packs would be helpful for pain. Stretching at the beginning of the work day was also emphasized. The record noted frequent stretching throughout the work shift should help relieve pain and discomfort, and as a general rule, he was to avoid wrist bracing during the day. The record noted that because of significantly elevated NCS, Dr. Cathcart would refer Claimant to Dr. De Priest.

Exhibit D also contained records of Dr. Michael De Priest relating to his treatment of Claimant. Dr. De Priest's records included a Preliminary Nurse Hand Evaluation dated April 28, 2004. That record referred to the right hand, and identified numbness, pain in wrist and some in elbow, bothered Claimant about his hands. Claimant stated he did have numbness and tingling in his fingers. The record stated that working bothered his hands the most, and he did have problems at night. The record asked how long had Claimant been bothered by his hands, and the handwritten response was "4 years at least, may be closer to 8 years." The record noted that Claimant wore a wrist brace nights. The record included a letter dated April 28, 2004 from Dr. Michael De Priest to Dr. David Cathcart. The letterhead indicated that Dr. De Priest was a member of the American Society of Plastic and Reconstructive Surgeons Inc., a Diplomat of the American Board of Plastic Surgery, a Diplomat of the American Board of Surgery, and Certificate of Added Qualifications in Surgery of the Hand. Dr. De Priest's April 28, 2004 letter stated that Claimant said he had had trouble with his hands for at least four (maybe even eight) years. He first noted numbness, but he now had severe pain that radiated into the wrist and forearm. He had tried splinting and chiropractic adjustments without improvement.

Dr. De Priest's April 28, 2004 letter also noted that Claimant's pain was so bad that he was now willing to proceed with surgical treatment. The letter noted that they checked Claimant's right median motor and sensory latencies. Claimant's right median sensory latency was normal, but the motor latency was noted to be quite prolonged at 5.22 msec. The letter stated that Claimant wanted to proceed with surgical treatment, and a time was reserved for the operation on May 17, 2004. The record included Dr. De Priest's NCV[2] Report dated April 28, 2004. The indication was shown to be persistent pain and numbness in right hand. The results shown in the NCV Report were that Claimant's right median motor latency was 5.22 msec[3] (upper limit of normal is 4.2 msec) and right median sensory latency was 2.80 msec (upper limit of normal is 3.1 msec.) Dr. De Priest's impression was "Prolonged right median motor

latency consistent with surgically significant right carpal tunnel syndrome." The plan was to proceed with right carpal tunnel release.

Exhibit D also included Dr. David Cathcart's note dated August 30, 2004. Claimant's chief complaint dealt with concerns about elevated blood sugar. The note did not mention complaints about or treatment for carpal tunnel syndrome.

Exhibit D also contained medical records of Dr. Karen Vaniver. Dr. Vaniver's Surgery Scheduling Ticket & Checklist dated July 26, 2005 included a diagnosis of right carpal tunnel syndrome. Planned procedure was right open carpal tunnel release. Dr. Vaniver's records also included her History and Physical dated August 8, 2005. Claimant's chief complaint was right hand pain. The history of present illness noted that Claimant was vice president of operations at an accounting firm and complained of right hand pain which had been present for several months. It extended from his long finger to his wrist and awakened him from sleep. He had nerve conduction studies on April 20, 2004 which showed right carpal tunnel syndrome. Dr. Vaniver's impression was right carpal tunnel syndrome, early left cubital tunnel syndrome. The plan was for open right carpal tunnel release. Her records contained an Operative Note dated August 8, 2005. The preoperative and postoperative diagnosis was right carpal syndrome. The operative procedure was right open carpal tunnel release. The Operative Note stated that Claimant tolerated the procedure well and was dispositioned to the recovery room in stable condition.

Exhibit 1 is the medical report of Dr. Anne Rosenthal dated September 5, 2006. The letterhead of the report was "Rockhill Orthopaedics, P.C." The report included Claimant's history that he began to have problems when he was redoing the lockout policies and his right hand went completely numb and it would take 20 or 30 minutes to come back. The report noted they did an electrical test at Dr. Cathcart's office. Claimant said that was the first and only time that he ever lost it, but he had been having problems with it for years at night and wearing night splints. Claimant stated that he maybe first noticed it in 2002, but it had been so long he did not remember. Claimant stated that he had no symptoms now. The report noted that it was pretty good, just not as strong as it used to be. He stated the pain was gone right after the operation and the numbness had not come back. Claimant reported that it was sore along the scar when he had to hit something when putting things together.

Dr. Rosenthal's September 5, 2006 report noted Claimant's vocational history at Johnson Controls from February 2000 until May 6, 2004. Claimant worked as a safety coordinator keeping records on safety, teaching and running safety programs. The report noted that Claimant described his job as follows: "[H]e would do safety auditing and recording safety records and writing safety programs. He would spend 6-7 hours/day on the computer at the end of the month. He stated that he did not have any secretarial help. If it wasn't the end of the month he would spend '2, 3 or possibly 4 hours on the computer per day.'" The record noted that currently Claimant was working as an accountant for an accounting firm and was vice president of operations. Hobbies were noted to be raising chickens and birds and playing with the kids. Dr. Rosenthal performed an examination and noted that bilateral wrist range of motion was full and equal. Dr. Rosenthal's report included a description of her review of records of Dr. Cathcart, Dr. Walker, preemployment physical for Johnson Controls dated January 12, 2000, Dr. De Priest, and Dr. Vaniver. Dr. Rosenthal's impression was status post right carpal tunnel release with good results. Dr. Rosenthal noted in her September 5, 2006 report that, "Without having a job description, I am unable to address causation." She noted that Claimant was doing well and did not need any work restrictions. She believed he was at maximum medical improvement. She also stated that

for the right carpal tunnel syndrome and subsequent release by Dr. Vaniver on August 8, 2005, there was a 5% permanent partial disability at the 175 week level of the right upper extremity.

Exhibit 1 also included Dr. Rosenthal's January 18, 2007 IME addendum regarding Claimant. That report stated that the plant nurse called her and noted that the maximum amount of time per day that Claimant would spend on the computer would have been one hour. Dr. Rosenthal's January 18, 2007 report stated that:

With the pre-employment physical examination from January 12, 2000, noting evidence of symptomatic carpal tunnel syndrome, with an abnormal nerve pace study, along with his complaints of carpal tunnel syndrome to Dr. Cathcart with activities of daily living, along with the documentation that less than one hour per day or a maximum of one hour per day is spent on the computer, the right carpal tunnel syndrome is not vocationally related.

