

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

Injury No.: 06-097891

Employee: Laura Selmon
Employer: Siegal Roberts Automotive
Insurer: Hartford Insurance Company c/o Specialty Risk Services
Date of Accident: On or about July 31, 2006
Place and County of Accident: St. Francois County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 7, 2008. The award and decision of Administrative Law Judge Lawrence Kasten, issued April 7, 2008, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 19th day of August 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Laura Selmon

Injury No. 06-097891

Dependents: N/A

Employer: Siegal Roberts Automotive

Additional Party: N/A

Insurer: Hartford Insurance Company c/o Specialty Risk Services

Appearances: James Krispin for the employee
Mark Kornblum for the employer-insurer

Hearing Date: Commenced: December 20, 2007
Completed: January 9, 2008

Checked by: LK/kh

SUMMARY OF FINDINGS

- Are any benefits awarded herein? Yes.
- Was the injury or occupational disease compensable under Chapter 287? Yes.
- Was there an accident or incident of occupational disease under the Law? Yes.
- Date of accident or onset of occupational disease? On or about July 31, 2006
- State location where accident occurred or occupational disease contracted: St. Francois County, Missouri.
- Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.

- Did employer receive proper notice? Yes.
- Did accident or occupational disease arise out of and in the course of the employment? Yes.
- Was claim for compensation filed within time required by law? Yes.
- Was employer insured by above insurer? Yes.
- Describe work employee was doing and how accident happened or occupational disease contracted:
Repetitive motion with upper extremities
- Did accident or occupational disease cause death? No.
- Parts of body injured by accident or occupational disease: Right shoulder and neck.
- Nature and extent of any permanent disability: 25% of the right shoulder and 2.5 % of body as a whole referable to the cervical spine.
- Compensation paid to date for temporary total disability: None.
- Value necessary medical aid paid to date by employer-insurer: None.
- Value necessary medical aid not furnished by employer-insurer: \$15,950.00.
- Employee's average weekly wage: \$463.95
- Weekly compensation rate: \$309.30
- Method wages computation: By agreement.

- Amount of compensation payable:

\$15,950.00 in previously incurred medical
\$1,237.20 in temporary total disability
\$21,032.40 in permanent partial disability

Total: \$38,219.60.

- Second Injury Fund liability: N/A
- Future requirements awarded: None.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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: James Krispin.

FINDINGS OF FACT AND RULINGS OF LAW

On December 20, 2007, the employee, Laura Selmon, appeared in person and by her attorney, James Krispin, for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Mark Kornblum. Also present for the employer was Angie Tessmer, its human resources representative. This case was heard with Injury Number 07-046372 and separate awards were issued in each case. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS

- Siegel Roberts Automotive was operating under and subject to the provisions of the Missouri Workers' Compensation Act and its liability was fully insured by Hartford Insurance c/o Specialty Risk Services.
- On or about July 31, 2006, Laura Selmon was an employee of Siegel Roberts Automotive.
- The employer had notice of the employee's alleged occupational disease.
- The employee's claim was filed within the time allowed by law.
- The employee's average weekly was \$463.95. The rate of compensation for temporary total and permanent partial disability is \$309.30 per week.
- The employer-insurer has not paid any medical aid.
- The employer-insurer has not paid any temporary disability.

ISSUES

- Occupational disease

- Medical causation
- Claim for previously incurred medical
- Temporary total disability
- Nature and extent of permanent partial disability

EXHIBITS

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- Medical records of Dr. Krewet
- Medical records and medical bill of Dr. Noguera
- Medical records of JMH Rehab Center
- Medical records of Dr. Ruble
- Medical bills of Dr. Ruble
- Impala tape
- Impala emblem
- Deposition of Dr. Berkin including exhibits (The record was left open for the submission of this exhibit which was received and admitted into evidence on January 9, 2008. The record was then closed).

Employer-Insurer's Exhibits

- Deposition of Dr. Doll including exhibits.

WITNESSES: Laura Selmon, the employee; Dalton Demman, for the employer-insurer

BRIEFS: The employee filed her brief on January 22, 2008. On March 10, 2008, a letter was received from the employer-insurer's attorney indicating that they would not be filing a brief.

FINDINGS OF FACT

The employee was born in December of 1967. Prior to working at Siegel Roberts Automotive, she did not have any physical problems or complaints with her shoulders, arms or wrists and had no treatment for her shoulders, arms or wrists. The employee used to bowl but stopped in 2002 prior to the problems in her arms. Outside of the workplace she does not have any hobbies or activities. The employee had a prior motor vehicle accident that caused a neck injury. She received chiropractic treatment for approximately three weeks. She and her daughter received a settlement for \$14,000.00. The employee did not have any physical difficulties with her neck after that.

She started working at Siegel Roberts on September 30, 2002 as a tape assembler. The employee's shift was 5 a.m. to 1:30 p.m. During that 8.5 hour shift, there was a 30 minute lunch and two 10 minute breaks. The employee testified that she worked a lot of overtime and would work 10 or 11 hours a day. The three months prior to July 31, 2006 the employee averaged 41.6 hours per week. The employee testified that prior to that she worked more overtime.

The employee assembled emblems for Impala automobiles. There were two parts used in the process. The first was a precut two sided adhesive tape in the shape of an Impala that was attached to a plastic chrome Impala emblem. The two sided adhesive tape was on a coil/roll that was about the same size as a 14 inch auto tire and weighed about 30 pounds. There were approximately 2500 tapes on each roll. Once or twice a

shift the employee had to load a new roll onto a spindle that was located to her left side. The roll would be strung across the employee at head level and was loaded above shoulder level.

The employee would get a supply of emblems off a rack above her head every hour and a half using both extremities which would take a couple of minutes. The rest of the time her work was at head or face level or below.

To assemble each Impala emblem, the employee pulled one of the tapes off the roll about head level. She would pull the adhesive off in two pre-cut areas and then place the tape into a "fixture" which had to be adjusted to fit properly. She would then retrieve an emblem, inspect it, and load the emblem into the "fixture". The tape and the emblem had to be aligned by use of her hands including a lot of pushing. She had to swipe with her hands to remove any residue from the part. She then would start a press machine which was located at waist level. She would press and hold buttons until the press completed its cycle. She removed the emblem from the fixture, put down foam, and peeled the tape off the emblem, and put it into a tote (box). She would sometimes carry a tote (box) of emblems. The employee's quota was 180 Impala emblems per hour which is 3 emblems per minute. If she worked 10 hours a day, it would be 1800 completed emblems per day. She usually met or exceeded her quota.

Claimant's Exhibit F is the tape used in the process. Claimant's Exhibit F is the completed Impala emblem. Since January of 2007, they have been assembling different sizes and shapes of emblems.

Dalton Demman, the employer's Acrylic Business Unit Manager testified. He oversees the tape assembly operation. The emblems that are currently being made are similar to the prior ones but the tape is now clear Mylar instead of the blue liner. The new tape makes the job less difficult. The tape assemblers' work above the head is very minimal. The assemblers pull tape with every emblem. Sometimes the inside circle is not there which means the assembler does not have to pull the inside circle out. The tape process does not always work, the freshly cut tape does not always work well, and the emblem does not always fit. The quota for the tape assemblers is 180 emblems an hour. The employee is currently working as a tape assembler and her quantity of her work is good and she meets quota.

The employee testified that in approximately 2004, she started having shoulder problems including a lot of aching when she was picking the totes off the rack. She had pain in her right shoulder when she buckled down. She had more problems going above her shoulder and had numbness in her hands. She did not have any activities outside of work and had no injuries to her shoulder. In 2004, the employee notified her supervisor about her problems but did not ask for medical treatment. Her shoulder problems progressed where she had problems doing her job. In 2006 she told her supervisor, Sandra Cramp about her problems and requested that she be sent to a doctor. The employer sent her to Dr. Krewet for the problems in her shoulder, elbow and wrist which were mainly at that time on the right side.

The employee saw Dr. Krewet on July 7, 2006. The employee noted problems for several years with right shoulder, neck, elbow and hand pain which had gradually been getting worse. The employee had numbness in the thumb and index finger. The employee had a sore elbow from time to time and neck pain more on the right. In the neck examination, the employee had some tenderness laterally and posteriorly on the right and in the area of the trapezius. The right shoulder revealed some tenderness in the area of the AC joint with some crepitus with rotational movements. The employee had difficulty raising her arm to the horizontal. External rotation produced a fair amount of pain throughout the entire range of motion. The employee had tenderness in the elbow over the medial epicondyle and laterally. The Phalen's and Tinel's signs were negative. Dr. Krewet diagnosed probable right shoulder impingement as the source of most pain but doubted carpal tunnel disease. X-rays of the right shoulder revealed some arthritic changes and the AC joint was narrow. The radiologist report of the right shoulder showed minimal osteoarthritic changes with spur formation at the acromioclavicular joint. An employer certificate of fitness showed a diagnosis of neck and right upper extremity pain most likely due to impingement of the right shoulder.

