

**TEMPORARY AWARD ALLOWING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge  
by Supplemental Opinion)

Injury No. 11-104621

Employee: Renee Quast  
Employer: RPCS, Inc. d/b/a Price Cutter  
Insurer: Fuel Marketers Insurance Trust

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence, read the briefs, 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge, as supplemented herein.

**Discussion**

*"Time" of injury under § 287.420 in cases of occupational disease*

The administrative law judge concluded that employee's claim is not barred by application of § 287.420 RSMo, because employee provided timely notice to employer of her injury for purposes of the statute as construed by the court in *Allcorn v. Tap Enters.*, 277 S.W.3d 823 (Mo. App. 2009). The administrative law judge noted that employee filed her claim for compensation (which set forth each of the elements required under § 287.420, and thus constituted an effective notice to employer) before her obligation to do so was triggered under *Allcorn* by the opinion that Dr. Koprivica rendered on August 25, 2012. We agree with this conclusion by the administrative law judge, because it correctly applies the controlling case law on the issue.

In its application for review and brief, employer argues employee failed to present any evidence that she actually sustained an injury on May 1, 2011, the date of occupational disease alleged in her claim for compensation. As a result, employer argues, employee's claim for compensation cannot be deemed effective written notice of the "time" of injury under a strict construction of § 287.420. We disagree for the following reasons.

Employee claims a gradual onset injury by occupational disease. Specifically, in her claim for compensation, employee alleged she sustained injury to her lower extremities as a result of her repetitive duties for employer. Dr. Koprivica opined that the repetitive cumulative trauma of continually standing and walking at work was the prevailing factor causing the claimed injury to employee's lower extremities. (We specifically defer to and adopt the administrative law judge's findings, analysis, and conclusions with respect to the issue of medical causation, including his determination that Dr. Koprivica provided the more persuasive expert medical testimony.) It must be noted that employer does not argue that it was in any way surprised or prejudiced regarding the theory of injury employee pursued at the hearing, nor could we conclude that employer suffered any such prejudice on the record before us, especially where it procured and presented its own expert medical evidence relevant to the issue of occupational disease.

Employee: Renee Quast

- 2 -

Assigning a “time” of injury to an occupational disease that develops gradually can be a counterintuitive task, and the courts have acknowledged this difficulty. See *Miller v. U.S. Airways Group, Inc.*, 316 S.W.3d 462, 468 (Mo. App. 2010)(Smart, J., concurring)(pointing out that “[u]nlike an injury due to accident, an occupational disease develops over a period of time and is not caused by an event on a single day”). The *Allcorn* court specifically confronted the time of injury requirement under § 287.420 in a case of gradual onset occupational disease, and held that where the employee’s claim for compensation alleged a time of injury that was inconsistent with the dates he was actually employed by employer, the claim for compensation could not be deemed to constitute effective notice of the time of injury. See *Allcorn*, 277 S.W.3d at 830-31. A logical corollary of the court’s holding is that if an employee’s claim for compensation in a gradual onset occupational disease case *does* allege a time of injury consistent with the dates the employee was actually employed by employer, the claim for compensation may be deemed effective notice of the time of injury under § 287.420.

Because employee claims (and her evidence supports) a gradual onset theory of injury, it follows (and we so find) that she sustained injury during the entire period of time that she was employed by and performed her repetitive duties for employer. The evidence reveals that employee worked for employer from August 2006 until employer discharged her on February 1, 2012. It follows that on May 1, 2011, employee was employed by employer. We conclude that employee’s claim for compensation constitutes effective written notice of the “time” of her injury for purposes of § 287.420.

#### Past medical expenses

In awarding employee’s claimed past medical expenses, the administrative law judge cited the court’s decision in *Meyers v. Wildcat, Inc.*, 258 S.W.3d 77 (Mo. App. 2008). Employer’s application for review herein does not challenge this aspect of the administrative law judge’s award. We note, however, that the *Meyers* court specifically relied upon a liberal construction of Chapter 287 in reaching its holding.

As the parties are undoubtedly aware, the legislature in 2005 replaced liberal construction with the mandate under § 287.800 RSMo that we must strictly construe the provisions of Chapter 287. As a result, we cannot adopt the administrative law judge’s (implicit) conclusion that the *Meyers* decision is controlling in this case, which involves an injury sustained after the effective date of the 2005 amendments to the Missouri Workers’ Compensation Law. Having said that, we deem the remainder of the administrative law judge’s analysis of this issue to be persuasive, and hereby adopt it as our own with regard to employee’s claim for past medical expenses.

#### **Decision**

We affirm and adopt the findings, conclusions, decision, and award of the administrative law judge to the extent they are not inconsistent with this supplemental opinion.

The award and decision of Administrative Law Judge L. Timothy Wilson, issued July 8, 2014, is attached and incorporated by this reference.

Employee: Renee Quast

- 3 -

This award is only temporary or partial. It is subject to further order, and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

Given at Jefferson City, State of Missouri, this 15<sup>th</sup> day of December 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

John J. Larsen, Jr., Chairman

---

James G. Avery, Jr., Member

---

Curtis E. Chick, Jr., Member

Attest:

---

Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Renee Quast

Injury No. 11-104621

Dependents: N/A

Employer: RPCS, Inc. d/b/a Price Cutter

Insurer: Fuel Marketers Insurance Trust

Additional Party: N/A

Hearing Date: April 7, 2014

Checked by: LTW

### 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: May 1, 2011
5. State location where accident occurred or occupational disease was contracted: Christian 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 engaged in employment with Employer for approximately 6 years, and while working as an employee of Employer, Employee was required to stand and walk repetitively and cumulatively on concrete or other hard surfaces in her employment with Employer. As a consequence of suffering repetitive and cumulative trauma to her feet Employee sustained an incident of occupational disease involving an injury in the nature of tendinitis and Morton's neuroma in the left foot.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Left Foot
14. Nature and extent of any permanent disability: N/A
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? \$1,133.10
- 18. Employee's average weekly wages: \$406.00
- 19. Weekly compensation rate: \$270.67 (TTD / PPD)
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Unpaid medical expenses: .....\$1,133.10

Weeks of temporary total disability (or temporary partial disability) ..... N/A

Medical Care: Employer and Insurer are ordered to provide Employee with additional medical care consistent with the recommendations of Dr. Koprivica, and which is reasonable, necessary, and casually related to the incident of occupational disease of May 1, 2011.

**TOTAL: .....TBD**

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

**IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.**

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

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

Employee: Renee Quast

Injury No. 11-104621

Dependents: N/A

Employer: RPCS, Inc. d/b/a Price Cutter

Insurer: Fuel Marketers Insurance Trust

Additional Party: N/A

The above-referenced workers' compensation claim, which involved the joining of two workers' compensation cases, was heard before the undersigned Administrative Law Judge on April 7, 2014.<sup>1</sup> Further, the parties were afforded an opportunity to submit briefs or proposed awards, resulting in the record being completed and submitted to the undersigned on May 7, 2014.

The employee appeared personally and through her attorney Darren J. Morrison, Esq. The employer and insurer appeared through their attorney, Steven Marsh, Esq.

### **Injury No. 11-104621:**

The parties entered into a stipulation of facts in Injury No. 11-104621. The stipulation is as follows:

- (1) On or about May 1, 2011, and at all times relevant to this case, RPCS, Inc. d/b/a Price Cutter, was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Fuel Marketers Insurance Trust.
- (2) On the alleged injury date of May 1, 2011, Renee Quast was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The claimed incident of occupational disease of May 1, 2011 occurred in Christian County, Missouri, and the contract of employment between the employee and employer was made in Missouri. Similarly, the employment was principally localized in Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.

---

<sup>1</sup> The workers' compensation cases that were joined for hearing include Injury Nos. 12-000968 and 11-104621.

- (5) At the time of the claimed incident of occupational disease the employee's average weekly wage was \$406.00, which is sufficient to allow a compensation rate of \$270.67 for temporary total disability compensation, permanent total disability compensation, and permanent partial disability compensation.
- (8) Temporary total disability compensation has not been provided to the employee.
- (9) The employer and insurer have not provided medical treatment to the employee.

The issues to be resolved by hearing in Injury No. 11-104621 include:

- (1) Whether the employee, Renee Quast, sustained an incident of occupational disease on or about May 1, 2011; and, if so, whether the occupational disease arose out of and in the course of her employment with the employer?
- (2) Whether the employee notified the employer of her injury as required by Section 287.420, RSMo?
- (3) Whether the claimed incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (4) Whether the employer and insurer are obligated to pay for certain past medical care and expenses?
- (5) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee from the effects of the injuries?
- (6) Whether the employee sustained any permanent disability as a consequence of the claimed incident of occupational disease of May 1, 2011; and, if so, what is the nature and extent of the disability? (The parties agreed to defer adjudication of this issue if the claim was determined to be compensable.)

**Injury No. 12-000968:**

The parties entered into a stipulation of facts in Injury No. 12-000968. The stipulation is as follows:

- (1) On or about January 4, 2012, and at all times relevant to this case, RPCS, Inc. d/b/a Price Cutter, was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Fuel Marketers Insurance Trust.

- (2) On the alleged injury date of January 4, 2012, Renee Quast was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The claimed incident of occupational disease of January 4, 2012, occurred in Christian County, Missouri, and the contract of employment between the employee and employer was made in Missouri. Similarly, the employment was principally localized in Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (5) At the time of the claimed incident of occupational disease the employee's average weekly wage was \$406.00, which is sufficient to allow a compensation rate of \$270.67 for temporary total disability compensation, permanent total disability compensation, and permanent partial disability compensation.
- (8) Temporary total disability compensation has not been provided to the employee.
- (9) The employer and insurer have not provided medical treatment to the employee.

The issues to be resolved by hearing in Injury No. 12-000968 include:

- (1) Whether the employee, Renee Quast, sustained an incident of occupational disease on or about January 4, 2012; and, if so, whether the occupational disease arose out of and in the course of her employment with the employer?
- (2) Whether the employee notified the employer of her injury as required by Section 287.420, RSMo?
- (3) Whether the claimed incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (4) Whether the employer and insurer are obligated to pay for certain past medical care and expenses?
- (5) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee from the effects of the injuries?
- (6) Whether the employee sustained any permanent disability as a consequence of the claimed incident of occupational disease of January 4, 2012; and, if so, what is the nature and extent of the disability? (The

parties agreed to defer adjudication of this issue if the claim was determined to be compensable.)

### EVIDENCE PRESENTED

The parties jointly offered for admission into evidence the following exhibit:

Joint Exhibit I.....Deposition of Renee Quast (Employee)  
(Inclusion of Deposition Exhibits)

Joint Exhibit I was received and admitted into evidence.

The employee elected to not testify in person as part of her case-in-chief, relying on the presentation and admission of Joint Exhibit I and Exhibits A, B, C and D. In this regard, the employee offered for admission the following exhibits:

Exhibit A..... Deposition of P. Brent Koprivica, M.D., Volume I  
(Inclusion of Deposition of Exhibits)  
Exhibit B..... Deposition of P. Brent Koprivica, M.D., Volume II  
(Inclusion of Deposition of Exhibits)  
Exhibit C.....Medical Records  
    Tab 1.....Chiropractic Records from Vega Chiropractic  
    Tab 2.....Medical Records from St. John's Clinic & Rachelene Middleton, M.D.  
    Tab 3.....Medical Records from Dan Park, M.D.  
Exhibit D..... Medical Bills

The exhibits were received and admitted into evidence.