Prior to employment beginning, there was a positive nerve test of the right upper extremity for carpal tunnel syndrome. Furthermore, Mr. Porter noted that he would spend 6-7 hours per day on the computer, which has been noted by his company to only have been up to one hour per day, and this would not be enough to cause or aggravate his right carpal tunnel syndrome. Therefore, the right carpal tunnel syndrome is not vocationally related.

Exhibit D included the medical report of Dr. Gregory Walker dated October 26, 2005. The letterhead of that report included the words: "Gregory E. Walker, M.D. Neuro-Surgeon." That report noted that Dr. Walker examined Claimant on October 3, 2005 and reviewed medical records including Employer's Medical Exam Records of Claimant, and records of Dr. Michael De Priest, Heartland Occupational Medicine, and Dr. Karen Vaniver. Dr. Walker's report noted that Claimant stated that the first numbness he experienced in his right hand began around April 6, 2004 while performing data input at Employer. He stated he saw Dr. Cathcart's PA[4] and had two EMGs.[5] He was sent to a hand surgeon, Dr. De Priest, who scheduled Claimant for surgery in May. He was terminated from work for Employer around May 23, 2004. He eventually had a right carpal tunnel release by Dr. Vaniver and had been released as of August 2005. Claimant stated that his job at the Employer involved primarily data entry for three to four years. Prior to surgery, he was having some difficulty opening jars and difficulty sleeping because of nighttime paresthesias.

Dr. Walker's report discussed the records he reviewed. Dr. Walker performed a physical examination of Claimant. He noted Claimant had what appeared to be normal strength in the upper extremities with the exception of his right grip, which was approximately 55 pounds on the dynamometer, and 130 pounds on the left. Intrinsic hand strength revealed that Claimant had some slight weakness in the opponens pollicis on the right graded as 3/5. The left side was normal. Sensation was noted to be normal in the upper extremities.

Dr. Walker concluded that according to the medical records, Claimant had a history of carpal tunnel syndrome extending back some eight years, and the symptoms were minor then. It was noted on Claimant's pre-employment physical that nerve conduction was already reduced. Latencies were already elevated consistent with carpal tunnel syndrome prior to working for Employer. Claimant stated he was not symptomatic at that time, and felt he could perform his duties pain-free. Dr. Walker stated, "I feel that as the patient did perform keyboard entry for a significant portion of his employment history with Johnson Controls and this could certainly aggravate and accelerate an asymptomatic pre-existing

condition which he obviously had at the time." Dr. Walker also noted that Claimant's diabetes mellitus, insulin-dependent, contributed to the vulnerability of the nerves in the body to compression. Dr. Walker rated Claimant 15% permanent partial disability at the wrist, right side, as a result of his carpal tunnel syndrome and subsequent surgery. He stated that he believed that Claimant did have a pre-existing nerve dysfunction; however, it was not symptomatic to a significant degree during that time. Dr. Walker also stated, "It is my belief that his work entering data into a computer over a prolonged period of time aggravated this condition making it symptomatic requiring surgery. The above is stated within a reasonable degree of medical certainty." Dr. Walker did not believe any further treatment was necessary.

Exhibit E is Dr. Walker's October 2, 2007 report with attached medical bills of Dr. David Cathcart, Dr. Michael De Priest, Dr. Karen Vaniver, and St. Joseph Center for Outpatient Surgery. Dr. Walker's October 2, 2007 report noted that the total charges included \$5,413.99 with \$696.58 in out-of-pocket by Claimant. Dr. Walker stated that the charges were reasonable and appropriate and reasonable and necessary to relieve Claimant of his carpal tunnel syndrome.

Dr. Walker was deposed by Employer/Insurer's counsel on April 12, 2006. His deposition was admitted as Exhibit 2. The objections contained in Exhibit 2 are overruled. Dr. Walker testified that the speed at which the nerve conducts the impulse across the carpal tunnel of Claimant were both elevated on January 18, 2000. The right was worse than the left. He agreed that at the start of Claimant's employment he was demonstrating motor latency. Dr. Walker said motor latency is not the same thing as carpal tunnel syndrome. He stated that there are people that have increased latencies that are asymptomatic and there are people who have increased latencies that are symptomatic. He stated that Claimant reported some symptoms to him as early as 2000. The best that Dr. Walker could recall was that Claimant was having some intermittent symptoms in 2000. Dr. Walker stated that he did not get the impression that Claimant was having nighttime paresthesia where it would wake him up at night. Claimant did not appear to be bothered when he was driving for prolonged periods of time. Dr. Walker stated that he did not get the impression that Claimant had a full-blown carpal tunnel syndrome at that time. He had intermittent numbness that was more right-handed. At that time it was either due to some previous employment exposures or medical conditions or both.

Dr. Walker stated that it was his impression that Claimant spent a great deal of his time with data entry at a computer keyboard. Claimant told him it was basically 50% of his job duties. It was Dr. Walker's impression that Claimant was sitting there and manually doing key-stroking and data entry using his hands during that 50% of the time. Dr. Walker was asked to assume that Claimant's job activities required him to type 1 to 2 hours a day in an 8-hour day, that Claimant did some data entry, read some things on the computer and those one to two hours of typing and data entry were interrupted to go to different areas of the plant, to get up and respond to calls and do other things, and whether that would change his opinion as to whether the work activities were a substantial cause of Claimant's carpal tunnel syndrome. Dr. Walker responded that he thought 1 to 2 hours a day could do it. Dr. Walker also testified that Claimant had diabetes, insulin dependent. He stated that people frequently have a lower threshold for developing carpal tunnel syndrome that have diabetes by virtue of their nerves being more vulnerable. He testified that he did not think that diabetes causes carpal tunnel syndrome. It makes them more susceptible to the effects of it.

Dr. Walker was asked whether it was possible in Claimant's case, assuming he did not have a harmful exposure with Employer that his condition developed just as a normal progression of entrapment

of the nerve. He indicated it was not unless there was an underlying medical condition such as hypothyroidism or congestive heart failure causing excessive amount of fluid gain or adrenal problems.

