

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

Injury No.: 99-081559

Employee: Cayree Ragsdale  
Employer: Litton Advanced Circuitry  
Insurer: CNA Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

Date of Accident: June 24, 1999

Place and County of Accident: Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the associate administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the associate administrative law judge dated April 4, 2005. The award and decision of Associate Administrative Law Judge L. Timothy Wilson, issued April 4, 2005, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 8<sup>th</sup> day of August 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Cayree Ragsdale

Injury No. 99-081559

Dependents: N/A  
Employer: Litton Advanced Circuitry  
Additional Party: N/A  
Insurer: CNA Insurance Company  
Hearing Date: September 16, 2004

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by: LTW/mp

**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: June 24, 1999
5. State location where accident occurred or occupational disease was contracted: Greene 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:  
While performing repetitive hand movements in her job, Claimant developed injuries to both wrists and hands.
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: both wrists and hands
0. Nature and extent of any permanent disability: 20% permanent partial disability to both upper extremities
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages:
19. Weekly compensation rate: \$294.73
0. Method wages computation: stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

The employer and insurer shall provide claimant with future medical care relative to removal of the hardware (related to her surgeries) as may be reasonable, necessary and causally related to the accident of June 24, 1999.

80 weeks of permanent partial disability from Employer	\$23,578.40
8 weeks of disfigurement from Employer	2,357.84

22. Second Injury Fund liability: No

TOTAL:	\$25,936.24
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23. Future requirements awarded: future medical (see above)

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Paul Reichert

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

Employee: Cayree Ragsdale

Injury No: 99-081559

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial Relations of Missouri  
Jefferson City, Missouri

Dependents: N/A

Employer: Litton Advanced Circuitry

Additional Party N/A

Insurer: CNA Insurance Company

Checked by: LTW/mp

The above-referenced workers' compensation claim, which involved the consolidation of two workers' compensation cases, was heard before the undersigned Associate Administrative Law Judge on September 16, 2004. Therecord was left open for the submission of additional evidence, and the parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about December 10, 2004.

The parties entered into a stipulation of facts in Injury No. 99-081559. The stipulation is as follows:

- (1) On or about June 24, 1999, Litton Advanced Circuitry was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by CNA Insurance Co.
- (2) On the alleged injury date of June 24, 1999, Cayree Ragsdale was an employee of the employer and was working under and subject to The Missouri Workers' Compensation Law.
- (3) On or about June 24, 1999, the employee sustained an incident of occupational disease which arose out of and in the course and scope of employment.
- (4) The above-referenced employment and incident of occupational disease occurred in Greene County, Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.
- (5) The employee notified the employer of her injury as required by Section, 287.420, RSMo.
- (6) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (7) At the time of the alleged incident of occupational disease, the employee's average weekly wage was sufficient to allow a compensation rate of \$294.73 for permanent partial disability compensation.
- (8) Temporary disability benefits and medical care have been provided to the employee. (The parties did not identify in the stipulation the amount of temporary disability compensation and medical expenses paid by the employer and insurer in this case. However, the Receipt and Notice of Termination of Compensation identifies temporary disability compensation being paid in the amount of \$858.61 and medical expenses being paid in the amount of \$11,216.89)

The issues to be resolved by hearing in Injury No. 99-081559 include:

- (1) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve her of the effects of the injuries?
- (2) Whether the employee sustained any permanent disability as a consequence of the alleged incident of occupational disease; and, if so, what is the nature and extent of the disability?

In Injury No. 00-177055 the parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about October 13, 2000, Litton Advance Circuitry was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by CNA Insurance Co.
- (2) On the alleged injury date of October 13, 2000, Cayree Ragsdale was an employee of the employer and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged incident of occupational disease accident occurred in Greene County, Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.
- (4) The employee notified the employer of her injury as required by Section, 287.420, RSMo.
- (5) The Claim for Compensation was filed within the time prescribed by Section 287.430,

RSMo.

- (6) At the time of the alleged accident, the employee's average weekly wage was sufficient to allow a compensation rate of \$314.26 for permanent partial disability compensation.
- (7) Temporary disability benefits and medical care have not been provided to the employee.

In Injury No. 00-177055 the issues to be resolved by hearing include:

- (1) Whether the employee sustained an incident of occupational disease on or about October 13, 2000; and, if so, whether the incident of occupational disease arose out of and in the course of her employment with Litton Advanced Circuitry?
- (2) Whether the alleged incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (3) Whether the employee has sustained any permanent disability as a consequence of the alleged incident of occupational disease; and, if so, what is the nature and extent of the disability?
- (4) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation?

### **EVIDENCE PRESENTED**

The employee, Cayree Ragsdale, testified at the hearing in support of her claim. Also, the employee has offered for admission the following exhibits:

Exhibit A ..... Medical Records from Norbert T. Belz, M.D.  
Exhibit B ..... Medical Report from Bruce Schlafly, M.D.  
Exhibit C ..... List of Activities Description  
Exhibit D ..... Diagram of Joint Protection for Thumbs  
Exhibit E ..... Medical Records from St. John's Regional Health Center  
Exhibit F ..... Medical Records from St. John's Physicians & Clinics – Regional Ear, Nose & Throat Center  
Exhibit G ..... Medical Records from Barry Rosenblum, M.D.  
Exhibit H ..... Medical Report from Shane L. Bennoch, M.D.  
Exhibit I ..... Diagram of Work Environment  
Exhibit J . Medical Report from Suburban Surgical Associates, Inc.  
Exhibit K ..... Deposition of Shane Bennoch, M.D.

Exhibits A, B, C, D, E, F, G, H, and I were received and admitted into evidence. Exhibit J was denied admission, but it was received and retained as an offer of proof. Exhibit K was received and admitted into evidence subsequent to the hearing by agreement of the parties.

The employer and insurer did not present any witnesses at the hearing of this case or offer any exhibits for admission into evidence. Similarly, the Second Injury Fund did not present any witnesses at the hearing of this case or offer any exhibits for admission 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 official notice of the documents contained in the Legal File which include: Letter Dated March 11, 2002 and Request to Dismiss Medical Fee Dispute (Injury No. 99-081559); Answer of Second Injury Fund to Claim for Compensation (Injury No. 00-177055); Answer of Employer & Insurer to Claim for Compensation (Injury No. 00-177055); Claim for Compensation (Injury No. 00-177055); Answer of Employer & Insurer to Claim for Compensation (Injury No. 99-081559); Claim for Compensation (Injury No. 99-081559); Receipt and Notice of Termination of Compensation (Injury No. 99-081559); and Report of Injury (Injury No. 99-081559).

### **DISCUSSION**

The employee, Cayree Ragsdale, is nearly 54 years of age, having been born on April 17, 1951. She is a resident of Springfield, Missouri. Additionally, Ms. Ragsdale is a long-time employee of Litton Industries, having been employed by the employer for 22 years.

As an employee of Litton Advanced Circuitry, Ms. Ragsdale has worked in the factory, performing assembly work as

a tool crib attendant. The duties of Ms. Ragsdale in this employment require her to perform repetitive gripping and pinching with her hands and thumbs while working with drill bits. After performing this work for about 10 years, the job duties changed which allowed her to use a computer program that assisted in the loading of drill bits. According to Ms. Ragsdale, this employment involved fine manipulation involving her four fingers and thumbs.

