

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

Injury No.: 04-142259

Employee: Deborah J. Strait
Employer: GDX Automotive
Insurer: Self-Insured c/o Gallagher Bassett Services
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

Date of Accident: Alleged November 30, 2004

Place and County of Accident: Alleged Franklin 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 25, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Kevin Dinwiddie, issued April 25, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17th day of October 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed. I believe

the administrative law judge erred in concluding that employee failed to meet the burden of proof regarding the contraction of an occupational disease.

The employee must prove by substantial and competent evidence that he has contracted an occupational disease and not an ordinary disease of life. *Kelley v. Banta & Stude Const. Co., Inc.*, 1 S.W.3d 43, 48 (Mo.App. E.D. 1999); *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 299-300 (Mo.App. S.D. 1991). This involves showing that there was an exposure to the disease which was greater than or different from that which affects the public generally, and that there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. *Id.*; *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo.App. W.D. 1994).

A single expert medical opinion will support a finding of compensability even where the causes of the occupational disease are indeterminate. *Kelley*, 1 S.W.3d at 48; *Dawson*, 885 S.W.2d at 716. Work conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. *Id.*

The administrative law judge found that employee failed to prove that her knee condition was work related and found issues as to injury by occupational disease and medical causation in favor of the employer.

However, competent evidence shows that employee met her burden by establishing that she contracted an occupational disease, bilateral chondromalacia and patellofemoral syndrome, and not an ordinary disease of life. She was able to demonstrate both that her exposure was greater than that which affects the public generally and that her work was linked to the contraction of the disease.

Employee testified that her daily job duties included repetitive climbing, bending, kneeling, stooping and squatting. She testified that she climbed a twelve foot ladder 12-16 times a day and stepped up onto a ten inch high platform 10 times a shift. Employee claimed that she had to bend and stoop in order to clean machines and retrieve tools from under her work table. She also testified to squatting to check machine parts as well as occasionally kneeling on the concrete floor. Employee testified that she did not have any problems relating to her knees prior to 2001 when she began to experience pain and swelling in her knees. She testified that her condition was made worse by the repetitive stepping and climbing.

Through expert testimony, employee was able to establish that her work conditions were a major contributing factor to the disease. Dr. Bichalo and Dr. Volarich testified that employee's duties exposed her to the contraction of an occupational disease, specifically, bilateral chondromalacia. Dr. Bichalo, employer's examining physician, opined that employee's knee condition was most likely caused by repetitive work-related type activities. He opined employee sustained a 30% permanent partial disability at each lower extremity. Dr. Bichalo's opinion was supported by Dr. Volarich who opined that the repetitive nature of employee's work was the substantial contributing factor in causing employee's knee condition as well as subsequent treatment, including surgery. He opined employee sustained a 30% permanent partial disability of the right knee and a 35% permanent partial disability of the left knee.

I find the opinions of Dr. Bichalo and Dr. Volarich to be most persuasive, credible and worthy of belief. Employee satisfied her burden by establishing work place exposure as well as a link between her knee condition and her employment. There was sufficient evidence to establish that her employment was a substantial factor in the development of her knee condition.

Additionally, employee is entitled to recovery of her past medical expenses. Employer never authorized treatment for employee's knee condition as it was thought to be not work-related. Because treatment was never authorized by employer, it was reasonable for employee to seek treatment on her own. Dr. Volarich testified that the medical treatment employee received for her knee condition was reasonable and necessary to cure and relieve her from the effects of the occupational disease. Therefore, an award of past medical expenses is justified.

I find that there was exposure in the workplace sufficient to conclude that employee's work duties were capable of producing her resultant medical condition, bilateral chondromalacia. Accordingly, I would reverse the decision of the administrative law judge and award compensation for her knee condition.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

John J. Hickey, Member
AWARD

Employee:	Deborah J. Strait	Injury No.	04-142259
Dependents:	n/a		
Employer:	GDX Automotive		Before the DIVISION OF WORKERS' COMPENSATION
Additional Party:	State Treasurer, as custodian of Second Injury Fund		Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	self-insured c/o Gallagher Bassett Services		
Hearing Date:	11/20/06 and 2/2/07; finally submitted 3/2/07	Checked by:	KD/bb and In

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? no
2. Was the injury or occupational disease compensable under Chapter 287? no
3. Was there an accident or incident of occupational disease under the Law? no
4. Date of accident or onset of occupational disease: alleged 11/30/04
5. State location where accident occurred or occupational disease was contracted: Franklin County, Mo
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
yes
7. Did employer receive proper notice? n/a
8. Did accident or occupational disease arise out of and in the course of the employment?
no
9. Was claim for compensation filed within time required by Law? yes
10. Was employer insured by above insurer? self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
employee alleges to have suffered occupational disease by repetitive use in production work
12. Did accident or occupational disease cause death? no Date of death? n/a
13. Part(s) of body injured by accident or occupational disease: alleged left knee
14. Nature and extent of any permanent disability: n/a
15. Compensation paid to-date for temporary disability: none
16. Value necessary medical aid paid to date by employer/insurer? none
17. Value necessary medical aid not furnished by employer/insurer? n/a
18. Employee's average weekly wages: by agreement
19. Weekly compensation rate: \$387.00/ \$354.05

20. Method wages computation: by agreement of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable: n/a/

Unpaid medical expenses: n/a

Issues as to occupational disease and medical causation found in favor of the employer. The claim for compensation as against the employer and insurer is denied. All other issues are rendered moot.

22. Second Injury Fund liability: Open

TOTAL: N/A

23. Future requirements awarded: n/a

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Deborah J. Strait

Injury No: 04-142259

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: n/a

Employer: GDY Automotive

Additional Party State Treasurer, as custodian of Second Injury Fund

Insurer: self-insured c/o Gallagher Bassett Services

Checked by: KD/bb

The claimant, Ms. Deborah J. Strait, and the employer, GDX Automotive, self-insured c/o Gallagher Bassett Services, appeared at hearing by and through their counsel and agreed to have a joint hearing in this matter with companion injury numbers 05-026564 and 05-022140.

At issue in Injury Number 04-142259 is whether the claimant sustained a compensable injury to her left knee. The claimant requests that the claim as against the Second Injury Fund remain open. The parties have agreed that the various issues to address at hearing are as follows:

Injury by occupational disease;
Medical causation;
Notice;
Liability for past medical expense;
Temporary total disability; and
Permanent partial disability.

Further, the employer alleges that past payment of certain disability benefits should be credited toward any temporary total disability found to be owed in the matter.

Ms. Strait appeared at hearing and testified on her own behalf. Ms. Strait further elicited the testimony of Ms. Cheryl Pierce; the deposition testimony of David Thomas Volarich, D.O.; and read into the record certain portions of the deposition of James Daryl Eichelberger. The employer elicited the testimony of Mr. Kevin Carpenter; Ms. Sherry Counts; Ms. Jennifer Christy; Ms. Angela Pataky; Ms. Josephine Gonzales; Mr. Robert Dryden; and the deposition testimony of Dr. Michael Nogalski; Dr. David Chalk; and of Dr. Paulo Bichahlo.

It is further noted that the deposition of Deborah J. Strait, taken on 4/26/06, was submitted as a part of the records of Tesson Heights Orthopaedics, Claimant's Exhibit B.

EXHIBITS

Certain objections made at hearing to the various exhibits offered into evidence raise an issue as to the evidentiary weight to be attributed to those offers, but not their admissibility. The following exhibits are in evidence:

Claimant's Exhibits

- A. Deposition of David Thomas Volarich, D.O., taken on 10/13/06
- B. Certified medical records of Tesson Heights Orthopaedic & Arthroscopic Associates, P.C.
- C. Medical records of Patient's First Health Care and Tri-County Surgery Center
- C-1 Billing statements
- F1-F4. Earnings Statements

Employer and Insurer's Exhibits

- 2. Deposition of Dr. Michael Nogalski taken on 10/23/06
- 3. Deposition of David Chalk, M.D., taken on 11/1/06
- 4. Deposition of Paulo Bichahlo, M.D., taken on 11/13/06
- 5. Application for employment
- 6. Photo of stairs
- 7. Workplace photographs (6)
- 8. Income Protection Claim (three pages)
- 9. Medical record of Dr. Chalk (one page)
- 10. Orientation Materials
- 11. Timeline
- 12. Task Analysis Report

SUMMARY OF WITNESS TESTIMONY

Deborah J. Strait

Ms. Strait relates that she worked out of the home in certain factory jobs from time to time, and otherwise was a housewife and homemaker until November of 1999, when at the age of 41 she began working for GDX Automotive. Ms. Strait recalls working at a plant in Berger, Missouri, for three months making small parts before being transferred to the "rear door" plant in New Haven, Missouri. Ms. Strait notes that in January of 2000 she began working as a "Tech 4", operating machines that performed glass encapsulation for the rear window on Grand Am automobiles. Claimant relates that there are 9 jobs performed in two hour rotations to the six stations where all the jobs are done. Claimant agrees that it would take a day and a half to get through a complete rotation of the various jobs.

Claimant identified the 9 jobs as follows: 100 ton press; d-bar machine; b-pillar and header cut machine; assembly table; trimming; b-pillar mold; foam pad and butyl; and b-pillar pad and glass prep. Claimant explained that the d-bar machine bends and cuts parts, and that b-pillar and header is also a cutting process where rubber parts are loaded into the cutting machine. Claimant relates that on both cutting machines, she would insert the parts and then remove them after the cut. Claimant relates that on the b-pillar mold machine she would insert the header and b-pillar into the mold with her left and right hands, then place a rubber plug in the top of mold, close the mold, and the machine would form a part. Claimant relates that prior to that operation, she would need to clean the mold with a brass brush or other abrasive tool as necessary.

Claimant relates that the 100 ton press is a glass encapsulation machine that completes the part. She notes that prior to using the mold, she would clean the top and bottom parts by hand with wire brushes, cleaning out all the rubber. Claimant would then place the glass into the press with two other parts, and the machine would then make the part.

Ms. Strait acknowledges that trimming is a job that requires removing excess rubber off of parts by hand, by use of hand grinder, or by use of scissors. Claimant would also affix loose spots by adding primer and pressing down on the glass. Ms. Strait further defines "glass prep" as scraping excess adhesive off of glass with a blade, as well as applying primer by hand to the edges of the glass before putting the glass into the 100 ton press.

Ms. Strait notes that at either the trim or assembly table she would also affix by hand a foam pad to the elbow of the part, and would affix a part called the butyl to the head of the part. Claimant relates that assembly is the location where "deco pads" would be pressed on to the front of the window by hand, and that certain other clamps would be affixed to the window, which is then placed into a machine that completes the process. Lastly, claimant relates that a part called the "b-pillar pad" is placed by hand on the b-pillar/header. Ms. Strait notes that tools used from time to time include scissors, hook knives, scraper blades, emery boards, grinding tools, Allen wrenches, screwdrivers, and brass brushes. Ms. Strait relates that 22 parts are made in 2 hours, of a total of 88 or so in a shift.

Ms. Strait relates that on occasion where parts are out of specification or cut incorrectly, it would take more force than usual to push them into place. Claimant further relates that from time to time she would use tools to break down the mold to repair loose seals, or to replace spring plates.

Ms. Strait claims that she would climb a twelve foot ladder to the top of the 100 ton press at least 12 to 16 times a day, in order to feed rubber into the machine. She notes that the 100 ton press is on a ten inch high platform. On direct examination, she alleged that she would need to step up on the platform 10 times a shift; on cross examination, claimant alleged that she stepped onto the platform ten times in an hour.

On cross examination, Ms. Strait acknowledged that in the latter months of 2002 she became a "Tech 5" and began working on the extrusion line. Claimant acknowledged that photos marked as Employer and Insurer's 7 through 7F accurately represent the extrusion line. Ms. Strait notes that working the extrusion line means running extruders, stainers, pulley machines, salt tanks, and "ir" ovens. Ms. Strait notes that on occasion she is required to dismantle an extruder, which means she would take a die out, break it down, and clean it, all by hand. Claimant relates that on the extrusion line she uses impact wrenches, large wrenches, screwdrivers, tape measures, cheater bars, and pliers. She relates that she is required to bend and stoop to clean machines, mop floors, and drain water tanks. On cross examination, Ms. Strait claimed that on the extrusion line she would need to bend, stoop, or crawl as much as three to four hours a day. Claimant notes that four people worked on an extrusion line; the first person fed the machine, the middle two were pullers and packers, and the fourth person was an inspector.

