

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

Injury No.: 03-089867

Employee: Angeline Thomas
Employer: Rose Metal Products
Insurer: Federated Mutual Insurance Company
Date of Accident: Alleged September 10, 2003
Place and County of Accident: Alleged Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the 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 March 31, 2005, and awards no compensation in the above-captioned case.

The Commission finds that the administrative law judge correctly weighed and evaluated the lay and medical testimony in reaching his conclusions as to the issues presented. *Reese v. Gary & Roger Link, Inc.*, 5 S.W.3d 522 (Mo. App. E.D. 2002), *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo. App. S.D.2001), *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240 (Mo. banc 2003).

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

Given at Jefferson City, State of Missouri, this 19th day of August 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Angeline Thomas
Dependents: N/A
Employer: Rose Metal Products

Injury No. 03-089867

Before the
DIVISION OF WORKERS'

COMPENSATION

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

Additional Party:N/A

Insurer: Federated Mutual Insurance Company

Hearing Date: November 4, 2004

Checked by: LTW/mp

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 September 10, 2003
5. State location where accident occurred or occupational disease was contracted: alleged Greene County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
yes
7. Did employer receive proper notice? 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? yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant alleges that performing her duties as a data entry clerk caused her to sustain injury involving her neck and upper extremities.
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: neck and upper extremities
14. Nature and extent of any permanent disability:
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?

17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages: \$378.00
19. Weekly compensation rate: \$252.00
20. Method wages computation: stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

The claim for compensation is denied.

22. Second Injury Fund liability: No

TOTAL: \$.00

23. Future requirements awarded: none

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Angeline Thomas

Injury No: 03-089867

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: Rose Metal Products

Additional Party N/A

Insurer: Federated Mutual Insurance Company

Checked by: LTW/mp

The above-referenced workers' compensation claim was heard before the undersigned Associate Administrative Law Judge on November 4, 2004. The record was left open for the submission of additional evidence and briefs, resulting in the record being completed and submitted to the undersigned on or about December 31, 2004.

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about September 10, 2003, Rose Metal Products was an employer operating under and subject to The Missouri Workers' Compensation Law and during this time was fully insured by Federated Mutual Insurance Co.

- (2) On the alleged injury date of September 10, 2003, Angeline Thomas was an employee of the employer and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged accident occurred in Greene County, Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (5) At the time of the alleged accident or incident of occupational disease, the employee's average weekly wage was \$378.00, which is sufficient to allow a compensation rate of \$252.00 for temporary and permanent disability compensation.
- (6) Temporary disability compensation and medical care have not been provided to the employee.

The sole issues to be resolved by hearing include:

- (1) Whether the employee sustained an accident or incident of occupational disease on or about September 10, 2003?
- (2) Whether the employee provided the employer with notice of the accident as required by Section 287.420, RSMo?
- (3) Whether the employee sustained an accident or incident of occupational disease on or about September 10, 2003; and, if so, whether the alleged accident or incident of occupational disease arose out of and in the course of her employment with the Rose Metal Products?
- (4) Whether the alleged accident or incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (5) Whether the employee has sustained injuries that will require additional medical care in order to cure and relieve her of the effects of the injuries?
- (6) Whether the employer and insurer are obligated to pay for certain past medical care and expenses? (This issue is deferred pending further hearing.)
- (7) Whether any temporary total disability compensation is owed to the employee? (The employee seeks 46 weeks of temporary total disability compensation, payable for the period of September 18, 2003, through August 5, 2004?)
- (8) Whether the claimant sustained any permanent disability as a consequence of the alleged accident or incident of occupational disease; and, if so, the nature and extent of the disability?
- (9) Whether the employee is entitled to costs under Section 287.560, RSMo?

