

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

Injury No.: 05-017526

Employee: Carla Rucker
Employer: Ford Motor Company (settled)
Insurer: Self-insured (settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having heard the parties' arguments, 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 dated April 23, 2010, as supplemented herein.

Introduction

The issues stipulated in dispute at the hearing were whether employee sustained an injury by accident arising out of and in the course of employment, medical causation, the nature and extent of disability resulting from the accident, if any, and the nature and extent of any Second Injury Fund liability.

The administrative law judge made the following findings: (1) claimant sustained an injury by accident arising out of and in the course of her employment on January 10, 2005; (2) claimant's 2005 left wrist complaints and treatment were medically and causally related to the 2005 work injury; (3) claimant sustained a 25% permanent partial disability to her left wrist as a result of the January 10, 2005, work injury; and (4) claimant is permanently and totally disabled as a result of the combination of employee's primary and preexisting disabilities.

The Second Injury Fund filed an Application for Review arguing the administrative law judge erred in awarding permanent total disability benefits to employee in that: (1) employee presented proof of both an occupational disease and traumatic injury and so failed to prove causation for her alleged primary wrist injury; (2) employee failed to prove she sustained an accident on January 10, 2005; and (3) the administrative law judge improperly assigned the burden of proving causation and accident to the Second Injury Fund.

The following issues are currently before the Commission: (1) whether employee met her burden of proving she sustained an injury by accident arising out of and in the course of employment; (2) whether employee met her burden of proof on medical causation; (3) the nature and extent of disability resulting from the accident, if any; and (4) the nature and extent of any Second Injury Fund liability.

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For the following reasons, the Commission affirms the award of the administrative law judge as supplemented herein.

Discussion

Burden of proof

In her award, the administrative law judge made the following comments when discussing whether claimant sustained an injury by accident while in the course and scope of her employment:

The SIF questioned whether Claimant sustained an accident arising out of and in the course of her employment, and raised the issue of medical causation. Although the SIF raised these issues, they presented no evidence to substantiate their position.

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The administrative law judge probably chose the foregoing language to identify the issues that the Second Injury Fund declined to stipulate. We agree, however, that these comments provoke a legitimate question as to whether the administrative law judge assigned the appropriate burden of proof.

Of course, it is employee's burden to prove all the essential elements of her claim under the Missouri Workers' Compensation Law. *Lacy v. Fed. Mogul*, 278 S.W.3d 691, 701 (Mo. App. 2009). The Second Injury Fund was entitled to challenge employee's proof as to each of the elements of her claim, including the issues of accident and medical causation. By declining to stipulate to these issues, the Second Injury Fund was not then required to put on evidence to validate its position. The Second Injury Fund, in fact, has no obligation whatsoever to present contrary or conflicting evidence with regard to employee's claim for permanent total disability benefits. *Dunn v. Treasurer of Mo. As Custodian of Second Injury Fund*, 272 S.W.3d 267, 275 (Mo. App. 2008). Rather, the burden to present evidence and establish the elements of her claim remained with employee at all times.

In reviewing this matter and evaluating the evidence presented by the parties, we are mindful of the appropriate burden of proof. We affirm the findings and conclusions of the administrative law judge on the issues of accident and medical causation because we are convinced that employee met her burden on these issues.

Nature and extent of disability stemming from the last injury

We agree with the administrative law judge in that we are convinced employee is permanently and totally disabled due to a combination of the last injury and her preexisting disabling conditions. This conclusion is amply supported by the testimony of both Dr. Volarich and the vocational expert Ms. Gonzalez. We find the opinions of both experts persuasive.

The Second Injury Fund argues, however, that employee's claim for permanent total disability must be denied because employee failed to establish the disability from the last injury considered in isolation. Citing *Bock v. City of Columbia*, 274 S.W.3d 555 (Mo.

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App. 2008), the Second Injury Fund argues that employee's claim must be denied because Dr. Volarich failed to apportion the degree of disability stemming from the last injury and that which was preexisting or attributable to other causes.