I.  
(Injury No. 99-081559)

In the late 1990s Ms. Ragsdale began to develop pain in her hands at the base of the thumbs, involving both of her right and left hands, with the left hand being worse than the right hand. Initially, in or around June 1999, the employer and insurer provided Ms. Ragsdale with medical care through John D. Mackie, D.O., who is a physician practicing in the specialty of occupational medicine, and who diagnosed her with sprain / strain / arthropathy of the hand and wrist and treated her conservatively with corticosteroids and Medrol dosepak. Eventually, on or about July 1, 1999, Dr. Mackie referred Ms. Ragsdale to J. Scott Swango, M.D., who is an orthopedic surgeon, for evaluation and treatment of right and left thumb pain.

On or about July 26, 1999, Ms. Ragsdale presented to Dr. Swango for an examination and evaluation, presenting with complaints of right and left thumb pain. At the time of this examination, Dr. Swango took a work history and reviewed the description of her activities, which included a recognition by Dr. Swango that in her work duties Ms. Ragsdale engages in "pinching activity;" and, while "she is right hand dominant, she uses her left hand equally to her right." In light of his examination and findings, Dr. Swango diagnosed Ms. Ragsdale with bilateral trapeziometacarpal joint arthritis, which he believed to be a work-related condition, associated with the repetitive pinching activity she performs at work. Also, Dr. Swango placed Ms. Ragsdale in thumb support splints and scheduled follow-up treatment with her. Additionally, following this initial examination of Ms. Ragsdale, Dr. Swango permitted her to continue working full duty.

Dr. Swango initially treated Ms. Ragsdale with splints and medication, and later administered cortisone injections at the base of her left and right thumbs. The cortisone injections provided initial relief; but with her continuing to work full duty in her employment with Litton Advanced Circuitry, Ms. Ragsdale began to experience a slow recurrence of pain at the base of her left thumb. Eventually, the pain became severe and began limiting her ability to use her hand which caused her to accept Dr. Swango's recommendation that she undergo surgical arthrodesis of the left thumb at the CMC joint ("joint fusion").

On June 1, 2000, Ms. Ragsdale underwent an arthrodesis of the trapeziometacarpal joint of the left thumb. The surgery involved internal fixation with plates and screws. Following this operation Ms. Ragsdale continued to receive care under Dr. Swango, who treated Ms. Ragsdale with a cast, and then later switched to a splint, and followed-up with hand therapy. On September 20, 2000, Dr. Swango examined Ms. Ragsdale and released her from his care for the treatment of her left thumb. Additionally, as of the September 20, 2000 examination, Ms. Ragsdale had returned to work fully duty.

On December 4, 2000, Ms. Ragsdale returned to see Dr. Swango, noting that her left thumb was doing well, but she had begun to experience intermittent pain at the base of her right thumb. In light of his examination of Ms. Ragsdale on this date, Dr. Swango treated Ms. Ragsdale's right thumb with a cortisone injection. Following this examination Dr. Swango did not schedule any follow-up treatment, releasing Ms. Ragsdale to return as needed.

In light of continuing pain and difficulty in using her right thumb, in November 2001 Ms. Ragsdale returned to see Dr. Swango. In noting that the diagnostic studies revealed a worsening of Ms. Ragsdale's condition and that Ms. Ragsdale demonstrated a positive trapeziometacarpal grind test, Dr. Swango administered an additional cortisone injection into the basilar joint of the right thumb. Eventually, in light of Ms. Ragsdale's condition worsening, in February 2002 Dr. Swango presented Ms. Ragsdale with surgical options involving suspensionplasty versus an arthrodesis of the right thumb. Ms. Ragsdale elected to proceed with a suspensionplasty, which she underwent on April 16, 2002. As with his treatment of Ms. Ragsdale's left hand, Dr. Swango provided Ms. Ragsdale with follow-up treatment that included a progressive therapy program and paraffin treatments at home.

On or about November 6, 2002, Dr. Swango released Ms. Ragsdale from his care, finding her to be at maximum medical improvement, relative to the occupational injury involving her right and left thumbs. Also, on November 6, 2002, Dr. Swango opined that, as a consequence of the occupational injury suffered by Ms. Ragsdale, she presented with a permanent partial impairment of 11 percent referable to the right thumb, and a permanent partial impairment of 22 percent referable to the left thumb. Additionally, in releasing Ms. Ragsdale from his care, Dr. Swango suggested that Ms. Ragsdale would be governed by restrictions and limitations, and recommended that she undergo an FCE relative to work evaluations and consideration of her employment with Litton Advanced Circuitry.

Bruce Schlafly, M.D., who is an orthopedic surgeon affiliated with Hand Surgery Associates, P.C., in St. Louis, Missouri, presented testimony in behalf of Ms. Ragsdale through the submission of a complete medical report. Dr. Schlafly performed an independent medical examination of the claimant on October 29, 2001, November 12, 2001, and October 28, 2002. At the time of his examinations of Ms. Ragsdale, Dr. Schlafly took a history from Ms. Ragsdale, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of the claimant, Dr. Schlafly opined that, as a consequence of the repetitive pinching activity involved in the work performed by Ms.

Ragsdale in her employment with Litton Advanced Circuitry, Ms. Ragsdale sustained an occupational injury in the nature of bilateral trapeziometacarpal joint arthritis at the base of the thumb. Additionally, Dr. Schlafly opined that, as a consequence of this occupational injury, Ms. Ragsdale sustained a permanent partial disability of 25 percent referable to the left hand, and a permanent partial disability of 25 percent referable to the right hand. Further, Dr. Schlafly opined that the bilateral nature of this injury causes Ms. Ragsdale to suffer additional disability greater than the simple sum of each hand, and that a loading factor should be applied in the assessment of Ms. Ragsdale's overall disability.

At the hearing, and during her examinations with Dr. Schlafly, Ms. Ragsdale testified that she continues to experience stiffness in her left thumb, which causes her to experience difficulty in using her left hand. With regard to her left hand, she experiences pain along the metacarpal area of the left thumb, and has trouble carrying objects with the left hand. Notably, because of the arthrodesis, she cannot flatten the palm of her left hand against an object; and this interferes with lifting and pushing activities. With regard to her right hand, the surgery provided some pain relief, but she continues to suffer from residual weakness in her right thumb and hand. Further, she cannot lift a gallon of milk with the right hand alone or pick up a big glass of ice tea. Similarly, she has trouble removing lids from jars.

Further, at the hearing Ms. Ragsdale noted that, while she has returned to her employment with Litton Advanced Circuitry, she is not working full duty as before, as she now is governed by work restrictions. Also, Ms. Ragsdale noted that she has experienced a significant change in her life style, as she now experiences difficulty in performing common activities (e.g. carrying items, holding items, buttoning clothes, using zippers, getting Tupperware items on and off, cleaning house, sweeping, using a broom or mop, etc.) Additionally, Ms. Ragsdale noted that, at times, her hand is painful and she no longer fishes; she no longer is able to cut her own fire wood; and she is no longer able to do maintenance work around the house (e.g. painting).

## II.

(Injury No. 00-177055)

Subsequent to undergoing surgery on her left thumb and being released to return to work, in October 2000 Ms. Ragsdale was engaged in her employment with Litton Advanced Circuitry, working in a room that Ms. Ragsdale referred to as the "Tool Crib." According to Ms. Ragsdale, this room measured approximately 10 to 12 feet wide and approximately 30 to 35 feet long. Also, Ms. Ragsdale noted that in October 2000 the company was involved in a construction renovation project, which involved tearing up some concrete and other construction work in a room next to the Tool Crib. Additionally, while the ceiling tiles in the Tool Crib were intact, the ceiling tiles had been removed in the surrounding areas, leaving only a thin wall separating the construction machinery from her room, the Tool Crib.