He testified that generally carpal tunnel syndrome is due to either thickening of the synovium of the tendon sleeves due to repetitive motion or thickening of the flexor retinaculum or carpal ligament due to repetitive use. He stated that most people do not develop carpal tunnel syndrome if they are not doing something injurious to their wrists or some kind of repetitive motion unless they have a previous fracture that causes compression of the canal at the wrist.

Dr. Walker testified on cross-examination that Claimant did not relate to him any information suggesting to him that prior to April 2004 his right hand was in any way disabled because of a condition. Dr. Walker stated that he did not review any medical records suggesting that prior to April of 2004 that Claimant's right hand was in any way disabling him. Dr. Walker testified that the records suggested that Claimant's right hand condition became disabling to him probably around April 28, 2004 when it got to the point where Claimant felt like he really needed to go ahead with surgery because his pain was bad enough. Dr. Walker testified that over the years he had treated many individuals who had carpal tunnel complaints.

Dr. Walker testified that the typical symptoms in individuals clinically diagnosed as having carpal tunnel syndrome are pain and numbness. Usually the pain is located at the wrist more on the palm side of the forearm and wrist will often experience pain, aching sensation extending up as far as the elbow frequently. Then there is paresthesia or numbness experienced generally in the thumb, index and middle fingers, sometimes half of the ring finger. It is usually accentuated by doing activities with the hand above the head or heart such as driving, reading a newspaper, or fixing your hair. When it gets severe enough, one might develop atrophy in the muscles that move the thumb and palm. As it progresses, one gets nighttime paresthesia where one gets a burning, pins and needle feeling in the hand frequently awakening a person at night where they are frequently shaking their hand out. When it gets to that point most people want to consider surgery. Claimant did not report any of those types of symptoms prior to his employment with Employer beginning in February 2000 except some intermittent tingling in his arm and hand. He did not indicate any difficulty with performing any of his employment prior to working for Employer. Dr. Cathcart's 2004 records indicated Claimant was having some pain in his hand at least on an intermittent basis and then occasionally radiating up to the arm four years prior. Dr. Walker stated he had never heard of Lipitor causing neurologic symptoms in the form of numbness and tingling. He testified his opinions given in his deposition and report had been phrased and couched within a reasonable degree of medical certainty.

DISCUSSION

ACCIDENT, OCCUPATIONAL DISEASE, MEDICAL CAUSATION

Did Claimant sustain an injury by accident or occupational disease arising out of and in the course of his employment for Employer, and if so, was his injury medically causally related to an accident or occupational disease arising out of and in the course of employment?

Occupational diseases are compensable under the Missouri Workers' Compensation Act.^[6] The statute requires that the condition be an "identifiable disease arising with or without human fault and in the course of the employment."

Section 287.067.1, RSMo. For an injury to be compensable under the Act, the work performed must have been a substantial factor in causing the medical condition or disability. *Kent v. Goodyear Tire and Rubber Company*, 147 S.W.3d 865, 867-68 (Mo.App 2004).

An employee's claim for compensation due to an occupational disease is to be determined under Section 287.067.1, RSMo. It defines occupational disease as:

. . . an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

Section 287.067.2, RSMo, provides that an occupational disease is compensable "if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor." Section 287.067.7, RSMo, provides: "With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with a prior employer was the substantial contributing factor to the injury, the prior employer shall be liable for such occupational disease."

Section 287.063, RSMo, provides:

1. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists, subject to the provisions relating to occupational disease due to repetitive motion as set forth in subsection 287.067, RSMo.
2. The employer liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease for which claim is made regardless of the length of time of such last exposure.
3. The statute of limitation referred to in section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that a compensable injury has been sustained. . . .

"When construing a statute, our primary goal is to ascertain the intent of the legislature from the language used and to give effect to that intent by giving the words used their plain and ordinary meaning." *State ex rel. Nixon v. QuikTrip Corp.*, 133 S.W.3d 33, 37 (Mo. banc 2004).

Claimant must present substantial and competent evidence that he or she has contracted an occupationally induced disease rather than an ordinary disease of life. The Courts have stated that the determinative inquiry involves two considerations: "(1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort." *Polavarapu v. General Motors Corp.*, 897 S.W.2d 63, 65 (Mo.App.

1995); *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo.App 1994), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 228; *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 300 (Mo.App 1991); *Prater v. Thorngate, Ltd.*, 761 S.W.2d 226, 230 (Mo.App 1988); *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413, 415 (Mo.App 1988); *Jackson v. Risby Pallet and Lumber Co.*, 736 S.W.2d 575, 578 (Mo.App. 1987). In proving up a work-related occupational disease, "[a] claimant's medical expert must establish the probability that the disease was caused by conditions in the work place." *Smith v. Donco Const.*, 182 S.W.3d 693, 701 (Mo.App. 2006) (citing *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App. 1991) (quoting *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226 S.W.2d 795, 797 (Mo.App. 1987)); *Dawson*, 885 S.W.2d at 716. There must be medical evidence of a direct causal connection between the conditions under which the work is performed and the occupational disease. *Coloney v. Accurate Superior Scale Co.*, 952 S.W.2d 755 (Mo.App. 1997), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226; *Dawson*, 885 S.W.2d at 716; *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795, 797 (Mo.App. 1987); *Estes v. Noranda Aluminum, Inc.*, 574 S.W.2d 34, 38 (Mo.App. 1978). Even where the causes of the disease are indeterminate, a single medical opinion relating the disease to the job is sufficient to support a decision for the employee. *Dawson*, 885 S.W.2d at 716; *Prater v. Thorngate, Ltd.*, 761 S.W.2d 226, 230 (Mo.App. 1988).

The cause of an employee's medical condition need not be a single traumatic event. An employee may obtain compensation pursuant to The Workers' Compensation Law for gradual and progressive medical conditions which result from repeated or constant exposure to hazards encountered by the employee in the workplace. *Smith v. Climate Engineering*, 939 S.W.2d 429 (Mo.App. 1996), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 227; *Rector v. City of Springfield*, 820 S.W.2d 639 (Mo.App. 1991). Diseases resulting from the chronic traumata of repetitive occupational body movements qualify for compensation if they cause an employee to sustain a loss of earning capacity. *Collins v. Neevel Luggage Manufacturing Company*, 481 S.W.2d 548, 555 (Mo.App. 1972); *Coloney*, 952 S.W.2d at 759.