The employee returned to Dr. Krewet on July 14. The examination of the neck showed lateral tenderness. The examination of the shoulder revealed tenderness in the area of the AC joint and over the medial epicondyle. The

diagnosis was neck/right upper extremity pain and arthritis in the right AC joint. Dr. Krewet felt that the employee's main symptoms were due to arthritis in the AC joint and that she should see her private physician for this. Dr. Krewet recommended continued Feldene and an injection. If that did not help, he recommended an MRI of the shoulder due to a probable impingement component. Dr. Krewet stated the employee could work full duty and released her from his care. On the employer certificate of fitness, Dr. Krewet's diagnosis was neck/right upper extremity pain and arthritis in the right AC joint.

The employee testified that Dr. Krewet did not get a lot of information regarding her job. Dr. Krewet told her that her symptoms were from arthritis, were not work related, and to see her own doctor. She told Sandra Cramp what Dr. Krewet said, and Ms. Cramp told her to seek treatment on her own. She went to Dr. Noguera who told her that the problems were work related and referred her to Dr. Ruble, an orthopedic surgeon.

On July 25, 2006, the employee saw Dr. Noguera. Dr. Noguera stated that the employee's right shoulder definitely had bursitis and possible impingement. Dr. Noguera stated that the right shoulder pain was definitely work related from overuse. The employee had complained to her supervisor for over two years of right shoulder pain. Dr. Noguera stated that he would refer the employee back to a workers' compensation physician for possible referral to an orthopedic surgeon for cortisone injections.

In an August 24, 2006 letter to Dr. Noguera, Dr. Ruble, an orthopedic surgeon, noted that the employee had seen him for right shoulder pain which had been going on for about two months. The employee cannot really relate it to anything she has done and cannot recall an injury. On examination, the employee had pain with extremes of forward elevation and abduction of the right shoulder and a positive impingement test. It was negative on the left side. The employee had some tenderness about the right trapezius muscle. Dr. Ruble assessed right shoulder pain secondary to impingement syndrome and right shoulder trapezius muscle strain. Dr. Ruble prescribed Feldene, an anti-inflammatory; and physical therapy.

The employee attended therapy from September 12 through October 2, 2006. In the initial evaluation, it stated that the employee had intermittent problems for the last two years which has been more constant since July 14, 2006. The employee had increased pain with lifting. In a September 25 note, the employee stated she was okay until she did repetitive motions especially overhead at work. The pain was worse during the day while using her arms. On September 27, the employee noted that the pain returned when utilizing her arms overhead. On October 2, the employee continued to do repetitive work and was getting sore by the end of the work day. The therapist noted that the symptoms may not clear with the present intensity of work.

Dr. Ruble ordered an MRI which was performed on October 7, 2006. The radiologist stated that there was no rotator cuff tear and possible mild tendinosis of the superior cuff. The acromion was normal and there was no definite labral tear. There was mild arthrosis of the acromioclavicular joint with no significant encroachment on the superior cuff.

On October 12, Dr. Ruble noted that the MRI revealed no obvious rotator cuff tear and no significant effusion. She continued to have pain over her right trapezius muscle and increased pain with overhead activities. She described clicking and popping in the shoulder. Her right hurts worse than the left. She denied any new injury, numbness or tingling in the extremity. Dr. Ruble noted that the employee's active range of motion was good with pain past 90 degrees of forward elevation and abduction. She had decreased strength bilaterally due to pain. The assessment was right shoulder impingement syndrome. A steroid injection into the right shoulder joint was performed.

On November 16, Dr. Ruble stated the employee had impingement syndrome. She denied any new injury. Her pain interfered with her life and work and kept her awake. In the physical exam, there was pain with overhead motion and decreased strength in the right shoulder. There was no tenderness about either AC joint. Dr. Ruble recommended arthroscopic surgery.

On December 26, 2006, Dr. Ruble performed surgery for a pre-operative diagnosis of right shoulder impingement syndrome. The employee had some numbness and tingling in her left upper extremity and some numbness in the right upper extremity. She had mild tenderness over the AC joint but there was no plan to perform a

distal clavicle excision. In the operative report, Dr. Ruble noted that there was extensive fraying and partial tearing of the labrum superiorly, anteriorly, and posteriorly. Debridement of the labrum was performed. The glenohumeral joint had mild chondromalacia changes present. A gentle chondroplasty was performed. The rotator cuff had no sign of any tear. There was mild partial thickness under surface tearing present and a debridement was performed. With regard to the subacromial space, there was an extensive debridement of the bursal. There was a large anterior acromial spur and an acromioplasty was performed that was taken over to the AC joint. The procedures performed were right shoulder arthroscopy, arthroscopic subacromial decompression, debridement of the labral fraying/partial tearing. The post-operative diagnosis was right shoulder impingement with partial tearing/fraying of the labrum.

On January 8, 2007, Dr. Ruble removed the sutures. He continued the employee off work. On February 6, the employee had a slightly decreased range of motion and decreased strength in the right shoulder. Dr. Ruble continued Feldene, Tylenol and physical therapy; and performed a steroid injection in the right shoulder. Dr. Ruble stated for the employee to continue with a 40 hour work week. The employee had increased pain with pulling, overhead activities and internal rotation; and had catching and popping in her shoulder.

On March 20, 2007 the employee described catching with pulling items off shelves at work and a locking sensation. She had weakness; as well as numbness and tingling in her finger tips on the right side. The employee had full active range of motion with pain at extreme end points of motion and pain with resistance. Dr. Ruble noted that the employee exhibited positive carpal tunnel tests especially with compression on the right side. Dr. Ruble assessed status post right shoulder arthroscopy with subacromial decompression and possible carpal tunnel syndrome. She was given a new prescription of Feldene and was to take Tylenol for pain. Dr. Ruble returned the employee to full duty with an extended 40 hour work week and released her from care to return on an as needed basis.

The employee testified that she was off work for four weeks after the surgery. She continued to have difficulty including left shoulder problems which were similar to the right.

On November 7, 2007, the employer-insurer sent the employee to Dr. Doll, a physical medicine and rehabilitation specialist. The employee reported a gradual onset of symptoms occurring approximately two years after beginning employment at Siegal Roberts Automotive in 2002. She worked as a taper of emblems. The employee described working with an Impala emblem where she would first put tape on a rail and into a fixture and then place the part into the fixture. She would perform a hand swipe maneuver for approximately two years when she then used a press which required greater force when pushing the press down over the emblem to affix the tape. She began to experience a pinching sensation in the right shoulder when she reached up to her shoulder or above the shoulder level to obtain a box of parts or tape that would need to be carried to her work station. Her shoulder symptoms gradually worsened and she began to experience aching in her wrists and hands as well as her lateral elbows and upper arms. She also developed soreness in the base of her neck. Her right sided symptoms were greater than her left, which she attributed to being right handed. She worked 40 hours per week but would often have overtime where she would work up to 10 to 11 hours a day, 3 to 4 days per week.

After surgery, her right shoulder felt better but she continued to have significant pain and a catching sensation particularly when reaching above the shoulder level. Her job was changed somewhat in comparison to her pre-surgical position. She continued to perform taping activities. She was pressing the emblems but had less picking out of the tape from the emblem which aggravated the condition the most. She denied any prior occurrence of similar symptoms.

Dr. Doll reviewed a job analysis which showed the essential tasks including reaching above the shoulder level occasionally with lifting and carrying up to twenty pounds maximum. He reviewed the employee's April 14, 2007 deposition. He also reviewed a May 15, 2007 job video which revealed an employee lifting a roll of stickers off the spindle and placing a new roll onto the spindle. A cover was placed over the end and tightened with a few right hand turns. The ribbon of stickers was drawn across and through roller guides across the work station. The cardboard box was slid off of one stand over to a counter. Stickers were peeled off with the thumb and index finger and placed onto a tray. The tray was slid forward and two buttons were pushed to advance the tray into the press. The spool was later changed and occasional lifting of totes was observed.

During the examination, Dr. Doll noted the Tinel's test yielded a report of tingling into the hand diffusely

when tapping occurred over the median and ulnar nerve and with random tapping not over any particular neurologic structure. The Phalen's test yielded a report of tingling in the second and fourth distal fingers of the left hand and yielded no report of symptoms in the right upper extremity.

Dr. Doll's impression was diffuse bilateral neck, upper shoulder, and arm pain; right shoulder degenerative joint disease; and status post shoulder arthroscopy for impingement syndrome.

Dr. Doll stated that on July 7, 2006, the employee reported a progression of pain in her right shoulder, neck, elbow, and hand that had been present for several years. She had gradual worsening and reported some numbness in the thumb and index finger of the right hand. The employee attributed those symptoms to her work activities and indicated a repetitive cause to her condition. The employee was diagnosed with impingement syndrome of the right shoulder and underwent surgical intervention with continued pain symptoms.