Ms. Strait relates that prior to her employment with GDX she had no problems with respect to her hands, wrists, or knees. She relates that in 2001 she began to suffer pain and swelling in her knees, made worse when bending, squatting, and going up ladders. Ms. Strait acknowledges that her family physician, Dr. Calvin, referred

her to Dr. Chalk, who performed a left knee surgery on 2/3/05, and a right knee surgery on 4/4/05. Ms. Strait confirms that prior to her surgeries she did not claim the knee condition to be work related, and that she chose to pursue benefits provided to her by wage contribution, short term disability, and through her health insurance.

Ms. Strait recalls suffering from pain and swelling in her hands and wrists beginning in 2000 or 2001. Claimant recalls advising Bob Dryden from employer's Human Resources Department, and states that his response was to provide her with magnet bracelets to wear while working. Claimant relates that in November or December of 2004 she filled out an accident report as to her wrist complaints, and further acknowledges that she eventually sought out an evaluation by Dr. Peeples in November of 2004, who had treated her in the past for migraine complaints.

Ms. Strait relates that she had an ncv, and was referred to a specialist, Dr. Tucker, who performed a carpal tunnel release of the right hand on 8/2/05, and a release of the left hand on 8/30/05. Ms. Strait recalls that she attempted a return to work on 10/24/05; that she worked one day; and that she chose to quit her employment on account of the pain and swelling she experienced in her hands and knees.

Ms. Strait relates that thereafter she went to school to learn the business of real estate sales, and from early July to October of 2006 she worked at American Recreational, sewing in a factory setting 40 hours a week until the factory closed.

Ms. Strait also offered rebuttal testimony, acknowledging that Exhibits F1- through F4 are copies of her earnings statements that reflect the amount taken out on a weekly basis for her medical insurance. Ms. Strait acknowledges she chose the option that provides for the employer to pay 85% of the medical, and the employee the other 15%.

Cheryl Pierce

Ms. Pierce relates that she is currently employed at GDX Automotive as a "Molder", doing production work. The witness relates that over the past three or four years she had been working as a "Tech 4" in the rear door department, performing rubber encapsulation of glass for the rear door of certain automobiles, until the termination of the contract for such production. Ms. Pierce relates that climbing the ladder or metal staircase to the top of the 100 ton press was done, as a rule, 4 to 8 times in an eight hour shift. Ms. Pierce relates that in summer months, the rubber would kink and break, causing a need to climb the stairs about twice as often as during the other seasons.

Ms. Pierce confirms that the press was elevated on a wooden platform approximately 12 inches high, and supposes that in a normal two hour shift a worker would need to step on and off the platform about 10 times in a shift. Ms. Pierce relates that it was common to work 4 hour shifts on the press, which would double the number of steps on and off the platform.

Ms. Pierce relates that cleaning and trimming would require bending and squatting, for example to reach tools and tool supplies on a lower shelf. The witness supposes she would need to do such bending or squatting 6 times in a 2 hour shift. Ms. Pierce notes that during the weekly cleaning she would need to squat to grease fittings, and notes that she would bend or squat to pick up rubber or glass waste material. The witness recalls having to kneel to retrieve things that fall into a mold, and when cleaning.

The witness further relates that the rear door job required gripping, pushing, pulling, occasional machine repair, and the use of certain hand tools. When asked whether the Tech 4 job required the use of force with the hands, Ms. Peirce responded "extremely".

Ms. Pierce relates that she is familiar with Deborah Strait, and that she has personally observed Ms. Strait performing the various functions of the Tech 4 job. In particular, Ms. Pierce recalls that for about a year Ms. Strait was responsible for doing a reinspection of parts, which she did by squatting and walking along the skid to view the parts.

Kevin Carpenter

Mr. Carpenter testified that for the last nine years he has been the Human Resource Manager for GDX Automotive. Mr. Carpenter, using payroll records at his disposal, testified to total numbers of hours worked by Ms. Strait from 2000 to 2005. Mr. Carpenter also shared a summary of the claimant's personnel file that he had created with the assistance of Mr. Robert Dryden. Mr. Carpenter explained that short term disability was an insurance paid for by the employer; that long term disability was insurance paid for by the employee. Mr. Carpenter noted that the medical program was voluntary on the part of the employee, and that Ms. Strait chose the

85-15 program, which means that after the employee paid an office fee and deductible, the employer would pay 85% of the medical expense and the employee would pay 15%. Mr. Carpenter notes that the employer maintains an account for paying such bills, and that a third party administers the account and negotiates rates.

Sherry Counts

- This witness relates that she is employed by GDX Automotive, noting that she began her career with the company in January of 1987. Ms. Counts relates that she worked in the rear door department from 1999 until the phase out of the department in 2004. Ms. Counts notes that it would take at least two days to get through a rotation of the various jobs performed in the rear door department. As for the stairs to the top of the 100 ton press, Ms. Counts suggests that some rotations may not require any climbing at all, and supposes that the usual number of climbs would be from 0 to 3 in the course of a shift. Ms. Counts acknowledges there was a platform to step onto at the 100 ton press, but relates that she would only need to step up and down from that platform as many as two times a shift to retrieve needed materials. Ms. Counts further testified as to her experience as to the limited amount of stooping, bending, squatting, climbing, or crawling necessary to work the rear door job. Ms. Counts testified as to the rare occasion when a soft seal or spring plate would need a repair. Ms. Counts acknowledges that she is not familiar with Deborah Strait, as the two worked on different shifts.

Jennifer Christy

- Ms. Christy relates that she has a degree in Industrial Engineering, and has worked since 2001 in the field of review of industrial processes. The witness relates that she seeks ways to improve production, reduce losses, and track quality issues. Ms. Christy relates that much of her time was spent performing work station evaluations and task analysis to help minimize workplace injury. The witness identified Employer and Insurer's Exhibit No. 12 as a task analysis she performed at GDX Automotive in January of 2005. Ms. Christy relates that she performed her analysis of the "RD 130" or rear door department job by interviewing employees; taking notes and measurements; by watching the job duties performed; and by taking photographs and videotaping the various functions. The witness relates that she would then use a stopwatch to determine the cycle time for the various job tasks, and a gauge to determine amount of force applied. The witness relates that an ergonomic risk assessment for development of musculo-skeletal disorders is then applied to each of the job tasks performed.

Ms. Christy relates that she then applied her findings to a strain index and to other ergonomics risk tools used in the ergonomics field to reach the conclusion that all job tasks contained risk factors that fell within acceptable ergonomic limits for hands, arms, and wrists. Ms. Christy affirms that her analysis was applicable as to disorders relative to the upper extremities, and did not relate to risk factors and disorders relating to the lower extremities.

Ms. Christy acknowledged that her task analysis assumed a job rotation every two hours, and that her analysis did not include a review of risk related to repair and cleaning functions performed on the rear door job by a Tech 4. Ms. Christy acknowledges that she was aware that repair and cleaning were functions of the job, but chose, based on her interview and observance of the workers, to conclude that repair and cleaning was performed so infrequently as to be deemed not relevant to the task analysis.

Angela Pataky

- Ms. Pataky relates that she has worked at GDX for over ten years, and worked on the rear door job for five years altogether. Ms. Pataky relates that for approximately two years she worked the same rear door shift with Deborah Strait.

Ms. Pataky relates that on occasion a job rotation would last more than two hours, and would agree that most of the time a rotation lasted two hours. Ms. Pataky recalls that the step ladder on the 100 ton press would need to be climbed maybe two to four times in a 2 hour rotation; that the platform at the 100 ton press would also need to be stepped on and off maybe two to four times in a 2 hour rotation; and that no other jobs in the rear door department required any climbing.

The witness further recalls that a Tech 4 might need to squat maybe 4 times in a rotation at the cutting machine for b-pillar and header when reaching a shelf, and might need to kneel once during a rotation at the assembly table to string labels.

Josephine Gonzales

Ms. Gonzales relates that she has worked at GDX Automotive for five years, in the extrusion department over the last 4 and a half years. The witness relates that she is now a "Tech 5", and that she runs rubber through an extrusion machine, creating a final product for use on car doors. Ms. Gonzales notes that there are eight extrusion lines, both "hot air" and "salt" lines that require similar work. Ms. Gonzales notes that she has worked both types of lines, and notes that she worked for a year on the same line as Deborah Strait.

Ms. Gonzales notes that there are four positions on the extrusion line, and that the workers rotate through those positions every two hours. Claimant identifies the four positions from beginning on the line to the end, as extruder; spray booth; pack out; and line lead. The witness explains that the extruder feeds rubber and wire into the machine once, or maybe twice on the occasion when there is a break in the material, and spends the rest of the time watching the machine. The person at spray booth lines up paint guns on the part, and sprays a coating on the parts. She relates that this worker will also walk the line to the next position, clean the area, and help the others. Ms. Gonzales relates that there is no forceful use of the hands as extruder or at the spray booth, and that neither of the jobs requires kneeling, squatting, climbing, or crawling.

The witness relates that at "pack out" the rubber parts, weighing an ounce or so, are taken off of the machine and are loaded into a "buggy". The fourth position, "line lead", is quality inspection. Ms. Gonzales notes that this person checks parts and monitors the running of the extrusion line, making sure the machine is running at speed. The witness suggests that the entire line is about 150 feet long, and that the line lead will walk the line maybe one or two times in a rotation. Ms. Gonzales relates that neither "pack out" nor "line lead" requires the forceful use of the hands, nor do they require any crawling, climbing, kneeling, or squatting.

Ms. Gonzales notes that a wrench will need to be used from time to time, maybe two times in a week, to take out a die when necessary, and that the line lead, when performing quality control, will use a pair of scissors to cut parts as many as two to four times in a two hour rotation.

Robert Dryden

The witness relates that he has been employed by GDX Automotive since 1998, and that he is the Environmental Health & Safety Manager. Mr. Dryden relates that beginning in 2001 his duties included handling workers' compensation matters. Mr. Dryden notes that he performs the new employee safety orientation, and notes that all employees participate in a one hour safety meeting each month.

Mr. Dryden relates that his first notice that Ms. Strait was claiming work related wrist injuries was when he received a claim for compensation at some point after 1/24/05.

The witness was unable to recall any conversation had with Ms. Strait from 2000 to 2002 as to wrist complaints, but agrees that he may have given Ms. Strait wrist splints to wear, noting that he had a history of providing such splints to employees, whether or not the employee complaints were believed to be work related. The witness relates that had Ms. Strait claimed her wrist complaints to be work related, an accident report would have been prepared, and the claimant referred to the company physician. Mr. Dryden acknowledges that as of 2005, no such report or referral had occurred.

Mr. Dryden recalls that the rear door department was in operation from 1998 through 2004 or 2005, and estimates that as many as 351 employees worked that job. Mr. Dryden recalls that two employees working that job have made allegation that they suffered a work related carpal tunnel syndrome.

Mr. Dryden recalls that he was not aware of the claimant making any knee complaint prior to her going on sick leave to have a knee surgery in January of 2005. Mr. Dryden further relates that he is unaware as to any prior history of knee complaint from Ms. Strait before 2005.

The witness confirms that he was present with Ms. Christy when she was in the plant for her task analysis, and further confirms that the filing of a workers' compensation claim by Ms. Sherry Pope was one of the reasons for the task analysis.

James Daryl Eichelberger

On rebuttal the claimant read into the record those portions of the deposition testimony of Mr. Eichelberger that established that he was the Plant Manager at GDX Automotive, and that the "Tech 4" position was the employer's first effort to provide for shared leadership that would empower the workforce. The witness relates that the "Tech 4" was not only responsible for production, but also for performing light mechanical fixes, and for

determining rotation schedules. This witness further acknowledged that scissors were used on the b-pillar mold and on the 100 ton press; that an air operated grinder was used on the b-pillar mold; that a brass brush was used on the 100 ton press; and that a sanding stick was used for light trim work.