According to Ms. Ragsdale, the construction company utilized bobcats in the tearing up of the concrete and in the removing of the construction material, and was present for two to three weeks. During this period, the bobcats (gas operated machines) caused a lot of fumes to be produced in the enclosed building, which included a lot of fumes being produced by the bobcats in the enclosed Tool Crib room, where Ms. Ragsdale worked during her entire 8-hour work day. Also, Ms. Ragsdale notes that, during this two-week (10 work days) period of inhaling the fumes, she began getting a lot of headaches while at work, although the headaches would go away upon being at home. Further, she began to experience a petroleum type smell which she could not get rid of in her experience of smell. Approximately two weeks later, according to Ms. Ragsdale, she experienced a loss of smell; and Ms. Ragsdale could not smell the bobcats exhaust fumes.

In light of her experiencing of this loss of smell, Ms. Ragsdale notified the plant nurse of her concern; and she received a smell test from the company nurse. Apparently, according to Ms. Ragsdale, she could not smell the item presented to her by the nurse; and the nurse directed her to follow up with St. John's Regional Health Center. Thereafter, Ms. Ragsdale presented to the emergency room of St. John's Regional Health Center, presenting with complaints of not being able to smell, dizziness, and headaches, relating the problems to the exhaust fumes caused by the bobcats. Notably, during the trip to the hospital, Ms. Ragsdale drove with the window down and took deep breaths. Additionally, she had to wait a couple of hours before being examined by the attending physicians. The diagnostic studies, including a carbon monoxide test, were interpreted as being normal.

In light of Ms. Ragsdale presenting with improvement in her symptoms, and having a normal diagnostic study, the attending physician released Ms. Ragsdale from care. At the time of this release, the attending physician prescribed the following directions: (1) rest, (2) fresh air, (3) to follow-up with the ER as needed, and (4) to follow up with her personal physician and to seek attention for a sinus polyp. Thereafter, Ms. Ragsdale followed up with her family physician, Michael Good, M.D., who referred her to Allan L. Allphin, M.D., who is an otolaryngologist, for evaluation of her inability to smell and defective tasting.

On December 14, 2000, Ms. Ragsdale presented to Dr. Allphin with complaints of loss of smell, and presenting a history of exposure to exhaust fumes from bobcats and construction activity occurring at work. Dr. Allphin diagnosed Ms. Ragsdale with total anosmia, "probably secondary to a viral illness in the past." Dr. Allphin did not believe medication effect was playing a role in her symptomology. In light of his diagnosis, Dr. Allphin recommended that Ms. Ragsdale use "some Nasonex to keep all the inflammation down and improve airflow in her nose." Additionally, Dr. Allphin recommended that Ms. Ragsdale follow up with him in six to eight weeks.

On February 8, 2001, Ms. Ragsdale presented to Dr. Allphin with follow-up treatment relative to her decreased smell. At the time of this examination, Dr. Allphin noted that Ms. Ragsdale's use of the Nasonex caused her to experience "too much in way of nosebleeds." Also, Dr. Allphin noted that Ms. Ragsdale's condition had not changed and she was continuing to suffer from anosmia. Additionally, at the time of this examination, Dr. Allphin revisited with Ms. Ragsdale the history of her onset of symptoms, which she related to the carbon monoxide poisoning from the bobcats involved in the construction in her work environment, and, further, noted the absence of any other specific event. This time, in light of his examination and findings, and in light of the history provided to him by Ms. Ragsdale, Dr. Allphin diagnosed Ms. Ragsdale with "anosmia with turbinate hypertrophy, nasal obstruction, and anosmia secondary to probable carbon monoxide." Notably, Dr. Allphin continued to provide Ms. Ragsdale with follow-up medical care, with a continuing diagnosis of anosmia, caused by carbon monoxide injury.

In March 2002 Ms. Ragsdale sought and obtained from Barry Rosenblum, M.D., who is an otolaryngologist practicing in St. Louis, Missouri, a second opinion relative to diagnosis and treatment of her inability to smell. Notably, Dr. Rosenblum confirmed the diagnosis of anosmia secondary to carbon monoxide. Additionally, Dr. Rosenblum, as with Dr. Allphin, considered the condition of anosmia to be permanent. Further, over time Ms. Ragsdale began to experience a severe disruption in her ability to taste.

Shane L. Bennoch, M.D., who is a physician presently performing independent medical examinations and some personal injury evaluations, testified by deposition on behalf of Ms. Ragsdale.<sup>[1]</sup> Dr. Bennoch performed an independent medical examination of Ms. Ragsdale on September 7, 2004. At the time of this examination, Dr. Bennoch took a history from Ms. Ragsdale, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Ragsdale, Dr. Bennoch opined that, as a consequence of suffering in October 2000 chronic exposure to noxious fumes in her employment at Litton Advanced Circuitry, Ms. Ragsdale sustained an occupational injury in the nature of anosmia (loss of smell) and dysgeusia (dysfunction of taste). Dr. Bennoch is of the opinion that the dysgeusia is related to the anosmia. Additionally, Dr. Bennoch opined that, as a consequence of this occupational injury, Ms. Ragsdale sustained a permanent partial disability of 25 percent to the body as a whole referable to the anosmia; and she sustained a permanent partial disability of 20 percent to the body as a whole referable to the dysgeusia.

Notably, in explaining his opinion of disability referable to the two conditions (anosmia and dysgeusia), Dr. Bennoch propounded the following comments:

I think, essentially, what is not well understood is, so you've lost your sense of smell; it's no big deal. So you can't smell. But it affects everything 24 hours a day. But, more importantly, it affects significantly your ability to pick up potential dangers.

And the potential dangers for Ms. Ragsdale, would be, obviously, number one, any kind of fire, smoke, that type of danger. She would be unable to pick that up.

I think the second thing is, any type of gaseous fumes she would be unable to detect. And I would assume that in an industrial setting that could be a significant problem.

As far as activities of daily living, the things I would be very concerned about would be, number one, any type of gas at home, if there was gas in the home, gas heat, gas cooking or whatever, she would probably have to actually switch that to not be in danger because she couldn't detect it. .... When your sense of smell goes off, you don't realize all the things you miss.

But one of the things that can happen is that you have to be extremely careful with food because our sense of smell keeps us on the straight and level as far as not eating food that may have gone bad, et cetera. So, in this case, she's probably going to have to do things, such as date food, be very careful in looking at the expirations

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[T]he sense of smell is not – most people think of hearing and sight as the biggies – and, obviously, they are – but the sense of smell affects you all the time. And from a work standpoint, if you are working – if you're working at a plant that has those potentials, the danger is there if you don't have the smell.

The taste is more a activities of daily living type of thing. It's not a function thing, but it is a danger from the standpoint of food, et cetera, so she is very affected in her daily living. And there could be potential catastrophe if you can't smell in the environment she works in, from my understanding of what happens there.

At the hearing Ms. Ragsdale testified that, since suffering the loss of smell, she has not regained this sense. In light of this loss, according to Ms. Ragsdale, she suffers from several problems. The primary concern voiced by Ms. Ragsdale is a

feeling of being scared – that she is afraid of being exposed to dangerous fumes / gases and, not being able to smell such gases / fumes, she lacks the ability to know if she is in danger. Similarly, she lacks the ability to know when to get out of dangerous situations. Additionally, Ms. Ragsdale notes that, relative to these concerns, the employer has not made accommodations for her. Further, while she can experience taste, the taste sense is different – her tastes are blah.