Gradual and progressive injuries resulting from repeated exposure to on-the-job hazards is broad enough to now treat compensable aggravations of preexisting diseases or infirmities caused by nonaccidental conditions of employment as either accidents or occupational diseases. *Kelley v. Banta & Stude Const. Co., Inc.*, 1 S.W.3d 43, 49 (Mo.App. 1999); *Smith*, 939 S.W.2d at 436. Aggravation of a preexisting disease or infirmity caused by nonaccidental conditions of employment is compensable as either an accident or as an occupational disease. *Smith*, 939 S.W.2d at 436.

In claims for compensation for medical conditions associated with repetitive activities, a claimant must prove: 1) the injury arose out of and in the course of employment; 2) causation from job-related activities; and 3) nature and extent of disability. *Kintz v. Schnucks Markets, Inc.*, 889 S.W.2d 121, 124 (Mo.App. 1994), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 228. Manipulations and flexions, iterated and reiterated within a concentrated time, are unusual conditions, and if they inhere in an employment task being performed by an employee, they expose the employee who performs them to a risk not shared by the public generally and to which the employee would not have been exposed outside of employment, and thus qualify for compensation pursuant to The Law. *Collins*, 481 S.W.2d at 555.

Missouri courts have interpreted section 287.063, RSMo to provide that an employee with an

occupational disease is “injured” within the meaning of the section 287.120, RSMo when the disease causes a “compensable injury.” *Coloney*, 952 S.W.2d at 759, citing *Hinton v. National Lock Corp.*, 879 S.W.2d 713, 717 (Mo.App. 1994) (citing *Prater v. Thorngate, Ltd.*, 761 S.W.2d 226, 228 (Mo.App. 1988)). The “injury” requirement of the Act necessitates that the employee's “injury” create a harm that tangibly affects the employee's earning ability. *Coloney*, 952 S.W.2d at 763; *Johnson v. Denton Constr. Co.*, 911 S.W.2d 286, 287 (Mo. banc 1995). Requiring that the harm tangibly affect the employee's earning ability upholds the intent of the legislature in enacting the Worker's Compensation Act which was to provide indemnity for loss of earning power and disability to work and not for pain, suffering, or mere physical ailment. *Coloney*, 952 S.W.2d at 760.

Section 287.020.2, RSMo requires that the injury be "clearly work related" for it to be compensable. Section 287.020, RSMo provides:

2. The word ‘accident’ as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

3. (1) In this chapter the term ‘injury’ is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

(2) An injury shall be deemed to arise 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.

The employee must establish a causal connection between the accident and the claimed injuries. *Thorsen v. Sachs Electric Company*, 52 S.W.3d 611, 618 (Mo.App. 2001), *overruled in part on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 225 (Mo. 2003); *Williams v. DePaul Ctr.*, 996 S.W.2d 619, 625 (Mo.App. 1999), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226; *Fisher v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo.App 1990), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 230. Section 287.020.2, RSMo requires that the injury be "clearly work related" for it to be compensable. An injury is clearly work related, "if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor." *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo. 1999). Injuries that are triggered or precipitated by work may nevertheless be compensable if the work is found to be a "substantial factor" in causing the injury. *Kasl*, 984 S.W.2d at 853; *Cahall v. Cahall*, 963 S.W.2d 368, 372 (Mo.App 1998), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226. A substantial factor does not have to be the primary or most significant causative factor. *Bloss v. Plastic Enterprises*, 32 S.W.3d 666, 671 (Mo.App 2000), *overruled in part on*

other grounds by Hampton, 121 S.W.3d at 225; *Cahall*, 963 S.W.2d at 372. An accident may be both a triggering event and a substantial factor in causing an injury. *Bloss*, 32 S.W.3d at 671. Further, there is no “bright-line test or minimum percentage set out in the Workers’ Compensation Law defining ‘substantial factor.’” *Cahall*, 963 S.W.2d at 372. The claimant in a workers' compensation case has the burden to prove all essential elements of his or her claim, *Royal v. Advantica Restaurant Group, Inc.*, 194 S.W. 3d 371, 376 (Mo.App 2006), (citing *Cook v. St. Mary's Hosp.*, 939 S.W.2d 934, 940 (Mo.App. 1997)), *overruled on other grounds by Hampton*, 121 S.W.3d at 226, *Fischer v. Arch Diocese of St. Louis-Cardinal Ritter Inst.*, 793 S.W.2d 195, 198 (Mo.App. 1990), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 230; *Griggs vs. A.B. Chance Co.*, 503 S.W.2d 697, 705 (Mo.App. 1973), including “a causal connection between the injury and the job.” *Royal*, 194 S.W. 3d at 376, (citing *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 631 (Mo.App. 1999)), *overruled on other grounds by Hampton*, 121 S.W.3d at 226.

Prior to August 28, 2005, Section 287.800, RSMo provided in part: “Law to be liberally construed.—All of the provisions of this chapter shall be liberally construed with a view to the public welfare. . . .” The fundamental purpose of the Workers' Compensation Law is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted with a view to the public interest, and is intended to extend its benefits to the largest possible class. Any doubt as to the right of an employee to compensation should be resolved in favor of the injured employee. *West v. Posten Const. Co.* 804 S.W.2d 743, 745-46 (Mo. 1991), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 224. Although all doubts should be resolved in favor of the employee and coverage in a workers’ compensation proceeding, if an essential element of the claim is lacking, it must fail. *Thorsen*, 52 S.W.3d at 618; *White v. Henderson Implement Co.*, 879 S.W.2d 575, 579 (Mo.App. 1994), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 228.

The quantum of proof is reasonable probability. *Thorsen*, 52 S.W.3d at 620; *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo.App. 1995), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 227; *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 199 (Mo.App. 1990), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 230. “Probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt.” *Thorsen*, 52 S.W.3d at 620; *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 329 (Mo.App 1986); *Fischer*, 793 S.W.2d at 198. Such proof is made only by competent and substantial evidence. It may not rest on speculation. *Griggs v. A. B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. 1974). Expert testimony may be required where there are complicated medical issues. *Goleman v. MCI Transporters*, 844 S.W.2d 463, 466 (Mo.App. 1992), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229. “Medical causation of injuries which are not within common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause.” *Thorsen*, 52 S.W.3d at 618; *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App 1991). Compensation is appropriate as long the performance of usual and customary duties led to a breakdown or a change in pathology. *Bennett v. Columbia Health Care*, 134 S.W.3d 84, 87 (Mo.App. 2004).

Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *Kelley v. Banta & Stude Constr. Co. Inc.*, 1 S.W.3d 43, 48 (Mo.App. 1999);

Webber v. Chrysler Corp., 826 S.W.2d 51, 54 (Mo.App. 1992), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229; *Hutchinson v. Tri-State Motor Transit Co.*, 721 S.W.2d 158, 162 (Mo.App. 1986), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 231. The Commission's decision will generally be upheld if it is consistent with either of two conflicting medical opinions. *Smith v. Donco Const.*, 182 S.W.3d 693, 701 (Mo.App. 2006). The acceptance or rejection of medical evidence is for the Commission. *Smith*, 182 S.W.3d at 701; *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 263 (Mo.App. 2004). The testimony of Claimant or other lay witnesses as to facts within the realm of lay understanding can constitute substantial evidence of the nature, cause, and extent of disability when taken in connection with or where supported by some medical evidence. *Pruteanu v. Electro Core, Inc.*, 847 S.W.2d 203, 206 (Mo.App. 1993), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229; *Reiner v. Treasurer of State of Mo.*, 837 S.W.2d 363, 367 (Mo.App. 1992); *Fischer*, 793 S.W.2d at 199. The trier of facts may also disbelieve the testimony of a witness even if no contradictory or impeaching testimony appears. *Hutchinson*, 721 S.W.2d at 161-2; *Barrett v. Bentzinger Brothers, Inc.*, 595 S.W.2d 441, 443 (Mo.App. 1980), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 231. The testimony of the employee may be believed or disbelieved even if uncontradicted. *Weeks v. Maple Lawn Nursing Home*, 848 S.W.2d 515, 516 (Mo.App. 1993), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229.

A preexisting but non-disabling condition does not bar recovery of compensation if a job-related injury causes the pre-existing condition to “escalate to the level of disability.” *Higgins v. Quaker Oats Co.*, 183 S.W.3d 264, 271 (Mo.App. 2005); *Avery v. City of Columbia*, 966 S.W.2d 315, 322 (Mo. App. 1998), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226; *Miller v. Wefelmeyer*, 890 S.W.2d 372, 376 (Mo.App. 1994), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 228. An employer is liable for any aggravation of a preexisting asymptomatic condition caused by the primary injury. *Gennari v. Norwood Hills Corporation*, 322 S.W.2d 718, 722-23 (Mo. 1959); *Miller*, 890 S.W.2d at 376; *Weinbauer v. Grey Eagle Distributors*, 661 S.W.2d 652 (Mo.App. 1983). It is sufficient to show only that the performance of usual and customary duties led to a breakdown or change in pathology. *Winsor v. Lee Johnson Const. Co.*, 950 S.W.2d 504, 509 (Mo.App. 1997), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226; *Smith*, 939 S.W.2d at 434; *Wolfgeher v. Wagner Cartage Serv, Inc.*, 646 S.W.2d 781, 784 (Mo. banc 1983). The Court noted in *Winsor* at 509: “Dr. Weed testified that there was an exacerbation of Winsor's previous back injury by virtue of the August 11th incident. ‘Exacerbation,’ whether used in medical parlance or everyday conversation, means the same thing: an ‘increase in the severity of a disease or any of its symptoms,’ *Dorland's Illustrated Medical Dictionary* 589 (28th ed.1994), an ‘intensification or aggravation, as of a disease, pain, etc.’”

The worsening of a preexisting condition, i.e., an increase in the severity of the condition, or an intensification or aggravation thereof, is a “change in pathology.” *Winsor*, 950 S.W.2d at 509; *Rector v. City of Springfield*, 820 S.W.2d 639, 643 (Mo.App. 1991), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229. “If substantial evidence exists from which the Commission could determine that Claimant’s preexisting condition did not constitute an impediment to performance of Claimant’s duties, there is sufficient competent evidence to warrant a finding that Claimant’s condition was aggravated by a work-related injury.” *Avery*, 966 S.W.2d at 322; *Miller*, 890 S.W.2d at 376.

This case is governed by the provisions of the pre-2005 amendments to the Missouri Workers’ Compensation Law. Claimant does not need to prove that work was the prevailing factor in causing his injury and disability, only that work was a substantial factor. Based on all the evidence and the

application of The Missouri Workers' Compensation Law, I find that Claimant has met his burden to prove that he sustained an injury that was clearly work related, and that his work for Employer was a substantial factor in causing his right hand and right wrist injury and resulting disability. I find that he sustained a compensable occupational disease from cumulative repetitive trauma through April 5, 2004 that resulted in injury to his right hand and right wrist, and the need for his carpal tunnel surgery on August 8, 2005, and permanent partial disability. I find that he was exposed to a risk that was greater than and different from that which affects the public generally. I find that Dr. Walker's conclusions are credible and prove the probability that Claimant sustained an occupational disease from repetitive trauma that was caused by conditions in Claimant's workplace.

I do not find that Claimant's injury was from a single accident. Claimant did not attribute it to a single accident, and the medical evidence did not either. I find that the credible evidence established that Claimant sustained a gradual and progressive injury which resulted from repeated and constant exposure to hazards encountered by Claimant in Employer's workplace that resulted in injury his right hand and wrist, and in the need for his carpal tunnel surgery. I find that the performance of Claimant's usual and customary duties working for Employer led to a breakdown or change in pathology. I also note that no evidence was presented that Claimant engaged in any other activity or had any accidents away from work during the time that he worked for Employer, or thereafter, that caused his carpal tunnel syndrome or the need for carpal tunnel syndrome surgery.

Claimant stated he did a lot of auditing which involved clipboard writing. He also entered data into a computer and did monthly reports. He stated that he spent at least an hour or two per day doing data entry and, at the end of the month, he spent most of his time doing data entry. Claimant stated that when he worked for Employer, he did handwriting on a clipboard. He wrote checkmarks and numbers. He filled out forms, made notes and entered information into a program in the computer with a regular keyboard. He also performed duties for an absent worker for several months. He also stated that he was diagnosed with diabetes in December 2000 and that he took insulin. He said he had not lost any time from work with any Employer before April 2004 due to numbness or tingling.