The last injury occurred on January 10, 2005, when a metal bracket fell on employee's left wrist. Employee had previously been diagnosed with bilateral carpal tunnel syndrome in 2002 and had sought treatment for left wrist and hand pain intermittently since 1995. Dr. Volarich assigned a 45% permanent partial disability of the left wrist due to the injury on January 10, 2005, attributed to employee's carpal tunnel syndrome that required open carpal tunnel release, as well as de Quervain's tenosynovitis that required left dorsal compartment decompression. Dr. Volarich noted that, prior to the incident on January 10, 2005, employee suffered from progressively worse symptoms related to left wrist carpal tunnel syndrome, but notably, Dr. Volarich did not include left wrist carpal tunnel syndrome in his catalogue of employee's disabling conditions preexisting January 10, 2005.

The Second Injury Fund characterizes Dr. Volarich's testimony as assigning one disability rating to two separate "accidents": one attributable to employee's repetitive work and the other to the falling bracket incident on January 10, 2005. The Second Injury Fund argues that one of these accidents must have occurred before the other, and therefore employee has failed to establish the disability resulting from the "last" accident where Dr. Volarich assigned only one disability rating.

We acknowledge employee's burden to establish the nature and extent of disability resulting from the last injury considered alone:

If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, ... the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of a special fund known as the "Second Injury Fund" ...

Section 287.220.1 RSMo.

We do not agree, however, with the Second Injury Fund's reading of Dr. Volarich's testimony regarding the January 10, 2005, claim. Dr. Volarich did not identify two "accidents." Rather, Dr. Volarich diagnosed two separate medical conditions stemming from the same event, namely, the bracket falling on employee's wrist on January 10, 2005. We read Dr. Volarich's opinion as indicating that two events occurred simultaneously when the bracket fell on employee's wrist: (1) employee's occupational disease of carpal tunnel syndrome was aggravated and became a compensable injury; and (2) employee sustained de Quervain's tenosynovitis when the bracket struck her left wrist at the radial styloid.

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We find no authority for the proposition—and the Second Injury Fund has directed us to none—that employee is precluded from recovery under § 287.220.1 simply because the last injury resulted in multiple medical conditions to the same body part. We note that part of the difficulty in this case derives from the counterintuitive notion of assigning a “date of injury” to an occupational disease that develops over time, but such is the nature of the workers’ compensation law in Missouri: “[a]n occupational disease does not become a compensable injury until the disease causes the employee to become disabled by affecting the employee’s ability to perform his ordinary tasks and harming his earning ability.” *Garrone v. Treasurer of State*, 157 S.W.3d 237 (Mo. App. 2004). The evidence of a dramatic increase in employee’s left wrist symptoms and her eventual left wrist surgeries following the work injury of January 10, 2005, supports Dr. Volarich’s position that, as a result of the accident on that date, employee’s carpal tunnel syndrome became a compensable injury that harmed her earning ability and affected her ability to perform ordinary tasks. Thus, it was appropriate for Dr. Volarich to assign one disability rating to employee’s left wrist condition, and employee was entitled to rely on Dr. Volarich’s rating in proving the extent of disability resulting from the last compensable work injury.

Because we otherwise agree with the analysis, findings, and conclusions of the administrative law judge, we affirm the remainder of the award without supplementation.

Conclusion

We supplement the award of the administrative law judge with the foregoing findings, conclusions, and comments. In all other respects, we affirm the award.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued April 23, 2010, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission further approves and affirms the administrative law judge’s allowance of attorney’s fees 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 7th day of December 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Carla Rucker

Injury No.: 05-017526

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Ford Motor Company (previously settled)

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

Additional Party: Second Injury Fund (SIF)

Insurer: Self

Hearing Date: February 3, 2010

Checked by: KMH

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 10, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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:
Claimant injured her left upper extremity in the course and scope of her employment.
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 upper extremity
14. Nature and extent of any permanent disability: 25% of the left wrist previously paid by Employer and Permanent and Total Disability benefits from the Second Injury Fund beginning March 6, 2006, due to a combination of the primary injury and the pre-existing injuries and disabilities.
15. Compensation paid to-date for temporary disability: \$162.20
16. Value necessary medical aid paid to date by employer/insurer? \$11,155.27

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$675.90/\$354.05
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

43.75 weeks of permanent partial disability from Employer	(previously paid)
3 weeks of disfigurement from Employer	(previously paid)

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
weekly differential of \$321.85 payable by SIF for 43.75 weeks beginning
March 6, 2006, and, thereafter, \$675.90 per week as provided by law

TOTAL: TO BE DETERMINED

23. Future requirements awarded:

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:

Evan Beatty

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Carla Rucker

Injury No.: 05-017526

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Ford Motor Company (previously settled)

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

Additional Party: SIF

Insurer: Self (previously settled)

Checked by: KMH

A hearing was held on the above captioned matter February 3, 2010. Carla Rucker (Claimant) was represented by attorney Evan Beatty. The Second Injury Fund (SIF) was represented by Assistant Attorney General Kristin Frazier. Claimant previously settled her case with Employer/Insurer.