FINDINGS OF FACT AND RULINGS OF LAW

INJURY BY OCCUPATIONAL DISEASE/MEDICAL CAUSATION

On 3/10/03 Ms. Strait complained to Dr. Chalk of a one year history of right knee pain. As of March of 2003, Ms. Strait had worked as a Tech 4 on the rear door department for approximately two years, from January of 2000 to the latter part of 2002, when she began working as a Tech 5 on the extrusion line. Ms. Strait continued to work the extrusion line prior to her right knee surgery on 2/3/05, excepting those leave of absence periods as noted on Employer and Insurer's Exhibit No. 11.

Ms. Strait chose to treat with Dr. Chalk, and prior to her leave of absence for surgery did not allege to either Dr. Chalk or to her employer that she believed her knee complaints to be work related.

On 11/30/04 the claimant complained to Dr. Chalk of bilateral knee pain, left worse than right. An MRI of the left knee performed on 12/6/04 revealed to Dr. Chalk mild to moderate chondromalacia changes in the patellofemoral joint and in the medial femoral condyle. Dr. Chalk treated by administering a cortical steroid shot to the knee. When injection, physical therapy, and medication failed to give significant improvement, on 2/3/05 Dr. Chalk then performed an arthroscopy of the left knee. The operative report (See Claimant's Exhibit C) indicates, in part, that "Arthroscopic examination of the joint showed significant chondral defects of the patella, primarily of the lateral facet; however, when visualized, in the trochlear groove with the femur, there was significant chondral destruction there and, in fact, there was a central groove that was down to subchondral bone." Dr. Chalk also noted a small non-full-thickness chondral defect in the medial femoral condyle. Dr. Chalk went on to remove what he refers to as "bad cartilage" in the medial femoral condyle and in the patellofemoral joint. Dr. Chalk explains in his deposition that he also released a band of tissue by performing a lateral release, thereby relieving pressure on the knee joint that is caused by the band when the knee is flexed.

Dr. Chalk ordered physical therapy post the left knee surgery. An MRI was performed as to the right knee, and on 4/4/05 Dr. Chalk performed essentially the same surgery to the right knee as to the left for essentially the same conditions (See operative note contained in Claimant's Exhibit D).

Ms. Strait began suffering from increased swelling in the left knee, and Dr. Chalk first aspirated fluid from the knee, then proceeded to administer a series of Synvisc injections to thicken fluid in the joint and to decrease inflammation. After the third in the series of injections was performed on 7/19/05, Ms. Strait was released to return to work on 8/1/05.

Claimant was to return for a follow up in two months, but did not return to Dr. Chalk for further treatment or evaluation.

While treating with Dr. Chalk for her knee complaints, Ms. Strait was also being evaluated by Dr. Tucker for complaint of numbness and tingling in her hands. Instead of returning to work upon her release by Dr. Chalk, claimant chose to have right and left carpal tunnel releases performed on 8/2/05 and on 8/30/05 respectively. Claimant attempted a return to work on 10/24/05, and worked that one day before choosing to leave her employment on account of her hand and knee complaints.

Drs. Bichahlo, Chalk, Nogalski, and Volarich all offered their respective opinions as to whether the left knee condition in need of treatment was work related. Dr. Chalk, the treating physician as to the left knee, is believed by this fact finder to be the most persuasive and credible of the four physicians to render a causation opinion in this matter.

The testimony of Dr. Bichahlo is a puzzle wrapped in an enigma. More often than not it is telling when an evaluator chosen by the employer and insurer concludes that the condition at issue is due to repetitive use, and is work related. In the case of Dr. Bichahlo, his expert opinion as to causation as contained in his first report is based upon the subjective history provided to him by the claimant, and his second report is further based on the deposition of the claimant taken on 4/26/06, and the task analysis report. Inasmuch as the history provided to Dr. Bichahlo by claimant is not contained in his records, it is not clear what the basis is for Dr. Bichahlo's conclusion in his first report dated 2/14/06 that the claimant's left knee complaint is work related. This fact finder does have access to the task analysis report, and that document does not lead this fact finder to the conclusion that the claimant would repeatedly climb, bend, and stoop. Further, when asked what he would consider repetitive, in the context of repetitive climbing, bending, kneeling, and so on, Dr. Bichahlo noted that repetitive to him would mean maybe 75% of the time. (Employer and Insurer's Exhibit 4, at pp. 23, 24). Further, having read the deposition of

Ms. Strait as contained in the records from the office of Dr. Bichahlo, this fact finder is still at a loss to understand the basis for the conclusion reached by Dr. Bichahlo to the effect that the claimant performed repetitive climbing, bending, and kneeling.

Dr. Chalk persuades that the chondromalacia suffered by Ms. Strait is more commonly found in females, and is a process that occurs due to a malalignment of the kneecap. Dr. Chalk explains that the malalignment causes increased pressures across the kneecap and the groove it sits in, and that activity over time cause wear to progress to the point of fragmentation of articular cartilage, leading to the wear and tear of the sort seen in the knees of Ms. Strait (Employer and Insurer's Exhibit No. 3, at p.32).

At issue is whether the bending and flexing of the knees as performed by Ms. Strait at her work was a substantial factor in the cause of the condition in need of treatment known as chondromalacia patella, see Section 287.020 RSMo. 2000. Dr. Chalk concluded that the claimant's job duties were not a significant factor in aggravating what he refers to as chondromalacia patellar or patellofemoral syndrome, noting that it was his understanding that repetitive stair climbing, kneeling or squatting were not part of her normal job activities. When pressed as to how many repetitions of flexing the knee would be significant to him, Dr. Chalk responded that his idea of frequent would be walking up and down a flight of stairs more than six to ten times a day; that squatting would be different from frequent for stair climbing, a factor of the six to ten referred to for stairs; and as to kneeling, six times in the course of a day. (Employer and Insurer's Exhibit No. 3, at pp. 49-52).

Ms. Pataky and Ms. Gonzales are found to be credible witnesses, and their testimony as to the types of exertion required on the 130 rear door and on the extrusion line to be worthy of belief. The testimony of Ms. Pataky is particularly compelling because she worked on the 130 rear door job for five years, two of those five years on the same shift as Ms. Strait.

Ms. Pataky testified to climbing, squatting, and kneeling, and to a frequency of such activity that would be deemed by Dr. Chalk to be infrequent. Further, Ms. Gonzales testified persuasively that none of the jobs on the extrusion line require frequent kneeling, squatting, climbing, or crawling.

From all of the evidence, the claimant has failed to persuade that the condition in need of treatment known as chondromalacia patella was work related within the meaning of Section 287.020 RSMo 2000. The issues as to injury by occupational disease and medical causation are found in favor of the employer and insurer.

A finding in favor of the employer and insurer on the issues of injury by occupational disease and medical causation render the remaining issues moot.

Date: April 25, 2007

Made by: /s/ KEVIN DINWIDDIE
KEVIN DINWIDDIE
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST
PATRICIA "PAT" SECREST
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 05-022140

Employee: Deborah J. Strait

Employer: GDX Automotive

Insurer: Self-Insured c/o Gallagher Bassett Services

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

Date of Accident: On or about January 31, 2005

Place and County of Accident: Franklin 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 25, 2007. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued April 25, 2007, 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 17th day of October 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Deborah J. Strait

Injury No. 05-022140

Dependents: n/a

Employer: GDX Automotive

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: State Treasurer, as custodian of Second Injury Fund

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

Insurer: self-insured c/o Gallagher Bassett Services

Hearing Date: 11/20/06 and 2/2/07; finally submitted 3/2/07

Checked by: KD/bb and In

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: on or about 1/31/05
5. State location where accident occurred or occupational disease was contracted: Franklin County, Mo
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
employee suffered occupational disease by repetitive use at her work
12. Did accident or occupational disease cause death? no Date of death? n/a
13. Part(s) of body injured by accident or occupational disease: right and left upper extremities at the wrist
15. Nature and extent of any permanent disability: 15% of the right wrist, 15% of the left wrist, and 15% of the disability for multiplicity of injury
15. Compensation paid to-date for temporary disability: none
16. Value necessary medical aid paid to date by employer/insurer? none
17. Value necessary medical aid not furnished by employer/insurer? \$14,024.20
18. Employee's average weekly wages: by agreement
19. Weekly compensation rate: \$387.00/ \$354.05
21. Method wages computation: by agreement of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$14,024.20
10 weeks of temporary total disability at \$387.00 per week.....	\$3,870.00
60.375 weeks of permanent partial disability from Employer at \$354.05 per week.....	\$21,375.77

22. Second Injury Fund liability: Open

TOTAL:	\$39,269.97
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23. Future requirements awarded: n/a

Said payments to begin as of the date of this award and to be payable and be subject to modification and review as provided by law.

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

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Deborah J. Strait

Injury No: 05-022140

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: n/a

Employer: GDX Automotive

Additional Party State Treasurer, as custodian of Second Injury Fund

Insurer: self-insured c/o Gallagher Bassett Services

Checked by: KD/bb

The claimant, Ms. Deborah J. Strait, and the employer, GDX Automotive, self-insured c/o Gallagher Bassett Services, appeared at hearing by and through their counsel and agreed to have a joint hearing in this matter with companion injury numbers 04-142259 and 05-026564.

At issue in Injury Number 05-022140 is whether the claimant sustained a compensable injury to her left and right upper extremities at the level of the wrists. The condition at issue is a bilateral carpal tunnel syndrome. The claimant requests that the claim as against the Second Injury Fund remain open. The parties have agreed that the various issues to address at hearing are as follows:

- Injury by occupational disease;
- Medical causation;
- Notice;
- Liability for past medical expense;
- Temporary total disability; and
- Permanent partial disability.

Further, the employer alleges that past payment of certain disability benefits should be credited toward any temporary total disability found to be owed in the matter.

Ms. Strait appeared at hearing and testified on her own behalf. Ms. Strait further elicited the testimony of Ms. Cheryl Pierce; the deposition testimony of David Thomas Volarich, D.O.; and read into the record certain portions of the deposition of James Daryl Eichelberger. The employer elicited the testimony of Mr. Kevin Carpenter; Ms. Sherry Counts; Ms. Jennifer Christy; Ms. Angela Pataky; Ms. Josephine Gonzales; Mr. Robert Dryden; and the deposition testimony of Henry George Ollinger, M.D., and of Paulo Bicachlo, M.D.

It is further noted that the deposition of Deborah J. Strait, taken on 4/26/06, was submitted as a part of the records of Tesson Heights Orthopaedics, Claimant's Exhibit B.

EXHIBITS

Certain objections made at hearing to the various exhibits offered into evidence raise an issue as to the evidentiary weight to be attributed to those offers, but not their admissibility. The following exhibits are in evidence:

Claimant's Exhibits

- D. Deposition of David Thomas Volarich, D.O., taken on 10/13/06
- E. Certified medical records of Tesson Heights Orthopaedic & Arthroscopic Associates, P.C.
- E. Certified medical records of St. Louis Orthopedic, Inc. (Dr. Tucker); N.E.I of St Louis (Dr. Peebles); and St. John's Mercy Medical Center
- E-1 Billing statements
- F1-F4. Earnings Statements

Employer and Insurer's Exhibits

- 1. Deposition of Henry George Ollinger, M.D., taken on 8/07/06
- 4. Deposition of Paulo Bicachlo, M.D., taken on 11/13/06
- 5. Application for employment
- 7. Workplace photographs (6)
- 10. Orientation Materials
- 11. Timeline
- 12. Task Analysis Report

SUMMARY OF WITNESS TESTIMONY

Deborah J. Strait

Ms. Strait relates that she worked out of the home in certain factory jobs from time to time, and otherwise was a housewife and homemaker until November of 1999, when at the age of 41 she began working for GDX Automotive. Ms. Strait recalls working at a plant in Berger, Missouri, for three months making small parts before being transferred to the "rear door" plant in New Haven, Missouri. Ms. Strait notes that in January of 2000 she began working as a "Tech 4", operating machines that performed glass encapsulation for the rear window on Grand Am automobiles. Claimant relates that there are 9 jobs performed in two hour rotations to the six stations where all the jobs are done. Claimant agrees that it would take a day and a half to get through a complete rotation of the various jobs.