Employer's Position Description, Exhibit G, noted that Claimant's job duties included using specialized testing equipment, sampling measuring and evaluating employee exposures to in-plant chemical contaminants, and also accumulating, preparing and entering health, industrial hygiene, medical and safety data into the HIS computer system.

The Employer Notification Form dated January 18, 2000 signed by Dr. Cathcart in Exhibit D noted that Claimant was qualified for full participation in job duties as described. The Nerve Conduction Amonitor Motor Latency Evaluation of the Median dated January 18, 2000 noted average latency of 4.7 on the left and 4.95 on the right with upper limit of normal shown to be 4.2 mS. Claimant saw Dr. Cathcart on June 29, 2001 for shortness of breath and Dr. Cathcart's impressions at that time included diabetes mellitus. Dr. Cathcart's records of Claimant's visits on September 12, 2002 and March 10, 2003 did not mention any complaints relating to Claimant's right upper extremity.

Dr. Cathcart's records in Exhibit D included the April 7, 2004 notes of Dr. Cathcart's PA, Richard Campbell, RN, relating to his examination of Claimant for hand pain. The record noted that the problems began four years ago and since the problem started, the symptoms had gradually worsened. It was noted to have come on gradually and had been progressive since its onset. Claimant was noted on

April 7, 2004 to have problems with activity of daily living. Claimant complained of pain and numbness in the hand with gripping objects. The symptoms were improved by rest and worsened by repetitive use of the hands. Sleeping usually caused numbness in the hand. Claimant reported associated tingling and fingers and weak grip. The record noted that Claimant had a past medical history significant for diabetes mellitus. A nerve conduction done on April 7, 2004 reported the right median nerve latency was elevated at 5.4 mS. The diagnosis included carpal tunnel syndrome and diabetes mellitus type I insulin. The record noted that because of significantly elevated NCS, Dr. Cathcart would refer Claimant to Dr. De Priest.

Dr. De Priest's April 28, 2004 records noted that working bothered Claimant's hands the most, and he did have problems at night. Dr. De Priest's April 28, 2004 letter also noted that Claimant's pain was so bad that he was now willing to proceed with surgical treatment. The results shown in the April 28, 2007 NCV Report were that Claimant's right median motor latency was 5.22 msec (upper limit of normal is 4.2 msec). Dr. De Priest's impression was "Prolonged right median motor latency consistent with surgically significant right carpal tunnel syndrome." The plan was to proceed with right carpal tunnel release and surgery was scheduled for May 17, 2004.

Claimant's chief complaint when he saw Dr. Karen Vaniver on August 8, 2005 was right hand pain. It extended from his long finger to his wrist and awakened him from sleep. Dr. Vaniver's impression was right carpal tunnel syndrome, early left cubital tunnel syndrome. She performed an open right carpal tunnel release on August 8, 2005.

Dr. Walker noted that Claimant had minor symptoms in 2000, and his symptoms became much more severe in 2004. Dr. Walker concluded that according to the medical records, Claimant had a history of carpal tunnel syndrome extending back some eight years, and the symptoms were minor then. Claimant told Dr. Walker that he was not symptomatic at that time, and felt he could perform his duties pain free. The best that Dr. Walker could recall was that Claimant was having some intermittent symptoms in 2000. Dr. Walker stated that he did not get the impression that Claimant was having nighttime paresthesia then where it would wake him up at night. It did not appear to be bothering him when he was driving for prolonged periods of time. Dr. Walker stated that he did not get the impression that Claimant had a full-blown carpal tunnel syndrome at that time.

I find that Claimant did not have any proven preexisting disability related to his right hand or right wrist. There was no evidence that he was hospitalized or had surgery for carpal tunnel syndrome, or had any permanent disability from that prior to April 5, 2004. Dr. Walker testified that Claimant did not relate to him any information suggesting to him that prior to April 2004 his right hand was in any way disabled because of a condition. Dr. Walker stated that he did not review any medical records suggesting that prior to April of 2004 that Claimant's right hand was in any way disabling him. He testified that the typical symptoms in individuals clinically diagnosed as having carpal tunnel syndrome are pain and numbness. As it progresses, one gets nighttime paresthesia where one gets a burning, pins and needle feeling in the hand frequently awakening a person at night where they are frequently shaking their hand out. When it gets to that point, most people want to consider surgery. Claimant did not report any of those types of symptoms prior to his employment with Employer beginning in February 2000 except some intermittent tingling in his arm and hand. Claimant did not indicate any difficulty with performing any of his employment prior to working for Employer.

Dr. Walker felt that as Claimant performed keyboard entry for a significant portion of his employment history with Employer that this could certainly aggravate and accelerate an asymptomatic pre-existing condition which he obviously had at the time. Dr. Walker also noted that Claimant's diabetes mellitus, insulin-dependent, contributed to the vulnerability of the nerves in the body to compression. Dr. Walker believed that Claimant's work entering data into a computer over a prolonged period of time aggravated this condition, making its symptomatic requiring surgery.

Dr. Walker testified that one to two hours a day of interrupted typing and data entry could cause Claimant's carpal tunnel syndrome. Dr. Walker noted that Claimant had diabetes, insulin dependent. He stated that people that have diabetes frequently have a lower threshold for developing carpal tunnel syndrome by virtue of their nerves being more vulnerable.

I find the conclusions of Dr. Walker regarding causation are more credible than the conclusions of Dr. Rosenthal. Dr. Rosenthal based her opinion that Claimant's right carpal tunnel syndrome was not vocationally related on the assumption that Claimant only spent a maximum of one hour per day on the computer. Her opinion was not noted to have considered the other duties Claimant performed, including note-taking, winding up hoses, or cleaning monitors. I find that Claimant performed repetitive duties for Employer that involved his right upper extremity for more than one hour per day on average, and that the amount of time he spent entering data into the computer at the end of the month increased when he prepared reports.

I find that the medical evidence and testimony supports the conclusion that Claimant's work for Employer was a substantial factor in causing his right hand and wrist injury and disability. I find that Claimant sustained a compensable injury to his right wrist and right hand arising out of and in the course of his employment for Employer.

PAST MEDICAL BILLS

What is Employer/Insurer's liability, if any, for past medical bills?