## FINDINGS AND CONCLUSIONS

The fundamental purpose of The Workers' Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo. App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo. Banc 1983). Yet, a liberal construction cannot be applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo. App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo. App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Brufflat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo. App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo. App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the claimant need not establish the elements of the case on the basis of absolute certainty. It is sufficient if the claimant shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation claimant has shown the elements of a case by reasonable probability, means founded on reason and experience, which inclines the mind to believe, but leaves room for doubt. See, *Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo. App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575, 577 (Mo. App., W.D. 1994); and *Downing v. Williamette Industries, Inc.*, 895 S.W.2d 650 (Mo. App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo. App. W.D. 1993).

### I.

(Injury No. 99-081559)

The parties readily acknowledge and stipulate that on or about June 24, 1999, the employee, Cayree Ragsdale, sustained an occupational injury as a consequence of repetitive trauma which arose out of and in the course of her employment with the employer Litton Advanced Circuitry. The parties further acknowledge that this injury caused Ms. Ragsdale to sustain an injury in the nature of bilateral trapeziometacarpal joint arthritis, occurring at the basilar joint (where the thumb joins the wrist); and this injury resulted in Ms. Ragsdale undergoing extensive medical treatment, including an arthrodesis (fusion) of the trapeziometacarpal joint of the left thumb, with internal fixation involving plates and screws, and a suspensionplasty of the right thumb.

Yet, while the parties may agree on the nature of the injury sustained by Ms. Ragsdale, the parties, relying on different medical opinion, dispute the nature and extent of the permanent disability sustained by Ms. Ragsdale. The employee relies upon the opinion of Dr. Schlafly, while the employer and insurer rely upon the opinion of Dr. Swango. Notably, both physicians are orthopedic surgeons who are engaged in a practice that involves hand surgery.

Although I consider Dr. Swango to be an excellent surgeon and consider him to be credible, I am of the opinion that the disability sustained by Ms. Ragsdale as a consequence of this injury is greater than that expressed by him. First, I believe the injury is better measured at the level of the hand or wrist (175 week level), as the injury extends to the basilar joint where the thumb joins the wrist, and the limitations and restrictions impact the entire use of Ms. Ragsdale's hand. Additionally, the injury causes Ms. Ragsdale to be governed by restrictions and limitations that are not insignificant, and are enhanced by the bilateral nature of the injury.

For example, with regard to her left hand, she experiences pain along the metacarpal area of the left thumb, and has trouble carrying objects with the left hand. And, because of the arthrodesis, she cannot flatten the palm of her left hand against an object; and this interferes with lifting and pushing activities. With regard to her right hand, she continues to suffer from residual weakness in her right thumb and hand. Further, while she is right-hand dominant, she cannot lift a gallon of milk with the right hand alone or pick up a big glass of ice tea. Similarly, she has trouble removing lids from jars. Also, she has experienced a significant change in her lifestyle, as she now experiences difficulty in performing common activities (e.g. carrying items, holding items, buttoning clothes, using zippers, getting Tupperware items on and off, cleaning house, sweeping, using a broom or mop, etc.) Additionally, at times, her right hand is painful and she no longer fishes; she no longer is able to cut her own fire wood; and she is no longer able to do maintenance work around the house (e.g.

painting).

Accordingly, after consideration and review of the evidence, I find and conclude that, as a consequence of the occupational injury of June 24, 1999, the employee, Cayree Ragsdale, sustained a permanent partial disability of 20 percent to each upper extremity referable to the 175-week level (70 weeks). I further find and conclude that, in light of the bilateral nature of this injury, Ms. Ragsdale sustained 10 weeks of additional permanent disability, which represents a multiplicity effect and the effect of suffering additional disability greater than the simple sum of the disability to each wrist considered alone. Also, the surgeries caused Ms. Ragsdale to sustain scarring to both of her wrists / hands; and she is awarded 8 weeks of disfigurement. Hence, the employee is entitled to 88 weeks of permanent partial disability compensation.

Therefore, in light of the foregoing, the employer and insurer are ordered to pay to the employee the sum of \$25, 936.24, which represents 88 weeks of permanent partial disability compensation.

Further, in light of Ms. Ragsdale undergoing internal fixation involving plates and screws, which continue to be in place, Ms. Ragsdale is entitled to future medical care relative to removal of this hardware. Accordingly, the employer and insurer shall provide the employee with future medical care relative to removal of the hardware. (The award of future medical care, however, shall be limited to removal of the hardware, as may be reasonable, necessary and causally related to the accident of June 24, 1999.)

## II. (Injury No. 00-177055)

The evidence is supportive of a finding that, as a consequence of suffering in October 2000 chronic exposure to noxious fumes in her employment at Litton Advanced Circuitry, Ms. Ragsdale sustained an occupational injury in the nature of anosmia (loss of smell) and dysgeusia (dysfunction of taste). This occupational exposure occurred as a consequence of Ms. Ragsdale working alone in an enclosed room, which she described as the "Tool Crib," measuring approximately 10 to 12 feet wide and approximately 30 to 35 feet long while the employer was involved in a construction renovation project. Notably, during a two- to three-week period of this construction project, the construction company utilized bobcats in the tearing up of the concrete and in the removing of the construction material; and, during this period, the bobcats (gas-operated machines) caused a lot of fumes to be produced and circulate in the enclosed building, which included a lot of fumes being produced and circulated by the bobcats in the enclosed Tool Crib room where Ms. Ragsdale worked during her entire 8-hour work day.

In examining the medical – causal relationship of her injury (anosmia and dysgeusia), Ms. Ragsdale relies upon the medical opinions of three physicians – Drs. Allphin, Rosenblum, and Bennoch. Although disputing liability, the employer and insurer do not offer any medical opinion challenging the opinions of these three physicians.

Accordingly, after consideration and review of the evidence, I find and conclude that on or about October 13, 2000, the employee, Cayree Ragsdale, sustained an incident of occupational disease that arose out of and in the course of her employment with Litton Advanced Circuitry; and this injury resulted in her suffering anosmia (loss of smell) and dysgeusia (dysfunction of taste). I further find and conclude that, as a consequence of this occupational injury, Ms. Ragsdale is governed by restrictions, as outlined by both Dr. Bennoch and Ms. Ragsdale, and has lost the enjoyment of two important senses. Finally, I find and conclude that, as a consequence of this occupational injury, Ms. Ragsdale sustained a permanent partial disability of 12.5 percent to the body as a whole (50 weeks).

Therefore, in light of the foregoing, the employer and insurer are ordered to pay to the employee the sum of \$15,713.00, which represents 50 weeks of permanent partial disability compensation, payable at the compensation rate of \$314.26 per week.

The evidence, however, is not supportive of Second Injury Fund liability, as the preexisting injuries involving Ms. Ragsdale's upper extremities (Injury No. 99-081559) do not combine with this occupational injury (Injury No. 00-177055) to cause her to suffer additional permanent disability greater than the simple sum of each disability considered alone. Although both the primary injury and the preexisting injury cause Ms. Ragsdale to be governed by restrictions and limitations, including actual and/or potential hindrances and obstacles to employment, and meet the minimum statutory threshold of permanent disability, the combination of these disabilities do not cause Ms. Ragsdale to suffer any enhanced permanent partial disability. Therefore, the Claim for Compensation, as filed against the Second Injury Fund, is denied.

An attorney's fee of twenty-five percent of the benefits ordered to be paid is hereby approved and there 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.