Claimant identified the 9 jobs as follows: 100 ton press; d-bar machine; b-pillar and header cut machine; assembly table; trimming; b-pillar mold; foam pad and butyl; and b-pillar pad and glass prep. Claimant explained that the d-bar machine bends and cuts parts, and that b-pillar and header is also a cutting process where rubber parts are loaded into the cutting machine. Claimant relates that on both cutting machines, she would insert the parts and then remove them after the cut. Claimant relates that on the b-pillar mold machine she would insert the header and b-pillar into the mold with her left and right hands, then place a rubber plug in the top of mold, close the mold, and the machine would form a part. Claimant relates that prior to that operation, she would need to clean the mold with a brass brush or other abrasive tool as necessary.

Claimant relates that the 100 ton press is a glass encapsulation machine that completes the part. She

notes that prior to using the mold, she would clean the top and bottom parts by hand with wire brushes, cleaning out all the rubber. Claimant would then place the glass into the press with two other parts, and the machine would then make the part.

Ms. Strait acknowledges that trimming is a job that requires removing excess rubber off of parts by hand, by use of hand grinder, or by use of scissors. Claimant would also affix loose spots by adding primer and pressing down on the glass. Ms. Strait further defines "glass prep" as scraping excess adhesive off of glass with a blade, as well as applying primer by hand to the edges of the glass before putting the glass into the 100 ton press.

Ms. Strait notes that at either the trim or assembly table she would also affix by hand a foam pad to the elbow of the part, and would affix a part called the butyl to the head of the part. Claimant relates that assembly is the location where "deco pads" would be pressed on to the front of the window by hand, and that certain other clamps would be affixed to the window, which is then placed into a machine that completes the process. Lastly, claimant relates that a part called the "b-pillar pad" is placed by hand on the b-pillar/header. Ms. Strait notes that tools used from time to time include scissors, hook knives, scraper blades, emery boards, grinding tools, Allen wrenches, screwdrivers, and brass brushes. Ms. Strait relates that 22 parts are made in 2 hours, of a total of 88 or so in a shift.

Ms. Strait relates that on occasion where parts are out of specification or cut incorrectly, it would take more force than usual to push them into place. Claimant further relates that from time to time she would use tools to break down the mold to repair loose seals, or to replace spring plates.

Ms. Strait claims that she would climb a twelve foot ladder to the top of the 100 ton press at least 12 to 16 times a day, in order to feed rubber into the machine. She notes that the 100 ton press is on a ten inch high platform. On direct examination, she alleged that she would need to step up on the platform 10 times a shift; on cross examination, claimant alleged that she stepped onto the platform ten times in an hour.

On cross examination, Ms. Strait acknowledged that in the latter months of 2002 she became a "Tech 5" and began working on the extrusion line. Claimant acknowledged that photos marked as Employer and Insurer's 7 through 7F accurately represent the extrusion line. Ms. Strait notes that working the extrusion line means running extruders, stainers, pulley machines, salt tanks, and "ir" ovens. Ms. Strait notes that on occasion she is required to dismantle an extruder, which means she would take a die out, break it down, and clean it, all by hand. Claimant relates that on the extrusion line she uses impact wrenches, large wrenches, screwdrivers, tape measures, cheater bars, and pliers. She relates that she is required to bend and stoop to clean machines, mop floors, and drain water tanks. On cross examination, Ms. Strait claimed that on the extrusion line she would need to bend, stoop, or crawl as much as three to four hours a day. Claimant notes that four people worked on an extrusion line; the first person fed the machine, the middle two were pullers and packers, and the fourth person was an inspector.

Ms. Strait relates that prior to her employment with GDX she had no problems with respect to her hands, wrists, or knees. She relates that in 2001 she began to suffer pain and swelling in her knees, made worse when bending, squatting, and going up ladders. Ms. Strait acknowledges that her family physician, Dr. Calvin, referred her to Dr. Chalk, who performed a left knee surgery on 2/3/05, and a right knee surgery on 4/4/05. Ms. Strait confirms that prior to her surgeries she did not claim the knee condition to be work related, and that she chose to pursue benefits provided to her by wage contribution, short term disability, and through her health insurance.

Ms. Strait recalls suffering from pain and swelling in her hands and wrists beginning in 2000 or 2001. Claimant recalls advising Bob Dryden from employer's Human Resources Department, and states that his response was to provide her with magnet bracelets to wear while working. Claimant relates that in November or December of 2004 she filled out an accident report as to her wrist complaints, and further acknowledges that she eventually sought out an evaluation by Dr. Peeples in November of 2004, who had treated her in the past for migraine complaints.

Ms. Strait relates that she had an ncv, and was referred to a specialist, Dr. Tucker, who performed a carpal tunnel release of the right hand on 8/2/05, and a release of the left hand on 8/30/05. Ms. Strait recalls that she attempted a return to work on 10/24/05; that she worked one day; and that she chose to quit her employment on account of the pain and swelling she experienced in her hands and knees.

Ms. Strait relates that thereafter she went to school to learn the business of real estate sales, and from early July to October of 2006 she worked at American Recreational, sewing in a factory setting 40 hours a week until the factory closed.

Ms. Strait also offered rebuttal testimony, acknowledging that Exhibits F1- through F4 are copies of her earnings statements that reflect the amount taken out on a weekly basis for her medical insurance. Ms. Strait acknowledges she chose the option that provides for the employer to pay 85% of the medical, and the employee the other 15%.

Cheryl Pierce

- Ms. Pierce relates that she is currently employed at GDX Automotive as a "Molder", doing production work. The witness relates that over the past three or four years she had been working as a "Tech 4" in the rear door department, performing rubber encapsulation of glass for the rear door of certain automobiles, until the termination of the contract for such production. Ms. Pierce relates that climbing the ladder or metal staircase to the top of the 100 ton press was done, as a rule, 4 to 8 times in an eight hour shift. Ms. Pierce relates that in summer months, the rubber would kink and break, causing a need to climb the stairs about twice as often as during the other seasons.

Ms. Pierce confirms that the press was elevated on a wooden platform approximately 12 inches high, and supposes that in a normal two hour shift a worker would need to step on and off the platform about 10 times in a shift. Ms. Pierce relates that it was common to work 4 hour shifts on the press, which would double the number of steps on and off the platform.

Ms. Pierce relates that cleaning and trimming would require bending and squatting, for example to reach tools and tool supplies on a lower shelf. The witness supposes she would need to do such bending or squatting 6 times in a 2 hour shift. Ms. Pierce notes that during the weekly cleaning she would need to squat to grease fittings, and notes that she would bend or squat to pick up rubber or glass waste material. The witness recalls having to kneel to retrieve things that fall into a mold, and when cleaning.

The witness further relates that the rear door job required gripping, pushing, pulling, occasional machine repair, and the use of certain hand tools. When asked whether the Tech 4 job required the use of force with the hands, Ms. Peirce responded "extremely".

Ms. Pierce relates that she is familiar with Deborah Strait, and that she has personally observed Ms. Strait performing the various functions of the Tech 4 job. In particular, Ms. Pierce recalls that for about a year Ms. Strait was responsible for doing a reinspection of parts, which she did by squatting and walking along the skid to view the parts.

Kevin Carpenter

- Mr. Carpenter testified that for the last nine years he has been the Human Resource Manager for GDX Automotive. Mr. Carpenter, using payroll records at his disposal, testified to total numbers of hours worked by Ms. Strait from 2000 to 2005. Mr. Carpenter also shared a summary of the claimant's personnel file that he had created with the assistance of Mr. Robert Dryden. Mr. Carpenter explained that short term disability was an insurance paid for by the employer; that long term disability was insurance paid for by the employee. Mr. Carpenter noted that the medical program was voluntary on the part of the employee, and that Ms. Strait chose the 85-15 program, which means that after the employee paid an office fee and deductible, the employer would pay 85% of the medical expense and the employee would pay 15%. Mr. Carpenter notes that the employer maintains an account for paying such bills, and that a third party administers the account and negotiates rates.

Sherry Counts

- This witness relates that she is employed by GDX Automotive, noting that she began her career with the company in January of 1987. Ms. Counts relates that she worked in the rear door department from 1999 until the phase out of the department in 2004. Ms. Counts notes that it would take at least two days to get through a rotation of the various jobs performed in the rear door department. As for the stairs to the top of the 100 ton press, Ms. Counts suggests that some rotations may not require any climbing at all, and supposes that the usual number of climbs would be from 0 to 3 in the course of a shift. Ms. Counts acknowledges there was a platform to step onto at the 100 ton press, but relates that she would only need to step up and down from that platform as many as two times a shift to retrieve needed materials. Ms. Counts further testified as to her experience as to the limited amount of stooping, bending, squatting, climbing, or crawling necessary to work the rear door job. Ms. Counts testified as to the rare occasion when a soft seal or spring plate would need a repair. Ms. Counts acknowledges that she is not familiar with Deborah Strait, as the two worked on different shifts.

Jennifer Christy

Ms. Christy relates that she has a degree in Industrial Engineering, and has worked since 2001 in the field of review of industrial processes. The witness relates that she seeks ways to improve production, reduce losses, and track quality issues. Ms. Christy relates that much of her time was spent performing work station evaluations and task analysis to help minimize workplace injury. The witness identified Employer and Insurer's Exhibit No. 12 as a task analysis she performed at GDX Automotive in January of 2005. Ms. Christy relates that she performed her analysis of the "RD 130" or rear door department job by interviewing employees; taking notes and measurements; by watching the job duties performed; and by taking photographs and videotaping the various functions. The witness relates that she would then use a stopwatch to determine the cycle time for the various job tasks, and a gauge to determine amount of force applied. The witness relates that an ergonomic risk assessment for development of musculo-skeletal disorders is then applied to each of the job tasks performed.

Ms. Christy relates that she then applied her findings to a strain index and to other ergonomics risk tools used in the ergonomics field to reach the conclusion that all job tasks contained risk factors that fell within acceptable ergonomic limits for hands, arms, and wrists. Ms. Christy affirms that her analysis was applicable as to disorders relative to the upper extremities, and did not relate to risk factors and disorders relating to the lower extremities.

Ms. Christy acknowledged that her task analysis assumed a job rotation every two hours, and that her analysis did not include a review of risk related to repair and cleaning functions performed on the rear door job by a Tech 4. Ms. Christy acknowledges that she was aware that repair and cleaning were functions of the job, but chose, based on her interview and observance of the workers, to conclude that repair and cleaning was performed so infrequently as to be deemed not relevant to the task analysis.

Angela Pataky

Ms. Pataky relates that she has worked at GDX for over ten years, and worked on the rear door job for five years altogether. Ms. Pataky relates that for approximately two years she worked the same rear door shift with Deborah Strait.

Ms. Pataky relates that on occasion a job rotation would last more than two hours, and would agree that most of the time a rotation lasted two hours. Ms. Pataky recalls that the step ladder on the 100 ton press would need to be climbed maybe two to four times in a 2 hour rotation; that the platform at the 100 ton press would also need to be stepped on and off maybe two to four times in a 2 hour rotation; and that no other jobs in the rear door department required any climbing.

The witness further recalls that a Tech 4 might need to squat maybe 4 times in a rotation at the cutting machine for b-pillar and header when reaching a shelf, and might need to kneel once during a rotation at the assembly table to string labels.

Josephine Gonzales

Ms. Gonzales relates that she has worked at GDX Automotive for five years, in the extrusion department over the last 4 and a half years. The witness relates that she is now a "Tech 5", and that she runs rubber through an extrusion machine, creating a final product for use on car doors. Ms. Gonzales notes that there are eight extrusion lines, both "hot air" and "salt" lines that require similar work. Ms. Gonzales notes that she has worked both types of lines, and notes that she worked for a year on the same line as Deborah Strait.