EVIDENCE PRESENTED

The claimant testified at the hearing in support of her claim. In addition, the claimant offered for admission the following exhibits:

Exhibit A Deposition of James A. Stuckmeyer, M.D.
 Exhibit B Photograph of Chair
 Exhibit C Photograph of Computer / Desk
 Exhibit D Statement for Services Rendered
 Exhibit E Communication from Springfield Family Physicians Re: Employee's Off Work Status
 Exhibit F Employee Data Calendar (2000)
 Exhibit G Letter of Denial from Insurer to Employee
 Exhibit H Personnel File (Notes) Re: Employee

The exhibits were received and admitted into evidence.

The employer and insurer presented two witnesses at the hearing of this case – Richard Splitter and Bertha (Bert) Hunt. Also, the employer and insurer offered for admission the following exhibits:

- Exhibit 1 Medical Records from Springfield Family Physicians
- Exhibit 2 Medical Records from Ferrell Duncan Clinic
- Exhibit 3 Medical Records from Cox Medical Center
- Exhibit 4 Photographs of Office Desk and Work Station
- Exhibit 5 Records from Dubinick Chiropractic Group
- Exhibit 6 Deposition of Steven Otto, M.D.

Exhibits 1, 2, 3, 4, and 5 were received and admitted into evidence at the time of the hearing of November 4, 2004. Exhibit 6 was received and admitted into evidence subsequent to the hearing on or about December 7, 2004.

In addition, the parties identified several documents filed with the Division of Workers' Compensation which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File which include: Claim for Compensation; Answer of Employer & Insurer to Claim for Compensation; and Report of Injury. Also, the undersigned has filed with the Legal File Mr. Stang's Letter Dated December 8, 2004, and Ms. Turner's Letter Dated December 1, 2004.

DISCUSSION

The employee, Angeline Thomas, is 40 years of age, having been born on February 19, 1965. Ms. Thomas is a resident of Nixa, Missouri.

In or around September 1999, Ms. Thomas secured employment with Rose Metal Products, working as a data entry clerk. In this employment Ms. Thomas worked eight-hour days, and during the workday performed repetitive hand movements. The duties of Ms. Thomas included the following activity:

- Figuring time cards manually and posting the time to work orders for each employee;
- Entering house sales and work orders into the computer, which involved retrieval of files from filing cabinets, data entry of information, and refilling of files in the filing cabinets; and
- Filing and assisting in computer inventory control, which involved keeping track of materials and time spent on jobs.

According to Ms. Thomas, with each work order she entered ten to twelve items on the computer which required her repeatedly to look up and down, as she could not see the computer monitor screen and the work order at the same time. Additionally, Ms. Thomas noted that she did "keying in" most of the day, every day, and spent six hours a day on the computer. Also, Ms. Thomas would occasionally relieve the receptionist for lunch.

In addition, Ms. Thomas testified that, in the course of performing her work duties, she had to lower her chair to do data entry, but she was not required to hold her head and neck in a fixed position. Notably, she could generally control the pace of her work and the tasks she performed. Further, prior to beginning employment with Rose Metal Products and continuing through 2000, Ms. Thomas worked as a full-time student, studying computer programming at a local business college.

In February 2000 Ms. Thomas began to experience discomfort and pain in her neck, upper back, and upper extremities. In light of these symptoms, on February 4, 2000, Ms. Thomas presented to Robert L. Dubinick, D.C., for chiropractic treatment. At the time of this visit, Dr. Dubinick took a history of Ms. Thomas' complaints and noted the following,

The patient is a 34-year-old, white female. She works as a bookkeeper at Rose Metal Products. She is also a full-time student, studying computer programming. She is under quite a bit of stress. She denies any radiation of the complaints into the upper extremities. She gets occasional tingling sensations in her neck and upper back. These are related to increased exertional activity and demand place the musculature. Sitting seems to make it worse. Overall it seems to be getting worse. No palliative factors are identified.

Dr. Dubinick provided Ms. Thomas with chiropractic treatment consisting of hot packs and interferential current, and a series of manipulations. This treatment appears to have provided Ms. Thomas with some relief as her symptoms decreased and she received no further treatment for her symptoms until 2003.