The employer and insurer called the employee, Renee Quast, to testify at the hearing of this case. In addition, the employer and insurer offered for admission the following exhibits:

Exhibit 1..... Deposition of Thomas B. Corsolini, M.D.  
(Inclusion of Deposition Exhibits)  
Exhibit 2..... Deposition Statements of the Employee  
Exhibit 3.....Administrative Manual of Employer

The exhibits were received and admitted into evidence.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took administrative or judicial notice of the documents contained in the Legal File, which include:

#### **Injury No. 11-104621:**

- Notice of Hearing
- Order of Dismissal of Second Injury Fund
- Motion to Dismiss Second Injury Fund

- Answer of Second Injury Fund to Claim for Compensation
- Answer of Employer/Insurer to Claim for Compensation
- Answer of Second Injury Fund to Claim for Compensation
- Claim for Compensation
- Report of Injury

**Injury No. 12-000968:**

- Notice of Hearing
- Order of Dismissal of Second Injury Fund
- Motion to Dismiss Second Injury Fund
- Answer of Employer/Insurer to Second Amended Claim for Compensation
- Second Amended Claim for Compensation
- Answer of Second Injury Fund to First Amended Claim for Compensation
- Answer of Employer/Insurer to First Amended Claim for Compensation
- First Amended Claim for Compensation
- Answer of Second Injury Fund to Original Claim for Compensation
- Original Claim for Compensation

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

## **DISCUSSION**

### *Background & Employment*

The employee, Renee Quast, is 56 years old. She resides in Nixa, Missouri.

Ms. Quast is a high school graduate and enjoys certain post-secondary education. She attended Cypress College in California, pursuing a degree in fine arts, but did not complete the degree. She later attended Prairie Bible College in Alberta, Canada, and received her Associate of Arts degree in 2004 in Biblical Studies.

Ms. Quast's employment history includes a variety of different occupations. During the period of 1975 to 1978 she worked in a clerical position at the L.A. Herald Examiner newspaper, and from 1978 to 1980 she worked as a graphic artist. She then became a homemaker, and continued in this position for several years. Subsequently, Ms. Quast worked for the Pregnancy Resource Center, first as a volunteer and later as a part-time employee from 1997 until 1999. She then moved to Canada with her husband for approximately five years. While living in Canada Ms. Quast did not work outside the home.

In or around 2006 she and her husband separated and she moved to Nixa, Missouri. Upon moving to Nixa, Missouri, Ms. Quast obtained employment with the employer RPCS, Inc. d/b/a Price Cutter. As an employee of Price Cutter, Ms. Quast worked in a variety of positions, including work as a cashier, bookkeeper, and guest relations manager/front-end manager.

Ms. Quast's initial employment involved work as a cashier, which required her to perform cashier duties. In this position she utilized a belt scanner to process purchases. In March 2007 she assumed the duties of a bookkeeper. In this position she had a desk and an office. She would make up the cash register tills for the cashiers, count the money, check the cash register tills, and record her bookkeeping entries on a computer. On or about October 18, 2009, she received a promotion to the position of Guest Relations Manager ("GRM"). In this position she was responsible for supervising and assisting the cashiers, assisting and directing customers, answering the phone, and working the service desk handling returns, the sale of money orders and Western Union wire transfers, etc. Additionally, while working as a bookkeeper and as Guest Relations Manager she continued to perform cashier duties.

She continued in this employment until being suspended on January 4, 2012 due to an incident with an employee. This incident occurred on Christmas Day 2011, and involved Ms. Quast physically grabbing a co-worker and forcibly removing him from the cashier check stand. As a consequence of this incident the employer terminated Ms. Quast, with the termination occurring on or about January 28, 2012.

Ms. Quast is presently employed by a loan company and is working as a branch manager. In this employment Ms. Quast only occasionally engages in computer work, and her work duties entail mostly seated work.

#### *Prior Medical Conditions*

Prior to 2011 Ms. Quast's medical history appears to be unremarkable. Dr. Koprivica notes a past medical history that includes a prior history of cholecystectomy and cesarean section. She denies having sustained any prior work-related injury with permanent disability. Similarly, she denies suffering any prior fractures or athletic type injuries causing any residual permanent disability. However, she was involved in a prior motor vehicle accident in 1989, which caused her to sustain a neck injury and resulted in her receiving a settlement associated with that injury.

#### *Incident of Occupational Disease*

The employee, Renee Quast, alleges that she sustained two repetitive trauma injuries while engaged in employment with the employer, Price Cutter. The 2011 claim (Injury No. 11-104621) refers to a repetitive trauma type injury to the employee's lower extremities, and the 2012 claim (Injury No. 12-000968) refers to a repetitive trauma injury to the employee's upper extremities.

#### **In Re: Injury No. 11-104621:**

In her employment with the employer, Price Cutter, Ms. Quast was required to be on her feet for much of the workday. Notably, as a cashier Ms. Quast stood on a mat and processed the purchase of grocery items. This work activity required her to stand constantly throughout the work period, and only during the two 15 minute breaks (morning and afternoon) and the 30 minute lunch break did she have opportunity to sit and avoid standing. As a bookkeeper, Ms. Quast worked mostly on her feet. Although this work activity did not require her to stand during the entire work period, she continued to engage in work, including work as a cashier, which

required her to be on her feet for most of the work period. In this regard, Ms. Quast noted that the work as a bookkeeper allowed her to sit during the day for approximately two hours; the remaining time she was required to be on her feet. Similarly, Ms. Quast testified that her work duties as the Guest Relations Manager required her to be on her feet for most of the work day.

In late 2010 Ms. Quast began to notice progressive problems in her left foot, which she identified as pain in her forefoot, especially into the second and third toes. As time went on Ms. Quast noticed progressive problems with pain in her forefoot, especially into the second and third toes. These symptoms would worsen throughout the day at Price Cutter. Eventually, on March 31, 2011, Ms. Quast obtained an examination with her personal physician, Rachelene Middleton, M.D. At the time of this examination Ms. Quast presented with multiple concerns, including left foot pain present for several months. Additionally, Ms. Quast noted that this pain was fairly constant, and she was on her feet all day at Price Cutter.

In offering a medical description of Ms. Quast's complaints of pain, Dr. Middleton stated that the description of pain is in the ball of Ms. Quast's foot, and is radiating between her second and third toes. Based on this initial examination, Dr. Middleton diagnosed the left foot condition to involve a possible neuroma. She referred Ms. Quast to a podiatrist, and continued to provide follow-up medical treatment.

Subsequently, on April 20, 2011, Ms. Quast presented to Dan Park, D.P.M., a podiatrist. She denied any recent trauma to her left foot, but described her work at Price Cutter and told the doctor the pain in her left foot had been ongoing for eight or nine months. Dr. Park diagnosed tenosynovitis of the foot and ankle, and further diagnosed a lesion of the plantar nerve. In light of his examination and findings, Dr. Park administered an injection of cortisone solution in Ms. Quast's left foot at the initial visit, and then provided follow-up treatment on May 4, 2011. Dr. Park again injected the foot with a cortisone solution, and advised Ms. Quast she needed to rest as much as possible. At the next visit with Dr. Park on June 8, 2011, Ms. Quast stated her pain in her left foot was about the same but that the sharp shooting pain was better. She was again injected with cortisone solution and told to rest as much as possible. Ms. Quast received additional injections on June 22, 2011, and August 22, 2011.

In addition, Ms. Quast experienced diffuse musculoskeletal complaints, resulting in her obtaining chiropractic treatment on August 29, 2011.

**In Re: Injury No. 12-000968:**

Ms. Quast testified that she began to experience problems with her hands while employed at Price Cutter, and in June 2011 she presented to Dr. Middleton with multiple concerns, including complaints of bilateral hand pain. Dr. Middleton initially thought Ms. Quast's problems were related to osteoarthritis. Ms. Quast continued to receive follow-up medical treatment with Dr. Middleton for multiple medical concerns, including bilateral hand pain, which Dr. Middleton identified as being "suspicious for osteoarthritis."

In September 2011 Ms. Quast discussed with Dr. Middleton bilateral complaints of pain in her hands, and in particular complaints involving her right hand. During this office visit Ms. Quast described performing hand intensive activity, including a lot of computer work, and work with her right hand as a cashier. Notably, the complaints of pain included numbness in the first

three fingers of her right hand. Based on her examination of Ms. Quast, dated September 22, 2011, Dr. Middleton described the numbness as being in the median nerve distribution and suspected carpal tunnel syndrome. Although providing or offering a suspected diagnosis of carpal tunnel syndrome, Dr. Middleton did not indicate or provide an opinion as to the cause of the medical condition, and in particular did not address the question of whether Ms. Quast had sustained a work-related injury.

In providing treatment for the complaints of hand pain, Dr. Middleton provided Ms. Quast with a handout on stretching exercises and directed Ms. Quast to wear a "wrist splint as needed." In this regard, Dr. Middleton prescribed a hand/wrist brace, which Ms. Quast wore. Additionally, Dr. Middleton discussed options for anti-inflammatory medications, but expressed hesitancy because of Ms. Quast's hypertension. Otherwise, Ms. Quast does not appear to have received any additional treatment for this medical concern. In discussing the lack of treatment for her hand pain, Ms. Quast noted that she did not have health insurance for a period of time following her termination in February of 2012. Also, Ms. Quast noted that she has not seen any doctor for treatment for her pain.

Ms. Quast testified that the fall season, and continuing into the Thanksgiving and Christmas seasons, is a busy time of year for Price Cutter and she was reluctant to take time off to get medical attention for her bilateral hand pain. Apparently, Ms. Quast did not inform Price Cutter of her right hand condition until after the incident with the co-employee.

#### *Present Complaints*

Ms. Quast continues to experience pain and has limited standing capability due to the pain in her left foot. The pain in her foot radiates into the second and third toes, and she is limited in her ability to stand and walk. She cannot walk barefoot on her left foot. Also, Ms. Quast continues to experience pain in both hands, as well as numbness in her index, middle and ring fingers. The right index finger is constantly numb. Further, she experiences pain into the forearm and elbow, mostly on the right.

#### *Independent Medical Examinations*

##### P. Brent Koprivica, M.D.

P. Brent Koprivica, M.D., a physician practicing in the specialty of occupational medicine, testified by deposition on behalf of the employee on July 11, 2013 and again on February 10, 2014. Dr. Koprivica performed an independent medical examination of the employee on August 25, 2012. At the time of this examination, Dr. Koprivica took a history from Ms. Quast, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Quast, Dr. Koprivica propounded multiple medical opinions in regard to Ms. Quast's multiple medical conditions.

In regard to Injury No. 11-104621 and the employee's claim of injury to her left foot, Dr. Koprivica testified that Ms. Quast suffers from tendinitis and Morton's neuroma in her left foot. Dr. Koprivica further opined that this medical condition is an injurious condition in the nature of repetitive or cumulative trauma associated with prolonged standing on a hard surface at work, and thus constitutes an incident of occupational disease. In explaining the nature of Morton's

neuroma, Dr. Koprivica stated that Morton's neuroma is "basically an irritative injury to the nerve from pressure being put on that nerve between the metatarsal heads." According to Dr. Koprivica, while the cause of Morton's neuroma is not absolutely known, it is a condition that is commonly associated with wearing shoes that cause the toe box to compress the forefront, and the more an individual is on his or her feet, the greater amount of compression on the forefront of the feet. This compression injures the nerves that are situated between the metatarsals in the forefoot, producing symptoms associated with tingling and pain.