The employee must prove that the medical care provided by the physician selected by the employee was reasonably necessary to cure and relieve the employee of the effects of the injury. *Chambliss v. Lutheran Medical Center*, 822 S.W.2d 926 (Mo.App. 1991), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229; *Jones v. Jefferson City School District*, 801 S.W.2d 486, 490-91 (Mo.App. 1990), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 230; *Roberts v. Consumers Market*, 725 S.W.2d 652, 653 (Mo.App. 1987); *Brueggemann v. Permaneer Door Corporation*, 527 S.W.2d 718, 722 (Mo.App. 1975). The employee may establish the causal relationship through the testimony of a physician or through the medical records in evidence that relate to the services provided. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo. 1989); *Meyer v. Superior Insulating Tape*, 882 S.W.2d 735, 738 (Mo.App. 1994), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 228; *Lenzini v. Columbia Foods*, 829 S.W.2d 482, 484 (Mo.App. 1992), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229; *Wood v. Dierbergs Market*, 843 S.W.2d 396, 399 (Mo.App. 1992), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229. The medical bills in *Martin* were shown by the medical records in evidence to relate to the professional services rendered for treatment of the product of the employee's injury. *Martin*, 769 S.W.2d at 111.

Section 287.140.1, RSMo, provides in part: ‘If the employee desires, he shall have the right to select his own physician, surgeon, or other requirement at his own expense.’ The Court in *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795 (Mo.App. 1987), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 226, stated at 798:

In general, only when an employer has notice that a claimant needs treatment or demand is made on the employer to furnish medical treatment and he neglects to provide needed treatment, will the employer be held liable for medical treatment for the employee. *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872, 880 (Mo.App.1984). Implicit in the above rule is knowledge by the employee that he has suffered a job related disability. Where an employee does not know at the time that he or she receives medical treatment that he or she has suffered a compensable injury, and the employee contracts for medical services without the employer's knowledge, the employer is not relieved from liability for necessary medical services. *Beatty v. Chandeysson Electric Co.*, 238 Mo.App. 868, 190 S.W.2d 648, 656 (1945). Generally, a compensable injury under the occupational disease provision becomes apparent when an employee is medically advised that he or she can no longer physically continue in the suspected employment. *Moore v. Carter Carburetor Div. ACF Industries*, 628 S.W.2d 936, 941 (Mo.App.1982).

The law in Missouri provides that while the employer has the right to name the treating physician, it waives that right by failing or neglecting to provide necessary medical aid to the injured worker. *Emert v. Ford Motor Co.*, 863 S.W.2d 629, 631 (Mo.App.1993), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 228; *Shores v. General Motors Corp.*, 842 S.W.2d 929, 931 (Mo.App.1992), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 229; *Herring v. Yellow Freight System, Inc.*, 914 S.W.2d 816, 822 (Mo.App. 1995), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 227; *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 879 (Mo.App. 1984). The Court in *Shores* stated at 931-932:

The case law under § 287.140(1) establishes the employer's right to provide medical treatment of its choice, however, this right is waived when the employer fails to provide necessary medical treatment after receiving notice of an injury. *Wiedower v. ACF Indus., Inc.*, 657 S.W.2d 71, 74 (Mo.App.1983). ‘Where the employer with notice of an injury refuses or neglects to provide necessary medical care, the [claimant] may make his own selection and have the cost assessed against the employer.’ *Id.*

In the present case, there is substantial evidence which supports a finding that employer had notice of claimant's injuries and refused to provide medical treatment. On the day she was injured, and thereafter whenever the pain made it difficult to work, claimant reported to the plant dispensary to receive medical aid. At some point, a nurse at the dispensary informed claimant that she was no longer welcome and should consult her own doctor for further treatment.

In the case at hand, shortly after experiencing pain in his wrist, Claimant had reported his injury to Employer's plant nurse. He also reported his injury to his supervisor. Employer refused to send him to a company physician and advised him that his injuries would not be accepted as work-related. As in *Shores*, Claimant was told to consult his own doctor for treatment. At no time did Employer authorize or direct Claimant to obtain medical treatment under workers' compensation. Employer had notice of Claimant's injury, but refused to provide medical treatment. Claimant then sought medical care and attention through his personal physician. I find that Employer waived the right to control Claimant's medical care. I have found that Claimant's claim is compensable. Claimant had the right to select his own medical provider and have the cost assessed against Employer.

Exhibit E included medical bills of Medclinic in the amount of \$184.00, Dr. De Priest in the amount of \$240.00, Dr. Vaniver in the amount of \$1,740.00, and St. Joseph Center for Outpatient Surgery in the amount of \$3,249.99. These medical bills were in the total amount of \$5,413.99. Claimant's testimony, the medical bills, and the medical treatment records all demonstrate that all of these bills were incurred by Claimant to treat his right carpal tunnel injury. Dr. Walker stated in his report in Exhibit E that the charges were reasonable and appropriate and reasonable and necessary to relieve Claimant of his carpal tunnel syndrome. Employer's attorney stipulated at the hearing that the charges were reasonable and customary, and that the treatment was necessary to cure and relieve Claimant's carpal tunnel condition.

I find that the medical bills identified in Exhibit E in the total amount of \$5,413.99 were reasonable and necessary and causally related to Claimant's injury sustained in the course of his employment for Employer, and that they should be paid by Employer. Claimant is awarded the sum of \$5,413.99 from Employer for these past medical expenses.

PERMANENT DISABILITY

What is the nature and extent of Claimant's permanent disability, if any, as a result of an injury by accident or occupational disease arising out of and in the course of his employment for Employer?