On June 11, 2003, Ms. Thomas presented to her family physician, John Fry, D.O., with complaints of neck

stiffness / pain that had persisted for one day. Additionally, Ms. Thomas presented with complaints of headaches, which Dr. Fry diagnosed as migraines. In light of his examination and evaluation, Dr. Fry prescribed adjustments, medication, and physical therapy, which Ms. Thomas did not consider to be helpful. Following this receipt of treatment, and in light of Ms. Thomas continuing to experience complaints of pain, Dr. Fry prescribed an MRI of the cervical spine which proved to be negative. Following his review and evaluation of the MRI diagnostic study, Dr. Fry diagnosed Ms. Thomas with cervical disc disease. Although experiencing symptoms, Ms. Thomas continued to work and engage in her employment with Rose Metal Products.

In September 2003 Ms. Thomas sought and obtained medical leave, complaining that she was experiencing migraines and shoulder / neck pain, and believing that she could not do her job. On or about September 18, 2003, Dr. Fry took Ms. Thomas off work; and Ms. Thomas began receiving short-term disability benefits through Rose Metal Products. On September 30, 2003, Ms. Thomas filed a Claim for Compensation, alleging that, as a consequence of her employment with Rose Metal Products, she sustained a work-related injury involving her neck and upper extremities. Through this Claim for Compensation, Ms. Thomas requested that the employer and its insurer provide her with medical treatment and temporary disability compensation. (The employer and insurer filed an Answer to the Claim for Compensation, denying liability.)

On or about October 2, 2003, Ms. Thomas sought and obtained an initial physical therapy evaluation at Cox Medical Center. At the time of this evaluation, Ms. Thomas reported neck and upper extremity pain since February 2000. Additionally, she reported that she was unsure "as to the etiology of the pain" and did not recall suffering any injury or trauma. Following a brief period of physical therapy (six visits), Ms. Thomas reported experiencing 25% improvement with leg numbness in the right upper extremity, but little change in her cervical pain.

On or about October 28, 2003, Ms. Thomas returned to her employment with Rose Metal Products. But, after several hours doing manual filing and posting, Ms. Thomas' symptoms increased; and she left work to see Dr. Fry, who again prescribed physical therapy and took her off work. Further, in light of continuing complaints, at the time of this October 28, 2003 visit, Dr. Fry referred Ms. Thomas to Steven M. Otto, M.D., who is a neurologist, for a neurological consultation.

In light of this referral, on November 7, 2003, Ms. Thomas presented to Dr. Otto for examination and evaluation. At the time of this examination, Dr. Otto took a history of Ms. Thomas' complaints of pain, wherein he propounded the following comments:

Angeline Thomas is a 38 year old right handed woman. She had had at least a three year history of neck pain. This is at the lower aspect of her neck. It is described as a severe ache which worsens at times. She can press on it and make her head hurt worse. It occurs when she is laying flat on her back. She saw a chiropractor in the year 2000 for this. Manipulation of her neck resulted in no improvement. In the course of the last few months things have significantly worsened. Nothing makes it feel better or worse. She has been placing heat on it without any relief. She went to physical therapy. That resulted in no improvement. MRI of the cervical spine resulted in minimal disc bulk at C6-7 without focal herniated nucleus pulposus, nerve root impingement or spinal canal stenosis. Plain films of the cervical spine were described as normal.

Also, in taking a history from Ms. Thomas, Dr. Otto noted that she worked in data entry, and that she sits on a stool that is much lower than the computer, which causes her to be in an awkward position.