In addressing specifically Ms. Quast's medical condition, Dr. Koprivica opined that the prevailing factor in the cause of Ms. Quast's Morton's neuroma in the left foot is the standing and walking on hard surfaces she repetitively encountered while working at Price Cutter. In examining this issue, Dr. Koprivica noted that Ms. Quast was unable to take breaks when her foot bothered her on the job, but instead "toughed it out" until the end of the shift. In addition, Dr. Koprivica testified that he believed Ms. Quast's standing and walking on hard surfaces for the length of time her job required was unique to her employment, and did not constitute a risk factor shared by the general population.

Also, in regard to Injury No. 11-104621 and Ms. Quast's Morton's neuroma in the left foot, Dr. Koprivica opined that Ms. Quast is continuing to suffer residual complaints of pain and symptomology, which necessitates receipt of medical treatment in order to cure and relieve her from the effects of the medical condition. Thusly, Dr. Koprivica opined that the employee should be referred to Dr. Park for treatment specific to this medical condition, including surgical consultation. In explaining this opinion, Dr. Koprivica propounded the following comments:

Separately, as to the issue regarding the development of Morton's neuroma, I would note that the cause of Morton's neuroma is not known. It is felt that there is a higher risk based on shoe wear. The type of shoe a person wears in terms of the narrowing of the toe region of a shoe increases this risk due to mechanical compression.

Realizing the type of shoe that a person wears is of concern, the fact that Ms. Quast was working in a standing position, where the extent of the weight bearing in her shoes is significantly increased as a risk at work as opposed to away from work, is felt to be the prevailing factor for her development of a Morton's neuroma.

Even though she would have been exposed to risk from shoe wear while standing and walking outside of work, she was not required to be on her feet throughout a shift as she is at work. She constantly stood on hard surfaces. There is also contribution from the type of shoe she was wearing, but the necessity of being on her feet in performing her work tasks constantly is felt to be the prevailing factor in its development.

In regard to Injury No. 12-000968 and the employee's claim of injury bilaterally to her right and left hands, Dr. Koprivica testified that Ms. Quast suffers from carpal tunnel syndrome in both her right and left hands. Additionally, Dr. Koprivica opined that this medical condition is an injurious condition in the nature of repetitive and cumulative trauma, and thus constitutes an incident of occupational disease. Moreover, Dr. Koprivica opined that the prevailing factor in the

cause of Ms. Quast's bilateral carpal tunnel syndrome is the repetitive work activities she undertook as an employee of Price Cutter, which involved repetitive hand intensive activity, including a lot of computer work, and in particular cashier work.

In addition, in regard to Injury No. 12-000968 and Ms. Quast's bilateral carpal tunnel syndrome, Dr. Koprivica opined that Ms. Quast is continuing to suffer residual complaints of pain and symptomology, which necessitates receipt of medical treatment in order to cure and relieve her from the effects of the medical condition. Thusly, Dr. Koprivica opined that the employee should undergo medical treatment in the nature of electrodiagnostic studies, and should obtain follow up with an upper extremity specialist to treat her condition. Notably, Dr. Koprivica cited medical literature supporting his belief that employee's work as a cashier is the prevailing factor in the cause of her carpal tunnel syndrome.

Notably, in discussing the causation of Ms. Quast's carpal tunnel syndrome, and in noting that his opinion is supported by medical literature, Dr. Koprivica propounded the following testimony:

Q. ...what about her job exposed her to the increased risk that made that job a prevailing factor in the cause of her carpal tunnel syndrome?

A. When I look at these issues it's not a simple issue, because we know that, for example, age influences the risk of having carpal tunnel. We know that individuals who are female as opposed to male, they're more likely to develop it. What I was looking at is the hypothesis as to its development and why certain people get it and others don't, and if you look at this issue, it's noted that carpal tunnel syndrome, when you have that as a diagnosis, the carpal tunnel pressure is higher than on a side that doesn't have carpal tunnel. So if I put a needle in at the time of surgery before you open up the carpal tunnel, the relative pressure's higher on the side that has carpal tunnel than the side that doesn't.

So it's known that pressure causes damage to nerve, and the longer the pressure is there, it's a progressive injury. So pressure is one of the common factors that we're looking at, and if you look at what we know are risk factors, the fact that you're a female versus a male, the relative size of the carpal tunnel in a female as a population versus male is smaller. The smaller the volume, the higher the pressure. So all other things being equal, a female is more likely than a male to get carpal tunnel if they're doing activities where the pressure in the carpal tunnel are increased. And that's a true statement. Aging because of the duration of time of exposure to pressure is longer, you're more likely to have carpal tunnel than if you're younger. Again, that fits with this premise as to its development.

...When they [NIOSH] looked at this, they looked at all the world literature in the Nineties and they said, well, we know that when a person bends their wrist down, which is palmar flexion, or extends their wrist, the more you're doing that, the more likely you're going to get carpal tunnel. Doesn't matter if you're doing it at home or you're doing it at work. It's known that those activities are associated with a risk of carpal tunnel.

Q. Is that because that activity increases the pressure from the carpal tunnel?

A. Yes, and that's been measured in studies where when you bend the wrist down it goes up, and when you bend it back it goes up, and that's when you have carpal tunnel or you don't have carpal tunnel. What they found relatively was on the carpal tunnel side it's much higher than to the non-carpal tunnel side. But that activity is known to increase those pressures. So if you're looking at an activity where you're bending your wrists a lot, especially if your (sic) maintaining the extremes of bending the wrist down or bending it back for extended periods of time, the relative pressure is higher for longer periods of time, that tends to accumulate over time and that's going to be – you're more likely to get carpal tunnel.

...If you pinch something, the pressure goes up. So the more you're pinching, the more you're grasping, the more you're doing those postures, the greater the risk, and it's not unique to work....

Now, in a cashier, when you look at what a cashier does, you're there scanning (sic). If they have a hand scanner, they have a trigger activated thing which the trigger activation is an activity that is known to put risk on developing increased fractures of the carpal tunnel. If they're grabbing items and they're scanning them on the conveyor system where they supplied it, that pinching and grasping increases the pressures as they have to do it. The more the weight involved, the greater the force, the greater the increase in pressure.

Thomas Corsolini, M.D.

Thomas Corsolini, M.D., a physician practicing in physical medicine, testified by deposition on behalf of the employer and insurer on November 22, 2013. Dr. Corsolini performed an independent medical examination of the employee on September 18, 2013. At the time of this examination, Dr. Corsolini took a history from Ms. Quast, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Quast, Dr. Corsolini propounded multiple medical opinions in regard to Ms. Quast's multiple medical conditions.

In regard to Injury No. 11-104621, Dr. Corsolini testified that he is in agreement with other medical opinion that Ms. Quast suffers from Morton's neuroma in her left foot. Dr. Corsolini, however, opined that this medical condition is not an occupationally related injury. In describing the nature of this medical condition, Dr. Corsolini does not appear to disagree with the description provided by Dr. Koprivica. In explaining this condition, Dr. Corsolini testified that Morton's neuroma is a condition that occurs with "gradual changes in the connective tissue of that part of the foot in which the bones, the metatarsal head, begin to shift their position a little bit and essentially pinches the nerve, which hurts or tingles or burns." It is a medical condition that involves nerve related symptoms.

According to Dr. Corsolini, this medical condition specific to Ms. Quast was caused by her age and weight. Yet, on cross-examination, Dr. Corsolini acknowledged that standing for long periods of time can cause Morton's neuroma. Further, in stating that age and weight are causes of this medical condition, Dr. Corsolini did not explain or identify the mechanism in

which age or weight causes the presence of this medical condition, or causes the development of symptomology associated with the medical condition.

In regard to Injury No. 12-000968, Dr. Corsolini testified that he examined Ms. Quast and “did not see any arthritic changes” in her hands, her reflexes were normal, and there was no evidence of atrophy in either hand. However, by exam, he noted that Ms. Quast demonstrated a positive Tinel sign and a positive Phalen test of the right wrist; while the left wrist was normal relative to these two tests. In noting the significance of these two tests, Dr. Corsolini opined that Ms. Quast presents with probable right carpal tunnel syndrome. Yet, he opined that this medical condition is not causally related to Ms. Quast’s employment with Price Cutter.

Notably, in rendering his opinion that the right carpal tunnel syndrome is not a work-related injury, Dr. Corsolini does not offer a medical cause. Rather, he simply noted, “the medical literature does not support keyboard typing or use of a mouse as significant risk factors for development carpal tunnel syndrome.” Additionally, he noted Ms. Quast’s employment with Price Cutter involved “a sufficient variety of activities” that renders it not a sufficient risk, particularly in relation to other occupations, such as assembly work or poultry work.

## **FINDINGS AND CONCLUSIONS**

The workers’ compensation law for the State of Missouri underwent substantial change on or about August 28, 2005. The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation is on the employee, Section 287.808 RSMo. Administrative Law Judges and the Labor and Industrial Relations Commission shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts, and are to construe strictly the provisions, Section 287.800 RSMo.

### **(Injury No. 11-104621)**

#### **I.**

#### **Occupational Disease & Injury**

The underlying issue presented in this case is whether the employee sustained an incident of occupational disease in the nature of Morton’s neuroma in her left foot, in her employment with Price Cutter. The parties offer differing and competing medical opinions from examining physicians. Yet, neither party elected to solicit medical opinion from the treating physicians, who provided treatment without addressing this issue.

The term “occupational disease” is defined in Section 287.067, RSMo. In pertinent part, this statute states:

1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, 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 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.

2. An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

3. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

In the case of *Vickers v. Missouri Department of Public Safety*, 283 S.W.3d 287 (Mo. App. W.D. 2009), the court discussed the burden of proof and evidence necessary for an employee to establish that an occupational disease is compensable under Section 287.067, as the law existed prior to the 2005 amendments. The court stated as follows, 283 S.W.3d at 292 *et seq.*:

In proving a causal connection between the conditions of employment and the occupational disease, the claimant bears the burden of proof; to prove causation it is sufficient to show a recognizable link between the disease and some distinctive feature of the job . . . and there must be evidence of a direct causal connection between the conditions under which the work is performed and the occupational disease. However, the cause and development of an occupational disease is not a matter of common knowledge. There must be medical evidence of a direct causal connection. . . . 'A claimant must submit medical evidence establishing a *probability* that working conditions caused the disease, although they need not be the sole cause.' . . . Even where the causes of the diseases are indeterminate, a single medical opinion relating the disease to the job is sufficient to support a decision for the employee.'

Notably, however, the court's discussion of proving causation in *Vickers* must be viewed in context of Section 287.067, RSMo, as amended in 2005. The Amendments to this statute changed the causation factor to require that the occupational exposure be the "prevailing factor" in relation to causation. See, *Lawson v. Ford Motor Co.*, 217 S.W.3d 345 (Mo. App. E.D., 2007). In discussing this new requirement, the court in *Lawson* stated,

The legislature amended several sections of the Workers' Compensation Act in 2005. In particular, portions of section 287.067 and 287.020 were rewritten.

Specifically, section 287.067.2 discusses when an injury by occupational disease is considered compensable. Prior to 2005, the section stated that such an injury will be 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." Subsections 2 and 3 of section 287.020 previously contained definitions for "accident" and "injury." Prior to 2005, those definitions included language which concluded that an injury was compensable if it is work related, which occurs if work was a "substantial factor" in the cause of the disability.

After the 2005 amendments to the statutes, the definition of a compensable injury by occupational disease was changed to use the language "prevailing factor" in relation to causation. Specifically, section 287.067.2 states:

An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

Section 287.020.3 defines "injury" using similar terms.