All objections not expressly ruled upon in this award are overruled to the extent they conflict with this award.

STIPULATIONS

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
2. Employer's liability was self-insured.
3. Employer had notice of the injury and a claim for compensation was timely filed.
4. If Claimant is found permanently and totally disabled, her total disability date is March 6, 2006.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Accident
2. Arising out of and in the course of employment

3. Medical causation
4. Second Injury Fund Liability

FINDINGS OF FACT

Based upon the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 58 year-old right handed female who has worked for Employer since 1995. She is not married and has no dependents. Claimant graduated from high school and took a keypunch operating class in 1970, but never worked as a keypunch operator. She has no other education, vocational training, or college courses. Claimant lives in a two-level townhouse with bedrooms on the second floor. Claimant testified she only goes upstairs to sleep, and she does not have to do yard work.
2. Before working for Employer, Claimant worked as a school bus driver for 6 years. She had no injuries while working as a bus driver. Claimant left that employment to work for Employer. She was hired in at Employer as a laborer/line operator on the assembly line. She worked a number of different jobs and used a variety of tools while at Employer. Her jobs involved a great deal of lifting, bending, stooping, reaching, pulling, gripping, and other repetitive work. She generally was on her feet ten hours a day.
3. Before her last work injury in 2005, Claimant had extensive treatment on her upper extremities beginning in 1996, her left hip beginning in 1997, her low back injury beginning in 1999, and her neck in 2001.
4. In 1996, Claimant began treatment for work related bilateral carpal tunnel syndrome. She had extensive conservative treatment on both arms over a ten year time period through plant medical and multiple referrals to upper extremity specialists. She had numerous injections for her left carpal tunnel syndrome, left elbow epicondylitis and bicipital tendonitis, and left shoulder complaints. She had a carpal tunnel release on her right side and extensive treatment for pain in her right shoulder and arm. She had pain in both upper extremities radiating down her arms even when sitting still. In 1999 Dr. Van Ryn recommended Claimant return to work as a bus driver, and thought she was not able to handle the physical stress of working on the assembly line. She continued conservative treatment and missed time from work. By 2002 she still had significant complaints with both upper extremities, and Dr. Van Ryn imposed a permanent restriction of no work above shoulder level. Her right shoulder complaints persisted, and Dr. Rottman performed a right shoulder rotator cuff repair in October 2003. She had little relief from this surgery, and a second surgery was performed in October 2004. She had a subacromial decompression, biceps tenodesis, and mini open rotator cuff re-repair. Dr. Rottman released Claimant in early 2005 with permanent restrictions of no overhead work.