Date: April 4, 2005

Made by: /s/ L. Timothy L. Wilson  
L. Timothy Wilson

A true copy: Attest:

*/s/ Patricia "Pat" Secrest  
Patricia "Pat" Secrest  
Director  
Division of Workers' Compensation*

*Associate*

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 00-177055

Employee: Cayree Ragsdale  
Employer: Litton Advanced Circuitry  
Insurer: CNA Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

Date of Accident: October 13, 2000

Place and County of Accident: Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the associate administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the associate administrative law judge dated April 4, 2005. The award and decision of Associate Administrative Law Judge L. Timothy Wilson, issued April 4, 2005, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 8<sup>th</sup> day of August 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Cayree Ragsdale

Injury No. 00-177055

Dependents: N/A

Before the

**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Litton Advanced Circuitry

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party:N/A

Insurer: CNA Insurance Company

Hearing Date: September 16, 2004

Checked by: LTW/mp

**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: October 13, 2000
5. State location where accident occurred or occupational disease was contracted: Greene 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:  
While working in a small, enclosed room, Claimant inhaled fumes from bobcats working nearby, causing an occupational injury of anosmia (loss of smell) and dysgeusia (dysfunction of taste).
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: loss of smell and dysfunction of taste
14. Nature and extent of any permanent disability: 12.5% permanent partial disability to the body as a whole
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages:
19. Weekly compensation rate: \$314.26
20. Method wages computation: stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

50 weeks of permanent partial disability from Employer	\$15,713.00
--	-------------
22. Second Injury Fund liability: No  
The claim against the Second Injury Fund is denied.
- TOTAL: \$15,713.00
23. Future requirements awarded: none

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Cayree Ragsdale Injury No: 00-177055

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial Relations of Missouri  
Jefferson City, Missouri

Dependents: N/A

Employer: Litton Advanced Circuitry

Additional Party N/A

Insurer: CNA Insurance Company

Checked by: LTW/mp

The above-referenced workers' compensation claim, which involved the consolidation of two workers' compensation cases, was heard before the undersigned Associate Administrative Law Judge on September 16, 2004. Therecord was left open for the submission of additional evidence, and the parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about December 10, 2004.

The parties entered into a stipulation of facts in Injury No. 99-081559. The stipulation is as follows:

- (1) On or about June 24, 1999, Litton Advanced Circuitry was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by CNA Insurance Co.
- (2) On the alleged injury date of June 24, 1999, Cayree Ragsdale was an employee of the employer and was working under and subject to The Missouri Workers' Compensation Law.
- (3) On or about June 24, 1999, the employee sustained an incident of occupational disease which arose out of and in the course and scope of employment.
- (4) The above-referenced employment and incident of occupational disease occurred in

Greene County, Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.

- (5) The employee notified the employer of her injury as required by Section, 287.420, RSMo.
- (6) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (7) At the time of the alleged incident of occupational disease, the employee's average weekly wage was sufficient to allow a compensation rate of \$294.73 for permanent partial disability compensation.
- (8) Temporary disability benefits and medical care have been provided to the employee. (The parties did not identify in the stipulation the amount of temporary disability compensation and medical expenses paid by the employer and insurer in this case. However, the Receipt and Notice of Termination of Compensation identifies temporary disability compensation being paid in the amount of \$858.61 and medical expenses being paid in the amount of \$11,216.89)

The issues to be resolved by hearing in Injury No. 99-081559 include:

- (1) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve her of the effects of the injuries?
- (2) Whether the employee sustained any permanent disability as a consequence of the alleged incident of occupational disease; and, if so, what is the nature and extent of the disability?

In Injury No. 00-177055 the parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about October 13, 2000, Litton Advance Circuitry was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by CNA Insurance Co.
- (2) On the alleged injury date of October 13, 2000, Cayree Ragsdale was an employee of the employer and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged incident of occupational disease accident occurred in Greene County, Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.
- (4) The employee notified the employer of her injury as required by Section, 287.420, RSMo.
- (5) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (6) At the time of the alleged accident, the employee's average weekly wage was sufficient to allow a compensation rate of \$314.26 for permanent partial disability compensation.
- (7) Temporary disability benefits and medical care have not been provided to the employee.

In Injury No. 00-177055 the issues to be resolved by hearing include:

- (1) Whether the employee sustained an incident of occupational disease on or about October 13, 2000; and, if so, whether the incident of occupational disease arose out of and in the course of her employment with Litton Advanced Circuitry?
- (2) Whether the alleged incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (3) Whether the employee has sustained any permanent disability as a consequence of the

alleged incident of occupational disease; and, if so, what is the nature and extent of the disability?

- (4) Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of additional permanent partial disability compensation?

### EVIDENCE PRESENTED

The employee, Cayree Ragsdale, testified at the hearing in support of her claim. Also, the employee has offered for admission the following exhibits:

Exhibit A ..... Medical Records from Norbert T. Belz, M.D.  
Exhibit B ..... Medical Report from Bruce Schlafly, M.D.  
Exhibit C ..... List of Activities Description  
Exhibit D ..... Diagram of Joint Protection for Thumbs  
Exhibit E ..... Medical Records from St. John's Regional Health Center  
Exhibit F ..... Medical Records from St. John's Physicians & Clinics – Regional Ear, Nose & Throat Center  
Exhibit G ..... Medical Records from Barry Rosenblum, M.D.  
Exhibit H ..... Medical Report from Shane L. Bennoch, M.D.  
Exhibit I ..... Diagram of Work Environment  
Exhibit J . Medical Report from Suburban Surgical Associates, Inc.  
Exhibit K ..... Deposition of Shane Bennoch, M.D.

Exhibits A, B, C, D, E, F, G, H, and I were received and admitted into evidence. Exhibit J was denied admission, but it was received and retained as an offer of proof. Exhibit K was received and admitted into evidence subsequent to the hearing by agreement of the parties.

The employer and insurer did not present any witnesses at the hearing of this case or offer any exhibits for admission into evidence. Similarly, the Second Injury Fund did not present any witnesses at the hearing of this case or offer any exhibits for admission 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 official notice of the documents contained in the Legal File which include: Letter Dated March 11, 2002 and Request to Dismiss Medical Fee Dispute (Injury No. 99-081559); Answer of Second Injury Fund to Claim for Compensation (Injury No. 00-177055); Answer of Employer & Insurer to Claim for Compensation (Injury No. 00-177055); Claim for Compensation (Injury No. 00-177055); Answer of Employer & Insurer to Claim for Compensation (Injury No. 99-081559); Claim for Compensation (Injury No. 99-081559); Receipt and Notice of Termination of Compensation (Injury No. 99-081559); and Report of Injury (Injury No. 99-081559).

### DISCUSSION

The employee, Cayree Ragsdale, is nearly 54 years of age, having been born on April 17, 1951. She is a resident of Springfield, Missouri. Additionally, Ms. Ragsdale is a long-time employee of Litton Industries, having been employed by the employer for 22 years.

As an employee of Litton Advanced Circuitry, Ms. Ragsdale has worked in the factory, performing assembly work as a tool crib attendant. The duties of Ms. Ragsdale in this employment require her to perform repetitive gripping and pinching with her hands and thumbs while working with drill bits. After performing this work for about 10 years, the job duties changed which allowed her to use a computer program that assisted in the loading of drill bits. According to Ms. Ragsdale, this employment involved fine manipulation involving her four fingers and thumbs.

#### I.

(Injury No. 99-081559)

In the late 1990s Ms. Ragsdale began to develop pain in her hands at the base of the thumbs, involving both of her right and left hands, with the left hand being worse than the right hand. Initially, in or around June 1999, the employer and insurer provided Ms. Ragsdale with medical care through John D. Mackie, D.O., who is a physician practicing in the specialty of occupational medicine, and who diagnosed her with sprain / strain / arthropathy of the hand and wrist and treated her conservatively with corticosteroids and Medrol dosepak. Eventually, on or about July 1, 1999, Dr. Mackie referred Ms. Ragsdale to J. Scott Swango, M.D., who is an orthopedic surgeon, for evaluation and treatment of right and left thumb pain.