Ms. Gonzales notes that there are four positions on the extrusion line, and that the workers rotate through those positions every two hours. Claimant identifies the four positions from beginning on the line to the end, as extruder; spray booth; pack out; and line lead. The witness explains that the extruder feeds rubber and wire into the machine once, or maybe twice on the occasion when there is a break in the material, and spends the rest of the time watching the machine. The person at spray booth lines up paint guns on the part, and sprays a coating on the parts. She relates that this worker will also walk the line to the next position, clean the area, and help the others. Ms. Gonzales relates that there is no forceful use of the hands as extruder or at the spray booth, and that neither of the jobs requires kneeling, squatting, climbing, or crawling.

The witness relates that at "pack out" the rubber parts, weighing an ounce or so, are taken off of the machine and are loaded into a "buggy". The fourth position, "line lead", is quality inspection. Ms. Gonzales notes that this person checks parts and monitors the running of the extrusion line, making sure the machine is running at speed. The witness suggests that the entire line is about 150 feet long, and that the line lead will walk the line maybe one or two times in a rotation. Ms. Gonzales relates that neither "pack out" nor "line lead" requires the

forceful use of the hands, nor do they require any crawling, climbing, kneeling, or squatting.

Ms. Gonzales notes that a wrench will need to be used from time to time, maybe two times in a week, to take out a die when necessary, and that the line lead, when performing quality control, will use a pair of scissors to cut parts as many as two to four times in a two hour rotation.

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Robert Dryden

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The witness relates that he has been employed by GDX Automotive since 1998, and that he is the Environmental Health & Safety Manager. Mr. Dryden relates that beginning in 2001 his duties included handling workers' compensation matters. Mr. Dryden notes that he performs the new employee safety orientation, and notes that all employees participate in a one hour safety meeting each month.

Mr. Dryden relates that his first notice that Ms. Strait was claiming work related wrist injuries was when he received a claim for compensation at some point after 1/24/05.

The witness was unable to recall any conversation had with Ms. Strait from 2000 to 2002 as to wrist complaints, but agrees that he may have given Ms. Strait wrist splints to wear, noting that he had a history of providing such splints to employees, whether or not the employee complaints were believed to be work related. The witness relates that had Ms. Strait claimed her wrist complaints to be work related, an accident report would have been prepared, and the claimant referred to the company physician. Mr. Dryden acknowledges that as of 2005, no such report or referral had occurred.

Mr. Dryden recalls that the rear door department was in operation from 1998 through 2004 or 2005, and estimates that as many as 351 employees worked that job. Mr. Dryden recalls that two employees working that job have made allegation that they suffered a work related carpal tunnel syndrome.

Mr. Dryden recalls that he was not aware of the claimant making any knee complaint prior to her going on sick leave to have a knee surgery in January of 2005. Mr. Dryden further relates that he is unaware as to any prior history of knee complaint from Ms. Strait before 2005.

The witness confirms that he was present with Ms. Christy when she was in the plant for her task analysis, and further confirms that the filing of a workers' compensation claim by Ms. Sherry Pope was one of the reasons for the task analysis.

James Daryl Eichelberger

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On rebuttal the claimant read into the record those portions of the deposition testimony of Mr. Eichelberger that established that he was the Plant Manager at GDX Automotive, and that the "Tech 4" position was the employer's first effort to provide for shared leadership that would empower the workforce. The witness relates that the "Tech 4" was not only responsible for production, but also for performing light mechanical fixes, and for determining rotation schedules. This witness further acknowledged that scissors were used on the b-pillar mold and on the 100 ton press; that an air operated grinder was used on the b-pillar mold; that a brass brush was used on the 100 ton press; and that a sanding stick was used for light trim work.

FINDINGS OF FACT AND RULINGS OF LAW

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INJURY BY OCCUPATIONAL DISEASE/MEDICAL CAUSATION

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While treating with Dr. Chalk for her knee complaints, Ms. Strait was also being evaluated by Dr. Tucker for complaint of numbness and tingling in her hands. Prior to her visit to Dr. Tucker, Ms. Strait sought evaluation from a neurologist, Dr. Peeples, who had treated her in the past for migraine headache complaints. Dr. Peeples met with Ms. Strait on 11/8/04; performed a nerve conduction study; performed an examination of the hands; and concluded that the claimant suffered from relatively mild median entrapment neuropathies of the left and right carpal tunnels. Dr. Peeples acknowledged that having a decompression surgery would not be unreasonable, but was concerned that some of the complaints were diffuse in nature, related to an overuse, and that a surgery at the carpal tunnels might not resolve all of her complaints.

Ms. Strait testified at hearing that she began to have pain and swelling in her hands and wrists in 2000 or 2001. Her testimony as to the onset of complaints is consistent with the medical records of Dr. Tucker, who on 5/12/05 recorded a history of complaint of numbness and tingling in both hands for the last five years.

At that first visit to Dr. Tucker on 5/12/05, Dr. Tucker records a history of the claimant having been off of

work since February of 2005 due to unrelated knee problems, and having some relief of her hand problems, but with ongoing problems of dropping things and being awakened three to four times a week. Dr. Tucker performed an examination of the hands; reviewed the ncv findings; and concluded that a more conservative approach was advisable for a mild carpal tunnel syndrome bilaterally. Ms. Strait was provided with splints to wear at night, and on 6/13/05 Dr. Tucker provided her with steroid injection to both carpal tunnels. Claimant returned for a follow up on 7/25/05; reported very little improvement and on a temporary basis from the injections; and was subsequently scheduled for surgery by Dr. Tucker.

Instead of returning to work upon her release by Dr. Chalk subsequent to her knee surgeries, claimant chose to have right and left carpal tunnel releases performed by Dr. Tucker on 8/2/05 and on 8/30/05 respectively. In the office note for follow up evaluation post the first carpal tunnel surgery, claimant reported full resolution of numbness and tingling in her right hand. The operative notes indicate that as to both wrists, Dr. Tucker was able to perform a complete decompression of the nerve. Claimant returned for a follow up evaluation on 9/12/05 following her left carpal tunnel surgery, and reported full resolution of numbness and tingling. On 10/10/05 Ms. Strait made no complaint of numbness and tingling, but did have complaints of hand discomfort and a feeling of weakness. Dr. Tucker notes in his 10/10/05 note "She feels that she does not want to return to work for another two weeks. Certainly from an operative perspective she can return at any time...." (Claimant's Exhibit E). Ms. Strait attempted a return to work on 10/24/05, and worked that one day before choosing to leave her employment on account of her hand and knee complaints.

Drs. Volarich and Ollinger offered their respective opinions as to whether the bilateral carpal tunnel syndrome was work related. Notice is taken that the original claim for compensation was filed in this matter on 3/21/05. An entitlement to benefits is governed by the provisions of Section 287.020 RSMo 2000, made applicable to injury by occupational disease by operation of Section 287.067.2 RSMo 2000. For this bilateral carpal tunnel to be compensable, work must be a substantial factor in the cause of the condition.

Both Drs. Volarich and Ollinger agree that the claimant suffered from bilateral carpal tunnel, and that her course of treatment was medically necessary. Whereas Dr. Volarich concludes that years of repetitive use of the hands at work are the substantial contributing factors causing the involved carpal tunnel, Dr. Ollinger opines that the work performed at GDX Automotive was not a substantial factor for bilateral carpal tunnel syndrome.

It is illustrative in this matter to follow the thought process of Dr. Ollinger as he reaches his conclusion as to causation. After his initial examination of Ms. Strait on or about 2/22/06, and after reviewing certain of the medical records, the IME of Dr. Volarich, and having elicited a work and complaint history from Ms. Strait, Dr. Ollinger notes that he was unable to render an opinion on causation, and believed he was unable to make such an opinion without "hard copy verification of her duties". (Employer and Insurer's Exhibit No. 1, at p. 12). Dr. Ollinger notes that in response to his request, he received a copy of the deposition of Ms. Strait, and a copy of the task analysis performed with respect to Sherry Pope. Dr. Ollinger then concludes that based on his review of the task analysis, he is unable to conclude that work at GDX is a substantial factor for her bilateral carpal tunnel syndromes.

The history of complaint and the nature of the claimant's duties suggest that the hand complaints suffered by Ms. Strait are from overuse. Dr. Peeples suspected overuse as the cause of complaints. Dr. Volarich posits repetitive use as the cause of the condition. Dr. Ollinger relies on the task analysis to dispute causation, but it is apparent from all of the evidence that the claimant's job duties were not all encompassed by the task analysis. Mr. Eichelberger, the Plant Manager, testified that the "Tech 4" was responsible not just for production, but also for performing light mechanical fixes and determining production schedules. The testimony of Ms. Strait persuades that she would routinely need to use tools to make repairs or break down dies, both as a Tech 4 on the 130 rear door, and as a Tech 5 on the extrusion line.

From all of the evidence, the opinion of Dr. Volarich as to causation is found to be more persuasive than that of Dr. Ollinger. Claimant is found to have suffered a work related bilateral carpal tunnel syndrome for purposes of the application of Section 287.020 RSMo 2000. The issues as to injury by occupational disease and as to medical causation are found in favor of the claimant.

NOTICE

Section 287.420 RSMo 2000 provides a statutory notice requirement that does not apply to claims of occupational disease. Elgersma v. DePaul Health Center, 829 S.W.2d 35 (Mo.App. 1992); Endicott v. Display Technologies, Inc., 77 S.W.3d 612 (Mo banc 2002). Endicott establishes that any dictum to the contrary in Elgersma or other cases notwithstanding, an employee is not required to give notice of occupational diseases. The legislature, since Endicott was decided, enacted a notice provision applicable to occupational disease claims. That statute is deemed to be in part substantive in nature, to be applied prospectively, and not applicable to the

claim for compensation at issue. The issue as to notice is found in favor of the employee.

PAST MEDICAL EXPENSE

The claimant has put in issue a total of \$14,024.20 in past medical expense for treatment for her bilateral carpal tunnel syndrome. Dr. Ollinger provided persuasive testimony to the effect that all of the medical received was necessary for a carpal tunnel syndrome, and confirmed that the charges from Dr. Tucker in the amount of \$5,097.00, and from St. John's in the amounts of \$3,528.95 and \$4,078.25 were reasonable. As to the past medical at issue with respect to the services of Dr. Peeples in the amount of \$1,320.00, Dr. Ollinger was not familiar enough with such charges to render an opinion as to reasonableness. However, Ms. Strait testified as to the medical received from Dr. Peeples, and submitted both the medical records and corresponding billing statements in evidence. A sufficient basis exists in the matter to award compensation for all of the medical expense at issue, including the medical provided by Dr. Peeples. Martin v. Mid-America Farm Lines, Inc., 769 S.W.2d 105 (Mo banc 1989). The employee is found to have incurred medical expense, in the amount of \$14,024.20, to cure and relieve of the effects of her injury, and the charges for those services are found reasonable.

The choice of medical provider is waived when the employer fails to provide necessary medical treatment after receiving notice of an injury. Wiedower v. ACF Indus., Inc., 657 S.W.2d 71,74 (Mo.App. 1983). Notice is hereby taken of the answer filed by the employer in this matter. All the medical treatment at issue was received after the claim for compensation had been filed, and an answer filed by the employer denying liability for occupational disease. It is found that the employer failed or refused to provide the medical services giving rise to the issue as to liability for medical expense.

The thrust of the decision in Farmer-Cummings v. Personnel Pool of Platte County, 110 S.W.3d 818 (Mo banc 2003) is that an employee should not receive a windfall by receiving any more in compensation for medical service beyond the employee's actual expenses. At issue in Farmer-Cummings was the liability of the employer for charges that had been written off by the medical provider. The Court specifically noted that Section 287.270 did not apply in that case. Ms. Strait has shown that her actual expenses in this matter for medical care total \$14,024.20. The issue, with respect to Section 287.270 RSMo, is whether the employer can claim a credit as to these actual medical expenses the amounts paid by the employer out of a health program provided to its employees.