5. Claimant testified she missed a significant amount of work throughout her ten years of treatment on her upper extremities. Leading up to her 2005 injury and continuing today, she has right shoulder pain and numbness from her shoulder into her hand. Moving her arm to the side and behind her causes an increase in pain. She has very little ability to reach above her head. Her pain stays at a level of six to seven out of ten and increases with any activity. Claimant is right hand dominant and has to keep her arm close to her body to lift anything. She has continued numbness and tingling in her right hand along with swelling, decreased grip strength, and problems manipulating her fingers. She can't make a fist with her right hand. She also has continued numbness, tingling and pain in her left wrist. She has pain in her left elbow at a consistent level of six or seven out of ten. Her left elbow pain increases with any activity. She has left shoulder pain that runs down her arm. The left shoulder pain began after her right shoulder surgery and increased over time. In 2007 an MRI showed a left rotator cuff tear. She cannot sleep on either of her sides, and can't move her arms overhead without assistance. She tries to keep her arms at her sides and does not reach out or extend her arms.
6. Claimant settled her 1996 case for 37.5% of her right shoulder, 17.5% of her right wrist and 10% of her left elbow in 2007.
7. On October 24, 1997, Claimant developed left hip pain when the air gun she was using at work torqued and her body twisted. Claimant testified the gun frequently malfunctioned and she stabilized it by resting it on her hip. She frequently hit her hip with the gun causing pain in the hip. Eventually the pain ran down her leg and her knee frequently gave out. She had physical therapy and noted some improvement, but still had pain in her hip that was worse after a long day at work. She had a bone scan and MRI and was diagnosed with trochanteric bursitis resulting from her work activities. She continued to have hip pain and treated for the next few years.
8. Claimant testified her hip pain continues through today and she has a throbbing, dull pain in her left hip which is almost constant. It is painful to cross her legs, and she has difficulty squatting and climbing stairs. Her pain averages between a seven to eight and is aggravated by sitting, standing, walking, weight bearing, steps or walking on uneven ground. She has to walk slowly or she feels her hip or knee will give out.
9. In 1996 Claimant started having back problems. She had several injections, and had some numbness and tingling down her leg. She was diagnosed with degenerative joint disease and sacroilitis. In September 1999, she injured her low back at work when her torque gun malfunctioned and jerked Claimant. She twisted her back and felt immediate pain radiating into her leg. The pain was more severe than her previous back and leg pain. She had multiple exacerbations of back pain and treated at plant medical over the next few years. She had trigger point injections and spinal manipulation. During this treatment, she missed time from work periodically and often requested to go home early. She had difficulty keeping up with the line at work because she had pain with bending, stooping, and lifting. In August 2004, Dr. Lange ordered an MRI and diagnosed mechanical low back pain and right L4-5 radiculopathy. In 2005, she sought additional treatment for her low back and had another series of injections.

10. Leading up to her 2005 injury and continuing through today, Claimant has low back pain that radiates into her buttocks and down her left leg into her left knee. The pain is constant and dull, and she has some numbness in her leg. The back pain is at a seven to eight out of ten and worsens with activity. She has difficulty getting comfortable and can only sit for about fifteen minutes at a time and stand for about ten minutes at a time. She can only walk one block before she has to rest. She avoids bending or squatting and lifting anything greater than five to ten pounds. Her right lower extremity gives out with stair climbing.
11. Claimant settled her back injury case for 12.5% of the body as a whole on November 14, 2007.
12. In October 2001, Claimant was involved in a motor vehicle accident. She had suffered with neck and radicular pain since 1997 and had periods of conservative treatment. The car accident increased her complaints. She could not turn her head to the left, could not look up or down, and had pain and numbness into her hands. She had numbness and tingling in her right arm and hand and had weakness in the right upper extremity. She had physical therapy and injections with no improvement. In 2002, Dr. Washington noted he had previously diagnosed her with a herniated disc at C6-7 and treated her with therapy and injections. In March 2003, she had a cervical discectomy and decompression of the nerve root at C4-5 with a fusion at C4-5. She noted some improvement and the pain into her shoulder was gone. She had increased neck motion but developed headaches. Claimant testified the doctor told her the only way to improve her headaches was more surgery. She went to pain management in an effort to avoid surgery.
13. Claimant testified she continued to have neck complaints leading up to her 2005 injury, and those complaints continue. She has pain radiating down her arms and has headaches approximately twice a week. She has to lie down to support her head at times, and has a loss of range of motion in all directions. She rates her pain at an average of five to six out of ten.
14. On January 10, 2005, Claimant was reaching for stock at work, and a bracket fell and struck her left hand and wrist. While she had prior problems with her hand, this injury increased her symptoms, and caused swelling, numbness and tingling, throbbing, and a constant and severe pain in her hand and into her arm. Claimant was diagnosed with left deQuervain's tenosynovitis. Conservative treatment failed, and she had left carpal tunnel release and deQuervain's release on December 23, 2005. Claimant was released to one handed work in early 2006.
15. Claimant continues to have some swelling, burning, and numbness in her left hand. She has cramping and lost range of motion in her hand. She takes over the counter medications daily, and uses heat, ointments, ice and an ultrasound machine to relieve her pain. She has decreased grip strength and has difficulty holding onto objects. She has a dull ache and pain in her elbow, and cannot lift heavy objects.
16. Claimant settled her 2005 injury for 25% of the left wrist plus disfigurement.