On or about July 26, 1999, Ms. Ragsdale presented to Dr. Swango for an examination and evaluation, presenting with complaints of right and left thumb pain. At the time of this examination, Dr. Swango took a work history and reviewed the description of her activities, which included a recognition by Dr. Swango that in her work duties Ms. Ragsdale engages in

“pinching activity;” and, while “she is right hand dominant, she uses her left hand equally to her right.” In light of his examination and findings, Dr. Swango diagnosed Ms. Ragsdale with bilateral trapeziometacarpal joint arthritis, which he believed to be a work-related condition, associated with the repetitive pinching activity she performs at work. Also, Dr. Swango placed Ms. Ragsdale in thumb support splints and scheduled follow-up treatment with her. Additionally, following this initial examination of Ms. Ragsdale, Dr. Swango permitted her to continue working full duty.

Dr. Swango initially treated Ms. Ragsdale with splints and medication, and later administered cortisone injections at the base of her left and right thumbs. The cortisone injections provided initial relief; but with her continuing to work full duty in her employment with Litton Advanced Circuitry, Ms. Ragsdale began to experience a slow recurrence of pain at the base of her left thumb. Eventually, the pain became severe and began limiting her ability to use her hand which caused her to accept Dr. Swango’s recommendation that she undergo surgical arthrodesis of the left thumb at the CMC joint (“joint fusion”).

On June 1, 2000, Ms. Ragsdale underwent an arthrodesis of the trapeziometacarpal joint of the left thumb. The surgery involved internal fixation with plates and screws. Following this operation Ms. Ragsdale continued to receive care under Dr. Swango, who treated Ms. Ragsdale with a cast, and then later switched to a splint, and followed-up with hand therapy. On September 20, 2000, Dr. Swango examined Ms. Ragsdale and released her from his care for the treatment of her left thumb. Additionally, as of the September 20, 2000 examination, Ms. Ragsdale had returned to work fully duty.

On December 4, 2000, Ms. Ragsdale returned to see Dr. Swango, noting that her left thumb was doing well, but she had begun to experience intermittent pain at the base of her right thumb. In light of his examination of Ms. Ragsdale on this date, Dr. Swango treated Ms. Ragsdale’s right thumb with a cortisone injection. Following this examination Dr. Swango did not schedule any follow-up treatment, releasing Ms. Ragsdale to return as needed.

In light of continuing pain and difficulty in using her right thumb, in November 2001 Ms. Ragsdale returned to see Dr. Swango. In noting that the diagnostic studies revealed a worsening of Ms. Ragsdale’s condition and that Ms. Ragsdale demonstrated a positive trapeziometacarpal grind test, Dr. Swango administered an additional cortisone injection into the basilar joint of the right thumb. Eventually, in light of Ms. Ragsdale’s condition worsening, in February 2002 Dr. Swango presented Ms. Ragsdale with surgical options involving suspensionplasty versus an arthrodesis of the right thumb. Ms. Ragsdale elected to proceed with a suspensionplasty, which she underwent on April 16, 2002. As with his treatment of Ms. Ragsdale’s left hand, Dr. Swango provided Ms. Ragsdale with follow-up treatment that included a progressive therapy program and paraffin treatments at home.

On or about November 6, 2002, Dr. Swango released Ms. Ragsdale from his care, finding her to be at maximum medical improvement, relative to the occupational injury involving her right and left thumbs. Also, on November 6, 2002, Dr. Swango opined that, as a consequence of the occupational injury suffered by Ms. Ragsdale, she presented with a permanent partial impairment of 11 percent referable to the right thumb, and a permanent partial impairment of 22 percent referable to the left thumb. Additionally, in releasing Ms. Ragsdale from his care, Dr. Swango suggested that Ms. Ragsdale would be governed by restrictions and limitations, and recommended that she undergo an FCE relative to work evaluations and consideration of her employment with Litton Advanced Circuitry.

Bruce Schlafly, M.D., who is an orthopedic surgeon affiliated with Hand Surgery Associates, P.C., in St. Louis, Missouri, presented testimony in behalf of Ms. Ragsdale through the submission of a complete medical report. Dr. Schlafly performed an independent medical examination of the claimant on October 29, 2001, November 12, 2001, and October 28, 2002. At the time of his examinations of Ms. Ragsdale, Dr. Schlafly took a history from Ms. Ragsdale, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of the claimant, Dr. Schlafly opined that, as a consequence of the repetitive pinching activity involved in the work performed by Ms. Ragsdale in her employment with Litton Advanced Circuitry, Ms. Ragsdale sustained an occupational injury in the nature of bilateral trapeziometacarpal joint arthritis at the base of the thumb. Additionally, Dr. Schlafly opined that, as a consequence of this occupational injury, Ms. Ragsdale sustained a permanent partial disability of 25 percent referable to the left hand, and a permanent partial disability of 25% referable to the right hand. Further, Dr. Schlafly opined that the bilateral nature of this injury causes Ms. Ragsdale to suffer additional disability greater than the simple sum of each hand, and that a loading factor should be applied in the assessment of Ms. Ragsdale’s overall disability.

At the hearing, and during her examinations with Dr. Schlafly, Ms. Ragsdale testified that she continues to experience stiffness in her left thumb, which causes her to experience difficulty in using her left hand. With regard to her left hand, she experiences pain along the metacarpal area of the left thumb, and has trouble carrying objects with the left hand. Notably, because of the arthrodesis, she cannot flatten the palm of her left hand against an object; and this interferes with lifting and pushing activities. With regard to her right hand, the surgery provided some pain relief, but she continues to suffer from residual weakness in her right thumb and hand. Further, she cannot lift a gallon of milk with the right hand alone or pick up a big glass of ice tea. Similarly, she has trouble removing lids from jars.

Further, at the hearing Ms. Ragsdale noted that, while she has returned to her employment with Litton Advanced Circuitry, she is not working full duty as before, as she now is governed by work restrictions. Also, Ms. Ragsdale noted that she has experienced a significant change in her life style, as she now experiences difficulty in performing common activities (e.g. carrying items, holding items, buttoning clothes, using zippers, getting Tupperware items on and off, cleaning house,

sweeping, using a broom or mop, etc.) Additionally, Ms. Ragsdale noted that, at times, her hand is painful and she no longer fishes; she no longer is able to cut her own fire wood; and she is no longer able to do maintenance work around the house (e.g. painting).

## II. (Injury No. 00-177055)

Subsequent to undergoing surgery on her left thumb and being released to return to work, in October 2000 Ms. Ragsdale was engaged in her employment with Litton Advanced Circuitry, working in a room that Ms. Ragsdale referred to as the "Tool Crib." According to Ms. Ragsdale, this room measured approximately 10 to 12 feet wide and approximately 30 to 35 feet long. Also, Ms. Ragsdale noted that in October 2000 the company was involved in a construction renovation project, which involved tearing up some concrete and other construction work in a room next to the Tool Crib. Additionally, while the ceiling tiles in the Tool Crib were intact, the ceiling tiles had been removed in the surrounding areas, leaving only a thin wall separating the construction machinery from her room, the Tool Crib.

According to Ms. Ragsdale, the construction company utilized bobcats in the tearing up of the concrete and in the removing of the construction material, and was present for two to three weeks. During this period, the bobcats (gas operated machines) caused a lot of fumes to be produced in the enclosed building, which included a lot of fumes being produced by the bobcats in the enclosed Tool Crib room, where Ms. Ragsdale worked during her entire 8-hour work day. Also, Ms. Ragsdale notes that, during this two-week (10 work days) period of inhaling the fumes, she began getting a lot of headaches while at work, although the headaches would go away upon being at home. Further, she began to experience a petroleum type smell which she could not get rid of in her experience of smell. Approximately two weeks later, according to Ms. Ragsdale, she experienced a loss of smell; and Ms. Ragsdale could not smell the bobcats exhaust fumes.