217 S.W.3d at 349-350 *et seq.*

In this case, there is "biological plausibility" that the demands of the job in Ms. Quast's employment with Price Cutter caused her to suffer repetitive or cumulative trauma to her feet, which aggravated her left foot condition and caused her to sustain an injury in the nature of tendinitis and Morton's neuroma in her left foot. The prevailing factor in relation to causation is the demands of the job that required her to stand and walk repetitively and cumulatively on the hard surfaces in her employment with the employer, while working as an employee of Price Cutter.

The evidence presented in this case established the following facts. As an employee of Price Cutter, Ms. Quast was required to be on her feet for much of the workday. As a cashier Ms. Quast stood on a mat and processed the purchase of grocery items. This work activity required her to stand constantly throughout the work period, and only during the two 15 minute breaks (morning and afternoon) and the 30 minute lunch break did she have opportunity to sit and avoid standing. As a bookkeeper, Ms. Quast worked mostly on her feet. Although this work activity did not require her to stand during the entire work period, she continued to engage in work, including work as a cashier, which required her to be on her feet for most of the work period. The work as a bookkeeper allowed Ms. Quast to sit during the day for approximately two hours; the remaining time she was required to be on her feet. Similarly, as the Guest Relations Manager Ms. Quast was required to be on her feet for most of the workday.

In late 2010 Ms. Quast began to notice progressive problems in her left foot, which she identified as pain in her forefoot, especially into the second and third toes. As time went on Ms.

Quast noticed progressive problems with pain in her forefoot, especially into the second and third toes. These symptoms would worsen throughout the day at Price Cutter. This condition was later diagnosed as tenosynovitis of the foot and ankle, as well as having a lesion of the plantar nerve (Morton's neuroma) in the left foot.

After consideration and review of the evidence, I find and conclude that the employee's testimony was credible and consistent with the medical records, reports and other documents introduced into evidence, which demonstrated a long history of significant walking and/or standing on concrete or other hard surfaces as a part of her job. This employment caused the employee to suffer cumulative trauma to her feet, and this occupational exposure was the prevailing factor in causing the employee to suffer the resulting medical condition (tendinitis and Morton's neuroma in the left foot) and disability, and thus an occupational disease as the term is defined in Section 287.067, RSMo. Further, to the extent there are differences in medical opinion, I resolve the differences in favor of Dr. Koprivica, who I find credible, reliable and worthy of belief.

Therefore, for the foregoing reasons, I find and conclude that on or about May 1, 2011, the employee, Renee Quast, sustained an injury to her left foot by incident of occupational disease, which arose out of and in the course of her employment with the employer, Price Cutter.

## II. Notice

An employee who sustains a workers' compensation injury in Missouri is required to provide his or her employer with timely written notice of the injury, and the failure to provide such notice may result in the employee not being able to maintain a proceeding for compensation. The notice provision is set forth in Section 287.420, RSMo (2006), which, in relevant part, states:

No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition, unless the employee can prove the employer was not prejudiced by failure to receive the notice.

In *Allcorn v. Tap Enterprises*, 277 S.W.3d 823, (Mo. App. S.D. 2009) the Court of Appeals noted that this notice statute incorporates six elements -- (1) written notice, (2) of the time, (3) place, and (4) nature of the injury, and (5) the name and address of the person injured, (6) given to the employer no later than thirty days after the diagnosis of the condition. *Id.* at 828-30. Further, the court interpreted the sixth element as being triggered once a "diagnostician makes a causal connection between the underlying medical condition and some work-related activity or exposure." *Id.*

Notably, the change in the law from the former statute requires notice to be given in cases involving an incident of occupational disease or repetitive trauma, which the notice statute did not

previously require. Otherwise, the change appears minimal. The former statute stated the following:

No proceedings for compensation under this chapter shall be maintained unless written notice of the time, place and nature of the injury ... has been given to the employer as soon as practicable after the happening thereof but not later than thirty days after the accident, unless ... the employer was not prejudiced by failure to receive notice.

Section 287.420, RSMo

The purpose of the underlying notice requirement is twofold – to enable the employer to conduct an accurate and thorough investigation of the facts surrounding the injury; and to ensure that the employer has the opportunity to minimize the employee’s injury by providing prompt medical treatment. *Messersmith v. Missouri – Columbia / Mt. Vernon*, 43 S.W.3d 829 (Mo.banc 2001). *See also*, *Sell v. Ozarks Medical Center*, 333 S.W.3d 498 (Mo. App. S.D. 2011), *citing*, *Doerr v. Teton Transp., Inc.*, 258 S.W.3d 514, 527 (Mo.App.2008). Thus, the failure to give timely written notice may be excused if it is determined that the failure to provide timely written notice did not prejudice the employer. The evidence in the record need not be overwhelming or uncontroverted. *Id.*

Further, in the context of determining whether the employer has been prejudiced by the lack of timely written notice, several familiar principles bear reprise. The burden is upon the claimant to demonstrate that the employer did not suffer any prejudice. Actual notice of the accident within 30 days is a *prima facie* showing that the employer was not prejudiced by the lack of the requisite notice. *Seyler* at 538. Upon a *prima facie* showing, the burden shifts to the employer to demonstrate that it was prejudiced by the failure of the notice to be in writing. *Id.* *See also*, *Sell* at 511 and 512. In context of this issue, there is not any testimony or other form of evidence sufficient to demonstrate that the employer was hampered in its ability to investigate the incident, or that the employer was denied opportunity to minimize the employee’s injuries. Absent any such evidence, it is reasonable to conclude that the employer failed to meet its burden of establishing prejudice.

In addition, and perhaps more importantly, notice under Section 287.420, RSMo, for an occupational disease by repetitive or cumulative trauma is sufficient if a claim for compensation is filed prior to the actual diagnosis of a causal connection between the underlying medical condition and the work-related activity or exposure. *Allcorn v. Tap Enterprises, Inc.*, 277 S.W.3d 823, 829-30 (Mo. App. S.D. 2009). In light of *Allcorn*, Quast provided the employer and insurer with timely and sufficient notice under Section 287.420, RSMo. Notably, in April 2011 Ms. Quast sought and obtained treatment with her personal physician Rachelene Middleton, M.D., who diagnosed her with tenosynovitis of the foot and ankle, as well as possible Morton’s neuroma. Similarly, during the same month Dan Park, D.P.M., a podiatrist, diagnosed and treated Ms. Quast for this medical condition. Yet, neither Dr. Middleton nor Dr. Park indicated or opined that the medical condition was causally related to Ms. Quast’s employment.

In this case such a medical opinion did not occur until on or about August 25, 2012, when Ms. Quast presented to Dr. Koprivica for examination and evaluation.

Not until she obtained a medical examination by Dr. Koprivica did she obtain a medical opinion identifying the condition to relate to employment. Notably, on or about this date Dr. Koprivica issued a medical report, wherein he opined that Quast suffers from tendinitis and Morton's neuroma in her left foot; and this medical condition is an injurious condition in the nature of repetitive or cumulative trauma associated with prolonged standing on a hard surface at work. This report, which occurred subsequent to the filing of the Claim for Compensation, was the first medical diagnosis offering an opinion that Ms. Quast was suffering from a medical condition that was in the nature of an occupational disease by repetitive or cumulative trauma, and causally related to her employment with Price Cutter.

Accordingly, this issue is resolved in favor of the employee.

### III. Medical Care

#### *Past Medical Expenses*

In the present case, Ms. Quast sustained an occupational injury in the nature of tendinitis and Morton's neuroma in her left foot. The nature of this injury necessitated receipt of medical care, which Ms. Quast received through her personal physician, Rachelene Middleton, M.D., on March 31, 2011. Later, upon referral by Dr. Middleton, Ms. Quast obtained additional medical care for treatment of her left foot from Dan Park, D.P.M. The treatment provided by Dr. Park occurred on April 20, 2011, and continued through August 22, 2011. The nature of this treatment included diagnostic studies and cortisone injections in the left foot, resulting in the employee incurring medical expenses in the amounts and as follows:

Health Care Provider	Date of Service	Amount Billed	Insurance Adjustment (Group Insurer)	Amount Paid by EE	Amount Paid by Insurer (Group Insurer)	Balanced Owed
Mercy Clinic Springfield – Dr. Park	04-20-11	\$ 313.00	\$ 112.29	\$ 40.00	\$ 160.71	\$0.00
	05-04-11	\$ 157.00	\$ 77.96	\$ 40.00	\$ 39.04	\$0.00
	06-08-11	\$ 157.00	\$ 77.96	\$ 40.00	\$ 39.04	\$0.00
	06-22-11	\$ 157.00	\$ 77.96	\$ 40.00	\$ 39.04	\$0.00
	08-22-11	\$ 748.00	\$ 313.96	\$ 40.00	\$ 394.04	\$0.00
<b>Sub-total:</b>		<b>\$1,532.00</b>	<b>\$ 660.13</b>	<b>\$ 200.00</b>	<b>\$ 671.87</b>	
Mercy Clinic Springfield – SFGMC Nuclear Medicine	05-10-11	\$ 348.00	\$ 121.80	\$ 0.00	\$ 226.20	\$0.00
St. John's Clinic – Dr. Middleton	03-31-11	\$ 103.00	\$ 67.97	\$ 0.00	\$ 35.03	\$0.00
<b>Total:</b>		<b>\$1,983.00</b>	<b>\$ 849.90</b>	<b>\$ 200.00</b>	<b>\$ 933.10</b>	<b>\$0.00</b>

The aforementioned medical care was reasonable, necessary, and causally related to the incident of occupational disease. Further, the medical expenses were fair and reasonable.

In the present case, the health care providers accepted payment from the employee's private group health insurer, which included an insurer adjustment of the expenses billed, resulting in Ms. Quast incurring no reimbursement obligation or other liability to pay the medical bills, beyond her co-pay. See *Farmer-Cummings*, 110 S.W.3d at 822-23; *Treasurer of Missouri v. Hudgins*, 308 S.W.3d 789, 792 (Mo.App. 2010); *Ellis v. Missouri State Treasurer*, 302 S.W.3d 217, 225 (Mo.App.2009). Accordingly, the employer and insurer are liable for payment of medical expenses in the amount of \$1,133.10. (This amount represents the amount paid by the employee and her group health insurance carrier, and does not include the insurer adjustment.)

The Missouri Courts have determined that an employee may not be entitled to compensation for healthcare provider write-offs. *Farmer-Cummings v. Personnel Pool of Platte County*, 110 S.W.3d 818 (Mo. 2003). In the context of payments made by Medicaid, the Missouri Courts have "ruled that an employee is not entitled to compensation for Medicaid write-off amounts when the total amount submitted to Medicaid will never be sought from claimant." *Id.*, citing *Mann v. Varney Construction*, 23 S.W.3d 231, 233 (Mo.App. E.D. 2000). Similarly, the insurer adjustments accepted by each health care provider results in certain write-off amounts that will never be sought from the employee and not owed by the employee.

Finally, in adjudicating this issue it is understood that the employee incurred these medical expenses prior to informing the employer that she had incurred a work injury, and without giving the employer opportunity to select the health care provider, as allowed under Section 287.140.1, RSMo. Yet, it is not as if Ms. Quast elected to decline medical care selected by the employer and to undergo receipt of medical care on her own at her own expense. At the time she incurred the medical expenses she simply did not realize it involved a work-related medical condition. Accordingly, under these circumstances the liability for payment of the medical expenses remains with the employer. See, *Meyers v. Wildcat Materials, Inc.* 258 S.W.3d 77, 81-82 (Mo. App. S.D. 2008).