In light of his examination and evaluation of Ms. Thomas, Dr. Otto diagnosed Ms. Thomas with posture induced musculoskeletal pain syndrome. Further, in light of the negative MRI diagnostic study, Dr. Otto prescribed a nerve conduction study with an EMG of the right upper extremity, which were later determined to be normal. Thereafter, Dr. Otto called Ms. Johnson to tell her the x-rays were fine, her problem was not neurological, and she should follow up with her primary physician. And, on or about November 18, 2003, Dr. Otto wrote a letter to Dr. Fry, wherein he propounded the following statement:

Thank you for allowing me to participate in the care of Angeline Thomas. X-Rays of her cervical spines shows no abnormalities. Her nerve conduction study with EMG was normal as well. However, there was significant amount of muscle spasm in her neck. This is what I found on my clinical examination as well.

Ms. Thomas and I talked during the course of her nerve conduction and EMG test. At this time no further neurologic intervention is required. I believe that the majority of the muscle spasms in her neck is related to her posture at ther (sic) work.

Subsequent to being examined and evaluated by Dr. Otto, Ms. Thomas returned to Dr. Fry for follow-up treatment, but without any apparent success.

At the hearing Ms. Thomas testified that, following the visit with Dr. Otto, she received some treatment from Dr. Fry, but none after January 2004, as Rose Metal Products put her on permanent layoff. Therefore, her employment-related benefits ended, including insurance; and she could not afford the insurance payments under COBRA. The medical records of Dr. Fry indicate that he released her from his care and to return to work full duty without restrictions in January 2004, although he did see Ms. Thomas in February 2004.

On or about March 7, 2004, Ms. Thomas began receiving \$195 in weekly unemployment benefits, which continued until August 5, 2004, when she started working for Americorp. In this work environment, Ms. Thomas receives a cost-of-living adjustment in the amount of \$1,018 per month, and not a salary. Additionally, this work involves tutoring junior-high school students with homework; and, according to Ms. Thomas, this is much easier work than the work she performed with Rose Metal Products.

James A. Stuckmeyer, M.D., who is an orthopedic surgeon that now performs independent evaluations for both plaintiffs and defense, testified by deposition on behalf of the employee.^[1] Dr. Stuckmeyer performed an independent medical examination of the claimant on March 20, 2004. At the time of this examination, Dr. Stuckmeyer took a history from Ms. Thomas which included a description of her work activities at Rose Metal Products. Additionally, Dr. Stuckmeyer reviewed various medical records and performed a physical examination of Ms. Thomas. In light of his examination and evaluation of the claimant, Dr. Stuckmeyer opined that, as a consequences of the occupational duties performed at Rose Metal Products, Ms. Thomas suffered an injury to her cervical spine and to her right posterior shoulder girdle. Further, while not believing Ms. Thomas was a surgical candidate, Dr. Stuckmeyer did opine that, as a consequence of this injury, Ms. Thomas was temporarily and totally disabled, and that she should be referred to a physician for pain management treatment and possibly additional diagnostic studies.

During his cross-examination, Dr. Stuckmeyer acknowledged that Ms. Thomas presented with only subjective symptoms, and further acknowledged that an EMG performed on Ms. Thomas four months earlier had been normal. Additionally, with the exception of the MRI indicating a bulging disc, which Dr. Stuckmeyer acknowledged was not symptomatic, Dr. Stuckmeyer acknowledged that all of the objective testing performed on Ms. Thomas was normal. Dr. Stuckmeyer agreed that there was no nerve root impingement or stenosis. And he did not think the bulging disc was work related or the cause of Ms. Thomas' problem, indicating her symptoms were most likely related to posturally-induced-mechanical stresses on the cervical spine.