In light of her experiencing of this loss of smell, Ms. Ragsdale notified the plant nurse of her concern; and she received a smell test from the company nurse. Apparently, according to Ms. Ragsdale, she could not smell the item presented to her by the nurse; and the nurse directed her to follow up with St. John's Regional Health Center. Thereafter, Ms. Ragsdale presented to the emergency room of St. John's Regional Health Center, presenting with complaints of not being able to smell, dizziness, and headaches, relating the problems to the exhaust fumes caused by the bobcats. Notably, during the trip to the hospital, Ms. Ragsdale drove with the window down and took deep breaths. Additionally, she had to wait a couple of hours before being examined by the attending physicians. The diagnostic studies, including a carbon monoxide test, were interpreted as being normal.

In light of Ms. Ragsdale presenting with improvement in her symptoms, and having a normal diagnostic study, the attending physician released Ms. Ragsdale from care. At the time of this release, the attending physician prescribed the following directions: (1) rest, (2) fresh air, (3) to follow-up with the ER as needed, and (4) to follow up with her personal physician and to seek attention for a sinus polyp. Thereafter, Ms. Ragsdale followed up with her family physician, Michael Good, M.D., who referred her to Allan L. Allphin, M.D., who is an otolaryngologist, for evaluation of her inability to smell and defective tasting.

On December 14, 2000, Ms. Ragsdale presented to Dr. Allphin with complaints of loss of smell, and presenting a history of exposure to exhaust fumes from bobcats and construction activity occurring at work. Dr. Allphin diagnosed Ms. Ragsdale with total anosmia, "probably secondary to a viral illness in the past." Dr. Allphin did not believe medication effect was playing a role in her symptomology. In light of his diagnosis, Dr. Allphin recommended that Ms. Ragsdale use "some Nasonex to keep all the inflammation down and improve airflow in her nose." Additionally, Dr. Allphin recommended that Ms. Ragsdale follow up with him in six to eight weeks.

On February 8, 2001, Ms. Ragsdale presented to Dr. Allphin with follow-up treatment relative to her decreased smell. At the time of this examination, Dr. Allphin noted that Ms. Ragsdale's use of the Nasonex caused her to experience "too much in way of nosebleeds." Also, Dr. Allphin noted that Ms. Ragsdale's condition had not changed and she was continuing to suffer from anosmia. Additionally, at the time of this examination, Dr. Allphin revisited with Ms. Ragsdale the history of her onset of symptoms, which she related to the carbon monoxide poisoning from the bobcats involved in the construction in her work environment, and, further, noted the absence of any other specific event. This time, in light of his examination and findings, and in light of the history provided to him by Ms. Ragsdale, Dr. Allphin diagnosed Ms. Ragsdale with "anosmia with turbinate hypertrophy, nasal obstruction, and anosmia secondary to probable carbon monoxide." Notably, Dr. Allphin continued to provide Ms. Ragsdale with follow-up medical care, with a continuing diagnosis of anosmia, caused by carbon monoxide injury.

In March 2002 Ms. Ragsdale sought and obtained from Barry Rosenblum, M.D., who is an otolaryngologist practicing in St. Louis, Missouri, a second opinion relative to diagnosis and treatment of her inability to smell. Notably, Dr. Rosenblum confirmed the diagnosis of anosmia secondary to carbon monoxide. Additionally, Dr. Rosenblum, as with Dr. Allphin, considered the condition of anosmia to be permanent. Further, over time Ms. Ragsdale began to experience a severe disruption in her ability to taste.

Shane L. Bennoch, M.D., who is a physician presently performing independent medical examinations and some personal injury evaluations, testified by deposition on behalf of Ms. Ragsdale.<sup>[2]</sup> Dr. Bennoch performed an independent

medical examination of Ms. Ragsdale on September 7, 2004. At the time of this examination, Dr. Bennoch took a history from Ms. Ragsdale, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Ragsdale, Dr. Bennoch opined that, as a consequence of suffering in October 2000 chronic exposure to noxious fumes in her employment at Litton Advanced Circuitry, Ms. Ragsdale sustained an occupational injury in the nature of anosmia (loss of smell) and dysgeusia (dysfunction of taste). Dr. Bennoch is of the opinion that the dysgeusia is related to the anosmia. Additionally, Dr. Bennoch opined that, as a consequence of this occupational injury, Ms. Ragsdale sustained a permanent partial disability of 25 percent to the body as a whole referable to the anosmia; and she sustained a permanent partial disability of 20 percent to the body as a whole referable to the dysgeusia.

Notably, in explaining his opinion of disability referable to the two conditions (anosmia and dysgeusia), Dr. Bennoch propounded the following comments:

I think, essentially, what is not well understood is, so you've lost your sense of smell; it's no big deal. So you can't smell. But it affects everything 24 hours a day. But, more importantly, it affects significantly your ability to pick up potential dangers.

And the potential dangers for Ms. Ragsdale, would be, obviously, number one, any kind of fire, smoke, that type of danger. She would be unable to pick that up.

I think the second thing is, any type of gaseous fumes she would be unable to detect. And I would assume that in an industrial setting that could be a significant problem.

As far as activities of daily living, the things I would be very concerned about would be, number one, any type of gas at home, if there was gas in the home, gas heat, gas cooking or whatever, she would probably have to actually switch that to not be in danger because she couldn't detect it. .... When your sense of smell goes off, you don't realize all the things you miss.

But one of the things that can happen is that you have to be extremely careful with food because our sense of smell keeps us on the straight and level as far as not eating food that may have gone bad, et cetera. So, in this case, she's probably going to have to do things, such as date food, be very careful in looking at the expirations

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[T]he sense of smell is not – most people think of hearing and sight as the biggies – and, obviously, they are – but the sense of smell affects you all the time. And from a work standpoint, if you are working – if you're working at a plant that has those potentials, the danger is there if you don't have the smell.

The taste is more a activities of daily living type of thing. It's not a function thing, but it is a danger from the standpoint of food, et cetera, so she is very affected in her daily living. And there could be potential catastrophe if you can't smell in the environment she works in, from my understanding of what happens there.

At the hearing Ms. Ragsdale testified that, since suffering the loss of smell, she has not regained this sense. In light of this loss, according to Ms. Ragsdale, she suffers from several problems. The primary concern voiced by Ms. Ragsdale is a feeling of being scared – that she is afraid of being exposed to dangerous fumes / gases and, not being able to smell such gases / fumes, she lacks the ability to know if she is in danger. Similarly, she lacks the ability to know when to get out of dangerous situations. Additionally, Ms. Ragsdale notes that, relative to these concerns, the employer has not made accommodations for her. Further, while she can experience taste, the taste sense is different – her tastes are blah.

## FINDINGS AND CONCLUSIONS

The fundamental purpose of The Workers' Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo. App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo. Banc 1983). Yet, a liberal construction cannot be applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo. App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo. App. S.D. 1995), *citing Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Brufat v. Mister Guy*,

*Inc.* 933 S.W.2d 829, 835 (Mo. App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo. App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the claimant need not establish the elements of the case on the basis of absolute certainty. It is sufficient if the claimant shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation claimant has shown the elements of a case by reasonable probability, means founded on reason and experience, which inclines the mind to believe, but leaves room for doubt. See, *Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo. App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575,577 (Mo. App., W.D. 1994); and *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650 (Mo. App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo. App. W.D. 1993).