Dr. Doll stated that the employee's work activities did not appear to have the intensity, frequency, or above shoulder frequency to be established as a prevailing factor in the medical causation of the diffuse pain condition and symptoms. Her examination revealed diffuse findings in her bilateral upper extremities which appear to be related to a combination of her underlying degenerative conditions and her significant poor posture. She was previously diagnosed with an underlying degenerative condition and was appropriately referred to her private physician outside the scope of any work injury.

It was Dr. Doll's opinion that the employee's work activities were not the prevailing factor in the medical causation of her current condition and no further diagnostic testing, therapeutic intervention, work restrictions or permanent partial disability were assignable in relation to her reported work injury. She was at maximum medical improvement with a zero percent rating. Any further evaluation and treatment with regard to the diffuse symptoms would best be directed by her private physician outside the scope of this injury.

Dr. Doll's deposition was taken on December 17, 2007. When asked why the employee's work activities were not the prevailing factor in the cause of her complaints, Dr. Doll stated that the job activities she described to him, and that were provided in the records and video tape, did not have the intensity or frequency or above shoulder frequency to be established as the prevailing factor in the medical causation of her condition. When asked if he had an opinion as to what may have caused those conditions, Dr. Doll stated that she had some underlying degenerative conditions and some mechanical poor positioning and he had not identified any other conditions to explain the symptoms.

It was Dr. Doll's opinion that it did not appear that the employee needed any more diagnostic testing or formal treatment as it lacked a causal connection. Dr. Doll stated without establishing a causal relationship, there was no permanent partial disability assignable.

Dr. Doll thought that there were other things that the employee did that were not contained in the video such as the hand swipe maneuver she used to perform during the early portions of her employment where she would press down over the emblem to affix the tape. There may be others but he would have to review the tape and the job analysis form in greater detail. The parties and the doctor then reviewed the video at the deposition. Dr. Doll stated that the video was about eight minutes. When asked if there was anything else that was not depicted on the video, Dr. Doll stated that there were some subtle variables as to a description of her movements, her stepping onto a pad or off of a pad, or she held the spool with the left hand while she turned with the right hand that were specifically described in the job analysis.

Dr. Doll stated that if there was information available other than what is in the video or in the job analysis or what she told him in person, he supposed that could result in his making a different conclusion. He felt that he had a good understanding of what she did.

Dr. Doll did not know how many emblems per day the employee processed. When asked what sort of frequency would be required for the work activities to become the prevailing factor in causing the problems, Dr. Doll stated it would depend on the specific diagnosis. If it is a tendonitis across the wrist, how many times that the particular motion is performed would be important. With regard to impingement of the shoulder, it would be important as to

what weights were lifted, the position of the arm, and how frequent the arm comes across the shoulder level. The employee reached above her shoulder to grab that tote box but otherwise, as seen on the video, her arm was below the shoulder level the majority of the time.

If the employee reached above her shoulder to pull an emblem off the roll, Dr. Doll stated it would depend on how far above the shoulder it was and whether the upper arm was actually coming above the shoulder. If the elbow was not coming above the shoulder, Dr. Doll stated that position did not significantly impinge the shoulder and so frequency was not important in an impingement syndrome. In the operative report extensive fraying and partial tearing of the labrum was described by Dr. Ruble. Dr. Doll stated if the arm is below the shoulder level it was his opinion that there would not be a causal connection to the fraying and partial tearing of the labrum. Frequency in that case does not matter

With regard to her wrists, Dr. Doll stated that the video did not demonstrate how often she performed her tasks. Dr. Doll stated that the frequency was not contained in the job analysis. Dr. Doll reviewed the employee's deposition and she stated that her quota was 180 emblems per hour. Dr. Berkin's report stated that she processed 2,000 emblems a day. It was his opinion that there was not sufficient frequency for her job duties to be the prevailing factor in causing her injuries. Dr. Doll doubted that he confirmed with the employee that the job analysis accurately set forth her job activities based on how he typically does things.

Dr. Krewet felt that the employee's main symptoms were due to arthritis in the AC joint and did not believe it was related to work. Dr. Doll stated that fraying/tearing of the labrum is a different anatomic structure than the AC joint. Dr. Doll did not see where Dr. Ruble found AC joint degenerative findings.

Dr. Doll stated that if the employee was his patient he might recommend electrodiagnostic studies including an EMG and nerve conduction studies to evaluate for carpal tunnel syndrome. Dr. Doll stated that Dr. Berkin's recommendation for an EMG and a nerve conduction study of both extremities was a medically reasonable proposition but disagreed that it was causally connected to a work injury.

Dr. Doll stated that the underlying degenerative condition was one of the prevailing factors in causing the employee's problems. However, he was not aware of any evidence of symptoms or treatment prior to the employee working at Siegal Roberts.

The employee testified that she reviewed the video tape that was sent to Dr. Doll. She saw it before the hearing and also on the morning of the hearing. The person in the video tape was Sandra Cramp, her supervisor. Ms. Cramp does not usually perform the job that the employee did. The video tape did not fairly and accurately depict the job that she performed. The tape did not show her recovering the tape and parts from the rack. Ms. Cramp in the video did three to four tapings but did not add the Impala emblem to the tape. The employee testified that Sandra did not take the emblems and load them into the fixture. Her pace was very slow. Dr. Doll did not ask the employee if the tape was accurate. The video does not show her whole job. Mr. Demman testified that he did not see the tape.

The employee was seen by Dr. Berkin on June 20, 2007. His deposition was taken on December 27, 2007. In the history the employee reported developing pain to her right arm and shoulder working as a tape assembler. She related her symptoms to her job which involved assembling emblems for automobiles. As a large roll of tape moved across her work station, she removed pieces of tape off the roll and placed them into a fixture so they could be attached to the back of each emblem. She had to remove tape from the liners of the emblems. The emblems were put into a press which required the employee to use a lot of force to press down on the fixture to attach the liner. As each fixture came out of the press, the employee placed the emblem into a tote. She processed 2,000 emblems a day. After the surgery by Dr. Ruble, the employee returned to work and was placed on a job taping different parts.

The employee's complaints were pain and tenderness to her right shoulder that were aggravated by straining or lifting. She had pain when exerting force to her press machine and when lifting above her head to pull parts. She had limited movement in her right arm. The employee had identical symptoms in her left shoulder. She complained of

numbness and tingling to her hands and dropped parts due to difficulty gripping.

The employee's right wrist had tenderness localized over the volar surface. The Tinel's and Phalen's tests were positive. The employee had loss of range of motion in the right shoulder. The employee had 20 degrees loss of abduction, flexion, and extension. She had 10 degrees loss of internal rotation.

The Tinel's and Phalen's tests on the left extremity were positive. The employee had loss of range of motion on the left shoulder. She had 10 degrees loss of extension and abduction. She had tenderness over the left shoulder localized over the anterior and superior surfaces.

Dr. Berkin diagnosed the employee with cervical myalgia; impingement syndrome of the right shoulder with tearing and fraying of the glenoid labrum; overuse tendonitis of the left shoulder; bilateral carpal tunnel syndrome; and status post arthroscopy of the right shoulder with debridement of the glenoid labrum and subacromial decompression. Dr. Berkin stated that the employee sustained an impingement syndrome due to working as an assembler taping emblems used on automobiles. It was Dr. Berkin's opinion that the conditions he diagnosed were a direct result of the work activities she performed which involved exertional and repetitive activities of her arms.

It was Dr. Berkin's opinion that the repetitive and exertional activities the employee performed during the course of her employment as an assembler for S & R Automotive was the prevailing factor in causing the impingement syndrome of her right shoulder with tearing and fraying of the glenoid labrum, overuse tendonitis of her left shoulder, bilateral carpal tunnel syndrome and mild cervical myalgia.

Dr. Berkin did not have any information about her specific job duties that were provided by Siegel Roberts, did not have an opportunity to review a video of her job duties, and did not observe her working at Siegel Roberts. The only information he had about her specific job duties was the information that she provided to him. Dr. Berkin thought she gave a thorough description of her job duties.

With regard to her overhead use of her arms, Dr. Berkin thought she was working above her head when she placed some of the completed products into overhead totes. She was exerting force as she applied the liners to the emblems into the press machine. When she applied the label, she was not doing it overhead but was using a lot of force. He did not have any specific information about how much of her day was spent using her arms overhead.

With regard to her left shoulder, it was his opinion that the specific job duty that caused her left shoulder injury was the lifting above her head in order to pull parts and getting those parts to insert into machines. The employee was using both arms to do these activities and he thought once her right arm was injured she had to rely more on her left arm in order to accomplish her work tasks.