Therefore, for the foregoing reasons, the employer and insurer are ordered to pay to the employee medical expenses in the amount of \$1,049.90.

#### *Additional Medical Care*

The evidence is supportive of a finding, and I find and conclude that the employee is in need of additional medical care, causally related to the claimed occupational disease, in order to cure and relieve her from the effects of the tendinitis and Morton's neuroma in her left foot. The employee sustained her burden of proof. Accordingly, the employee is awarded additional medical treatment pursuant to Chapter 287, RSMo.

Therefore, in light of the foregoing, the employer and insurer are ordered to provide medical care consistent with the recommendations of Dr. Koprivica, and which is reasonable, necessary and causally related to the occupational disease.

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable. The Award is subject to modifications as provided by law.

Made by: /s/ L. Timothy Wilson  
L. Timothy Wilson  
*Administrative Law Judge*  
*Division of Workers' Compensation*

**TEMPORARY AWARD ALLOWING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge  
by Supplemental Opinion)

Injury No. 12-000968

Employee: Renee Quast  
Employer: RPCS, Inc. d/b/a Price Cutter  
Insurer: Fuel Marketers Insurance Trust

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence, read the briefs, 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge, as supplemented herein.

**Discussion**

*"Time" of injury under § 287.420 in cases of occupational disease*

The administrative law judge concluded that employee's claim is not barred by application of § 287.420 RSMo, because employee provided timely notice to employer of her injury for purposes of the statute as construed by the court in *Allcorn v. Tap Enters.*, 277 S.W.3d 823 (Mo. App. 2009). The administrative law judge noted that employee filed her claim for compensation (which set forth each of the elements required under § 287.420, and thus constituted an effective notice to employer) before her obligation to do so was triggered under *Allcorn* by the opinion that Dr. Koprivica rendered on August 25, 2012. We agree with this conclusion by the administrative law judge, because it correctly applies the controlling case law on the issue.

In its application for review and brief, employer argues employee failed to present any evidence that she actually sustained an injury on January 4, 2012, the date of occupational disease alleged in her claim for compensation. As a result, employer argues, employee's claim for compensation cannot be deemed effective written notice of the "time" of injury under a strict construction of § 287.420. We disagree for the following reasons.

Employee claims a gradual onset injury by occupational disease. Specifically, in her claim for compensation, employee alleged she sustained injury to her upper extremities as a result of her repetitive duties for employer. Dr. Koprivica opined that employee's occupational hand use activities were the prevailing factor causing the claimed injury to employee's upper extremities. (We specifically defer to and adopt the administrative law judge's findings, analysis, and conclusions with respect to the issue of medical causation, including his determination that Dr. Koprivica provided the more persuasive expert medical testimony.) It must be noted that employer does not argue that it was in any way surprised or prejudiced regarding the theory of injury employee pursued at the hearing, nor could we conclude that employer suffered any such prejudice on the record before us, especially where it procured and presented its own expert medical evidence relevant to the issue of occupational disease.

Employee: Renee Quast

- 2 -

Assigning a “time” of injury to an occupational disease that develops gradually can be a counterintuitive task, and the courts have acknowledged this difficulty. See *Miller v. U.S. Airways Group, Inc.*, 316 S.W.3d 462, 468 (Mo. App. 2010)(Smart, J., concurring)(pointing out that “[u]nlike an injury due to accident, an occupational disease develops over a period of time and is not caused by an event on a single day”). The *Allcorn* court specifically confronted the time of injury requirement under § 287.420 in a case of gradual onset occupational disease, and held that where the employee’s claim for compensation alleged a time of injury that was inconsistent with the dates he was actually employed by employer, the claim for compensation could not be deemed to constitute effective notice of the time of injury. See *Allcorn*, 277 S.W.3d at 830-31. A logical corollary of the court’s holding is that if an employee’s claim for compensation in a gradual onset occupational disease case *does* allege a time of injury consistent with the dates the employee was actually employed by employer, the claim for compensation may be deemed effective notice of the time of injury under § 287.420.

Because employee claims (and her evidence supports) a gradual onset theory of injury, it follows (and we so find) that she sustained injury during the entire period of time that she was employed by and performed her repetitive duties for employer. The evidence reveals that employee worked for employer from August 2006 until employer discharged her on February 1, 2012. It follows that on January 4, 2012, employee was employed by employer. We conclude that employee’s claim for compensation constitutes effective written notice of the “time” of her injury for purposes of § 287.420.

### Decision

We affirm and adopt the findings, conclusions, decision, and award of the administrative law judge to the extent they are not inconsistent with this supplemental opinion.

The award and decision of Administrative Law Judge L. Timothy Wilson, issued July 8, 2014, is attached and incorporated by this reference.

This award is only temporary or partial. It is subject to further order, and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

Given at Jefferson City, State of Missouri, this 15<sup>th</sup> day of December 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

John J. Larsen, Jr., Chairman

---

James G. Avery, Jr., Member

---

Curtis E. Chick, Jr., Member

Attest:

---

Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Renee Quast

Injury No. 12-000968

Dependents: N/A

Employer: RPCS, Inc. d/b/a Price Cutter

Insurer: Fuel Marketers Insurance Trust

Additional Party: N/A

Hearing Date: April 7, 2014

Checked by: LTW

### 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: January 4, 2012
5. State location where accident occurred or occupational disease was contracted: Christian 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 engaged in employment with Employer for approximately 6 years, performing repetitively and cumulatively hand intensive work, including work as a cashier. The repetitive and cumulative nature of this work activity, including the pinching maneuvers as she lifted and scanned grocery items, caused pressure to develop in the carpal tunnel region, which caused damage to the nerve. As a consequence of this repetitive and cumulative work activity, Employee sustained an incident of occupational disease involving an injury to her bilateral hands.
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 and Left Hands
14. Nature and extent of any permanent disability: N/A
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? None
- 18. Employee's average weekly wages: \$406.00
- 19. Weekly compensation rate: \$270.67 (TTD / PPD)
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Unpaid medical expenses: ..... **TBD**

Weeks of temporary total disability (or temporary partial disability) ..... N/A

Medical Care: Employer and Insurer are ordered to provide Employee with additional medical care consistent with the recommendations of Dr. Koprivica, and which is reasonable, necessary, and casually related to the incident of occupational disease of January 4, 2012.

**TOTAL: .....TBD**

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

**IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.**

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

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

Employee: Renee Quast

Injury No. 12-000968

Dependents: N/A

Employer: RPCS, Inc. d/b/a Price Cutter

Insurer: Fuel Marketers Insurance Trust

Additional Party: N/A

The above-referenced workers' compensation claim, which involved the joining of two workers' compensation cases, was heard before the undersigned Administrative Law Judge on April 7, 2014.<sup>1</sup> Further, the parties were afforded an opportunity to submit briefs or proposed awards, resulting in the record being completed and submitted to the undersigned on May 7, 2014.

The employee appeared personally and through her attorney Darren J. Morrison, Esq. The employer and insurer appeared through their attorney, Steven Marsh, Esq.

### **Injury No. 11-104621:**

The parties entered into a stipulation of facts in Injury No. 11-104621. The stipulation is as follows:

- (1) On or about May 1, 2011, and at all times relevant to this case, RPCS, Inc. d/b/a Price Cutter, was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Fuel Marketers Insurance Trust.
- (2) On the alleged injury date of May 1, 2011, Renee Quast was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The claimed incident of occupational disease of May 1, 2011 occurred in Christian County, Missouri, and the contract of employment between the employee and employer was made in Missouri. Similarly, the employment was principally localized in Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.

---

<sup>1</sup> The workers' compensation cases that were joined for hearing include Injury Nos. 12-000968 and 11-104621.

- (5) At the time of the claimed incident of occupational disease the employee's average weekly wage was \$406.00, which is sufficient to allow a compensation rate of \$270.67 for temporary total disability compensation, permanent total disability compensation, and permanent partial disability compensation.
- (8) Temporary total disability compensation has not been provided to the employee.
- (9) The employer and insurer have not provided medical treatment to the employee.

The issues to be resolved by hearing in Injury No. 11-104621 include:

- (1) Whether the employee, Renee Quast, sustained an incident of occupational disease on or about May 1, 2011; and, if so, whether the occupational disease arose out of and in the course of her employment with the employer?
- (2) Whether the employee notified the employer of her injury as required by Section 287.420, RSMo?
- (3) Whether the claimed incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (4) Whether the employer and insurer are obligated to pay for certain past medical care and expenses?
- (5) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee from the effects of the injuries?
- (6) Whether the employee sustained any permanent disability as a consequence of the claimed incident of occupational disease of May 1, 2011; and, if so, what is the nature and extent of the disability? (The parties agreed to defer adjudication of this issue if the claim was determined to be compensable.)

**Injury No. 12-000968:**

The parties entered into a stipulation of facts in Injury No. 12-000968. The stipulation is as follows:

- (1) On or about January 4, 2012, and at all times relevant to this case, RPCS, Inc. d/b/a Price Cutter, was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Fuel Marketers Insurance Trust.

- (2) On the alleged injury date of January 4, 2012, Renee Quast was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The claimed incident of occupational disease of January 4, 2012, occurred in Christian County, Missouri, and the contract of employment between the employee and employer was made in Missouri. Similarly, the employment was principally localized in Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (5) At the time of the claimed incident of occupational disease the employee's average weekly wage was \$406.00, which is sufficient to allow a compensation rate of \$270.67 for temporary total disability compensation, permanent total disability compensation, and permanent partial disability compensation.
- (8) Temporary total disability compensation has not been provided to the employee.
- (9) The employer and insurer have not provided medical treatment to the employee.

The issues to be resolved by hearing in Injury No. 12-000968 include:

- (1) Whether the employee, Renee Quast, sustained an incident of occupational disease on or about January 4, 2012; and, if so, whether the occupational disease arose out of and in the course of her employment with the employer?
- (2) Whether the employee notified the employer of her injury as required by Section 287.420, RSMo?
- (3) Whether the claimed incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (4) Whether the employer and insurer are obligated to pay for certain past medical care and expenses?
- (5) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee from the effects of the injuries?
- (6) Whether the employee sustained any permanent disability as a consequence of the claimed incident of occupational disease of January 4, 2012; and, if so, what is the nature and extent of the disability? (The

parties agreed to defer adjudication of this issue if the claim was determined to be compensable.)

### EVIDENCE PRESENTED

The parties jointly offered for admission into evidence the following exhibit:

Joint Exhibit I.....Deposition of Renee Quast (Employee)  
(Inclusion of Deposition Exhibits)

Joint Exhibit I was received and admitted into evidence.

The employee elected to not testify in person as part of her case-in-chief, relying on the presentation and admission of Joint Exhibit I and Exhibits A, B, C and D. In this regard, the employee offered for admission the following exhibits:

Exhibit A..... Deposition of P. Brent Koprivica, M.D., Volume I  
(Inclusion of Deposition of Exhibits)  
Exhibit B ..... Deposition of P. Brent Koprivica, M.D., Volume II  
(Inclusion of Deposition of Exhibits)  
Exhibit C .....Medical Records  
    Tab 1 .....Chiropractic Records from Vega Chiropractic  
    Tab 2 .Medical Records from St. John's Clinic & Rachelene Middleton, M.D.  
    Tab 3 .....Medical Records from Dan Park, M.D.  
Exhibit D..... Medical Bills

The exhibits were received and admitted into evidence.