Section 287.270 RSMo provides, in part, "No savings or insurance of the injured employee, nor any benefits derived from any other source than the employer or the employer's insurer for liability under this chapter, shall be considered in determining the compensation due hereunder; except as provided in subsection 3 of section 287.170,..." Section 287.800 RSMo. Cum. Supp. 2006, as provided by amendment to that Section effective August 28, 2005 (SB Nos. 1 & 130), provides that the provisions of Chapter 287 shall be construed strictly. In Priest v. Capitain, 139 S.W. 204, 209 (1911), the Supreme Court of Missouri, in the context of interpreting a statute to be strictly construed, adopted the Black's Law Dictionary definition of "strict construction" as follows: "Construction of a statute or other instrument according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact and technical meaning, and admits no equitable considerations or implications." Section 287.270 provides that no savings or insurance of the injured employee, nor any benefits derived from any other source than the employer for liability under Chapter 287, shall be considered in determining the compensation due. The claimant presented earnings statements (Claimant's Exhibits F-1 to F-4) showing that she voluntarily contributed to a medical program offered by the employer. Mr. Kevin Carpenter, the Human Resource Manager for the employer, acknowledged that the claimant made payments into the medical plan, and that after payment by the employee of an office fee and a deductible, the employer paid 85% of the medical expense, and the employee paid the remaining 15%. Strict construction of the relevant provisions of Section 287.270 suggests that the employer is not entitled to a credit for any of the payments made from the medical plan for the actual medical expenses in this matter, inasmuch as payment of the medical expenses was made from medical insurance made available to the employee by deduction by the employer of an agreed amount from her earnings. See, however, the determination that an employer, as the direct source of the funds for payment of medical bills under a basic health insurance plan, is entitled to a credit for all payments made. Morris v. National Refractories & Minerals, 21 S.W.3d 866 (Mo.App. E.D. 2000). Unclear is whether in Morris the health insurance plan was entirely funded by the employer, or whether the employee was obliged to make a contribution in order to qualify for health insurance. Inasmuch as the liability for a workers' compensation benefit is placed squarely on the shoulders of the employer under Chapter 287, it seems to this fact finder that it would violate the provisions of Section 287.270 to allow the employer to claim a credit in instances where the employee is obliged to make a contribution in order to qualify for the payment of the medical expense. See also Shaffer v. St. John's Regional Health Center, 943 S.W.2d 803, 807-808. In Morris, it appears that the employer was liable for all of the medical bills; in the case of Ms. Strait, the employer pursuant to the health plan is only liable for a portion of the medical bills. The employer further failed to establish the amount of the credit to which it believes it is entitled. The employer is found to be liable for the actual medical expense in the amount of \$14,024.20, and no credit is awarded in the matter.

TEMPORARY TOTAL DISABILITY

Ms Strait had her carpal tunnel surgeries on 8/2/05 and on 8/30/05. On 10/10/05 Dr. Tucker determined the claimant to be fit for a return to her work duties. Temporary total disability owed in this matter is from 8/2/05 through 10/10/05, a total of 10 weeks. At the stipulated rate of \$387.00 per week, the amount due for temporary total disability is \$3,870.00.

The employer argues that it is entitled to a credit for disability payments made to the claimant while recovering from her surgeries. In the event the case law supported such a conclusion, the employer would nonetheless be required to establish the amount of the credit to which it is due. However, the case law does not support a credit being given, and the employer has also failed to document the extent to which a credit would otherwise be due. Evans v. Missouri Utilities Co., 671 S.W.2d 812 (Mo.App. 1984); Ford Motor Co. v. Dickens, 700 S.W.2d 484 (Mo/App. 1985); Campbell v. Citicorp

PERMANENT PARTIAL DISABILITY

The claimant suffered from mild sensory changes in the upper extremities, and complaints as to numbness and tingling in the extremities for the most part resolved after surgery. Ms. Strait complains of a loss of grip strength, but it is apparent that her complaints are such that she was able to find employment at American Recreational in early July of 2006, and was able to perform sewing work on a 40 hours a week basis until that employer closed its factory in October of 2006. Doctors Ollinger and Volarich agree that the claimant suffers from a disability at the level of the wrists that is permanent and partial. From all of the evidence, the claimant is found to have suffered a repetitive use injury to the wrists, and to have suffered a permanent partial disability equivalent to 15% of each the left and right upper extremities at the level of the wrist. Claimant is further believed to have suffered a greater degree of permanent and partial disability by the combination of disabilities, by a factor of 15%. The amount due for permanent partial disability is $[(175 \times .15) + (175 \times .15) = 52.5] + [52.5 \times .15 = 7.875] = 60.375$ weeks. At the stipulated rate of \$354.05, the total due is \$21,375.77.

This award is subject to a lien in favor of James G. Krispin, Attorney at Law, in the amount of 25% thereof for necessary legal services rendered.

This award is subject to interest as provided by law.

Date: April 25, 2007

Made by: /s/ KEVIN DINWIDDIE
KEVIN DINWIDDIE
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST
PATRICIA "PAT" SECREST
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 05-026564

Employee: Deborah J. Strait
Employer: GDX Automotive
Insurer: Self- Insured c/o Gallagher Bassett Services
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged March 23, 2005

Place and County of Accident: Alleged Franklin 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 25, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Kevin Dinwiddie, issued April 25, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17th day of October 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed. I believe the administrative law judge erred in concluding that employee failed to meet the burden of proof regarding the contraction of an occupational disease.

The employee must prove by substantial and competent evidence that he has contracted an occupational disease and not an ordinary disease of life. *Kelley v. Banta & Stude Const. Co., Inc.*, 1 S.W.3d 43, 48 (Mo.App. E.D. 1999); *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 299-300 (Mo.App. S.D. 1991). This involves showing that there was an exposure to the disease which was greater than or different from that which affects the public generally, and that there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. *Id.*; *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo.App. W.D. 1994).

A single expert medical opinion will support a finding of compensability even where the causes of the occupational disease are indeterminate. *Kelley*, 1 S.W.3d at 48; *Dawson*, 885 S.W.2d at 716. Work conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. *Id.*

The administrative law judge found that employee failed to prove that her knee condition was work related and found issues as to injury by occupational disease and medical causation in favor of the employer.

However, competent evidence shows that employee met her burden by establishing that she contracted an occupational disease, bilateral chondromalacia and patellofemoral syndrome, and not an ordinary disease of life. She was able to demonstrate both that her exposure was greater than that which affects the public generally and

that her work was linked to the contraction of the disease.

Employee testified that her daily job duties included repetitive climbing, bending, kneeling, stooping and squatting. She testified that she climbed a twelve foot ladder 12-16 times a day and stepped up onto a ten inch high platform 10 times a shift. Employee claimed that she had to bend and stoop in order to clean machines and retrieve tools from under her work table. She also testified to squatting to check machine parts as well as occasionally kneeling on the concrete floor. Employee testified that she did not have any problems relating to her knees prior to 2001 when she began to experience pain and swelling in her knees. She testified that her condition was made worse by the repetitive stepping and climbing.

Through expert testimony, employee was able to establish that her work conditions were a major contributing factor to the disease. Dr. Bichalo and Dr. Volarich testified that employee's duties exposed her to the contraction of an occupational disease, specifically, bilateral chondromalacia. Dr. Bichalo, employer's examining physician, opined that employee's knee condition was most likely caused by repetitive work-related type activities. He opined employee sustained a 30% permanent partial disability at each lower extremity. Dr. Bichalo's opinion was supported by Dr. Volarich who opined that the repetitive nature of employee's work was the substantial contributing factor in causing employee's knee condition as well as subsequent treatment, including surgery. He opined employee sustained a 30% permanent partial disability of the right knee and a 35% permanent partial disability of the left knee.

I find the opinions of Dr. Bichalo and Dr. Volarich to be most persuasive, credible and worthy of belief. Employee satisfied her burden by establishing work place exposure as well as a link between her knee condition and her employment. There was sufficient evidence to establish that her employment was a substantial factor in the development of her knee condition.

Additionally, employee is entitled to recovery of her past medical expenses. Employer never authorized treatment for employee's knee condition as it was thought to be not work-related. Because treatment was never authorized by employer, it was reasonable for employee to seek treatment on her own. Dr. Volarich testified that the medical treatment employee received for her knee condition was reasonable and necessary to cure and relieve her from the effects of the occupational disease. Therefore, an award of past medical expenses is justified.

I find that there was exposure in the workplace sufficient to conclude that employee's work duties were capable of producing her resultant medical condition, bilateral chondromalacia. Accordingly, I would reverse the decision of the administrative law judge and award compensation for her knee condition.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

John J. Hickey, Member

AWARD

Employee:	Deborah J. Strait	Injury No. 05-026564
Dependents:	n/a	
Employer:	GDX Automotive	Before the DIVISION OF WORKERS' COMPENSATION
Additional Party:	State Treasurer, as custodian of Second Injury Fund	Department of Labor and Industrial Relations of Missouri
Insurer:	self-insured c/o Gallagher Bassett Services	Jefferson City, Missouri
Hearing Date:	11/20/06 and 2/2/07; finally submitted 3/2/07	Checked by: KD/bb and ln

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? no

2. Was the injury or occupational disease compensable under Chapter 287? no
3. Was there an accident or incident of occupational disease under the Law? no
4. Date of accident or onset of occupational disease: alleged 3/23/05
5. State location where accident occurred or occupational disease was contracted: Franklin County, Mo
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
yes
7. Did employer receive proper notice? n/a
8. Did accident or occupational disease arise out of and in the course of the employment?
no
9. Was claim for compensation filed within time required by Law? yes
10. Was employer insured by above insurer? self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
employee alleges to have suffered occupational disease by repetitive use in production work
12. Did accident or occupational disease cause death? no Date of death? n/a
13. Part(s) of body injured by accident or occupational disease: alleged right knee
16. Nature and extent of any permanent disability: n/a
15. Compensation paid to-date for temporary disability: none
16. Value necessary medical aid paid to date by employer/insurer? none

17. Value necessary medical aid not furnished by employer/insurer? n/a
18. Employee's average weekly wages: by agreement
19. Weekly compensation rate: \$387.00/ \$354.05
22. Method wages computation: by agreement of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable: n/a/

Unpaid medical expenses: n/a

Issues as to occupational disease and medical causation found in favor of the employer. The claim for compensation as against the employer and insurer is denied. All other issues are rendered moot.

22. Second Injury Fund liability: Open

TOTAL: N/A

23. Future requirements awarded: n/a

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Deborah J. Strait

Injury No: 05-026564

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

Dependents: n/a

Employer: GDX Automotive

Additional Party State Treasurer, as custodian of Second Injury Fund

Insurer: self-insured c/o Gallagher Bassett Services

Checked by: KD/bb

The claimant, Ms. Deborah J. Strait, and the employer, GDX Automotive, self-insured c/o Gallagher Bassett Services, appeared at hearing by and through their counsel and agreed to have a joint hearing in this matter with companion injury numbers 04-142259 and 05-022140.

At issue in Injury Number 05-026564 is whether the claimant sustained a compensable injury to her right knee. The claimant requests that the claim as against the Second Injury Fund remain open. The parties have agreed that the various issues to address at hearing are as follows:

Injury by occupational disease;
Medical causation;
Notice;
Liability for past medical expense;
Temporary total disability; and
Permanent partial disability.

Further, the employer alleges that past payment of certain disability benefits should be credited toward any temporary total disability found to be owed in the matter.

Ms. Strait appeared at hearing and testified on her own behalf. Ms. Strait further elicited the testimony of Ms. Cheryl Pierce; the deposition testimony of David Thomas Volarich, D.O.; and read into the record certain portions of the deposition of James Daryl Eichelberger. The employer elicited the testimony of Mr. Kevin

Carpenter; Ms. Sherry Counts; Ms. Jennifer Christy; Ms. Angela Pataky; Ms. Josephine Gonzales; Mr. Robert Dryden; and the deposition testimony of Dr. Michael Nogalski; Dr. David Chalk; and of Dr. Paulo Bichahlo.

It is further noted that the deposition of Deborah J. Strait, taken on 4/26/06, was submitted as a part of the records of Tesson Heights Orthopaedics, Claimant's Exhibit B.