It was Dr. Berkin's opinion that the employee had not reached maximum medical improvement and required further medical treatment for the overuse tendonitis of the left shoulder and bilateral carpal tunnel syndrome. He recommended a referral to an orthopedic surgeon for evaluation and treatment of her hands and left shoulder. He recommended an EMG and nerve conduction study of both upper extremities for evaluation of carpal tunnel syndrome; wrist splints to wear at night; and physical therapy for her left shoulder. The employee should avoid lifting with her arms extended from her body and should avoid excessive lifting or working above the shoulder level.

It was Dr. Berkin's opinion that the employee had reached maximum medical improvement with regard to her right shoulder and neck. It was Dr. Berkin's opinion that as a result of the injury while employed at S & R Automotive the employee sustained a 35% permanent partial disability of the right upper extremity at the level of the shoulder for the impingement syndrome and the fraying and tearing of the glenoid labrum; and a 7 % permanent partial disability of the body as a whole at the level of the cervical spine for the cervical myalgia.

At the hearing, it was the employee's testimony that she has a loss of range of motion of the right shoulder and the shoulder sticks at a certain level. She had pain which is worse with certain activities. The left shoulder is not as bad as the right. She can raise her arm to a certain extent and she can get a cup on a shelf if it is not above her head. She has numbness in her right hand including her thumb and tingling. The left hand has tingling mostly in her

thumb and index finger. She has loss of strength and dexterity and has problems dropping things.

RULINGS OF LAW:

Issue 1. Occupational Disease and Issue 2. Medical Causation

The employer-insurer is disputing that on or about July 31, 2006 the employee sustained an occupational disease arising out of and in the course of her employment and the employee's injuries were medically causally related to the alleged occupational disease.

In this case, the employee is claiming an injury to her right shoulder and neck. There is a disagreement among the physicians as to the employee's exact diagnosis. At the first visit, Dr. Krewet diagnosed the employee with neck and right upper extremity pain most likely due to impingement of the right shoulder. A week later, Dr. Krewet thought the employee's symptoms were due to arthritis in the AC Joint. Dr. Noguera stated that the employee's right shoulder definitely had bursitis with possible impingement. Dr. Ruble diagnosed right shoulder pain secondary to impingement syndrome and right trapezius muscle strain. Dr. Ruble performed a subacromial decompression and debridement of partial labral fraying/tearing. His post operative diagnosis was right shoulder impingement with partial tearing/fraying of the labrum. Dr. Doll's diagnosis was diffuse bilateral neck, upper shoulder and arm pain; right shoulder degenerative joint disease; and status post shoulder impingement syndrome. Dr. Berkin diagnosed cervical myalgia, right shoulder impingement syndrome with tearing and fraying of the glenoid labrum and status post surgery of the right shoulder with debridement of the glenoid labrum and subacromial decompression.

Based on a review of all the medical evidence, I find that the opinions of Dr. Noguera, Dr. Ruble and Dr. Berkin are persuasive and more credible than the opinions of Dr. Krewet and Dr. Doll on the diagnosis for the employee's neck and right shoulder. I find that the employee has cervical myalgia and right shoulder impingement and fraying/tearing of the glenoid labrum.

Under Section 287.020.3 (1) RSMo, "injury" is defined to be an injury which has arisen out of and in the course of employment. Under Section 287.067.2 and 287.067.3 RSMo, an injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. An injury due to repetitive motion is recognized as an occupational disease. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

Black's Law Dictionary 621 (Abridged Fifth Edition 1983) defines primary as "First; principal; chief, leading." Webster's College Dictionary 1071 (1991) defines primary as "First in rank or importance; chief;"

In order to be a compensable injury under a repetitive motion occupational disease, the employee has the burden to prove that the occupational exposure was the prevailing factor in causing the resulting medical condition and disability.

The employee's credible testimony was that she started working in 2002 at Siegal Roberts. The job she performed was highly repetitive and intensive involving her hands, arms and shoulders. She worked full time and had no other hand intensive jobs or activities. I find that the employee had a highly repetitive and intensive occupation involving her upper extremities and did not have any repetitive and intensive activities involving her upper extremities outside of work. The employee's symptoms began several years after starting to work for the employer.

Dr. Krewet felt that the employee's main symptoms were due to arthritis in the AC joint and not from a workers' compensation injury; and that the employee should seek treatment on her own.

Dr. Doll testified that the diffuse findings in the employee's upper extremities appeared to be related to a combination of her underlying degenerative conditions and her significant poor posture. The underlying degenerative condition was one of the prevailing factors in causing the problems. It was Dr. Doll's opinion that the employee's work activity was not the prevailing factor in the medical causation of her current condition. Dr. Doll stated that the

job activities she described to him, and that were provided in the records and video tape, did not appear to have the intensity or frequency or above shoulder frequency to be the prevailing factor in the medical causation of her condition. It was Dr. Doll's opinion that the employee's quota of 180 emblems per hour was not of a sufficient frequency for her job duties to be the prevailing factor in causing her injuries.

Dr. Doll's causation opinion is substantially affected by the employee's credible testimony that the videotape did not fairly and accurately depict the employee's work activities in that it did not include all aspects of her job, and that the pace demonstrated was significantly less than how the employee performed her tasks. Dr. Doll did not ask her if the tape was accurate.

It was Dr. Noguera's opinion that the employee's right shoulder was definitely work related due to overuse.

It was Dr. Berkin's opinion that the employee's repetitive and exertional work activities involving her arms during the course of her employment was the prevailing factor in causing the impingement syndrome of her right shoulder with tearing and fraying of the glenoid labrum and mild cervical myalgia, and those conditions were a direct result of the employee's work activities.

Based on a thorough review of the evidence, I find that the opinions of Dr. Berkin and Dr. Noguera are persuasive and are more credible than the opinions of Dr. Doll and Dr. Krewet. I find that the employee's work activities and job duties was the prevailing factor in causing the resulting medical conditions and disability of impingement syndrome of her right shoulder with tearing and fraying of the glenoid labrum and mild cervical myalgia. I find that the employee sustained a compensable work-related occupational disease and injury that arose out of and in the course of her employment. I find that the employee's impingement syndrome of her right shoulder with tearing and fraying of the glenoid labrum and mild cervical myalgia, and the need for her medical treatment including the surgery by Dr. Ruble is medically causally related to the employee's occupational disease.

Issue 3. Claim for Previously Incurred Medical

The employee is requesting previously incurred medical benefits in the amount of \$15,950.00. Claimant's Exhibit B is a bill from Dr. Noguera in the amount of \$114.00. Claimant's Exhibit E contains the medical bills for treatment including the right shoulder surgery by Dr. Ruble in the amount of \$15,836.00. The employer-insurer is disputing those bills with regard to the issues of authorization and causal relationship. The employer-insurer is not disputing the reasonable and necessity of the medical bills.

With regard to authorization, Section 287.140 RSMo gives the employer the right to select the treating physician. The employer waives that right by failing or neglecting to provide necessary medical aid. See Banks v. Springfield Park Care Center, 981 S.W.2d 161 (Mo. App. 1998). In Wiedower v. ACF Industries, 657 S.W.2d 71 (Mo. App. 1983), medical bills were awarded to the employee when the employer had notice of the injury but chose to treat the injury as non-compensable and did not offer medical services.

The employer will be liable for medical expenses incurred by the employee when the employer has unsuccessfully denied compensability of the claim. Denial of compensability is tantamount to a denial of liability for medical treatment. An Award can be entered for medical expenses of a employee through the selection of his own medical treatment. Beatty v. Chandeysson Elec. Co., 190 S.W.2d 648 (Mo. App. 1945). 1 Mo. Workers' Compensation Law Section 7.2 (Mo. Bar 3rd ed. 2004)

The employer-insurer initially offered treatment by Dr. Krewet but after he opined that the employee's condition was not work related, the employer-insurer denied additional treatment and denied the compensability of the claim. Based upon the case law and a review of the evidence, I find that the employer-insurer waived its right to select the treating physician by denying the compensability of the case and by failing or neglecting to provide necessary medical aid. The alleged defense of authorization is not valid. Based on my ruling on occupational disease in Issue 1 and medical causation in Issue 2, I find that the medical bills were medically causally related to the occupational disease and injury that the employee sustained to her neck and right shoulder on or about July 31, 2006.

Based upon a review of the bills, I find the employer is responsible for and is directed to pay the employee the sum of \$15,950.00 for the previously incurred medical bills in Claimant's Exhibits B and E.

Issue 4. Temporary Total Disability

The employee is requesting 4 weeks of temporary total disability benefits beginning on December 26, 2006, the day Dr. Ruble performed surgery. Dr. Ruble kept the employee off work until February 6, 2007. I find that the employee is entitled to 4 weeks of temporary total disability benefits starting on December 26, 2006 and ending on January 23, 2007. The employer-insurer is therefore ordered to pay to the employee \$1,237.20 which represents 4 weeks of temporary total disability at the rate of \$309.30.