The determination of the degree of disability sustained by an injured employee is not strictly a medical question. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 284 (Mo.App. 1997); *Sellers v. Trans World Airlines, Inc.*, 776 S.W.2d 502, 505 (Mo.App. 1989), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 230. While the nature of the injury and its severity and permanence are medical questions, the impact that the injury has upon the employee's ability to work involves factors, which are both medical and nonmedical. Accordingly, 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. *Sharp v. New Mac Elec. Co-op*, 92 S.W.3d 351, 354 (Mo.App. 2003); *Elliott v. Kansas City, Mo., School District*, 71 S.W.3d 652, 656 (Mo.App. 2002), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 225; *Sellers*, 776 S.W.2d at 505; *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); *Barrett*, 595 S.W.2d at 443; *McAdams v. Seven-Up Bottling Works*, 429 S.W.2d 284, 289 (Mo.App. 1968). The fact-finding body is not bound by or restricted to the specific percentages of disability suggested or stated by the medical experts. *Lane v. G & M Statuary, Inc.*, 156 S.W.3d 498, 505 (Mo.App. 2005); *Sharp*, 92 S.W.3d at 354; *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879, 885 (Mo.App. 2001), *overruled in part on other grounds by Hampton*, 121 S.W.3d at 225; *Landers*, 963 S.W.2d at 284; *Sellers*, 776 S.W.2d at 505; *Quinlan*, 714 S.W.2d at 238; *Banner*, 663 S.W.2d at 773. It may also consider the testimony of the employee and other lay witnesses and draw reasonable inferences in arriving at the percentage of disability. *Fogelsong v. Banquet Foods Corporation*, 526 S.W.2d 886, 892 (Mo.App. 1975).

The finding of disability may exceed the percentage testified to by the medical experts. *Quinlan*, 714 S.W.2d at 238; *McAdams*, 429 S.W.2d at 289. The Commission "is free to find a disability rating higher or lower than that expressed in medical testimony." *Jones v. Jefferson City School Dist.*, 801

S.W.2d 486, 490 (Mo.App. 1990); *Sellers*, 776 S.W.2d at 505. The Court in *Sellers* noted that “[t]his is due to the fact that determination of the degree of disability is not solely a medical question. The nature and permanence of the injury is a medical question, however, ‘the impact of that injury upon the employee's ability to work involves considerations which are not exclusively medical in nature.’” *Sellers*, 776 S.W.2d at 505. The uncontradicted testimony of a medical expert concerning the extent of disability may even be disbelieved. *Gilley v. Raskas Dairy*, 903 S.W.2d 656, 658 (Mo.App. 1995); *Jones*, 801 S.W.2d at 490.

The credible testimony from Claimant established that he continues to suffer from decreased grip strength with respect to his right hand. He drives with his left hand. He cannot use his right hand as long as before and cannot use a chain saw as much. It is hard for him to use his right thumb on the throttle of his four-wheeler. He has difficulty using his weed whacker because the throttle is on the right. He has not used his bow since the surgery because he does not have enough strength.

Dr. Walker noted that Claimant had what appeared to be normal strength in the upper extremities with the exception of his right grip which was approximately 55 pounds on the dynamometer, and 130 pounds on the left. Dr. Walker rated Claimant 15% permanent partial disability at the wrist, right side as a result of his carpal tunnel syndrome and subsequent surgery. Dr. Rosenthal noted that Claimant was doing well and did not need any work restrictions. She believed he was at maximum medical improvement. She also stated that for the right carpal tunnel syndrome and subsequent release by Dr. Vaniver on August 8, 2005, there was a 5% permanent partial disability at the 175 week level of the right upper extremity.

In light of Claimant’s testimony and the medical evidence and the application of the Missouri Workers’ Compensation Law, I find that Claimant has sustained a permanent partial disability of 10% of the right hand at the wrist (175 week level) as a result of a compensable injury to his right wrist and right hand sustained in the course of his employment for Employer, and is entitled to 17.5 weeks of compensation at a rate of \$347.05, for a total of \$6,073.38 in permanent partial disability benefits from Employer.

DISFIGUREMENT

I viewed the scar that resulted from Claimant’s carpal tunnel surgery during the December 18, 2007 hearing, and I assess 2 ½ weeks of disfigurement for that scar. I find that Claimant is entitled to 2½ weeks of disfigurement, for an additional \$867.63 in benefits from Employer.

ATTORNEY’S FEES

This award is subject to a lien in the amount of 25% of the additional payments hereunder, including the medical bills, in favor of Claimant’s attorney, John R. Boyd, for necessary legal services rendered to Claimant.

CONCLUSION

For all these reasons, and based on substantial and competent evidence, and the application of The Missouri Workers’ Compensation Law, I find in favor of Claimant. I find that Claimant has met his burden of proof that he sustained an injury by a cumulative repetitive occupational disease arising out of

and in the scope and course of his employment for Employer to April 5, 2004 that resulted in injury to his right hand and right wrist, and the need for his carpal tunnel surgery, and permanent partial disability of his right hand at the 175 week level. I further find that his claims for permanent partial disability benefits, disfigurement, and past medical expenses should be allowed, and are hereby awarded in accordance with the foregoing Findings of Fact and Rulings of Law. Claimant's attorney, John R. Boyd, is awarded a fee in the amount of 25% of all amounts awarded from Employer. Claimant's Claim against the Second Injury Fund has not been determined and remains open.

Date: 2/07/2008

Made by: /S/ ROBERT B. MINER

Robert B. Miner

Administrative Law Judge

Division of Workers' Compensation

A true copy: Attest:

/S/ JEFFREY W. BUKER

Jeffrey W. Buker, Director

Division of Workers' Compensation

[1] "HTN" is an abbreviation for "hypertension." *Stedman's Medical Dictionary, 28th ed.*

[2] "NCV" is an abbreviation for "nerve conduction velocity." *Stedman's Medical Dictionary, 28th ed.*

[3] "Msec" is an abbreviation for "millisecond." *Stedman's Medical Dictionary, 28th ed.*

[4] "PA" is an abbreviation for "physician's assistant." *Stedman's Medical Dictionary, 28th ed.*

[5] "EMG" is an abbreviation for "electromyogram," which is defined as "A graphic representation of the electric currents associated with muscular action." *Stedman's Medical Dictionary, 28th ed.*

[6] Sections 287.067.1, 2, RSMo (2000). All statutory references are to the Revised Statutes of Missouri 2000, unless otherwise noted. See *Lawson v. Ford Motor Co.*, --S.W.3d--, 2007 WL 817268 (Mo.App. 2007) where the Eastern District Court of Appeals held that the 2005 amendments to Sections 287.020, RSMo and 287.067, RSMo do not apply retroactively. In a workers' compensation case, the statute in effect at the time of the injury is generally the applicable version. *Chouteau v. Netco Construction*, 132 S.W.3d 328, 336 (Mo.App. 2004); *Tillman v. Cam's Trucking Inc.*, 20 S.W.3d 579, 585-86 (Mo.App. 2000).