EXHIBITS

Certain objections made at hearing to the various exhibits offered into evidence raise an issue as to the evidentiary weight to be attributed to those offers, but not their admissibility. The following exhibits are in evidence:

Claimant's Exhibits

- F. Deposition of David Thomas Volarich, D.O., taken on 10/13/06
- G. Certified medical records of Tesson Heights Orthopaedic & Arthroscopic Associates, P.C.
- D. Certified medical records of Dr. David Chalk, and certified medical records of St. John's Mercy Hospital- Washington, Mo
- D-1 Billing statements
- F1-F4. Earnings Statements

Employer and Insurer's Exhibits

- 2. Deposition of Dr. Michael Nogalski taken on 10/23/06
- 3. Deposition of David Chalk, M.D., taken on 11/1/06
- 4. Deposition of Paulo Bichahlo, M.D., taken on 11/13/06
- 5. Application for employment
- 6 Photo of stairs
- 7. Workplace photographs (6)
- 8. Income Protection Claim (three pages)
- 9. Medical record of Dr. Chalk (one page)
- 10. Orientation Materials
- 11. Timeline
- 12. Task Analysis Report

SUMMARY OF WITNESS TESTIMONY

Deborah J. Strait

Ms. Strait relates that she worked out of the home in certain factory jobs from time to time, and otherwise was a housewife and homemaker until November of 1999, when at the age of 41 she began working for GDX Automotive. Ms. Strait recalls working at a plant in Berger, Missouri, for three months making small parts before being transferred to the "rear door" plant in New Haven, Missouri. Ms. Strait notes that in January of 2000 she began working as a "Tech 4", operating machines that performed glass encapsulation for the rear window on Grand Am automobiles. Claimant relates that there are 9 jobs performed in two hour rotations to the six stations where all the jobs are done. Claimant agrees that it would take a day and a half to get through a complete rotation of the various jobs.

Claimant identified the 9 jobs as follows: 100 ton press; d-bar machine; b-pillar and header cut machine; assembly table; trimming; b-pillar mold; foam pad and butyl; and b-pillar pad and glass prep. Claimant explained that the d-bar machine bends and cuts parts, and that b-pillar and header is also a cutting process where rubber parts are loaded into the cutting machine. Claimant relates that on both cutting machines, she would insert the parts and then remove them after the cut. Claimant relates that on the b-pillar mold machine she would insert the header and b-pillar into the mold with her left and right hands, then place a rubber plug in the top of mold, close the mold, and the machine would form a part. Claimant relates that prior to that operation, she would need to clean the mold with a brass brush or other abrasive tool as necessary.

Claimant relates that the 100 ton press is a glass encapsulation machine that completes the part. She notes that prior to using the mold, she would clean the top and bottom parts by hand with wire brushes, cleaning out all the rubber. Claimant would then place the glass into the press with two other parts, and the machine would then make the part.

Ms. Strait acknowledges that trimming is a job that requires removing excess rubber off of parts by hand, by use of hand grinder, or by use of scissors. Claimant would also affix loose spots by adding primer and pressing down on the glass. Ms. Strait further defines "glass prep" as scraping excess adhesive off of glass with a blade, as well as applying primer by hand to the edges of the glass before putting the glass into the 100 ton press.

Ms. Strait notes that at either the trim or assembly table she would also affix by hand a foam pad to the elbow of the part, and would affix a part called the butyl to the head of the part. Claimant relates that assembly is the location where "deco pads" would be pressed on to the front of the window by hand, and that certain other clamps would be affixed to the window, which is then placed into a machine that completes the process. Lastly, claimant relates that a part called the "b-pillar pad" is placed by hand on the b-pillar/header. Ms. Strait notes that tools used from time to time include scissors, hook knives, scraper blades, emery boards, grinding tools, Allen wrenches, screwdrivers, and brass brushes. Ms. Strait relates that 22 parts are made in 2 hours, of a total of 88 or so in a shift.

Ms. Strait relates that on occasion where parts are out of specification or cut incorrectly, it would take more force than usual to push them into place. Claimant further relates that from time to time she would use tools to break down the mold to repair loose seals, or to replace spring plates.

Ms. Strait claims that she would climb a twelve foot ladder to the top of the 100 ton press at least 12 to 16 times a day, in order to feed rubber into the machine. She notes that the 100 ton press is on a ten inch high platform. On direct examination, she alleged that she would need to step up on the platform 10 times a shift; on cross examination, claimant alleged that she stepped onto the platform ten times in an hour.

On cross examination, Ms. Strait acknowledged that in the latter months of 2002 she became a "Tech 5" and began working on the extrusion line. Claimant acknowledged that photos marked as Employer and Insurer's 7 through 7F accurately represent the extrusion line. Ms. Strait notes that working the extrusion line means running extruders, stainers, pulley machines, salt tanks, and "ir" ovens. Ms. Strait notes that on occasion she is required to dismantle an extruder, which means she would take a die out, break it down, and clean it, all by hand. Claimant relates that on the extrusion line she uses impact wrenches, large wrenches, screwdrivers, tape measures, cheater bars, and pliers. She relates that she is required to bend and stoop to clean machines, mop floors, and drain water tanks. On cross examination, Ms. Strait claimed that on the extrusion line she would need to bend, stoop, or crawl as much as three to four hours a day. Claimant notes that four people worked on an extrusion line; the first person fed the machine, the middle two were pullers and packers, and the fourth person was an inspector.

Ms. Strait relates that prior to her employment with GDX she had no problems with respect to her hands, wrists, or knees. She relates that in 2001 she began to suffer pain and swelling in her knees, made worse when bending, squatting, and going up ladders. Ms. Strait acknowledges that her family physician, Dr. Calvin, referred her to Dr. Chalk, who performed a left knee surgery on 2/3/05, and a right knee surgery on 4/4/05. Ms. Strait confirms that prior to her surgeries she did not claim the knee condition to be work related, and that she chose to pursue benefits provided to her by wage contribution, short term disability, and through her health insurance.

Ms. Strait recalls suffering from pain and swelling in her hands and wrists beginning in 2000 or 2001. Claimant recalls advising Bob Dryden from employer's Human Resources Department, and states that his response was to provide her with magnet bracelets to wear while working. Claimant relates that in November or December of 2004 she filled out an accident report as to her wrist complaints, and further acknowledges that she eventually sought out an evaluation by Dr. Peebles in November of 2004, who had treated her in the past for migraine complaints.

Ms. Strait relates that she had an ncv, and was referred to a specialist, Dr. Tucker, who performed a carpal tunnel release of the right hand on 8/2/05, and a release of the left hand on 8/30/05. Ms. Strait recalls that she attempted a return to work on 10/24/05; that she worked one day; and that she chose to quit her employment on account of the pain and swelling she experienced in her hands and knees.

Ms. Strait relates that thereafter she went to school to learn the business of real estate sales, and from early July to October of 2006 she worked at American Recreational, sewing in a factory setting 40 hours a week until the factory closed.

Ms. Strait also offered rebuttal testimony, acknowledging that Exhibits F1- through F4 are copies of her earnings statements that reflect the amount taken out on a weekly basis for her medical insurance. Ms. Strait acknowledges she chose the option that provides for the employer to pay 85% of the medical, and the employee the other 15%.

Cheryl Pierce

Ms. Pierce relates that she is currently employed at GDX Automotive as a "Molder", doing production work. The witness relates that over the past three or four years she had been working as a "Tech 4" in the rear door department, performing rubber encapsulation of glass for the rear door of certain automobiles, until the termination of the contract for such production. Ms. Pierce relates that climbing the ladder or metal staircase to the top of the 100 ton press was done, as a rule, 4 to 8 times in an eight hour shift. Ms. Pierce relates that in summer months, the rubber would kink and break, causing a need to climb the stairs about twice as often as during the other seasons.

Ms. Pierce confirms that the press was elevated on a wooden platform approximately 12 inches high, and supposes that in a normal two hour shift a worker would need to step on and off the platform about 10 times in a shift. Ms. Pierce relates that it was common to work 4 hour shifts on the press, which would double the number of steps on and off the platform.

Ms. Pierce relates that cleaning and trimming would require bending and squatting, for example to reach tools and tool supplies on a lower shelf. The witness supposes she would need to do such bending or squatting 6 times in a 2 hour shift. Ms. Pierce notes that during the weekly cleaning she would need to squat to grease fittings, and notes that she would bend or squat to pick up rubber or glass waste material. The witness recalls having to kneel to retrieve things that fall into a mold, and when cleaning.

The witness further relates that the rear door job required gripping, pushing, pulling, occasional machine repair, and the use of certain hand tools. When asked whether the Tech 4 job required the use of force with the hands, Ms. Peirce responded "extremely".

Ms. Pierce relates that she is familiar with Deborah Strait, and that she has personally observed Ms. Strait performing the various functions of the Tech 4 job. In particular, Ms. Pierce recalls that for about a year Ms. Strait was responsible for doing a reinspection of parts, which she did by squatting and walking along the skid to view the parts.

Kevin Carpenter

Mr. Carpenter testified that for the last nine years he has been the Human Resource Manager for GDX Automotive. Mr. Carpenter, using payroll records at his disposal, testified to total numbers of hours worked by Ms. Strait from 2000 to 2005. Mr. Carpenter also shared a summary of the claimant's personnel file that he had created with the assistance of Mr. Robert Dryden. Mr. Carpenter explained that short term disability was an insurance paid for by the employer; that long term disability was insurance paid for by the employee. Mr. Carpenter noted that the medical program was voluntary on the part of the employee, and that Ms. Strait chose the 85-15 program, which means that after the employee paid an office fee and deductible, the employer would pay 85% of the medical expense and the employee would pay 15%. Mr. Carpenter notes that the employer maintains an account for paying such bills, and that a third party administers the account and negotiates rates.

Sherry Counts

This witness relates that she is employed by GDX Automotive, noting that she began her career with the company in January of 1987. Ms. Counts relates that she worked in the rear door department from 1999 until the phase out of the department in 2004. Ms. Counts notes that it would take at least two days to get through a rotation of the various jobs performed in the rear door department. As for the stairs to the top of the 100 ton press, Ms. Counts suggests that some rotations may not require any climbing at all, and supposes that the usual number of climbs would be from 0 to 3 in the course of a shift. Ms. Counts acknowledges there was a platform to step onto at the 100 ton press, but relates that she would only need to step up and down from that platform as many as two times a shift to retrieve needed materials. Ms. Counts further testified as to her experience as to the limited amount of stooping, bending, squatting, climbing, or crawling necessary to work the rear door job. Ms. Counts testified as to the rare occasion when a soft seal or spring plate would need a repair. Ms. Counts acknowledges that she is not familiar with Deborah Strait, as the two worked on different shifts.

Jennifer Christy

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Ms. Christy relates that she has a degree in Industrial Engineering, and has worked since 2001 in the field of review of industrial processes. The witness relates that she seeks ways to improve production, reduce losses, and track quality issues. Ms. Christy relates that much of her time was spent performing work station evaluations and task analysis to help minimize workplace injury. The witness identified Employer and Insurer's Exhibit No. 12 as a task analysis she performed at GDX Automotive in January of 2005. Ms. Christy relates that she performed her analysis of the "RD 130" or rear door department job by interviewing employees; taking notes and measurements; by watching the job duties performed; and by taking photographs and videotaping the various functions. The witness relates that she would then use a stopwatch to determine the cycle time for the various job tasks, and a gauge to determine amount of force applied. The witness relates that an ergonomic risk assessment for development of musculo-skeletal disorders is then applied to each of the job tasks performed.

Ms. Christy relates that she then applied her findings to a strain index and to other ergonomics risk tools used in the ergonomics field to reach the conclusion that all job tasks contained risk factors that fell within acceptable ergonomic limits for hands, arms, and wrists. Ms. Christy affirms that her analysis was applicable as to disorders relative to the upper extremities, and did not relate to risk factors and disorders relating to the lower extremities.