Issue 5. Nature and Extent of Permanent Partial Disability

Dr. Doll stated that the employee had no permanent partial disability assignable to a work related condition. It was Dr. Berkin's opinion that the employee sustained a 35% permanent partial disability of the right upper extremity at the level of the shoulder for the impingement syndrome and the fraying and tearing of the glenoid labrum; and a 7 % permanent partial disability of the body as a whole at the level of the cervical spine for the cervical myalgia.

Based on a review of the medical evidence including the medical records and Dr. Berkin's examination and permanent partial disability rating; and the credible testimony of the employee regarding her limitations, I find that as a direct result of the work related impingement syndrome and the fraying and tearing of the glenoid labrum that resulted in the surgery by Dr. Ruble that the employee sustained a 25% permanent partial disability of the right shoulder at the 232 week level (58 weeks). I find that as a direct result of the work related cervical myalgia the employee sustained a 2.5% permanent partial disability of the body as a whole referable to the cervical spine at the 400 week level (10 weeks). The employee is therefore entitled to a total of 68 weeks of compensation for permanent partial disability. The employer-insurer is ordered to pay to the employee 68 weeks of compensation at the rate of \$309.30 per week for a total award of permanent partial disability of \$21,032.40.

ATTORNEY'S FEE

James Krispin, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST

Interest on all sums awarded hereunder shall be paid as provided by law.

Date: _____

Made by:

Lawrence Kasten
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Mr. Jeff Buker
Division Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 07-046372

Employee: Laura Selmon
Employer: Siegal Roberts Automotive
Insurer: Hartford Insurance c/o Specialty Risk Services
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: January 31, 2007
Place and County of Accident: St. Francois 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, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated April 7, 2008.

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

The award and decision of Administrative Law Judge Lawrence Kasten, issued April 7, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19th day of August 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION
TEMPORARY OR PARTIAL AWARD

Employee: Laura Selmon

Injury No. 07-046372

Dependents: N/A

Employer: Siegal Roberts Automotive

Additional Party: Second Injury Fund (left open)

Insurer: Hartford Insurance c/o Specialty Risk Services

Appearances: James Krispin for the employee
Mark Kornblum for the employer-insurer

Hearing Date: Commenced: December 20, 2007
Completed: January 9, 2008

Checked by: LK:kh

SUMMARY OF FINDINGS

- Are any benefits awarded herein? Yes.
- Was the injury or occupational disease compensable under Chapter 287? Yes.
- Was there an accident or incident of occupational disease under the Law? Yes.
- Date of accident or onset of occupational disease? Yes.
- State location where accident occurred or occupational disease contracted: St. Francois County, Missouri.

- Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
- Did employer receive proper notice? Yes.
- Did accident or occupational disease arise out of and in the course of the employment? Yes.
- Was claim for compensation filed within time required by Law? Yes.
- Was employer insured by above insurer? Yes.
- Describe work employee was doing and how accident happened or occupational disease contracted:
Repetitive motion with upper extremities.
- Did accident or occupational disease cause death? No.
- Parts of body injured by accident or occupational disease: Bilateral hands and left shoulder.
- Compensation paid-to date for temporary total disability: None.
- Value necessary medical aid paid to date by employer-insurer? None.
- Value necessary medical aid not furnished by employer-insurer? N/A.
- Employee's average weekly wage: \$426.02.
- Weekly compensation rate: \$284.01

- Method wages computation: By agreement.
- Amount of compensation payable:

Additional Medical Treatment Awarded.

This award is only temporary and partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

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

FINDINGS OF FACT AND RULINGS OF LAW

On December 20, 2007, the employee, Laura Selmon, appeared in person and by her attorney, James Krispin, for a temporary or partial award. The employer-insurer was represented at the hearing by their attorney, Mark Kornblum. Also present for the employer-insurer was Angie Tessmer, who is the human resources representative. There is a claim against the Second Injury Fund but the parties agreed for that claim to remain open. This case was heard with Injury Number 06-097891 and separate awards were issued in each case. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS

- The employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act and its liability was fully insured by Hartford Insurance Company c/o Specialty Risk Services.
- On or about January 31, 2007, Laura Selmon was an employee of Siegal Roberts Automotive and was working under the Workers' Compensation Act of Missouri.
- The employer had notice of the employee's alleged occupational disease.
- The employee's claim was filed within the time allowed by law.
- The employee's average weekly wage was \$426.02. The rate of compensation for temporary total disability and permanent partial disability is at the rate of \$284.01.
- The employer-insurer has not paid any medical.
- The employer-insurer has not paid any temporary disability.

ISSUES:

- Occupational disease
- Medical causation
- Claim for additional or future medical aid

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- Medical records of Dr. Krewet
- Medical records and medical bill of Dr. Noguera
- Medical records of JMH Rehab Center
- Medical records of Dr. Ruble
- Medical bills of Dr. Ruble
- Impala tape
- Impala emblem
- Deposition of Dr. Berkin including exhibits (The record was left open for the submission of this exhibit which was received and admitted into evidence on January 9, 2008. The record was then closed).

Employer-Insurer's Exhibits

- Deposition of Dr. Doll including exhibits.

WITNESSES: Laura Selmon, the employee; and Dalton Demman, for the employer-insurer

BRIEFS: The employee filed her brief on January 22, 2008. On March 10, 2008, a letter was received from the employer-insurer's attorney indicating that they would not be filing a brief.

FINDINGS OF FACT:

The employee was born in December of 1967. Prior to working at Siegel Roberts Automotive, she did not have any physical problems or complaints with her shoulders, arms or wrists and had no treatment for her shoulders, arms or wrists. The employee used to bowl but stopped in 2002 prior to the problems in her arms. Outside of the workplace she does not have any hobbies or activities. The employee had a prior motor vehicle accident that caused a neck injury. She received chiropractic treatment for approximately three weeks. She and her daughter received a settlement for \$14,000.00. The employee did not have any physical difficulties with her neck after that.

She started working at Siegel Roberts on September 30, 2002 as a tape assembler. The employee's shift was 5 a.m. to 1:30 p.m. During that 8.5 hour shift, there was a 30 minute lunch and two 10 minute breaks. The employee testified that she worked a lot of overtime and would work 10 or 11 hours a day. The three months prior to July 31, 2006 the employee averaged 41.6 hours per week. The employee testified that prior to that she worked more overtime.

The employee assembled emblems for Impala automobiles. There were two parts used in the process. The first was a precut two sided adhesive tape in the shape of an Impala that was attached to a plastic chrome Impala emblem. The two sided adhesive tape was on a coil/roll that was about the same size as a 14 inch auto tire and weighed about 30 pounds. There were approximately 2500 tapes on each roll. Once or twice a shift the employee had to load a new roll onto a spindle that was located to her left side. The roll would be strung across the employee at head level and was loaded above shoulder level.

The employee would get a supply of emblems off a rack above her head every hour and a half using both extremities which would take a couple of minutes. The rest of the time her work was at head or face level or

below.

To assemble each Impala emblem, the employee pulled one of the tapes off the roll about head level. She would pull the adhesive off in two pre-cut areas and then place the tape into a "fixture" which had to be adjusted to fit properly. She would then retrieve an emblem, inspect it, and load the emblem into the "fixture". The tape and the emblem had to be aligned by use of her hands including a lot of pushing. She had to swipe with her hands to remove any residue from the part. She then would start a press machine which was located at waist level. She would press and hold buttons until the press completed its cycle. She removed the emblem from the fixture, put down foam, and peeled the tape off the emblem, and put it into a tote (box). She would sometimes carry a tote (box) of emblems. The employee's quota was 180 Impala emblems per hour which is 3 emblems per minute. If she worked 10 hours a day, it would be 1800 completed emblems per day. She usually met or exceeded her quota.

Claimant's Exhibit F is the tape used in the process. Claimant's Exhibit F is the completed Impala emblem. Since January of 2007, they have been assembling different sizes and shapes of emblems.

Dalton Demman, the employer's Acrylic Business Unit Manager testified. He oversees the tape assembly operation. The emblems that are currently being made are similar to the prior ones but the tape is now clear Mylar instead of the blue liner. The new tape makes the job less difficult. The tape assemblers' work above the head is very minimal. The assemblers pull tape with every emblem. Sometimes the inside circle is not there which means the assembler does not have to pull the inside circle out. The tape process does not always work, the freshly cut tape does not always work well, and the emblem does not always fit. The quota for the tape assemblers is 180 emblems an hour. The employee is currently working as a tape assembler and her quantity of her work is good and she meets quota.