17. In October 2005, Claimant began inquiries of her union and Employer about disability retirement. Approximately one month later, the employees were advised the plant would be shutting down. Employees were advised they had to be physically in the plant at the time of shut down in order to receive a retirement package. Numerous employees had been off work a few years and returned at the time of the shut down in order to receive their retirement package. Claimant testified she returned to work in February 2006 following her left wrist surgery in order to qualify for the retirement package. She was able to work because production at the plant was significantly reduced due to the impending closure, and the work shifts were shorter and easier. Claimant testified without the plant closure, she would have applied for disability retirement. She worked until March 6, 2006, when the plant closed. Claimant was eligible to transfer to another Ford plant, but felt she was physically unable to work. She had back, hip, neck and bilateral shoulder and arm pain. She had a permanent restriction of no overhead work, and could not write or type due to her multiple hand and arm injuries.
18. The totality of her injuries affects her functional ability. Claimant testified she has to lie down for a few hours two to three times a day to relieve the pain in multiple areas of her body. She can't sleep on either side or on her stomach. She has to sleep with pillows under her back and legs. She is only able to sleep two to three hours at a time and feels fatigued throughout the day. She limits cooking to the microwave because she is unable to lift pots and pans. She can do some cleaning if she takes breaks frequently. She is able to drive short distances only. Her son helps her grocery shop and carries the groceries into the house for her. She is no longer able to bowl, play darts, shop, go to the movies, or attend church as she did before her injuries. She testified she hardly ever leaves her townhouse. Her typical day involves watching television. She can't read very much because she has problems with concentration due to her pain and fatigue. She takes prescription anti-inflammatories on a daily basis to reduce the pain from her injuries. She is not able to take a narcotic medication anymore because she has developed an allergy.
19. Claimant's expert, Dr. Volarich, examined her and issued a report in 2006 and 2007. He found Claimant had weakness in both shoulders; a limp favoring her left side; lost range of motion in her neck, back, left hip, and both shoulders; and positive impingement in both shoulders. He opined her work was the prevailing factor in causing her 1999 back injury. He opined the repetitive nature of her work and the bracket incident in 2005 were the prevailing factors in causing her left carpal tunnel and deQuervain's syndromes. He rated her disabilities and opined Claimant was permanently and totally disabled as a result of the combination of her injuries. He found she is unable to engage in any substantial gainful employment.
20. Claimant's vocational expert, Delores Gonzalez, met with Claimant, reviewed her medical records, and issued a report in 2007 and 2009. She found Claimant's advanced age puts her at a disadvantage vocationally. Her education is not vocationally relevant. Claimant does not have transferable skills that could be used in other jobs within her physical capabilities. Her restrictions limit her to less than sedentary work which does not exist in the open labor market. She opined Claimant is not a candidate for vocational rehabilitation and is not capable of any competitive work. She concluded Claimant is

unable to work as a result of her 2005 injury in combination with her pre-existing conditions and disabilities.

21. Jim England, SIF's vocational expert, reviewed some of the medical records and Claimant's deposition and issued a report in 2009. He opined Claimant stopped working because the plant closed, not because of her physical problems. He testified she could work in a light duty full time job. He further opined if Dr. Volarich's restrictions regarding Claimant's back were accepted, that injury alone would prevent her from any type of work. He noted the majority of Claimant's complaints are to her upper extremities. Mr. England did not personally meet with Claimant, and he agreed observing the individual is important in assessing their abilities. He agreed Claimant's age and lack of advanced education are adverse vocational factors, and Claimant had no transferable skills from her work for Employer or her past work. He agreed given the restrictions imposed by Dr. Morris, who evaluated Claimant on behalf of the Social Security Administration, Claimant is unemployable. Mr. England was not aware of Claimant's condition and work restrictions in late 2005 and early 2006. He did not review the plant medical records outlining Claimant's extensive treatment history.
22. Claimant's current sources of income are her retirement from Employer and Social Security Disability.
23. Claimant is credible. During the hearing, she was in obvious pain and frequently shifted in her chair and alternated between sitting and standing throughout her testimony.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

- 1. Claimant sustained a left wrist injury by accident while in the course and scope of her employment. Her injury and subsequent treatment are medically and causally related to her work.**

The SIF questioned whether Claimant sustained an accident arising out of and in the course of her employment, and raised the issue of medical causation. Although the SIF raised these issues, they presented no evidence to substantiate their position.