The employer and insurer called the employee, Renee Quast, to testify at the hearing of this case. In addition, the employer and insurer offered for admission the following exhibits:

Exhibit 1..... Deposition of Thomas B. Corsolini, M.D.  
(Inclusion of Deposition Exhibits)  
Exhibit 2..... Deposition Statements of the Employee  
Exhibit 3.....Administrative Manual of Employer

The exhibits were received and admitted into evidence.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took administrative or judicial notice of the documents contained in the Legal File, which include:

#### **Injury No. 11-104621:**

- Notice of Hearing
- Order of Dismissal of Second Injury Fund
- Motion to Dismiss Second Injury Fund

- Answer of Second Injury Fund to Claim for Compensation
- Answer of Employer/Insurer to Claim for Compensation
- Answer of Second Injury Fund to Claim for Compensation
- Claim for Compensation
- Report of Injury

**Injury No. 12-000968:**

- Notice of Hearing
- Order of Dismissal of Second Injury Fund
- Motion to Dismiss Second Injury Fund
- Answer of Employer/Insurer to Second Amended Claim for Compensation
- Second Amended Claim for Compensation
- Answer of Second Injury Fund to First Amended Claim for Compensation
- Answer of Employer/Insurer to First Amended Claim for Compensation
- First Amended Claim for Compensation
- Answer of Second Injury Fund to Original Claim for Compensation
- Original Claim for Compensation

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

## **DISCUSSION**

### *Background & Employment*

The employee, Renee Quast, is 56 years old. She resides in Nixa, Missouri.

Ms. Quast is a high school graduate and enjoys certain post-secondary education. She attended Cypress College in California, pursuing a degree in fine arts, but did not complete the degree. She later attended Prairie Bible College in Alberta, Canada, and received her Associate of Arts degree in 2004 in Biblical Studies.

Ms. Quast's employment history includes a variety of different occupations. During the period of 1975 to 1978 she worked in a clerical position at the L.A. Herald Examiner newspaper, and from 1978 to 1980 she worked as a graphic artist. She then became a homemaker, and continued in this position for several years. Subsequently, Ms. Quast worked for the Pregnancy Resource Center, first as a volunteer and later as a part-time employee from 1997 until 1999. She then moved to Canada with her husband for approximately five years. While living in Canada Ms. Quast did not work outside the home.

In or around 2006 she and her husband separated and she moved to Nixa, Missouri. Upon moving to Nixa, Missouri, Ms. Quast obtained employment with the employer RPCS, Inc. d/b/a Price Cutter. As an employee of Price Cutter, Ms. Quast worked in a variety of positions, including work as a cashier, bookkeeper, and guest relations manager/front-end manager.

Ms. Quast's initial employment involved work as a cashier, which required her to perform cashier duties. In this position she utilized a belt scanner to process purchases. In March 2007 she assumed the duties of a bookkeeper. In this position she had a desk and an office. She would make up the cash register tills for the cashiers, count the money, check the cash register tills, and record her bookkeeping entries on a computer. On or about October 18, 2009, she received a promotion to the position of Guest Relations Manager ("GRM"). In this position she was responsible for supervising and assisting the cashiers, assisting and directing customers, answering the phone, and working the service desk handling returns, the sale of money orders and Western Union wire transfers, etc. Additionally, while working as a bookkeeper and as Guest Relations Manager she continued to perform cashier duties.

She continued in this employment until being suspended on January 4, 2012 due to an incident with an employee. This incident occurred on Christmas Day 2011, and involved Ms. Quast physically grabbing a co-worker and forcibly removing him from the cashier check stand. As a consequence of this incident the employer terminated Ms. Quast, with the termination occurring on or about January 28, 2012.

Ms. Quast is presently employed by a loan company and is working as a branch manager. In this employment Ms. Quast only occasionally engages in computer work, and her work duties entail mostly seated work.

#### *Prior Medical Conditions*

Prior to 2011 Ms. Quast's medical history appears to be unremarkable. Dr. Koprivica notes a past medical history that includes a prior history of cholecystectomy and cesarean section. She denies having sustained any prior work-related injury with permanent disability. Similarly, she denies suffering any prior fractures or athletic type injuries causing any residual permanent disability. However, she was involved in a prior motor vehicle accident in 1989, which caused her to sustain a neck injury and resulted in her receiving a settlement associated with that injury.

#### *Incident of Occupational Disease*

The employee, Renee Quast, alleges that she sustained two repetitive trauma injuries while engaged in employment with the employer, Price Cutter. The 2011 claim (Injury No. 11-104621) refers to a repetitive trauma type injury to the employee's lower extremities, and the 2012 claim (Injury No. 12-000968) refers to a repetitive trauma injury to the employee's upper extremities.

#### **In Re: Injury No. 11-104621:**

In her employment with the employer, Price Cutter, Ms. Quast was required to be on her feet for much of the workday. Notably, as a cashier Ms. Quast stood on a mat and processed the purchase of grocery items. This work activity required her to stand constantly throughout the work period, and only during the two 15 minute breaks (morning and afternoon) and the 30 minute lunch break did she have opportunity to sit and avoid standing. As a bookkeeper, Ms. Quast worked mostly on her feet. Although this work activity did not require her to stand during the entire work period, she continued to engage in work, including work as a cashier, which

required her to be on her feet for most of the work period. In this regard, Ms. Quast noted that the work as a bookkeeper allowed her to sit during the day for approximately two hours; the remaining time she was required to be on her feet. Similarly, Ms. Quast testified that her work duties as the Guest Relations Manager required her to be on her feet for most of the work day.

In late 2010 Ms. Quast began to notice progressive problems in her left foot, which she identified as pain in her forefoot, especially into the second and third toes. As time went on Ms. Quast noticed progressive problems with pain in her forefoot, especially into the second and third toes. These symptoms would worsen throughout the day at Price Cutter. Eventually, on March 31, 2011, Ms. Quast obtained an examination with her personal physician, Rachelene Middleton, M.D. At the time of this examination Ms. Quast presented with multiple concerns, including left foot pain present for several months. Additionally, Ms. Quast noted that this pain was fairly constant, and she was on her feet all day at Price Cutter.

In offering a medical description of Ms. Quast's complaints of pain, Dr. Middleton stated that the description of pain is in the ball of Ms. Quast's foot, and is radiating between her second and third toes. Based on this initial examination, Dr. Middleton diagnosed the left foot condition to involve a possible neuroma. She referred Ms. Quast to a podiatrist, and continued to provide follow-up medical treatment.

Subsequently, on April 20, 2011, Ms. Quast presented to Dan Park, D.P.M., a podiatrist. She denied any recent trauma to her left foot, but described her work at Price Cutter and told the doctor the pain in her left foot had been ongoing for eight or nine months. Dr. Park diagnosed tenosynovitis of the foot and ankle, and further diagnosed a lesion of the plantar nerve. In light of his examination and findings, Dr. Park administered an injection of cortisone solution in Ms. Quast's left foot at the initial visit, and then provided follow-up treatment on May 4, 2011. Dr. Park again injected the foot with a cortisone solution, and advised Ms. Quast she needed to rest as much as possible. At the next visit with Dr. Park on June 8, 2011, Ms. Quast stated her pain in her left foot was about the same but that the sharp shooting pain was better. She was again injected with cortisone solution and told to rest as much as possible. Ms. Quast received additional injections on June 22, 2011, and August 22, 2011.

In addition, Ms. Quast experienced diffuse musculoskeletal complaints, resulting in her obtaining chiropractic treatment on August 29, 2011.

**In Re: Injury No. 12-000968:**

Ms. Quast testified that she began to experience problems with her hands while employed at Price Cutter, and in June 2011 she presented to Dr. Middleton with multiple concerns, including complaints of bilateral hand pain. Dr. Middleton initially thought Ms. Quast's problems were related to osteoarthritis. Ms. Quast continued to receive follow-up medical treatment with Dr. Middleton for multiple medical concerns, including bilateral hand pain, which Dr. Middleton identified as being "suspicious for osteoarthritis."

In September 2011 Ms. Quast discussed with Dr. Middleton bilateral complaints of pain in her hands, and in particular complaints involving her right hand. During this office visit Ms. Quast described performing hand intensive activity, including a lot of computer work, and work with her right hand as a cashier. Notably, the complaints of pain included numbness in the first

three fingers of her right hand. Based on her examination of Ms. Quast, dated September 22, 2011, Dr. Middleton described the numbness as being in the median nerve distribution and suspected carpal tunnel syndrome. Although providing or offering a suspected diagnosis of carpal tunnel syndrome, Dr. Middleton did not indicate or provide an opinion as to the cause of the medical condition, and in particular did not address the question of whether Ms. Quast had sustained a work-related injury.

In providing treatment for the complaints of hand pain, Dr. Middleton provided Ms. Quast with a handout on stretching exercises, and directed Ms. Quast to wear a "wrist splint as needed." In this regard, Dr. Middleton prescribed a hand/wrist brace, which Ms. Quast wore. Additionally, Dr. Middleton discussed options for anti-inflammatory medications, but expressed hesitancy because of Ms. Quast's hypertension. Otherwise, Ms. Quast does not appear to have received any additional treatment for this medical concern. In discussing the lack of treatment for her hand pain, Ms. Quast noted that she did not have health insurance for a period of time following her termination in February of 2012. Also, Ms. Quast noted that she has not seen any doctor for treatment for her pain.

Ms. Quast testified that the fall season, and continuing into the Thanksgiving and Christmas seasons, is a busy time of year for Price Cutter and she was reluctant to take time off to get medical attention for her bilateral hand pain. Apparently, Ms. Quast did not inform Price Cutter of her right hand condition until after the incident with the co-employee.

#### *Present Complaints*

Ms. Quast continues to experience pain and has limited standing capability due to the pain in her left foot. The pain in her foot radiates into the second and third toes, and she is limited in her ability to stand and walk. She cannot walk barefoot on her left foot. Also, Ms. Quast continues to experience pain in both hands, as well as numbness in her index, middle and ring fingers. The right index finger is constantly numb. Further, she experiences pain into the forearm and elbow, mostly on the right.

#### *Independent Medical Examinations*

##### P. Brent Koprivica, M.D.

P. Brent Koprivica, M.D., a physician practicing in the specialty of occupational medicine, testified by deposition on behalf of the employee on July 11, 2013 and again on February 10, 2014. Dr. Koprivica performed an independent medical examination of the employee on August 25, 2012. At the time of this examination, Dr. Koprivica took a history from Ms. Quast, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Quast, Dr. Koprivica propounded multiple medical opinions in regard to Ms. Quast's multiple medical conditions.

In regard to Injury No. 11-104621 and the employee's claim of injury to her left foot, Dr. Koprivica testified that Ms. Quast suffers from tendinitis and Morton's neuroma in her left foot. Dr. Koprivica further opined that this medical condition is an injurious condition in the nature of repetitive or cumulative trauma associated with prolonged standing on a hard surface at work, and thus constitutes an incident of occupational disease. In explaining the nature of Morton's

neuroma, Dr. Koprivica stated that Morton's neuroma is "basically an irritative injury to the nerve from pressure being put on that nerve between the metatarsal heads." According to Dr. Koprivica, while the cause of Morton's neuroma is not absolutely known, it is a condition that is commonly associated with wearing shoes that cause the toe box to compress the forefront, and the more an individual is on his or her feet, the greater amount of compression on the forefront of the feet. This compression injures the nerves that are situated between the metatarsals in the forefoot, producing symptoms associated with tingling and pain.