The employee testified that in approximately 2004, she started having shoulder problems including a lot of aching when she was picking the totes off the rack. She had pain in her right shoulder when she buckled down. She had more problems going above her shoulder and had numbness in her hands. She did not have any activities outside of work and had no injuries to her shoulder. In 2004, the employee notified her supervisor about her problems but did not ask for medical treatment. Her shoulder problems progressed where she had problems doing her job. In 2006 she told her supervisor, Sandra Cramp about her problems and requested that she be sent to a doctor. The employer sent her to Dr. Krewet for the problems in her shoulder, elbow and wrist which were mainly at that time on the right side.

The employee saw Dr. Krewet on July 7, 2006. The employee noted problems for several years with right shoulder, neck, elbow and hand pain which had gradually been getting worse. The employee had numbness in the thumb and index finger. The employee had a sore elbow from time to time and neck pain more on the right. In the neck examination, the employee had some tenderness laterally and posteriorly on the right and in the area of the trapezius. The right shoulder revealed some tenderness in the area of the AC joint with some crepitus with rotational movements. The employee had difficulty raising her arm to the horizontal. External rotation produced a fair amount of pain throughout the entire range of motion. The employee had tenderness in the elbow over the medial epicondyle and laterally. The Phalen's and Tinel's signs were negative. Dr. Krewet diagnosed probable right shoulder impingement as the source of most pain but doubted carpal tunnel disease. X-rays of the right shoulder revealed some arthritic changes and the AC joint was narrow. The radiologist report of the right shoulder showed minimal osteoarthritic changes with spur formation at the acromioclavicular joint. An employer certificate of fitness showed a diagnosis of neck and right upper extremity pain most likely due to impingement of the right shoulder.

The employee returned to Dr. Krewet on July 14. The examination of the neck showed lateral tenderness. The examination of the shoulder revealed tenderness in the area of the AC joint and over the medial epicondyle. The diagnosis was neck/right upper extremity pain and arthritis in the right AC joint. Dr. Krewet felt that the employee's main symptoms were due to arthritis in the AC joint and that she should see her private physician for this. Dr. Krewet recommended continued Feldene and an injection. If that did not help, he recommended an MRI of the shoulder due to a probable impingement component. Dr. Krewet stated the employee could work full duty and released her from his care. On the employer certificate of fitness, Dr. Krewet's diagnosis was neck/right upper extremity pain and

arthritis in the right AC joint.

The employee testified that Dr. Krewet did not get a lot of information regarding her job. Dr. Krewet told her that her symptoms were from arthritis, were not work related, and to see her own doctor. She told Sandra Cramp what Dr. Krewet said, and Ms. Cramp told her to seek treatment on her own. She went to Dr. Noguera who told her that the problems were work related and referred her to Dr. Ruble, an orthopedic surgeon.

On July 25, 2006, the employee saw Dr. Noguera. Dr. Noguera stated that the employee's right shoulder definitely had bursitis and possible impingement. Dr. Noguera stated that the right shoulder pain was definitely work related from overuse. The employee had complained to her supervisor for over two years of right shoulder pain. Dr. Noguera stated that he would refer the employee back to a workers' compensation physician for possible referral to an orthopedic surgeon for cortisone injections.

In an August 24, 2006 letter to Dr. Noguera, Dr. Ruble, an orthopedic surgeon, noted that the employee had seen him for right shoulder pain which had been going on for about two months. The employee cannot really relate it to anything she has done and cannot recall an injury. On examination, the employee had pain with extremes of forward elevation and abduction of the right shoulder and a positive impingement test. It was negative on the left side. The employee had some tenderness about the right trapezius muscle. Dr. Ruble assessed right shoulder pain secondary to impingement syndrome and right shoulder trapezius muscle strain. Dr. Ruble prescribed Feldene, an anti-inflammatory; and physical therapy.

The employee attended therapy from September 12 through October 2, 2006. In the initial evaluation, it stated that the employee had intermittent problems for the last two years which has been more constant since July 14, 2006. The employee had increased pain with lifting. In a September 25 note, the employee stated she was okay until she did repetitive motions especially overhead at work. The pain was worse during the day while using her arms. On September 27, the employee noted that the pain returned when utilizing her arms overhead. On October 2, the employee continued to do repetitive work and was getting sore by the end of the work day. The therapist noted that the symptoms may not clear with the present intensity of work.

Dr. Ruble ordered an MRI which was performed on October 7, 2006. The radiologist stated that there was no rotator cuff tear and possible mild tendinosis of the superior cuff. The acromion was normal and there was no definite labral tear. There was mild arthrosis of the acromioclavicular joint with no significant encroachment on the superior cuff.

On October 12, Dr. Ruble noted that the MRI revealed no obvious rotator cuff tear and no significant effusion. She continued to have pain over her right trapezius muscle and increased pain with overhead activities. She described clicking and popping in the shoulder. Her right hurts worse than the left. She denied any new injury, numbness or tingling in the extremity. Dr. Ruble noted that the employee's active range of motion was good with pain past 90 degrees of forward elevation and abduction. She had decreased strength bilaterally due to pain. The assessment was right shoulder impingement syndrome. A steroid injection into the right shoulder joint was performed.

On November 16, Dr. Ruble stated the employee had impingement syndrome. She denied any new injury. Her pain interfered with her life and work and kept her awake. In the physical exam, there was pain with overhead motion and decreased strength in the right shoulder. There was no tenderness about either AC joint. Dr. Ruble recommended arthroscopic surgery.

On December 26, 2006, Dr. Ruble performed surgery for a pre-operative diagnosis of right shoulder impingement syndrome. The employee had some numbness and tingling in her left upper extremity and some numbness in the right upper extremity. She had mild tenderness over the AC joint but there was no plan to perform a distal clavicle excision. In the operative report, Dr. Ruble noted that there was extensive fraying and partial tearing of the labrum superiorly, anteriorly, and posteriorly. Debridement of the labrum was performed. The glenohumeral joint had mild chondromalacia changes present. A gentle chondroplasty was performed. The rotator cuff had no sign of any tear. There was mild partial thickness under surface tearing present and a debridement was performed. With regard to the subacromial space, there was an extensive debridement of the bursal. There was a large anterior acromial spur and

an acromioplasty was performed that was taken over to the AC joint. The procedures performed were right shoulder arthroscopy, arthroscopic subacromial decompression, debridement of the labral fraying/partial tearing. The post-operative diagnosis was right shoulder impingement with partial tearing/fraying of the labrum.

On January 8, 2007, Dr. Ruble removed the sutures. He continued the employee off work. On February 6, the employee had a slightly decreased range of motion and decreased strength in the right shoulder. Dr. Ruble continued Feldene, Tylenol and physical therapy; and performed a steroid injection in the right shoulder. Dr. Ruble stated for the employee to continue with a 40 hour work week. The employee had increased pain with pulling, overhead activities and internal rotation; and had catching and popping in her shoulder.

On March 20, 2007 the employee described catching with pulling items off shelves at work and a locking sensation. She had weakness; as well as numbness and tingling in her finger tips on the right side. The employee had full active range of motion with pain at extreme end points of motion and pain with resistance. Dr. Ruble noted that the employee exhibited positive carpal tunnel tests especially with compression on the right side. Dr. Ruble assessed status post right shoulder arthroscopy with subacromial decompression and possible carpal tunnel syndrome. She was given a new prescription of Feldene and was to take Tylenol for pain. Dr. Ruble returned the employee to full duty with an extended 40 hour work week and released her from care to return on an as needed basis.

The employee testified that she was off work for four weeks after the surgery. She continued to have difficulty including left shoulder problems which were similar to the right.

On November 7, 2007, the employer-insurer sent the employee to Dr. Doll, a physical medicine and rehabilitation specialist. The employee reported a gradual onset of symptoms occurring approximately two years after beginning employment at Siegal Roberts Automotive in 2002. She worked as a taper of emblems. The employee described working with an Impala emblem where she would first put tape on a rail and into a fixture and then place the part into the fixture. She would perform a hand swipe maneuver for approximately two years when she then used a press which required greater force when pushing the press down over the emblem to affix the tape. She began to experience a pinching sensation in the right shoulder when she reached up to her shoulder or above the shoulder level to obtain a box of parts or tape that would need to be carried to her work station. Her shoulder symptoms gradually worsened and she began to experience aching in her wrists and hands as well as her lateral elbows and upper arms. She also developed soreness in the base of her neck. Her right sided symptoms were greater than her left, which she attributed to being right handed. She worked 40 hours per week but would often have overtime where she would work up to 10 to 11 hours a day, 3 to 4 days per week.

After surgery, her right shoulder felt better but she continued to have significant pain and a catching sensation particularly when reaching above the shoulder level. Her job was changed somewhat in comparison to her pre-surgical position. She continued to perform taping activities. She was pressing the emblems but had less picking out of the tape from the emblem which aggravated the condition the most. She denied any prior occurrence of similar symptoms.