Ms. Christy acknowledged that her task analysis assumed a job rotation every two hours, and that her analysis did not include a review of risk related to repair and cleaning functions performed on the rear door job by a Tech 4. Ms. Christy acknowledges that she was aware that repair and cleaning were functions of the job, but chose, based on her interview and observance of the workers, to conclude that repair and cleaning was performed so infrequently as to be deemed not relevant to the task analysis.

Angela Pataky

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Ms. Pataky relates that she has worked at GDX for over ten years, and worked on the rear door job for five years altogether. Ms. Pataky relates that for approximately two years she worked the same rear door shift with Deborah Strait.

Ms. Pataky relates that on occasion a job rotation would last more than two hours, and would agree that most of the time a rotation lasted two hours. Ms. Pataky recalls that the step ladder on the 100 ton press would need to be climbed maybe two to four times in a 2 hour rotation; that the platform at the 100 ton press would also need to be stepped on and off maybe two to four times in a 2 hour rotation; and that no other jobs in the rear door department required any climbing.

The witness further recalls that a Tech 4 might need to squat maybe 4 times in a rotation at the cutting machine for b-pillar and header when reaching a shelf, and might need to kneel once during a rotation at the assembly table to string labels.

Josephine Gonzales

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Ms. Gonzales relates that she has worked at GDX Automotive for five years, in the extrusion department over the last 4 and a half years. The witness relates that she is now a "Tech 5", and that she runs rubber through an extrusion machine, creating a final product for use on car doors. Ms. Gonzales notes that there are eight extrusion lines, both "hot air" and "salt" lines that require similar work. Ms. Gonzales notes that she has worked both types of lines, and notes that she worked for a year on the same line as Deborah Strait.

Ms. Gonzales notes that there are four positions on the extrusion line, and that the workers rotate through those positions every two hours. Claimant identifies the four positions from beginning on the line to the end, as extruder; spray booth; pack out; and line lead. The witness explains that the extruder feeds rubber and wire into the machine once, or maybe twice on the occasion when there is a break in the material, and spends the rest of the time watching the machine. The person at spray booth lines up paint guns on the part, and sprays a coating on the parts. She relates that this worker will also walk the line to the next position, clean the area, and help the others. Ms. Gonzales relates that there is no forceful use of the hands as extruder or at the spray booth, and that neither of the jobs requires kneeling, squatting, climbing, or crawling.

The witness relates that at "pack out" the rubber parts, weighing an ounce or so, are taken off of the machine and are loaded into a "buggy". The fourth position, "line lead", is quality inspection. Ms. Gonzales notes that this person checks parts and monitors the running of the extrusion line, making sure the machine is running at speed. The witness suggests that the entire line is about 150 feet long, and that the line lead will walk the line

maybe one or two times in a rotation. Ms. Gonzales relates that neither “pack out” nor “line lead” requires the forceful use of the hands, nor do they require any crawling, climbing, kneeling, or squatting.

Ms. Gonzales notes that a wrench will need to be used from time to time, maybe two times in a week, to take out a die when necessary, and that the line lead, when performing quality control, will use a pair of scissors to cut parts as many as two to four times in a two hour rotation.

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Robert Dryden

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The witness relates that he has been employed by GDX Automotive since 1998, and that he is the Environmental Health & Safety Manager. Mr. Dryden relates that beginning in 2001 his duties included handling workers’ compensation matters. Mr. Dryden notes that he performs the new employee safety orientation, and notes that all employees participate in a one hour safety meeting each month.

Mr. Dryden relates that his first notice that Ms. Strait was claiming work related wrist injuries was when he received a claim for compensation at some point after 1/24/05.

The witness was unable to recall any conversation had with Ms. Strait from 2000 to 2002 as to wrist complaints, but agrees that he may have given Ms. Strait wrist splints to wear, noting that he had a history of providing such splints to employees, whether or not the employee complaints were believed to be work related. The witness relates that had Ms. Strait claimed her wrist complaints to be work related, an accident report would have been prepared, and the claimant referred to the company physician. Mr. Dryden acknowledges that as of 2005, no such report or referral had occurred.

Mr. Dryden recalls that the rear door department was in operation from 1998 through 2004 or 2005, and estimates that as many as 351 employees worked that job. Mr. Dryden recalls that two employees working that job have made allegation that they suffered a work related carpal tunnel syndrome.

Mr. Dryden recalls that he was not aware of the claimant making any knee complaint prior to her going on sick leave to have a knee surgery in January of 2005. Mr. Dryden further relates that he is unaware as to any prior history of knee complaint from Ms. Strait before 2005.

The witness confirms that he was present with Ms. Christy when she was in the plant for her task analysis, and further confirms that the filing of a workers’ compensation claim by Ms. Sherry Pope was one of the reasons for the task analysis.

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James Daryl Eichelberger

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On rebuttal the claimant read into the record those portions of the deposition testimony of Mr. Eichelberger that established that he was the Plant Manager at GDX Automotive, and that the “Tech 4” position was the employer’s first effort to provide for shared leadership that would empower the workforce. The witness relates that the “Tech 4” was not only responsible for production, but also for performing light mechanical fixes, and for determining rotation schedules. This witness further acknowledged that scissors were used on the b-pillar mold and on the 100 ton press; that an air operated grinder was used on the b-pillar mold; that a brass brush was used on the 100 ton press; and that a sanding stick was used for light trim work.

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FINDINGS OF FACT AND RULINGS OF LAW

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INJURY BY OCCUPATIONAL DISEASE/MEDICAL CAUSATION

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On 3/10/03 Ms. Strait complained to Dr. Chalk of a one year history of right knee pain. As of March of 2003, Ms. Strait had worked as a Tech 4 on the rear door department for approximately two years, from January of 2000 to the latter part of 2002, when she began working as a Tech 5 on the extrusion line. Ms. Strait continued to work the extrusion line prior to her right knee surgery on 2/3/05, excepting those leave of absence periods as noted on Employer and Insurer’s Exhibit No. 11.

Ms. Strait chose to treat with Dr. Chalk, and prior to her leave of absence for surgery did not allege to either Dr. Chalk or to her employer that she believed her knee complaints to be work related.

On 11/30/04 the claimant complained to Dr. Chalk of bilateral knee pain, left worse than right. An MRI of the left knee performed on 12/6/04 revealed to Dr. Chalk mild to moderate chondromalacia changes in the patellofemoral joint and in the medial femoral condyle. Dr. Chalk treated by administering a cortical steroid shot to the knee. When injection, physical therapy, and medication failed to give significant improvement, on 2/3/05 Dr. Chalk then performed an arthroscopy of the left knee. The operative report (See Claimant’s Exhibit C) indicates,

in part, that "Arthroscopic examination of the joint showed significant chondral defects of the patella, primarily of the lateral facet; however, when visualized, in the trochlear groove with the femur, there was significant chondral destruction there and, in fact, there was a central groove that was down to subchondral bone." Dr. Chalk also noted a small non-full-thickness chondral defect in the medial femoral condyle. Dr. Chalk went on to remove what he refers to as "bad cartilage" in the medial femoral condyle and in the patellofemoral joint. Dr. Chalk explains in his deposition that he also released a band of tissue by performing a lateral release, thereby relieving pressure on the knee joint that is caused by the band when the knee is flexed.

Dr. Chalk ordered physical therapy post the left knee surgery. An MRI was performed as to the right knee, and on 4/4/05 Dr. Chalk performed essentially the same surgery to the right knee as to the left for essentially the same conditions (See operative note contained in Claimant's Exhibit D).

Ms. Strait began suffering from increased swelling in the left knee, and Dr. Chalk first aspirated fluid from the knee, then proceeded to administer a series of Synvisc injections to thicken fluid in the joint and to decrease inflammation. After the third in the series of injections was performed on 7/19/05, Ms. Strait was released to return to work on 8/1/05.

Claimant was to return for a follow up in two months, but did not return to Dr. Chalk for further treatment or evaluation.

While treating with Dr. Chalk for her knee complaints, Ms. Strait was also being evaluated by Dr. Tucker for complaint of numbness and tingling in her hands. Instead of returning to work upon her release by Dr. Chalk, claimant chose to have right and left carpal tunnel releases performed on 8/2/05 and on 8/30/05 respectively. Claimant attempted a return to work on 10/24/05, and worked that one day before choosing to leave her employment on account of her hand and knee complaints.

Drs. Bichalo, Chalk, Nogalski, and Volarich all offered their respective opinions as to whether the right knee condition in need of treatment was work related. Dr. Chalk, the treating physician as to the right knee, is believed by this fact finder to be the most persuasive and credible of the four physicians to render a causation opinion in this matter.

The testimony of Dr. Bichalo is a puzzle wrapped in an enigma. More often than not it is telling when an evaluator chosen by the employer and insurer concludes that the condition at issue is due to repetitive use, and is work related. In the case of Dr. Bichalo, his expert opinion as to causation as contained in his first report is based upon the subjective history provided to him by the claimant, and his second report is further based on the deposition of the claimant taken on 4/26/06, and the task analysis report. Inasmuch as the history provided to Dr. Bichalo by claimant is not contained in his records, it is not clear what the basis is for Dr. Bichalo's conclusion in his first report dated 2/14/06 that the claimant's right knee complaint is work related. This fact finder does have access to the task analysis report, and that document does not lead this fact finder to the conclusion that the claimant would repeatedly climb, bend, and stoop. Further, when asked what he would consider repetitive, in the context of repetitive climbing, bending, kneeling, and so on, Dr. Bichalo noted that repetitive to him would mean maybe 75% of the time. (Employer and Insurer's Exhibit 4, at pp. 23, 24). Further, having read the deposition of Ms. Strait as contained in the records from the office of Dr. Bichalo, this fact finder is still at a loss to understand the basis for the conclusion reached by Dr. Bichalo to the effect that the claimant performed repetitive climbing, bending, and kneeling.

Dr. Chalk persuades that the chondromalacia suffered by Ms. Strait is more commonly found in females, and is a process that occurs due to a malalignment of the kneecap. Dr. Chalk explains that the malalignment causes increased pressures across the kneecap and the groove it sits in, and that activity over time cause wear to progress to the point of fragmentation of articular cartilage, leading to the wear and tear of the sort seen in the knees of Ms. Strait (Employer and Insurer's Exhibit No. 3, at p.32).

At issue is whether the bending and flexing of the knees as performed by Ms. Strait at her work was a substantial factor in the cause of the condition in need of treatment known as chondromalacia patella, see Section 287.020 RSMo. 2000. Dr. Chalk concluded that the claimant's job duties were not a significant factor in aggravating what he refers to as chondromalacia patellar or patellofemoral syndrome, noting that it was his understanding that repetitive stair climbing, kneeling or squatting were not part of her normal job activities. When pressed as to how many repetitions of flexing the knee would be significant to him, Dr. Chalk responded that his idea of frequent would be walking up and down a flight of stairs more than six to ten times a day; that squatting would be different from frequent for stair climbing, a factor of the six to ten referred to for stairs; and as to kneeling, six times in the course of a day. (Employer and Insurer's Exhibit No. 3, at pp. 49-52).

Ms. Pataky and Ms. Gonzales are found to be credible witnesses, and their testimony as to the types of exertion required on the 130 rear door and on the extrusion line to be worthy of belief. The testimony of Ms. Pataky is particularly compelling because she worked on the 130 rear door job for five years, two of those five

years on the same shift as Ms. Strait.

Ms. Pataky testified to climbing, squatting, and kneeling, and to a frequency of such activity that would be deemed by Dr. Chalk to be infrequent. Further, Ms. Gonzales testified persuasively that none of the jobs on the extrusion line require frequent kneeling, squatting, climbing, or crawling.

From all of the evidence, the claimant has failed to persuade that the condition in need of treatment known as chondromalacia patella was work related within the meaning of Section 287.020 RSMo 2000. The issues as to injury by occupational disease and medical causation are found in favor of the employer and insurer.

A finding in favor of the employer and insurer on the issues of injury by occupational disease and medical causation render the remaining issues moot.

Date: April 25, 2007

Made by: /s/ KEVIN DINWIDDIE
KEVIN DINWIDDIE
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST
PATRICIA "PAT" SECREST
Director
Division of Workers' Compensation