In addressing specifically Ms. Quast's medical condition, Dr. Koprivica opined that the prevailing factor in the cause of Ms. Quast's Morton's neuroma in the left foot is the standing and walking on hard surfaces she repetitively encountered while working at Price Cutter. In examining this issue, Dr. Koprivica noted that Ms. Quast was unable to take breaks when her foot bothered her on the job, but instead "toughed it out" until the end of the shift. In addition, Dr. Koprivica testified that he believed Ms. Quast's standing and walking on hard surfaces for the length of time her job required was unique to her employment, and did not constitute a risk factor shared by the general population.

Also, in regard to Injury No. 11-104621 and Ms. Quast's Morton's neuroma in the left foot, Dr. Koprivica opined that Ms. Quast is continuing to suffer residual complaints of pain and symptomology, which necessitates receipt of medical treatment in order to cure and relieve her from the effects of the medical condition. Thusly, Dr. Koprivica opined that the employee should be referred to Dr. Park for treatment specific to this medical condition, including surgical consultation. In explaining this opinion, Dr. Koprivica propounded the following comments:

Separately, as to the issue regarding the development of Morton's neuroma, I would note that the cause of Morton's neuroma is not known. It is felt that there is a higher risk based on shoe wear. The type of shoe a person wears in terms of the narrowing of the toe region of a shoe increases this risk due to mechanical compression.

Realizing the type of shoe that a person wears is of concern, the fact that Ms. Quast was working in a standing position, where the extent of the weight bearing in her shoes is significantly increased as a risk at work as opposed to away from work, is felt to be the prevailing factor for her development of a Morton's neuroma.

Even though she would have been exposed to risk from shoe wear while standing and walking outside of work, she was not required to be on her feet throughout a shift as she is at work. She constantly stood on hard surfaces. There is also contribution from the type of shoe she was wearing, but the necessity of being on her feet in performing her work tasks constantly is felt to be the prevailing factor in its development.

In regard to Injury No. 12-000968 and the employee's claim of injury bilaterally to her right and left hands, Dr. Koprivica testified that Ms. Quast suffers from carpal tunnel syndrome in both her right and left hands. Additionally, Dr. Koprivica opined that this medical condition is an injurious condition in the nature of repetitive and cumulative trauma, and thus constitutes an incident of occupational disease. Moreover, Dr. Koprivica opined that the prevailing factor in the

cause of Ms. Quast's bilateral carpal tunnel syndrome is the repetitive work activities she undertook as an employee of Price Cutter, which involved repetitive hand intensive activity, including a lot of computer work, and in particular cashier work.

In addition, in regard to Injury No. 12-000968 and Ms. Quast's bilateral carpal tunnel syndrome, Dr. Koprivica opined that Ms. Quast is continuing to suffer residual complaints of pain and symptomology, which necessitates receipt of medical treatment in order to cure and relieve her from the effects of the medical condition. Thusly, Dr. Koprivica opined that the employee should undergo medical treatment in the nature of electrodiagnostic studies and follow up with an upper extremity specialist to treat her condition. Notably, Dr. Koprivica cited medical literature supporting his belief that employee's work as a cashier is the prevailing factor in the cause of her carpal tunnel syndrome.

Notably, in discussing the causation of Ms. Quast's carpal tunnel syndrome, and in noting that his opinion is supported by medical literature, Dr. Koprivica propounded the following testimony:

Q. ...what about her job exposed her to the increased risk that made that job a prevailing factor in the cause of her carpal tunnel syndrome?

A. When I look at these issues it's not a simple issue, because we know that, for example, age influences the risk of having carpal tunnel. We know that individuals who are female as opposed to male, they're more likely to develop it. What I was looking at is the hypothesis as to its development and why certain people get it and others don't, and if you look at this issue, it's noted that carpal tunnel syndrome, when you have that as a diagnosis, the carpal tunnel pressure is higher than on a side that doesn't have carpal tunnel. So if I put a needle in at the time of surgery before you open up the carpal tunnel, the relative pressure's higher on the side that has carpal tunnel than the side that doesn't.

So it's known that pressure causes damage to nerve, and the longer the pressure is there, it's a progressive injury. So pressure is one of the common factors that we're looking at, and if you look at what we know are risk factors, the fact that you're a female versus a male, the relative size of the carpal tunnel in a female as a population versus male is smaller. The smaller the volume, the higher the pressure. So all other things being equal, a female is more likely than a male to get carpal tunnel if they're doing activities where the pressure in the carpal tunnel are increased. And that's a true statement. Aging because of the duration of time of exposure to pressure is longer, you're more likely to have carpal tunnel than if you're younger. Again, that fits with this premise as to its development.

...When they [NIOSH] looked at this, they looked at all the world literature in the Nineties and they said, well, we know that when a person bends their wrist down, which is palmar flexion, or extends their wrist, the more you're doing that, the more likely you're going to get carpal tunnel. Doesn't matter if you're doing it at home or you're doing it at work. It's known that those activities are associated with a risk of carpal tunnel.

Q. Is that because that activity increases the pressure from the carpal tunnel?

A. Yes, and that's been measured in studies where when you bend the wrist down it goes up, and when you bend it back it goes up, and that's when you have carpal tunnel or you don't have carpal tunnel. What they found relatively was on the carpal tunnel side it's much higher than to the non-carpal tunnel side. But that activity is known to increase those pressures. So if you're looking at an activity where you're bending your wrists a lot, especially if your (sic) maintaining the extremes of bending the wrist down or bending it back for extended periods of time, the relative pressure is higher for longer periods of time, that tends to accumulate over time and that's going to be – you're more likely to get carpal tunnel.

...If you pinch something, the pressure goes up. So the more you're pinching, the more you're grasping, the more you're doing those postures, the greater the risk, and it's not unique to work....

Now, in a cashier, when you look at what a cashier does, you're there scanning (sic). If they have a hand scanner, they have a trigger activated thing which the trigger activation is an activity that is known to put risk on developing increased fractures of the carpal tunnel. If they're grabbing items and they're scanning them on the conveyor system where they supplied it, that pinching and grasping increases the pressures as they have to do it. The more the weight involved, the greater the force, the greater the increase in pressure.

Thomas Corsolini, M.D.

Thomas Corsolini, M.D., a physician practicing in physical medicine, testified by deposition on behalf of the employer and insurer on November 22, 2013. Dr. Corsolini performed an independent medical examination of the employee on September 18, 2013. At the time of this examination, Dr. Corsolini took a history from Ms. Quast, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Quast Dr. Corsolini propounded multiple medical opinions in regard to Ms. Quast's multiple medical conditions.

In regard to Injury No. 11-104621, Dr. Corsolini testified that he is in agreement with other medical opinion that Ms. Quast suffers from Morton's neuroma in her left foot. Dr. Corsolini, however, opined that this medical condition is not an occupationally related injury. In describing the nature of this medical condition, Dr. Corsolini does not appear to disagree with the description provided by Dr. Koprivica. In explaining this condition, Dr. Corsolini testified that Morton's neuroma is a condition that occurs with "gradual changes in the connective tissue of that part of the foot in which the bones, the metatarsal head, begin to shift their position a little bit and essentially pinches the nerve, which hurts or tingles or burns." It is a medical condition that involves nerve related symptoms.

According to Dr. Corsolini, this medical condition specific to Ms. Quast was caused by her age and weight. Yet, on cross-examination, Dr. Corsolini acknowledged that standing for long periods of time can cause Morton's neuroma. Further, in stating that age and weight are causes of this medical condition, Dr. Corsolini did not explain or identify the mechanism in

which age or weight causes the presence of this medical condition, or causes the development of symptomology associated with the medical condition.

In regard to Injury No. 12-000968, Dr. Corsolini testified that he examined Ms. Quast and “did not see any arthritic changes” in her hands, her reflexes were normal, and there was no evidence of atrophy in either hand. However, by exam, he noted that Ms. Quast demonstrated a positive Tinel sign and a positive Phalen test of the right wrist; while the left wrist was normal relative to these two tests. In noting the significance of these two tests, Dr. Corsolini opined that Ms. Quast presents with probable right carpal tunnel syndrome. Yet, he opined that this medical condition is not causally related to Ms. Quast’s employment with Price Cutter.

Notably, in rendering his opinion that the right carpal tunnel syndrome is not a work-related injury, Dr. Corsolini does not offer a medical cause. Rather, he simply noted, “the medical literature does not support keyboard typing or use of a mouse as significant risk factors for development carpal tunnel syndrome.” Additionally, he noted Ms. Quast’s employment with Price Cutter involved “a sufficient variety of activities” that renders it not a sufficient risk, particularly in relation to other occupations, such as assembly work or poultry work.

## **FINDINGS AND CONCLUSIONS**

The workers’ compensation law for the State of Missouri underwent substantial change on or about August 28, 2005. The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation is on the employee, Section 287.808, RSMo. Administrative Law Judges and the Labor and Industrial Relations Commission shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts, and are to construe strictly the provisions, Section 287.800, RSMo.

### **(Injury No. 12-000968)**

#### **I.**

#### **Occupational Disease & Injury**

The underlying issue presented in this case is whether the employee sustained an incident of occupational disease in the nature of bilateral carpal tunnel syndrome, in her employment with Price Cutter. The parties offer differing and competing medical opinions from examining physicians.

The term “occupational disease” is defined in Section 287.067, RSMo. In pertinent part, this statute states:

1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, 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.

2. An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

3. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

In the case of *Vickers v. Missouri Department of Public Safety*, 283 S.W.3d 287 (Mo. App. W.D. 2009), the court discussed the burden of proof and evidence necessary for an employee to establish that an occupational disease is compensable under Section 287.067, as the law existed prior to the 2005 amendments. The court stated as follows, 283 S.W.3d at 292 *et seq.*:

In proving a causal connection between the conditions of employment and the occupational disease, the claimant bears the burden of proof; to prove causation it is sufficient to show a recognizable link between the disease and some distinctive feature of the job . . . and there must be evidence of a direct causal connection between the conditions under which the work is performed and the occupational disease. However, the cause and development of an occupational disease is not a matter of common knowledge. There must be medical evidence of a direct causal connection. . . . 'A claimant must submit medical evidence establishing a *probability* that working conditions caused the disease, although they need not be the sole cause.' . . . Even where the causes of the diseases are indeterminate, a single medical opinion relating the disease to the job is sufficient to support a decision for the employee.'

Notably, however, the court's discussion of proving causation in *Vickers* must be viewed in context of Section 287.067, RSMo as amended in 2005. The Amendments to this statute changed the causation factor to require that the occupational exposure be the "prevailing factor" in relation to causation. See, *Lawson v. Ford Motor Co.*, 217 S.W.3d 345 (Mo. App. E.D., 2007). In discussing this new requirement, the court in *Lawson* stated,

The legislature amended several sections of the Workers' Compensation Act in 2005. In particular, portions of section 287.067 and 287.020 were rewritten. Specifically, section 287.067.2 discusses when an injury by occupational disease

is considered compensable. Prior to 2005, the section stated that such an injury will be 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." Subsections 2 and 3 of section 287.020 previously contained definitions for "accident" and "injury." Prior to 2005, those definitions included language which concluded that an injury was compensable if it is work related, which occurs if work was a "substantial factor" in the cause of the disability.

After the 2005 amendments to the statutes, the definition of a compensable injury by occupational disease was changed to use the language "prevailing factor" in relation to causation. Specifically, section 287.067.2 states:

An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

Section 287.020.3 defines "injury" using similar terms.