Dr. Doll reviewed a job analysis which showed the essential tasks including reaching above the shoulder level occasionally with lifting and carrying up to twenty pounds maximum. He reviewed the employee's April 14, 2007 deposition. He also reviewed a May 15, 2007 job video which revealed an employee lifting a roll of stickers off the spindle and placing a new roll onto the spindle. A cover was placed over the end and tightened with a few right hand turns. The ribbon of stickers was drawn across and through roller guides across the work station. The cardboard box was slid off of one stand over to a counter. Stickers were peeled off with the thumb and index finger and placed onto a tray. The tray was slid forward and two buttons were pushed to advance the tray into the press. The spool was later changed and occasional lifting of totes was observed.

During the examination, Dr. Doll noted the Tinel's test yielded a report of tingling into the hand diffusely when tapping occurred over the median and ulnar nerve and with random tapping not over any particular neurologic structure. The Phalen's test yielded a report of tingling in the second and fourth distal fingers of the left hand and yielded no report of symptoms in the right upper extremity.

Dr. Doll's impression was diffuse bilateral neck, upper shoulder, and arm pain; right shoulder degenerative

joint disease; and status post shoulder arthroscopy for impingement syndrome.

Dr. Doll stated that on July 7, 2006, the employee reported a progression of pain in her right shoulder, neck, elbow, and hand that had been present for several years. She had gradual worsening and reported some numbness in the thumb and index finger of the right hand. The employee attributed those symptoms to her work activities and indicated a repetitive cause to her condition. The employee was diagnosed with impingement syndrome of the right shoulder and underwent surgical intervention with continued pain symptoms.

Dr. Doll stated that the employee's work activities did not appear to have the intensity, frequency, or above shoulder frequency to be established as a prevailing factor in the medical causation of the diffuse pain condition and symptoms. Her examination revealed diffuse findings in her bilateral upper extremities which appear to be related to a combination of her underlying degenerative conditions and her significant poor posture. She was previously diagnosed with an underlying degenerative condition and was appropriately referred to her private physician outside the scope of any work injury.

It was Dr. Doll's opinion that the employee's work activities were not the prevailing factor in the medical causation of her current condition and no further diagnostic testing, therapeutic intervention, work restrictions or permanent partial disability were assignable in relation to her reported work injury. She was at maximum medical improvement with a zero percent rating. Any further evaluation and treatment with regard to the diffuse symptoms would best be directed by her private physician outside the scope of this injury.

Dr. Doll's deposition was taken on December 17, 2007. When asked why the employee's work activities were not the prevailing factor in the cause of her complaints, Dr. Doll stated that the job activities she described to him, and that were provided in the records and video tape, did not have the intensity or frequency or above shoulder frequency to be established as the prevailing factor in the medical causation of her condition. When asked if he had an opinion as to what may have caused those conditions, Dr. Doll stated that she had some underlying degenerative conditions and some mechanical poor positioning and he had not identified any other conditions to explain the symptoms.

It was Dr. Doll's opinion that it did not appear that the employee needed any more diagnostic testing or formal treatment as it lacked a causal connection. Dr. Doll stated without establishing a causal relationship, there was no permanent partial disability assignable.

Dr. Doll thought that there were other things that the employee did that were not contained in the video such as the hand swipe maneuver she used to perform during the early portions of her employment where she would press down over the emblem to affix the tape. There may be others but he would have to review the tape and the job analysis form in greater detail. The parties and the doctor then reviewed the video at the deposition. Dr. Doll stated that the video was about eight minutes. When asked if there was anything else that was not depicted on the video, Dr. Doll stated that there were some subtle variables as to a description of her movements, her stepping onto a pad or off of a pad, or she held the spool with the left hand while she turned with the right hand that were specifically described in the job analysis.

Dr. Doll stated that if there was information available other than what is in the video or in the job analysis or what she told him in person, he supposed that could result in his making a different conclusion. He felt that he had a good understanding of what she did.

Dr. Doll did not know how many emblems per day the employee processed. When asked what sort of frequency would be required for the work activities to become the prevailing factor in causing the problems, Dr. Doll stated it would depend on the specific diagnosis. If it is a tendonitis across the wrist, how many times that the particular motion is performed would be important. With regard to impingement of the shoulder, it would be important as to what weights were lifted, the position of the arm, and how frequent the arm comes across the shoulder level. The employee reached above her shoulder to grab that tote box but otherwise, as seen on the video, her arm was below the shoulder level the majority of the time.

If the employee reached above her shoulder to pull an emblem off the roll, Dr. Doll stated it would depend on

how far above the shoulder it was and whether the upper arm was actually coming above the shoulder. If the elbow was not coming above the shoulder, Dr. Doll stated that position did not significantly impinge the shoulder and so frequency was not important in an impingement syndrome. In the operative report extensive fraying and partial tearing of the labrum was described by Dr. Ruble. Dr. Doll stated if the arm is below the shoulder level it was his opinion that there would not be a causal connection to the fraying and partial tearing of the labrum. Frequency in that case does not matter

With regard to her wrists, Dr. Doll stated that the video did not demonstrate how often she performed her tasks. Dr. Doll stated that the frequency was not contained in the job analysis. Dr. Doll reviewed the employee's deposition and she stated that her quota was 180 emblems per hour. Dr. Berkin's report stated that she processed 2,000 emblems a day. It was his opinion that there was not sufficient frequency for her job duties to be the prevailing factor in causing her injuries. Dr. Doll doubted that he confirmed with the employee that the job analysis accurately set forth her job activities based on how he typically does things.

Dr. Krewet felt that the employee's main symptoms were due to arthritis in the AC joint and did not believe it was related to work. Dr. Doll stated that fraying/tearing of the labrum is a different anatomic structure than the AC joint. Dr. Doll did not see where Dr. Ruble found AC joint degenerative findings.

Dr. Doll stated that if the employee was his patient he might recommend electrodiagnostic studies including an EMG and nerve conduction studies to evaluate for carpal tunnel syndrome. Dr. Doll stated that Dr. Berkin's recommendation for an EMG and a nerve conduction study of both extremities was a medically reasonable proposition but disagreed that it was causally connected to a work injury.

Dr. Doll stated that the underlying degenerative condition was one of the prevailing factors in causing the employee's problems. However, he was not aware of any evidence of symptoms or treatment prior to the employee working at Siegal Roberts.

The employee testified that she reviewed the video tape that was sent to Dr. Doll. She saw it before the hearing and also on the morning of the hearing. The person in the video tape was Sandra Cramp, her supervisor. Ms. Cramp does not usually perform the job that the employee did. The video tape did not fairly and accurately depict the job that she performed. The tape did not show her recovering the tape and parts from the rack. Ms. Cramp in the video did three to four tapings but did not add the Impala emblem to the tape. The employee testified that Sandra did not take the emblems and load them into the fixture. Her pace was very slow. Dr. Doll did not ask the employee if the tape was accurate. The video does not show her whole job. Mr. Demman testified that he did not see the tape.

The employee was seen by Dr. Berkin on June 20, 2007. His deposition was taken on December 27, 2007. In the history the employee reported developing pain to her right arm and shoulder working as a tape assembler. She related her symptoms to her job which involved assembling emblems for automobiles. As a large roll of tape moved across her work station, she removed pieces of tape off the roll and placed them into a fixture so they could be attached to the back of each emblem. She had to remove tape from the liners of the emblems. The emblems were put into a press which required the employee to use a lot of force to press down on the fixture to attach the liner. As each fixture came out of the press, the employee placed the emblem into a tote. She processed 2,000 emblems a day. After the surgery by Dr. Ruble, the employee returned to work and was placed on a job taping different parts.

The employee's complaints were pain and tenderness to her right shoulder that were aggravated by straining or lifting. She had pain when exerting force to her press machine and when lifting above her head to pull parts. She had limited movement in her right arm. The employee had identical symptoms in her left shoulder. She complained of numbness and tingling to her hands and dropped parts due to difficulty gripping.

The employee's right wrist had tenderness localized over the volar surface. The Tinel's and Phalen's tests were positive. The employee had loss of range of motion in the right shoulder. The employee had 20 degrees loss of abduction, flexion, and extension. She had 10 degrees loss of internal rotation.

The Tinel's and Phalen's tests on the left extremity were positive. The employee had loss of range of motion on the left shoulder. She had 10 degrees loss of extension and abduction. She had tenderness over the left shoulder localized over the anterior and superior surfaces.

Dr. Berkin diagnosed the employee with cervical myalgia; impingement syndrome of the right shoulder with tearing and fraying of the glenoid labrum; overuse tendonitis of the left shoulder; bilateral carpal tunnel syndrome; and status post arthroscopy of the right shoulder with debridement of the glenoid labrum and subacromial decompression. Dr. Berkin stated that the employee sustained an impingement syndrome due to working as an assembler taping emblems used on automobiles. It was Dr. Berkin's opinion that the conditions he diagnosed were a direct result of the work activities she performed which involved exertional and repetitive activities of her arms.