Richard Splitter, who is the controller and secretary/treasurer of Rose Metal Products, a position he has held for 26 years, is responsible for accounting, payroll, group insurance, pension, payment of premiums, and, indirectly, workers' compensation. According to Mr. Splitter, the procedure for reporting work injuries at Rose Metal Products by Ms. Thomas is that she and her supervisor are to complete an accident report; and then the office manager is to prepare and file the Report of Injury with the workers' compensation carrier. In the context of Ms. Thomas' Claim for Compensation, Mr. Splitter indicated that he was aware Ms. Thomas was having problems with her neck because of comments she made to him. He stated that he tried to help her by making changes to her work station, although he had no reason to believe that the concern with her neck might be related to her work until September 10, 2003. (The changes included changing her computer screen and keyboard.) According to Mr. Splitter, it was not until September 10, 2003, that Ms. Thomas indicated that her problems might be related to her work when she told him her doctor indicated her job might have something to do with her symptoms. Also, according to Mr. Splitter, in the 26 years he has been with Rose Metal Products, Ms. Thomas was the only office worker to be treated for symptoms of repetitive or overuse syndrome.

Bertha ("Bert") Hunt, who is a 23-year employee of Rose Metal Products, serves as the office and credit manager. As the office and credit manager of Rose Metal Products, Ms. Hunt supervises four office staff and serves as their supervisor, which included serving as Ms. Thomas' supervisor. According to Ms. Hunt, Ms. Thomas' duties included data entry, filing, answering the phone, checking invoices for typing errors, and posting. According to Ms. Hunt, the majority of Ms. Thomas' time was spent on the computer and that the job probably involved six hours a day of computer work. Ms. Hunt testified that in 2000 she became aware of Ms. Thomas having problems with her neck because she had become aware of Ms. Thomas obtaining chiropractic treatment. Later, not until September 2003, did she become aware of Ms. Thomas

asserting her belief that her neck problems were related to work. Upon learning of this claim, Ms. Hunt initiated the process of completing and filing a Report of Injury. Also, according to Ms. Hunt, the decision to deny the employee's workers' compensation claim was made by Federated Mutual Insurance; and she did not know why it had been denied.

At the hearing the employer and insurer provided additional evidence in the form of deposition testimony produced by Dr. Steven Otto. Notably, Dr. Otto is a neurologist and is one of the treating physicians of Ms. Thomas. Dr. Otto had begun treating Ms. Thomas upon referral by Ms. Thomas' family physician, Dr. Fry. In examining the nature and cause of Ms. Thomas' complaints of pain, Dr. Otto testified that he would defer to Dr. Fry on the question of pain management, but that he "found no reason, no neurological reason for her [Ms. Thomas'] problems." According to Dr. Otto, Ms. Thomas presented with a significant amount of muscle spasms in her neck, and that he offered a diagnosis of musculoskeletal pain syndrome. He defined this as a condition that exists "simply were someone hurts because their muscles, bones, and tendons hurt" and that it can occur for multiple reasons "within and without occupational- related situations."

In the case of Ms. Thomas, Dr. Otto considered the muscle spasms to be related to her posture and saw nothing to preclude her from working. However, in allowing Ms. Thomas to return to work, Dr. Otto did suggest that she improve her posture at work, as, according to Dr. Otto, Ms. Thomas presented with terrible posture and Ms. Thomas had told him "work was the source of her aggravation." In other words, as stated by Dr. Otto, "Improve your posture, fix the problem."

In addition, in responding to an inquiry examining the causal relationship of Ms. Thomas' musculoskeletal pain syndrome, Dr. Otto noted that, if an individual was no longer working, he "most definitely would" expect the condition to improve if the condition was related to the postural or positional situation presented at work. Further, in being questioned about his letter to Dr. Fry, and his statement that "the majority of the muscle spasms in her [Ms. Thomas'] neck is related to her posture at ther (sic) work" Dr. Otto specifically rejected any indication that Ms. Thomas' work at Rose Metal Products caused her musculoskeletal pain syndrome. Rather, according to Dr. Otto, Ms. Thomas's condition was related to her posture at work.

FINDINGS AND CONCLUSIONS

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

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim, including causation. *Grime v Altec Industries*, 83 S.W.3d 581, (Mo.App. W.D. 2002) citing *Decker v Square D Co.*, 974 S.W.2d 667, 670 (Mo.App. W.D. 1998). See also, *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo.App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Bruflat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo.App. W.D. 1996). Further, the question of causation is one for medical testimony, without which a finding for the claimant would be based on mere conjecture and speculation and not on substantial evidence. *Grime*, citing *Jacobs v City of Jefferson*, 991 S.W.2d 693, 696 (Mo.App. W.D. 1999). Where several events, only one being compensable, contribute to the alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job-related injury.

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

I.

Occupational Disease and Causation

The employee, Angeline Thomas, asserts that she sustained an occupational injury to her neck and right upper extremity, which involved an injury in the nature of repetitive trauma associated with her employment with Rose Metal Products and her duties as a data entry clerk. In support of her opinion, Ms. Thomas relies on the medical opinion of Dr. Stuckmeyer. The employer and insurer, however, deny liability, asserting that she suffers from muscle spasms related to her posture – that this musculoskeletal pain syndrome was not, and is not, caused by her employment with Rose Metal Products and her duties as a data entry clerk. The employer and insurer rely on the opinions of Dr. Otto.

The parties appear to agree that Ms. Thomas does not suffer from a neurological condition. And, while Ms. Thomas suffers from a bulging disc, the parties agree that this condition is not the source of her complaint of pain. Rather, the parties seemingly agree, Ms. Thomas's complaints of pain relate to a condition diagnosed by both physicians as musculoskeletal pain syndrome. The cause of this condition is the underlying dispute being litigated by the parties; and, seeking to resolve this issue, the parties offer differing medical opinion.

After consideration and review of the evidence, I resolve the differences in medical opinions in favor of the testimony and opinions of Dr. Otto who I find to be credible. Notably, Dr. Otto is a treating physician, who was selected not by the employer and insurer, but by Ms. Thomas' family physician. Dr. Otto is of the opinion that the work at Rose Metal Products did not cause Ms. Thomas' musculoskeletal pain syndrome. Rather, it is her posture that is the cause of her problems associated with the diagnosis and condition of musculoskeletal pain syndrome. Notably, Ms. Thomas' posture occurred at work; but work did not cause her posture. Additionally, this poor posture occurred while she was not at work, and while she performed activities unrelated to work, such as typing and performing the work of a full-time student, studying computer programming.

According to Dr. Otto, Ms. Thomas suffers from a posture-induced musculoskeletal pain syndrome which he indicated could occur for a number of reasons "within and without occupational related situations." He noted her posture, which he described as terrible, caused her neck to hurt and that her complaints were not caused by her posture at work, but were related to her posture there. He said she described her work as the cause of her problem and he told her to improve her posture at work adding "[i]mprove your posture, fix the problem." Most significantly, Dr. Otto testified he "most definitely would" expect such a condition to improve if the individual was no longer working; the employee last worked for the employer on September 2003, and didn't work at all until August 2004. Yet, she continues to present with complaints of musculoskeletal pain.

This, when taken in conjunction with Dr. Stuckmeyer's testimony that the employee's symptoms were most likely related to posturally-induced-mechanical stresses on the cervical spine, that her primary complaint was pain, and that the objective testing was normal with the exception of an MRI indicating a bulging disc which he did not think was caused by the employee's work or was the cause of her problem, clearly indicates the employee's complaints are posturally related and not the result of her prior employment with Rose Metal Products, particularly since her complaints continued long after her employment there ended.

Accordingly, after consideration and review of the evidence, I find and conclude that the employee, Angeline Thomas, did not on or about September 10, 2003, sustain an occupational disease arising out of and in the course of her employment with Rose Metal Products. The Claim for Compensation is denied.

Date: March 31, 2005

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

A true copy: Attest:

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

[\[1\]](#) Dr. Stuckmeyer testified that he used to perform surgery as an orthopedic surgeon, but he suffered an injury to his right wrist, which has taken away

his ability to perform surgery.