217 S.W.3d at 349-350 *et seq.*

In this case, there is "biological plausibility" that the demands of the job in Ms. Quast's employment with Price Cutter caused her to suffer repetitive or cumulative trauma to her right and left hands, which caused her to sustain an injury in the nature of carpal tunnel syndrome in both her right and left hands. The prevailing factor in relation to causation is the demands of the job that required her to perform hand intensive activity, including a lot of computer work, and work with her hands as a cashier in her employment with the employer, while working as an employee of Price Cutter.

The evidence presented in this case established the following facts. In or around 2006 Ms. Quast obtained employment with Price Cutter, working in a variety of positions, including work as a cashier, bookkeeper, and guest relations manager/front-end manager. Ms. Quast's initial employment involved work as a cashier, which required her to perform cashier duties. In this position she utilized a belt scanner to process purchases. In March 2007 she assumed the duties of a bookkeeper. As a bookkeeper, she had a desk and an office. She would make up the cash register tills for the cashiers, count the money, check the cash register tills, and record her bookkeeping entries on a computer. Later, on or about October 18, 2009, she received a promotion to the position of Guest Relations Manager ("GRM"). In this position she was responsible for supervising and assisting the cashiers, assisting and directing customers, answering the phone, and working the service desk handling returns, the sale of money orders and Western Union wire transfers, etc. Additionally, while working as a bookkeeper and as Guest Relations Manager she continued to perform cashier duties.

This employment required Ms. Quast to perform repetitively and cumulatively hand intensive work. Notably, the work as a cashier required Ms. Quast to perform pinching maneuvers, as she lifted and scanned grocery items. The repetitive and cumulative nature of this work activity caused pressure to present in the carpal tunnel region, and this pressure causes damage to the nerve. The longer the pressure occurs in the carpal tunnel region the injury becomes more progressive with greater damage to the nerve.

In or around 2011, and while employed by Price Cutter, Ms. Quast began to experience pain and numbness in both of her hands. In light of the continuing and progressive nature of this pain, Ms. Quast presented to Dr. Middleton with multiple concerns, including complaints of bilateral hand pain. Dr. Middleton initially thought Ms. Quast's problems were related to osteoarthritis. Ms. Quast continued to receive follow-up medical treatment with Dr. Middleton for multiple medical concerns, including bilateral hand pain, which Dr. Middleton identified as being "suspicious for osteoarthritis."

In September 2011 Ms. Quast discussed with Dr. Middleton bilateral complaints of pain in her hands, and in particular complaints involving her right hand. During this office visit Ms. Quast described performing hand intensive activity, including a lot of computer work, and work with her right hand as a cashier. Notably, the complaints of pain included numbness in the first three fingers of her right hand. Based on his examination of Ms. Quast, dated September 22, 2011, Dr. Middleton described the numbness as being in the median nerve distribution and suspected carpal tunnel syndrome. Although providing or offering a suspected diagnosis of carpal tunnel syndrome, Dr. Middleton did not indicate or provide an opinion as to the cause of the medical condition, and in particular did not address the question of whether Ms. Quast had sustained a work-related injury.

In providing treatment for the complaints of hand pain, Dr. Middleton provided Ms. Quast with a handout on stretching exercises, and directed Ms. Quast to wear a "wrist splint as needed." In this regard, Dr. Middleton prescribed a hand/wrist brace, which Ms. Quast wore. Additionally, Dr. Middleton discussed options for anti-inflammatory medications, but expressed hesitancy because of Ms. Quast's hypertension. Otherwise, Ms. Quast does not appear to have received any additional treatment for this medical concern.

Although time has passed since getting treatment for this bilateral hand pain, Ms. Quast continues to present with pain in both hands, as well as numbness in her index, middle and ring fingers. The right index finger is constantly numb. Further, she experiences pain into the forearm and elbow, mostly on the right.

After consideration and review of the evidence, I find and conclude that the employee's testimony was credible and consistent with the medical records, reports and other documents introduced into evidence, which demonstrated a long history of repetitive and cumulative hand intensive activity. This employment caused the employee to suffer repetitive and cumulative trauma to her right and left hands, and this occupational exposure was the prevailing factor in causing the employee to suffer bilateral carpal tunnel syndrome, and thus an occupational disease as the term is defined in Section 287.067, RSMo. Further, to the extent there are differences in medical opinion I resolve the differences in favor of Dr. Koprivica, who I find credible, reliable and worthy of belief.

Therefore, for the foregoing reasons, I find and conclude that on or about January 4, 2012, the employee, Renee Quast, sustained an injury to her right and left hands by incident of occupational disease, which arose out of and in the course of her employment with the employer, Price Cutter.

## II. Notice

An employee who sustains a workers' compensation injury in Missouri is required to provide his or her employer with timely written notice of the injury, and the failure to provide such notice may result in the employee not being able to maintain a proceeding for compensation. The notice provision is set forth in Section 287.420, RSMo (2006), which, in relevant part, states,

No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition, unless the employee can prove the employer was not prejudiced by failure to receive the notice.

In *Allcorn v. Tap Enterprises*, 277 S.W.3d 823, (Mo. App. S.D. 2009) the Court of Appeals noted that this notice statute incorporates six elements -- (1) written notice, (2) of the time, (3) place, and (4) nature of the injury, and (5) the name and address of the person injured, (6) given to the employer no later than thirty days after the diagnosis of the condition. *Id.* at 828-30. Further, the court interpreted the sixth element as being triggered once a "diagnostician makes a causal connection between the underlying medical condition and some work-related activity or exposure." *Id.*

Notably, the change in the law from the former statute requires notice to be given in cases involving an incident of occupational disease or repetitive trauma, which the notice statute did not previously require. Otherwise, the change appears minimal. The former statute stated the following:

No proceedings for compensation under this chapter shall be maintained unless written notice of the time, place and nature of the injury ... has been given to the employer as soon as practicable after the happening thereof but not later than thirty days after the accident, unless ... the employer was not prejudiced by failure to receive notice.

Section 287.420, RSMo

The purpose of the underlying notice requirement is twofold – to enable the employer to conduct an accurate and thorough investigation of the facts surrounding the injury; and to ensure that the employer has the opportunity to minimize the employee's injury by providing prompt medical treatment. *Messersmith v. Missouri – Columbia / Mt. Vernon*, 43 S.W.3d 829 (Mo.banc 2001). *See also*, *Sell v. Ozarks Medical Center*, 333 S.W.3d 498 (Mo. App. S.D. 2011), *citing*, *Doerr v. Teton Transp., Inc.*, 258 S.W.3d 514, 527 (Mo.App.2008). Thus, the failure to give

timely written notice may be excused if it is determined that the failure to provide timely written notice did not prejudice the employer. The evidence in the record need not be overwhelming or uncontroverted. *Id.*

Further, in the context of determining whether the employer has been prejudiced by the lack of timely written notice, several familiar principles bear reprise. The burden is upon the claimant to demonstrate that the employer did not suffer any prejudice. Actual notice of the accident within 30 days is a *prima facie* showing that the employer was not prejudiced by the lack of the requisite notice. *Seyler* at 538. Upon a *prima facie* showing, the burden shifts to the employer to demonstrate that it was prejudiced by the failure of the notice to be in writing. *Id.* See also, *Sell* at 511 and 512. In context of this issue, there is not any testimony or other form of evidence sufficient to demonstrate that the employer was hampered in its ability to investigate the incident, or that the employer was denied opportunity to minimize the employee's injuries. Absent any such evidence, it is reasonable to conclude that the employer failed to meet its burden of establishing prejudice.

In addition, and perhaps more importantly, notice under Section 287.420, RSMo, for an occupational disease by repetitive or cumulative trauma is sufficient if a claim for compensation is filed prior to the actual diagnosis of a causal connection between the underlying medical condition and the work-related activity or exposure. *Allcorn v. Tap Enterprises, Inc.*, 277 S.W.3d 823, 829-830 (Mo. App. S.D. 2009). In light of *Allcorn*, Ms. Quast provided the employer and insurer with timely and sufficient notice under Section 287.420, RSMo. Notably, in June 2011 Ms. Quast sought and obtained treatment with her personal physician Rachelene Middleton, M.D., who diagnosed her with bilateral hand pain, and viewed the presenting condition as suspicious for osteoarthritis. Later, in September 2011, as the symptoms continued to progress, Dr. Middleton offered a different diagnosis, indicating that she was suspicious of Ms. Quast presenting with carpal tunnel syndrome. Yet, at no time did Dr. Middleton indicate or opine that the medical condition was causally related to Ms. Quast's employment. (The medical records do not reflect or identify Ms. Quast receiving any additional medical care for treatment of her bilateral hand pain subsequent to the September 2011 office visit with Dr. Middleton.)

In this case such a medical opinion did not occur until on or about August 25, 2012, when Ms. Quast presented to Dr. Koprivica for examination and evaluation. At this time she obtained a medical opinion identifying the condition to relate to employment. Notably, on or about this date Dr. Koprivica issued a medical report, wherein he opined that Ms. Quast suffers from carpal tunnel syndrome in both her right and left hands. Additionally, Dr. Koprivica opined that this medical condition is an injurious condition in the nature of repetitive and cumulative trauma, and thus constitutes an incident of occupational disease. This report, which occurred subsequent to the filing of the Claim for Compensation, was the first medical diagnosis offering an opinion that Ms. Quast was suffering from a medical condition that was in the nature of an occupational disease by repetitive or cumulative trauma, and causally related to her employment with Price Cutter.

Accordingly, this issue is resolved in favor of the employee.

### III. Medical Care

#### *Past Medical Expenses*

In the present case, Ms. Quast obtained certain medical care and treatment for her bilateral hand pain, which she received through her personal physician. This treatment, however, involved multiple medical concerns, not all of which related to the carpal tunnel syndrome and her occupational injury. Further, in identifying or presenting an itemization of medical expenses the evidence presented by the employee appears to relate to the occupational disease claim relating to her left foot, and not the bilateral hand pain.

Accordingly, at this time the claim for past medical expenses is denied. This issue, of course, may be revisited and adjudicated at a final hearing.

#### *Additional Medical Care*

The evidence is supportive of a finding, and I find and conclude that the employee is in need of additional medical care, causally related to the claimed occupational disease, in order to cure and relieve her from the effects of the bilateral carpal tunnel syndrome. The employee sustained her burden of proof. Although significant time has elapsed since suffering this occupationally related medical condition, Ms. Quast is continuing to present with pain in both hands, as well as numbness in her index, middle and ring fingers. The right index finger is constantly numb. Further, she experiences pain into the forearm and elbow, mostly on the right.

This continuing pain and symptomology necessitates receipt of medical treatment in order to cure and relieve her from the effects of the medical condition. Based on this continuing symptomology, Dr. Koprivica opined that the employee should undergo medical treatment in the nature of electrodiagnostic studies and follow up with an upper extremity specialist to treat her condition. Further, in relating the need for treatment to the occupationally related bilateral carpal tunnel syndrome Dr. Koprivica cited medical literature supporting his belief that employee's work as a cashier is the prevailing factor in the cause of her carpal tunnel syndrome and need for treatment.

Accordingly, the employee is awarded additional medical treatment pursuant to Chapter 287, RSMo. Therefore, in light of the foregoing, the employer and insurer are ordered to provide medical care consistent with the recommendations of Dr. Koprivica, and which is reasonable, necessary and causally related to the occupational disease.

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable. The Award is subject to modifications as provided by law.

Made by: /s/ L. Timothy Wilson  
L. Timothy Wilson  
Administrative Law Judge  
Division of Workers' Compensation