It was Dr. Berkin's opinion that the repetitive and exertional activities the employee performed during the course of her employment as an assembler for S & R Automotive was the prevailing factor in causing the impingement syndrome of her right shoulder with tearing and fraying of the glenoid labrum, overuse tendonitis of her left shoulder, bilateral carpal tunnel syndrome and mild cervical myalgia.

Dr. Berkin did not have any information about her specific job duties that were provided by Siegel Roberts, did not have an opportunity to review a video of her job duties, and did not observe her working at Siegel Roberts. The only information he had about her specific job duties was the information that she provided to him. Dr. Berkin thought she gave a thorough description of her job duties.

With regard to her overhead use of her arms, Dr. Berkin thought she was working above her head when she placed some of the completed products into overhead totes. She was exerting force as she applied the liners to the emblems into the press machine. When she applied the label, she was not doing it overhead but was using a lot of force. He did not have any specific information about how much of her day was spent using her arms overhead.

With regard to her left shoulder, it was his opinion that the specific job duty that caused her left shoulder injury was the lifting above her head in order to pull parts and getting those parts to insert into machines. The employee was using both arms to do these activities and he thought once her right arm was injured she had to rely more on her left arm in order to accomplish her work tasks.

It was Dr. Berkin's opinion that the employee had not reached maximum medical improvement and required further medical treatment for the overuse tendonitis of the left shoulder and bilateral carpal tunnel syndrome. He recommended a referral to an orthopedic surgeon for evaluation and treatment of her hands and left shoulder. He recommended an EMG and nerve conduction study of both upper extremities for evaluation of carpal tunnel syndrome; wrist splints to wear at night; and physical therapy for her left shoulder. The employee should avoid lifting with her arms extended from her body and should avoid excessive lifting or working above the shoulder level.

It was Dr. Berkin's opinion that the employee had reached maximum medical improvement with regard to her right shoulder and neck. It was Dr. Berkin's opinion that as a result of the injury while employed at S & R Automotive the employee sustained a 35% permanent partial disability of the right upper extremity at the level of the shoulder for the impingement syndrome and the fraying and tearing of the glenoid labrum; and a 7 % permanent partial disability of the body as a whole at the level of the cervical spine for the cervical myalgia.

At the hearing, it was the employee's testimony that she has a loss of range of motion of the right shoulder and the shoulder sticks at a certain level. She had pain which is worse with certain activities. The left shoulder is not as bad as the right. She can raise her arm to a certain extent and she can get a cup on a shelf if it is not above her head. She has numbness in her right hand including her thumb and tingling. The left hand has tingling mostly in her thumb and index finger. She has loss of strength and dexterity and has problems dropping things.

RULINGS OF LAW:

Issue 1. Occupational Disease Issue and 2. Medical Causation

The employer-insurer is disputing that on or about January 31, 2007 the employee sustained an occupational disease arising out of and in the course of her employment and the employee's injuries were medically causally related to the alleged occupational disease.

In this case, the employee is claiming an injury to her left shoulder and bilateral wrists. There is a disagreement among the physicians as to the employee's exact diagnosis. In July of 2006, Dr. Krewet doubted carpal tunnel syndrome. In December of 2006, Dr. Ruble noted that the employee had numbness and tingling in the left upper extremity and numbness in the right upper extremity. In March of 2007, Dr. Ruble stated that the employee had positive carpal tunnel tests especially on the right side and diagnosed possible carpal tunnel syndrome. Dr. Doll stated that the Tinel's test had diffuse tingling in the hand when tapping over the median and ulnar nerve but also with random tapping not over any particular neurologic structure. The Phalen's test had tingling in two fingers of the left hand but none in the right hand. Dr. Doll assessed diffuse upper shoulder and arm pain. Dr. Berkin stated that the Tinel's and Phalen's tests were positive bilaterally and diagnosed the employee with bilateral carpal tunnel syndrome and overuse tendonitis of the left shoulder.

Based on a review of all the medical evidence, I find that the opinions of Dr. Ruble and Dr. Berkin are persuasive and more credible than the opinions of Dr. Krewet and Dr. Doll on the diagnosis for the employee's bilateral hands and left shoulder. I find that the employee has bilateral carpal tunnel syndrome and overuse tendonitis of the left shoulder.

Under Section 287.020.3 (1) RSMo, "injury" is defined to be an injury which has arisen out of and in the course of employment. Under Section 287.067.2 and 287.067.3 RSMo, an injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. An injury due to repetitive motion is recognized as an occupational disease. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

Black's Law Dictionary 621 (Abridged Fifth Edition 1983) defines primary as "First; principal; chief, leading." Webster's College Dictionary 1071 (1991) defines primary as "First in rank or importance; chief;"

In order to be a compensable injury under a repetitive motion occupational disease, the employee has the burden to prove that the occupational exposure was the prevailing factor in causing the resulting medical condition and disability.

The employee's credible testimony was that she started working in 2002 at Siegal Roberts. The job she performed was highly repetitive and intensive involving her hands, arms and shoulders. She worked full time and had no other hand intensive jobs or activities. I find that the employee had a highly repetitive and intensive occupation involving her upper extremities and did not have any repetitive and intensive activities involving her upper extremities outside of work. The employee's symptoms began several years after starting to work for the employer.

Dr. Doll testified that the diffuse findings in the employee's upper extremities appeared to be related to a combination of her underlying degenerative conditions and her significant poor posture. The underlying degenerative condition was one of the prevailing factors in causing the problems. It was Dr. Doll's opinion that the employee's work activity was not the prevailing factor in the medical causation of her current condition. Dr. Doll stated that the job activities she described to him, and that were provided in the records and video tape, did not appear to have the intensity or frequency or above shoulder frequency to be the prevailing factor in the medical causation of her condition. It was Dr. Doll's opinion that the employee's quota of 180 emblems per hour was not of a sufficient frequency for her job duties to be the prevailing factor in causing her injuries.

Dr. Doll's causation opinion is substantially affected by the employee's credible testimony that the videotape did not fairly and accurately depict the employee's work activities in that it did not include all aspects of her job, and that the pace demonstrated was significantly less than how the employee performed her tasks. Dr. Doll did not ask her if the tape was accurate.

It was Dr. Berkin's opinion that the employee's repetitive and exertional work activities involving her arms during the course of her employment was the prevailing factor in causing the bilateral carpal tunnel syndrome and left shoulder overuse tendonitis, and that those conditions were a direct result of the employee's work activities.

Based on a thorough review of the evidence, I find that the opinion of Dr. Berkin is persuasive and is more credible than the opinion of Dr. Doll. I find that the employee's work activities and job duties was the prevailing factor in causing the resulting medical conditions and disability of bilateral carpal tunnel syndrome and left shoulder overuse tendonitis. I find that the employee sustained a compensable work-related occupational disease and injury that arose out of and in the course of her employment. I find that the employee's bilateral carpal tunnel syndrome and left shoulder overuse tendonitis and the need for medical treatment is medically causally related to the employee's occupational disease.

Issue 3. Claim for Additional Medical Aid

The employee is requesting medical aid for her bilateral carpal tunnel syndrome and for her left shoulder overuse tendonitis.

It was Dr. Berkin's opinion that the employee had not reached maximum medical improvement and required further medical treatment for the overuse tendonitis of the left shoulder and bilateral carpal tunnel syndrome. He recommended a referral to an orthopedic surgeon for evaluation and treatment of her hands and left shoulder. He recommended an EMG and nerve conduction study of both upper extremities for evaluation of carpal tunnel syndrome; wrist splints for her wrists to wear at night; and physical therapy for her left shoulder.

Dr. Doll stated that he might recommend electrodiagnostic studies including an EMG and nerve conduction studies to evaluate for carpal tunnel syndrome if the employee was his patient. Dr. Doll stated that Dr. Berkin's recommendation for an EMG and a nerve conduction study of both extremities for evaluation of carpal tunnel syndrome was medically reasonable.

I find that the employee is in need of additional medical treatment to cure and relieve her from the effects of her work related injuries to her bilateral hands and left shoulder. The employer-insurer is therefore directed to provide the employee with all of the medical care that is reasonable and necessary to cure and relieve the employee from the effects of her work related injury pursuant to Section 287.140 RSMo. This treatment includes but is not limited to the treatment recommended by Dr. Berkin including an evaluation and treatment for her bilateral carpal tunnel syndrome and left shoulder overuse tendonitis by an orthopedic surgeon. The employer-insurer is ordered to furnish additional medical aid under the direction and control of an orthopedic surgeon.

As previously indicated this is a temporary or partial award. The award is therefore subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

Date: _____

Made by:

Lawrence C. Kasten
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Mr. Jeff Buker
Division Director
Division of Workers' Compensation