I.  
(Injury No. 99-081559)

The parties readily acknowledge and stipulate that on or about June 24, 1999, the employee, Cayree Ragsdale, sustained an occupational injury as a consequence of repetitive trauma which arose out of and in the course of her employment with the employer Litton Advanced Circuitry. The parties further acknowledge that this injury caused Ms. Ragsdale to sustain an injury in the nature of bilateral trapeziometacarpal joint arthritis, occurring at the basilar joint (where the thumb joins the wrist); and this injury resulted in Ms. Ragsdale undergoing extensive medical treatment, including an arthrodesis (fusion) of the trapeziometacarpal joint of the left thumb, with internal fixation involving plates and screws, and a suspensionplasty of the right thumb.

Yet, while the parties may agree on the nature of the injury sustained by Ms. Ragsdale, the parties, relying on different medical opinion, dispute the nature and extent of the permanent disability sustained by Ms. Ragsdale. The employee relies upon the opinion of Dr. Schlafly, while the employer and insurer rely upon the opinion of Dr. Swango. Notably, both physicians are orthopedic surgeons who are engaged in a practice that involves hand surgery.

Although I consider Dr. Swango to be an excellent surgeon and consider him to be credible, I am of the opinion that the disability sustained by Ms. Ragsdale as a consequence of this injury is greater than that expressed by him. First, I believe the injury is better measured at the level of the hand or wrist (175 week level), as the injury extends to the basilar joint where the thumb joins the wrist, and the limitations and restrictions impact the entire use of Ms. Ragsdale's hand. Additionally, the injury causes Ms. Ragsdale to be governed by restrictions and limitations that are not insignificant, and are enhanced by the bilateral nature of the injury.

For example, with regard to her left hand, she experiences pain along the metacarpal area of the left thumb, and has trouble carrying objects with the left hand. And, because of the arthrodesis, she cannot flatten the palm of her left hand against an object; and this interferes with lifting and pushing activities. With regard to her right hand, she continues to suffer from residual weakness in her right thumb and hand. Further, while she is right-hand dominant, she cannot lift a gallon of milk with the right hand alone or pick up a big glass of ice tea. Similarly, she has trouble removing lids from jars. Also, she has experienced a significant change in her lifestyle, as she now experiences difficulty in performing common activities (e.g. carrying items, holding items, buttoning clothes, using zippers, getting Tupperware items on and off, cleaning house, sweeping, using a broom or mop, etc.) Additionally, at times, her right hand is painful and she no longer fishes; she no longer is able to cut her own fire wood; and she is no longer able to do maintenance work around the house (e.g. painting).

Accordingly, after consideration and review of the evidence, I find and conclude that, as a consequence of the occupational injury of June 24, 1999, the employee, Cayree Ragsdale, sustained a permanent partial disability of 20 percent to each upper extremity referable to the 175-week level (70 weeks). I further find and conclude that, in light of the bilateral nature of this injury, Ms. Ragsdale sustained 10 weeks of additional permanent disability, which represents a multiplicity effect and the effect of suffering additional disability greater than the simple sum of the disability to each wrist considered alone. Also, the surgeries caused Ms. Ragsdale to sustain scarring to both of her wrists / hands; and she is awarded 8 weeks of disfigurement. Hence, the employee is entitled to 88 weeks of permanent partial disability compensation.

Therefore, in light of the foregoing, the employer and insurer are ordered to pay to the employee the sum of \$25, 936.24, which represents 88 weeks of permanent partial disability compensation.

Further, in light of Ms. Ragsdale undergoing internal fixation involving plates and screws, which continue to be in place, Ms. Ragsdale is entitled to future medical care relative to removal of this hardware. Accordingly, the employer and insurer shall provide the employee with future medical care relative to removal of the hardware. (The award of future medical care, however, shall be limited to removal of the hardware, as may be reasonable, necessary and causally related to the accident of June 24, 1999.)

II.  
(Injury No. 00-177055)

The evidence is supportive of a finding that, as a consequence of suffering in October 2000 chronic exposure to noxious fumes in her employment at Litton Advanced Circuitry, Ms. Ragsdale sustained an occupational injury in the nature of anosmia (loss of smell) and dysgeusia (dysfunction of taste). This occupational exposure occurred as a consequence of Ms. Ragsdale working alone in an enclosed room, which she described as the "Tool Crib," measuring approximately 10 to 12 feet wide and approximately 30 to 35 feet long while the employer was involved in a construction renovation project. Notably, during a two- to three-week period of this construction project, the construction company utilized bobcats in the tearing up of the concrete and in the removing of the construction material; and, during this period, the bobcats (gas-operated machines) caused a lot of fumes to be produced and circulate in the enclosed building, which included a lot of fumes being produced and circulated by the bobcats in the enclosed Tool Crib room where Ms. Ragsdale worked during her entire 8-hour work day.

In examining the medical – causal relationship of her injury (anosmia and dysgeusia), Ms. Ragsdale relies upon the medical opinions of three physicians – Drs. Allphin, Rosenblum, and Bennoch. Although disputing liability, the employer and insurer do not offer any medical opinion challenging the opinions of these three physicians.

Accordingly, after consideration and review of the evidence, I find and conclude that on or about October 13, 2000, the employee, Cayree Ragsdale, sustained an incident of occupational disease that arose out of and in the course of her employment with Litton Advanced Circuitry; and this injury resulted in her suffering anosmia (loss of smell) and dysgeusia (dysfunction of taste). I further find and conclude that, as a consequence of this occupational injury, Ms. Ragsdale is governed by restrictions, as outlined by both Dr. Bennoch and Ms. Ragsdale, and has lost the enjoyment of two important senses. Finally, I find and conclude that, as a consequence of this occupational injury, Ms. Ragsdale sustained a permanent partial disability of 12.5 percent to the body as a whole (50 weeks).

Therefore, in light of the foregoing, the employer and insurer are ordered to pay to the employee the sum of \$15,713.00, which represents 50 weeks of permanent partial disability compensation, payable at the compensation rate of \$314.26 per week.

The evidence, however, is not supportive of Second Injury Fund liability, as the preexisting injuries involving Ms. Ragsdale's upper extremities (Injury No. 99-081559) do not combine with this occupational injury (Injury No. 00-177055) to cause her to suffer additional permanent disability greater than the simple sum of each disability considered alone. Although both the primary injury and the preexisting injury cause Ms. Ragsdale to be governed by restrictions and limitations, including actual and/or potential hindrances and obstacles to employment, and meet the minimum statutory threshold of permanent disability, the combination of these disabilities do not cause Ms. Ragsdale to suffer any enhanced permanent partial disability. Therefore, the Claim for Compensation, as filed against the Second Injury Fund, is denied.

An attorney's fee of twenty-five percent of the benefits ordered to be paid is hereby approved and there 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.

Date: April 4, 2005

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

A true copy: Attest:

/s/ Patricia "Pat" Secrest  
Patricia "Pat" Secrest  
Director  
Division of Workers' Compensation

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<sup>[1]</sup> Dr. Bennoch is board-certified in pediatrics. Also, Dr. Bennoch worked in the emergency department of Cox Medical Center as an emergency room physician for 20 years, and for ten years he practiced medicine in Ash Grove, Missouri as a family practitioner.

<sup>[2]</sup> Dr. Bennoch is board-certified in pediatrics. Also, Dr. Bennoch worked in the emergency department of Cox Medical Center as an emergency room physician for 20 years, and for ten years he practiced medicine in Ash Grove, Missouri as a family practitioner.