Claimant credibly testified she injured her left wrist at work January 10, 2005, when a bracket fell from overhead and struck her left wrist. She had immediate pain, treated for several months, and ultimately had surgery in late 2005. Her testimony is corroborated by the medical records which establish a new injury in 2005.

“Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause.” *Brudnige v. Boehringer Ingelheim*, 812

S.W. 2d, 200 (Mo.App. 1991). While Claimant had previous problems with her left arm, the 2005 injury increased the severity of her complaints, caused a new condition, and required additional treatment. Dr. Volarich credibly testified Claimant's carpal tunnel was caused by her repetitive work, and her deQuervain's syndrome was caused by the 2005 bracket incident. The uncontradicted, credible medical testimony establishes her 2005 left wrist complaints and treatment are medically and causally related to her 2005 work injury.

2. Claimant is permanently and totally disabled as a result of the combination of her 2005 work injury and her pre-existing disabilities.

Section 287.220 RSMO provides that in cases of permanent total disability against the Second Injury Fund, there must be a determination of the following:

1. the percentage of disability resulting from the last injury alone;
2. that there was a pre-existing permanent disability that was a hindrance or obstacle to employment or to obtaining re-employment;
3. that all of the injuries and conditions combined, including the last injury, have resulted in the employee being permanently and totally disabled.

Claimant settled her last injury with Employer prior to this hearing. Based on my review of the evidence including the treating records, the medical opinions and Claimant's complaints, I find Claimant sustained a 25% permanent partial disability to her left wrist as a result of her January 10, 2005, work injury.

Claimant had two work related injuries prior to her 2005 work injury. The medical records and stipulations for compromise settlement regarding those injuries were admitted into evidence. These settlements reflect pre-existing disabilities of 37.5% of the right shoulder, 17.5% of the right wrist, 10% of the left elbow, and 12.5% of the body as a whole referable to the low back.

Claimant also had a pre-existing left hip injury and neck injury. I find her left hip injury caused 15% disability to the hip. Claimant had extensive treatment for her neck before and after her 2001 motor vehicle accident. She had a neck fusion that left her with significant restrictions and complaints.

I find Claimant's prior injuries and disabilities caused a hindrance or obstacle to her employment or to obtaining re-employment. The final question is whether the combination of Claimant's injuries rendered her permanently and totally disabled.

The test for permanent total disability is whether Claimant is able to adequately compete in the open labor market given his condition. *Messex v. Sachs Elec. Co.*, 989 S.W. 2d 206, 210 (Mo. App. E.D. 1999). The pertinent consideration in this test is the determination of whether any employer in the usual course of business would reasonably be expected to employ Claimant given his condition. *Carlson v. Plant Farm*, 952 S.W. 2d 369, 373 (Mo. App. W.D. 1997).

The vocational experts agree Claimant has no transferable skills, her advanced age limits her ability to compete in the open labor market and learn new skills, and her lack of advanced education adversely affects her employment. Claimant is severely restricted in her ability to sit, stand, walk, bend, squat, and lift. She has constant pain and motion restrictions in her upper extremities. Given her adverse vocational factors and her physical limitations, I find no employer would reasonable be expected to employ Claimant. Dr. Volarich credibly testified Claimant is permanently and totally disabled as a result of the combination of her 2005 injury with her pre-existing disabilities. I find Claimant was permanently and totally disabled at the cessation of her employment March 6, 2006, as a result of the combination of her primary and preexisting disabilities.

Claimant received compensation from Employer at \$354.05 for 43.75 weeks. The Second Injury Fund is hereby ordered to pay permanent total disability benefits at the differential rate of \$321.85 per week beginning March 6, 2006, during those 43.75 weeks, and thereafter \$675.90 per week for as long as provided by law. The amount accrued to date shall be paid forthwith with interest as provided by law.

An attorney lien of 25 percent of all compensation awarded herein is allowed Evan Beatty, Claimant's attorney, for necessary legal services rendered.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation