

**FINAL AWARD DENYING COMPENSATION**

Injury No.: 01-139673

Employee: Jantzer Washington  
Employer: Meridian Medical Tech  
Insurer: Hartford Fire Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard the parties' arguments, and considered the whole record. Pursuant to section 286.090 RSMo, we issue this award denying compensation by separate opinion. The award and decision of Administrative Law Judge Matthew D. Vacca issued September 14, 2009, is attached solely for reference and is not incorporated by this decision.

**Preliminaries**

The issues stipulated at trial were the nature and extent of any permanent disability resulting from a November 2001 work accident sustained by employee; the appropriate rate of temporary total disability payments; whether employee sustained an occupational disease in 2001 arising out of and in the course of her employment; medical causation as to the alleged occupational disease; the nature and extent of any permanent disability resulting from the alleged occupational disease; and the appropriate rate of permanent partial disability payments.

The administrative law judge denied compensation for the November 2001 work accident on findings that claimant's testimony and her proffered medical evidence lacked credibility; made no findings as to the 2001 occupational disease claim; and awarded \$1,000.00 to the Second Injury Fund on a finding that employee prosecuted a claim for synergistic disability without reasonable ground.

Employee submitted a timely Application for Review with the Commission alleging the following claims of error: the administrative law judge erred in granting employer's motion to have employee examined by Dr. David Brown; the administrative law judge should have recused himself from the case due to "unprofessional loss of composure"; there was insufficient evidence to support the findings and award of the administrative law judge; the administrative law judge erred in denying employee's claim for medical expenses; and the administrative law judge erred in awarding \$1,000.00 to the Second Injury Fund.

For the reasons set forth in this award and decision, the Commission affirms in part, and reverses in part, the award of the administrative law judge.

**Findings of Fact**

*Accident*

On November 27, 2001, employee was sitting in a chair performing her work duties as a syringe inspector when the chair suddenly dropped down to its lowest setting, resulting in immediate pain to employee's low back. Employee previously injured her low back in 2000, when her chair rolled out from under her and she fell to the floor. Although employee provided extensive treatment records relating to the 2000 chair accident, the record contains no treatment records for the primary injury of 2001. We note that the treatment records for the 2000 low back injury

Employee: Jantzer Washington

- 2 -

reveal that the diagnosis was lumbar contusion/sprain; treatment included physical therapy, muscle relaxants, nonsteroidal anti-inflammatory medications, and heating pads; and employee was released for full duty as of July 20, 2000.

With regard to the primary injury of 2001, employee testified that her treatment included physical therapy for three weeks, hot pads, and "some kind of like electroshock that they put on the back for about 15 to 20 minutes." Employee continued to work during the three weeks of physical therapy, and was released to full duty without restrictions.

Although the pain from the 2000 injury has never gone away in her low back, employee claims that the 2001 accident aggravated her low back pain.

Dr. Robert Poetz examined employee on June 24, 2003. Employee complained of lower back pain with pain shooting down into the right leg. Dr. Poetz diagnosed lumbar strain with exacerbation of degenerative disc disease and degenerative joint disease. Dr. Poetz rendered this diagnosis without elaboration of any kind, and included this diagnosis in a list of 19 separate diagnoses relating to employee's numerous other complaints and past injuries. Dr. Poetz opined that employee suffered from a 10% permanent partial disability of the body as a whole referable to the low back in connection with pre-existing conditions; 10% permanent partial disability of the body as a whole referable to the low back for an injury in 1994; and 20% permanent partial disability of the body as a whole referable to the low back for the two chair injuries. Dr. Poetz was unable to make any distinction between the 2000 and 2001 chair injuries.

#### *Occupational Disease*

Employee's claim for compensation alleges occupational disease based on "years of hard heavy work causing arthritis in spine and knees." Employee, 53 years old at the time of hearing, is 5 feet and 3 inches tall, and weighs 250 pounds. Employee sought treatment for back pain and radicular right leg pain in 2006 and 2007. Treating doctors from January to July 2006 and in June 2007 diagnosed degenerative lumbar disease with osteoarthritis, spondylosis, and radiculopathy manifesting in the right leg; treatment included ordering an MRI and EMG, home therapy with ice, and three depo medrol injections. With regard to her knees, employee testified that she sustained knee injuries in 1987, when she slipped on a bedspread, and in 1999, when she fell forward onto metal stairs. Employee was treated for bilateral knee pain in 1996, 1997, and 1999; employee was diagnosed as having degenerative arthritis of her bilateral knees and underwent conservative treatment. On June 30, 2005, x-rays revealed moderate osteoarthritis of the right knee with osteophytes in the medial compartment and small joint effusion, and moderate to severe osteoarthritis of the left knee, particularly in the medial compartment with osteophytes. In 2008, treating doctors diagnosed arthritis of the left knee; claimant treated with a knee brace, anti-inflammatory medications, and physical therapy.

Employee's testimony as to her work duties is puzzling. Employee began working for employer in 1990. At various times in her career with employer, employee worked as an assembler, inspector, and housekeeper, but there is no evidence as to when, or for how long, employee was engaged in these various positions. Employee's work duties as an inspector required her to take syringes from a pan on a conveyer belt and shake the syringes to see if there were any particles in the syringes. Apparently, employee sat in a chair while performing this task. Employee rotated every hour from this task to packing pans of syringes into boxes. The pans weighed between 25 and 30 pounds. There is no evidence as to what type of work duties employee performed while engaged as an assembler or housekeeper.

Employee: Jantzer Washington

- 3 -

When employee saw Dr. Poetz on June 24, 2003, she complained of lower back pain with pain shooting down into the right leg; pain, popping, and swelling in the knees; and shooting pains up both legs. Dr. Poetz opined that employee's work duties including "prolonged standing, walking, bending, kneeling, and squatting," caused her degenerative diseases of the knees and back. Dr. Poetz admitted that employee did not tell him her job duties, and acknowledged his opinion could change if he knew the amount of time employee was sitting versus standing. Dr. Poetz acknowledged that employee's obesity could aggravate her pre-existing degenerative disc and joint diseases.

Dr. Poetz believed employee to be disabled due to her degenerative arthritis of the back and knees. Dr. Poetz opined that employee suffered from a 5% permanent partial disability of the bilateral knees in connection with degenerative conditions; 10% permanent partial disability of the bilateral knees in connection with injury events in 1987 and 1989; 10% permanent partial disability of the right knee in connection with an injury event in 1994; and 10% permanent partial disability of the right knee and 15% permanent partial disability of the left knee in connection with an injury event in 1999. Dr. Poetz also opined that employee suffered disability of her low back; his ratings are noted in the foregoing section. Dr. Poetz opined that the combination of present and prior disabilities resulted in a total which exceeded the simple sum by 15%.

### Conclusions of Law

#### *Accident*

Employee testified that the pain never went away from the 2000 chair injury, and Dr. Poetz assigned permanent disability stemming from that incident. Accordingly, we conclude that employee suffered from a pre-existing disability of her low back on November 27, 2001, when she sustained the low back injury that is the subject of this claim. Where such is the case, it is the employee's burden to offer expert medical evidence to establish the extent of pre-existing disability, in order to determine what portion of disability is attributable to the injury that is the basis of the claim. *Plaster v. Dayco Corp.*, 760 S.W.2d 911, 913 (Mo. App. 1988). Failure to do so bars the claim. *Id.*

Here, employee's evidence as to permanent disability attributable to the November 2001 injury is analogous to that of the employee in the case of *Moriarty v. Treasurer of Mo.*, 141 S.W.3d 69, 73 (Mo. App. 2004). There, the court reversed an award of permanent partial disability where the employee's expert was unable to assign separate disability ratings as between two different exposures to a harmful compound. *Id.* at 74. The *Moriarty* employee offered the opinion of Dr. Volarich:

On cross-examination, Dr. Volarich answered "Correct" when asked, "And not unlike the PPD, you couldn't tell us what restrictions went to which particular '01 claims." Specifically, Dr. Volarich testified that "the overall fifty percent disability rating ... is due to the combination of those two [exposures]," and that it is "impossible to break those [two exposures] out." As such, *Moriarty* failed to prove the nature and extent of each separate pending disability claim ...

*Moriarty*, 141 S.W.3d at 73.

Here, Dr. Poetz acknowledged that he was unable to apportion disability as between the 2000 and 2001 chair accidents. Because employee failed to present evidence apportioning the disability attributable solely to the 2001 chair accident, we must deny her claim for permanent disability.

Employee: Jantzer Washington

- 4 -

*Occupational Disease*

To prevail on a theory of occupational disease, an “employee must provide substantial and competent evidence that he has contracted an occupationally induced disease rather than an ordinary disease of life.” *Kelley v. Banta & Stude Constr. Co., Inc.*, 1 S.W.3d 43, 48 (Mo. App. 1999) (citations omitted). This requires a showing that the employee’s work creates exposure to the disease greater than or different from that which affects the public generally, and that there is 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.*

We find employee’s evidence insufficient to support her claim for occupational disease. Employee failed to establish the “years of hard and heavy work” that she claims exposed her to the risk of developing arthritis in her spine and knees. Employee’s evidence as to her work duties lacks probative detail and fails to explain when and how she was exposed to the risk of arthritis.

Dr. Poetz opined that employee’s degenerative diseases were caused by “prolonged standing, walking, bending, kneeling, and squatting,” but acknowledged that employee never told him what her job duties entailed, other than the fact that she was an assembly line inspector. Dr. Poetz further admitted that his opinion could change if he knew the amount of time employee was sitting versus standing. This testimony reveals that Dr. Poetz was unaware of even the most basic physical activities involved in employee’s work for employer. We acknowledge that an employee is only required to establish a “reasonable probability” of exposure. *Pippin v. St. Joe Minerals Corp.*, 799 S.W.2d 898, 902 (Mo. App. 1990). We further acknowledge that “a single medical opinion relating the disease to the job is sufficient to support a decision for the employee.” *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo. App. 1994). At the same time, however, “[a] medical expert’s opinion must have in support of it reasons and facts supported by competent evidence which will give the opinion sufficient probative force to be substantial evidence.” *Pippin*, 799 S.W.2d at 904.

We conclude that the opinion of Dr. Poetz does not constitute substantial evidence where he was clearly unaware of the basic physical activities employee’s job entailed. We find the opinion of Dr. Poetz to lack credibility. Employee’s medical proof is further compromised by her submission of numerous medical records for treatment to her back and knees, records that consistently reveal diagnoses of degenerative disease or relate to injuries outside the scope of employee’s claim for occupational disease, and fail to provide evidence that employee’s degenerative arthritis is causally linked to her employment.

In sum, we are unable to find the necessary “recognizable link” between the claimed occupational disease and any feature of employee’s job. As a result, we conclude that employee did not sustain an occupational disease due to her work for employer.

*\$1,000.00 Penalty For Unreasonable Claim*

The administrative law judge awarded \$1,000.00 in costs to the Second Injury Fund offering the following rationale: “Claimant contends in her brief that her disability from the primary 2001 claim is 10% of the body as a whole. This figure does not meet Second Injury Fund thresholds § 287.220 [sic]. There is no other evidence to support a higher figure.”

Despite the fact that many of the disability ratings assigned by Dr. Poetz fall short of the statutory thresholds, the administrative law judge, as the finder of fact, could have assigned disability ratings that exceeded the thresholds. Likewise, although the administrative law judge overlooked and made no findings as to employee’s 2001 claim for occupational disease, he could have assigned ratings that exceeded the thresholds for purposes of that claim as well.

Employee: Jantzer Washington

- 5 -

Although we have found that employee has not met her burden of proving that she is entitled to compensation, we conclude that she did not pursue her claim against the Second Injury Fund without reasonable ground.

We reverse the award of \$1,000 to the Second Injury Fund.

**Conclusion**

Based on the foregoing, the Commission concludes that employee did not suffer a compensable injury by accident in November 2001. The Commission further concludes that employee was not exposed to the occupational disease of arthritis in the performance of her work duties for employer, and that her arthritis was not caused by any feature of her employment with employer. Accordingly, employee's claim for benefits is denied. All other issues are moot.

We affirm the decision of the administrative law judge that employee has failed to submit a compensable claim by separate opinion. We reverse the decision of the administrative law judge to award \$1000.00 to the Second Injury Fund.

The award of Administrative Law Judge Matthew D. Vacca dated September 14, 2009, is attached solely for reference, and is not incorporated herein.

Given at Jefferson City, State of Missouri, this 15<sup>th</sup> day of June 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

William F. Ringer, Chairman

---

Alice A. Bartlett, Member

---

John J. Hickey, Member

Attest:

---

Secretary

## AWARD

Employee:	Jantzer Washington	Injury No.:	01-139673
Dependents:	N/A	Before the	
Employer:	Meridian Medical Tech	<b>Division of Workers'</b>	
Additional Party:	Second Injury Fund	<b>Compensation</b>	
Insurer:	Hartford Fire Insurance Company	Department of Labor and Industrial	
Hearing Date:	June 16, 2009	Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	MDV:cw

### 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? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: November 27, 2001 Claimed
5. State location where accident occurred or occupational disease was contracted: St. Louis
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?
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: Fell on backside.
12. Did accident or occupational disease cause death? No Date of death?
13. Part(s) of body injured by accident or occupational disease: None
14. Nature and extent of any permanent disability: \$0
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$967.59

Employee: Jantzer Washington

Injury No.: 01-139673

17. Employee's average weekly wages: \$588.88 (\$14.72/hr./ .40 hrs week)

18. Weekly compensation rate: \$392.55/\$329.42

19. Method wages computation: Agreed/Testimony

**COMPENSATION PAYABLE**

20. Amount of compensation payable:

Unpaid medical expenses:

21. Second Injury Fund liability: No

TOTAL: \$0

22. Future requirements awarded:

Said payments to begin 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 of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: N/A

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

Employee:	Jantzer Washington	Injury No: 01-139673
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	Meridian Medical Tech	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	Hartford Fire Insurance Company	Checked by MDV:cw

### **ISSUES PRESENTED**

The issues presented for resolution in the 2001 claim by way of this hearing were rate, occupational disease, medical causation, course and scope of employment and the nature and extent of permanent partial disability. The Employer admits to an accident.

### **FINDINGS OF FACT**

1. Claimant was born June 25, 1956. Claimant completed the 11<sup>th</sup> grade at Soldan High School in 1975. Claimant is 5' 3" and 230lbs. Claimant married October 2, 1982 and divorced in August of 1994. Claimant is right hand dominant. It appears she did not work for a period of 10-15 years after high school.
2. Claimant first worked at McDonald's restaurant on Delmar Avenue in the City of St. Louis for a year; she left to make more money. Claimant next worked at Residence Inn in the housekeeping department for a year and a half. Claimant left the Residence Inn to go to Meridian.
3. In November 1989, Claimant started as a temp for Survival which later became Meridian. On January 2, 1990, Claimant began full time for Survival. Claimant worked in assembly for six months, then moved to housekeeping, then to an inspector. Meridian Manufacturing produces assembled syringes which are used for emergency bee stings and military use.
4. Claimant inspected syringes for particles in the medicine for about nine years. Inspecting syringes required holding and turning four or five syringes at one time and looking at the contents thereof for contaminants such as glass or lint. This is extremely light work not involving any vibration, not requiring pressure or tight gripping, simply a gentle flexion, no rotation, no pushing with downward forces and nothing to aggravate the cubital or carpal canals.
5. Claimant has long-standing arthritis.

6. On August 16, 1999, Claimant fell on some stairs at work landing on her knees. X-rays showed arthritic and degenerative changes. The Musculoskeletal history recounts arthritis in both knees for two years. She was treated conservatively for de minimus injuries. There was no change in the knees from two months prior when she had x-rays in June.
7. Claimant says she injured her back on November 27, 2001, when her chair roll out from under her. She also has testified the chair broke and collapsed. Her testimony was evasive. She looked away from me as if fabricating her testimony; she was very dramatic; her testimony was not believable. She also has testified she hurt her back in August of 1999, when her chair rolled away. Dr. Poetz treated her for three weeks in 1999. The accident and injuries are *de minimus* with no disability after healing. Dr. Poetz rated both injuries as causing 20% disability but did not apportion percentages to each accident.
8. Robert P. Poetz, DO examined Claimant on June 24, 2003. Claimant's chief complaints were arthritic. Dr. Poetz found Claimant to be morbidly obese. Dr. Poetz diagnosed degenerative joint disease of her knees. He believes Claimant suffered from left and right wrists and shoulder tendonitis caused at work by excessive and repetitive use of the tendons involved in that portion of the body. Dr. Poetz also stated that Claimant suffered from right lateral epicondylitis, from excessive and repetitive stress to the tendon where it inserts into the lateral epicondyle, due to inflammation, swelling and pain. (Ex. A pg. 11)
9. Dr. Poetz rated Claimant at 5% permanent partial disability to the lower right extremity as measured at the right, and 5% permanent partial disability to the lower left extremity as measured at the left knee, 10% permanent partial disability to the lower right extremity as measured at the right knee from a contusion; 10% permanent partial disability to the lower right extremity as measured at the right knee from another contusion. 15% permanent partial disability to the lower left extremity as measured at the right knee directly resultant from the August 16, 1999 injury. 10% permanent partial disability to the body as a whole as measured at the lumbar spine for Lumbar degenerative disc disease and degenerative joint disease. Pre-existing 10% permanent partial disability to the body as a whole as measured at the lumbar spine for a lumbar sprain in 1994. 20% permanent partial disability to the body as a whole as measured at the lumbar spine directly resultant from June 5, 2000 and November 27, 2001 work related injuries for Lumbar strain/contusion with exacerbation of degenerative disc disease and degenerative joint disease. 20% permanent partial disability to the body as a whole as measured at the lumbar spine directly resultant from June 5, 2000 and November 27, 2001 work related injuries for lumbar strain with exacerbation of degenerative disc disease and degenerative joint disease.
10. Dr. Poetz is not credible. He does not understand Claimant's job duties. Claimant merely holds fives syringes and gives them a quarter to a half turn and looks for particulate matter. There is no grasping, forceful twisting, no pressure, or tight gripping. Further, he rates every contusion, bump and bruise Claimant reported to a physician with disability.

11. On November 27, 2001, Dr. Poetz also rates 10% permanent partial disability to the body as a whole measured at the right hip, pre-existing right hip degenerative joint disease; March 2001, 25% permanent partial disability to the body as a whole as measured at the right hip resultant from the work related injury for right hip stress fracture with exacerbation of degenerative joint disease. In 1987 and 1993, 15% permanent partial disability to the upper right extremity as measured at the right wrist for right wrist tendinitis. In 1991 and 1993, 15% permanent partial disability to the upper left extremity as measured at the left wrist for left wrist tendinitis and 15% permanent partial disability to the upper left extremity as measured at the left wrist for bilateral wrist tendinitis. In 1989, 5% permanent partial disability to the upper right extremity as measured at the right hand for a crush injury to the right index finger. In 1997 and 1999, 20% permanent partial disability to the upper right extremity as measured at the right shoulder for right shoulder tendinitis and 20% permanent partial disability to the upper right extremity as measured at the right shoulder for right shoulder strains. In 1999, 15% permanent partial disability to the upper right extremity as measured at the right elbow for right elbow lateral epicondylitis, with 10% permanent partial disability to the body as a whole as measured at the cervical spine for cervical strain. Dr. Poetz opined that the combination of the present and prior disabilities results in a total which exceeds the simple sum by 15%. Again, his ratings are ridiculous. He fails to apportion disability between accidents and seems to believe every visit to the doctor must result in a disability rating.
12. Dr. Schlafly also looked at Claimant and found pain and tenderness at the right wrist at the base of the thumb.
13. Dr. Schlafly's impression was that Claimant's pain was caused by osteoarthritis at the base of the thumb at the right wrist. Dr. Schlafly could not confirm the carpal tunnel syndrome diagnosis and was unaware that she had work related flexor tenosynovitis of the hands and wrists.
14. According to Claimant at trial, her job at Meridian gave her a great deal of repetitive use of both of her hands. Claimant described a repetitive pinching and gripping of the syringes and vigorous shaking of them using her hands and wrists. This is not an accurate description of her job.
15. Dr. Poetz's opinion regarding disability is one of the most not credible opinions I have ever seen. It is absurd and ridiculous. He has rated over 700 weeks of disability in a case where there is no preexisting surgery. This Claimant should be inert with all the disability he has rated. The fact the Claimant would report all these injuries to health providers and then be such a poor historian at trial is very suspicious.
16. Dr. Schlafly diagnosed painful osteoarthritis at the base of the thumb in both hands due to her repetitive work with her hands during her years of employment at Meridian as the substantial and prevailing factor in the cause of the painful osteoarthritis at the base of her thumbs and the need for treatment.
17. Dr. Schlafly performed surgery at the CMC joint at the base of the right thumb.

18. The pathology report showed degeneration of cartilage at the CMC joint.
19. Claimant received therapy at Rehab 1 Network Clinic.
20. Dr. Schlafly concluded that Claimant was unable to perform the factory work that she had been performing at the Meridian factory. Dr. Schlafly found that she was unemployable at her previous job at Meridian, and unable to perform repetitive work with her hands as she had been performing at Meridian factory.
21. On September 21, 2007, Claimant returned to Dr. Schlafly again describing pain and stiffness and weakness in both hands, intermittent swelling in the right hand when she uses it. Claimant also has shooting pains extending from the right hand. Dr. Schlafly did not confirm a diagnosis of flexor tenosynovitis of the hands and wrists or carpal tunnel syndrome. He gave 30% permanent partial disability of the right hand at the level of the right wrists and 25% permanent partial disability of the left hand at the level of the left wrist, on the basis of work related painful osteoarthritis at the base of her thumbs. Dr. Schlafly pointed out the condition of multiplicity exists due to both hands being involved. He said a loading factor applied to the permanent partial disability ratings. He further concluded that Claimant may be permanently totally disabled and referred issue to a vocational rehabilitation counselor.
22. Mr. Israel, a vocational rehabilitation counselor, believes Claimant is unable to compete in the open labor market. (Ex. C, depo Ex. B pg. 8)
23. On February 11, 2008, Claimant experienced increased post claim degenerative problems with arthritis all through her body. Dr. Graham examined Claimant for left shoulder, left knee and leg area pain. She reported her left shoulder started hurting six months previously without any injury or trauma. Claimant reported problems down the right leg from the back and increasing problems on the left leg behind the knees for the previous several months. The left knee film shows degenerative changes in the patellofemoral joint. Dr. Graham's diagnosis was a left shoulder rotator cuff and biceps tendinitis, with left knee arthritis. These conditions post-date either claimed injuries.
24. Dr. Schlafly's opinion on causation is not credible. Claimant has thumb arthritis not wrist arthritis along with long standing pervasive degenerative arthritis all through her body. His opinion is also based on a wildly inaccurate description of Claimant's job duties. His testimony on other disabilities also completely contradicts Dr. Poetz's and I find neither has any idea what, if any, disability this Claimant has from work.
25. Claimant fabricated the extent of her job duties to Dr. Poetz and Dr. Schlafly.
26. Mr. Israel said in his judgment that Claimant's employability was a result of her last injuries at work to her wrists and hands combined with the pre-existing disabilities. His opinion is not credible because Claimant has had no work related injuries to her wrists and hands from work in these two claims.

27. Dr. Brown diagnosed Claimant with arthritis not related to work. (ex.1, p.12) Dr. Brown is the only physician who actually understood what claimant does at work. "She described her job to me as inspecting syringes full of medicine. She actually showed me how she did it. (Ex.1, p.8, l. 3-6). There are several reasons claimant's arthritis is not work related. Her condition is not confined to her hands; it is systemic and increases as we get older. Arthritis in the base of the thumbs is very common in women in the late forties and fifties, probably due to anatomics but not due to work, and epidemiologically, arthritis increases as the population sample ages. His testimony was unimpeached and uncontradicted due to employees wavier of cross examination.

### **DISCUSSION**

1. Dr. Poetz assigns a 20% disability rating for the sprain incident on November 21, 2001 and a June 5, 2000 injury but fails to apportion the disability between the two incidents. This failure of expert testimony is fatal. Miller v Wefelmeyer, 890 SW2.372 (Mo App E.D. 1994) (overruled on other grounds). There may have been a de minimus accident but it has only produced de minimus and non compensable minor back injuries. No compensation is awarded for an incident on November 27, 2001 when her chair rolled away from her.
2. For the 2005 occupational disease claim, Claimant has not suffered from a work related occupational disease that arose out of and in the course of her employment. Claimant has arthritic thumbs and a totally degenerated skeleton none of which has anything to do with her light work at Meridian. The work Claimant performed at Meridian is so light that long term performance of the job over multiple years would not constitute exposure to an occupational disease. There is simply no forceful, repetitive gripping, grasping, pushing, pulling or difficult maneuvering. This is an extremely easy and light job.
3. Remarkably, Mr. Gerritzen waived his right to cross examine Dr. Brown on a theory entitled "stacking of doctors". The theory is that apparently a party can have only one physician testify. Nevertheless, Mr. Gerritzen solicited both Dr. Schlafly and Dr. Poetz to testify. I overrule Mr. Gerritzen's "Stacking of doctors" objection as being contrary to any known precept of law and completely without authority, citation or force of logic.
4. Last and finally Claimant has failed to establish a rate in the 2005 claim. She asserted it as an issue but presented no credible evidence as to what the pay was on the date the occupational disease arose. She asserted some evidence regarding irrelevant time periods. Thus the default \$40.00 rate minimum is appropriate.
5. Therefore the second claim is also denied.
6. Claimant contends in her brief that her disability from the primary 2001 claim is 10% of the body as a whole. This figure does not meet Second Injury Fund thresholds §287.220. There is no other evidence to support a higher figure. The Second Injury Fund is hereby awarded costs of \$1,000 for Claimant's prosecution of a claim for synergistic disability in

the primary 2001 claim on no reasonable ground. The Second Injury Fund is dismissed. The threshold could not be met.

7. I find most of Claimant's testimony not believable. It seems very fabricated. Employee is one of those workers who complains of every ache and pain ever experienced. Her expert rates numerous minor aches with a 5, 10 or 15% disability rating. These claims are not credible.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Matthew D. Vacca  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

**FINAL AWARD DENYING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge  
by Separate Opinion)

Injury No.: 05-046248

Employee: Jantzer Washington  
Employer: Meridian Medical Tech  
Insurer: Twin City Fire Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard the parties' arguments, and considered the whole record. Pursuant to section 286.090 RSMo, we affirm the denial of compensation by separate opinion. The award and decision of Administrative Law Judge Matthew D. Vacca issued September 14, 2009, is attached solely for reference and is not incorporated by this decision.

**Preliminaries**

The issues stipulated at trial were whether employee sustained an occupational disease arising out of and in the course of her employment; medical causation; the nature and extent of any permanent disability; and the appropriate rate for permanent disability payments.

The administrative law judge denied compensation for the 2005 occupational disease claim on a finding that claimant's testimony and her proffered medical evidence lacked credibility.

Employee submitted a timely Application for Review with the Commission alleging the following claims of error: the administrative law judge erred in granting employer's motion to have employee examined by Dr. David Brown; the administrative law judge should have recused himself from the case due to "unprofessional loss of composure"; there was insufficient evidence to support the findings and award of the administrative law judge; the administrative law judge erred in denying employee's claim for medical expenses; and the administrative law judge erred in awarding \$1,000.00 to the Second Injury Fund.

For the reasons set forth in this award and decision, the Commission affirms the award of the administrative law judge by separate opinion.

**Findings of Fact**

Employee, 53 years old at the time of hearing, claims she sustained an occupational disease in her wrists, hands, and fingers as a result of her work duties for employer due to repetitious use of both hands dating back to 1990.

Employee testified that she was diagnosed with tendonitis of the right wrist as far back as December 1987, was diagnosed with tendonitis of both wrists in 1993, and that she settled workers' compensation claims for each wrist in 1996. Employee most recently sought treatment for bilateral wrist and hand complaints beginning in September 2003. Employee acknowledged that she continued to work her normal duties until August 2006, but testified that pain caused her not to be able to get as much done.

Employee: Jantzer Washington

- 2 -

Employee's testimony as to her work duties is vague, contradictory, and perplexing. Employee began working for employer in 1990. At various times in her career with employer, employee worked as an assembler, inspector, and housekeeper, but there is no evidence as to when, or for how long, employee was engaged in these various positions. Likewise, there is no evidence as to the nature of any work duties performed by employee while engaged as an assembler or housekeeper. Employee initially testified that when she started working for employer, it was in the capacity of an assembler, and that she went from there to housekeeping. However, when employee described her most recent work duties, employee described duties consistent with those of an inspector. Employee never testified as to when she became an inspector, or how long she did this work. As a result, there is insufficient evidence upon which to base any factual findings as to when, and for how long, employee was engaged as an inspector.

In any case, employee testified that her work duties as an inspector required her to take syringes from a pan on a conveyer belt and shake the syringes to see if there were any particles in the syringes. Employee picked up four or five syringes at one time. Employee rotated from this duty to packing syringes into boxes every hour. With regard to how many syringes employee picked up in a typical work shift, employee guessed that she might have inspected as many as 200 or 300 syringes in one hour. We do not find the testimony of claimant to be credible on this point. It is evident from her hearing testimony that claimant has a poor memory and we find her estimate unreliable. There was no other evidence provided to shed light on the speed of the conveyer belt or the expectations of employer. As a result, we find that there is insufficient evidence to establish how many syringes employee inspected in a typical work shift while working as an inspector.

Dr. Bruce Schlafly examined and treated employee for wrist and hand complaints multiple times from August 2005 through September 2007. On November 13, 2006, Dr. Schlafly performed a tendon interposition arthroplasty on employee's right thumb at the carpal metacarpal joint. Employee testified that the surgery performed by Dr. Schlafly did not help and that she still has pain in her right hand and wrist. In his report of September 21, 2007, Dr. Schlafly opined that employee suffers from work-related osteoarthritis at the base of both thumbs, rated employee's disability at 30% at the right wrist, 25% at the left wrist, and opined that a loading factor should be applied for bilateral disability. Dr. Schlafly opined that employee's repetitive work with her hands during her years of employment with employer is the substantial and prevailing factor causing the painful osteoarthritis and need for treatment. Dr. Schlafly elaborated that osteoarthritis can be caused by fifteen years of repetitive use of the wrists and hands as described by employee, due to gradual erosion of the cartilage on the joint surface.

Dr. David Brown examined employee on behalf of the employer on August 26, 2008. Employee showed Dr. Brown how she performed her work duties. Dr. Brown agreed with Dr. Schlafly that employee suffered from bilateral osteoarthritis at the base of both thumbs, but opined that work was not a causative factor. Dr. Brown opined that claimant's osteoarthritis is the result of a systemic medical condition related to aging. Dr. Brown explained that osteoarthritis at the base of the thumb is common in women in their late forties and fifties.

### **Conclusions of Law**

To prevail on a theory of occupational disease, an "employee must provide substantial and competent evidence that he has contracted an occupationally induced disease rather than an ordinary disease of life." *Kelley v. Banta & Stude Constr. Co., Inc.*, 1 S.W.3d 43, 48 (Mo. App. 1999) (citations omitted). This requires a showing that the employee's work creates exposure to the disease greater than or different from that which affects the public generally, and that there is 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.*

Employee: Jantzer Washington

- 3 -

We find employee's evidence insufficient to support her claim that she was exposed to an occupational disease. Although it appears that employee was occasionally involved in a task which involved repetitive grasping with her thumbs and fingers, the balance of employee's evidence as to her work duties lacks probative detail and fails to explain when and how she was exposed to the risk of osteoarthritis.

Likewise, we find that employee failed to establish a recognizable causal link between her work duties and the development of osteoarthritis. Dr. Schlafly based his opinion, in large part, upon a belief that employee was engaged as an inspector and performed the work duties described as grasping and shaking syringes for fifteen years. This proposition is in no way evident from the record. It also appears that Dr. Schlafly was unaware that employee rotated from inspecting to packing syringes every hour.

We acknowledge that an employee is only required to establish a "reasonable probability" of exposure. *Pippin v. St. Joe Minerals Corp.*, 799 S.W.2d 898, 902 (Mo. App. 1990). We further acknowledge that "a single medical opinion relating the disease to the job is sufficient to support a decision for the employee." *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo. App. 1994). At the same time, however, "[a] medical expert's opinion must have in support of it reasons and facts supported by competent evidence which will give the opinion sufficient probative force to be substantial evidence." *Pippin*, 799 S.W.2d at 904. On the question whether employee's osteoarthritis was caused by the performance of her work duties, we find the opinion of Dr. Brown to be more credible than that of Dr. Schlafly. We find that employee's osteoarthritis is the result of natural degenerative processes.

In sum, we are unable to find the necessary "recognizable link" between the claimed occupational disease and any established feature of employee's job. As a result, we conclude that employee did not sustain an occupational disease due to her work for employer.

### Conclusion

Based on the foregoing, the Commission concludes that employee did not sustain an occupational disease as a result of the performance of her work duties for employer. Accordingly, employee's claim for benefits is denied. All other issues are moot.

The award of Administrative Law Judge Matthew D. Vacca dated September 14, 2009, is attached solely for reference, and is not incorporated herein.

Given at Jefferson City, State of Missouri, this 15<sup>th</sup> day of June 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

William F. Ringer, Chairman

---

Alice A. Bartlett, Member

---

John J. Hickey, Member

Attest:

---

Secretary

## AWARD

Employee:	Jantzer Washington	Injury No.:	05-046248
Dependents:	N/A		Before the
Employer:	Meridian Medical Tech		<b>Division of Workers'</b>
			<b>Compensation</b>
Additional Party:	Second Injury Fund		Department of Labor and Industrial
			Relations of Missouri
			Jefferson City, Missouri
Insurer:	Twin City Fire Insurance Company		
Hearing Date:	June 16, 2009	Checked by:	MDV:cw

### 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? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: May 27, 2005
5. State location where accident occurred or occupational disease was contracted: Yes
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Fell on backside.
12. Did accident or occupational disease cause death? No Date of death?
13. Part(s) of body injured by accident or occupational disease: None
14. Nature and extent of any permanent disability: \$0
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$7,334.05

Employee: Jantzer Washington

Injury No.: 05-046248

- 17. Employee's average weekly wages:
- 18. Weekly compensation rate: \$40.00 minimum
- 19. Method wages computation: Minimum

**COMPENSATION PAYABLE**

20. Amount of compensation payable:

21. Second Injury Fund liability: No

TOTAL: \$0

22. Future requirements awarded: None

Said payments to begin 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 of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Ray Gerritzen

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

Employee: Jantzer Washington

Injury No: 05-046248

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Meridian Medical Tech

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

Additional Party: Second Injury Fund

Insurer: Twin city Fire Insurance Company

Checked by MDV:cw

### **PRELIMINARY MATTERS**

Two claims, injury number 05-046248 and 01-139673, were tried together pursuant to 8 CSR 20-3.050 (1), (2), and (3). Claimant offered all her evidence to be used in both cases. Employer's evidence was offered only for the 2005 case. The Second Injury Fund offered its evidence for both cases. The transcripts will reside with the second case, injury number 05-046248, and it is designated the master proceeding. Separate awards will be issued.

### **ISSUES PRESENTED**

The issues presented for resolution in the 2005 claim were rate, occupational disease, medical causation, course and scope of employment and the nature and intent of permanent partial disability.

### **FINDINGS OF FACT**

1. Claimant was born June 25, 1956. Claimant completed the 11<sup>th</sup> grade at Soldan High School in 1975. Claimant is 5' 3" and 230lbs. Claimant married October 2, 1982 and divorced in August of 1994. Claimant is right hand dominant. It appears she did not work for a period of 10-15 years after high school.
2. Claimant first worked at McDonald's restaurant on Delmar Avenue in the City of St. Louis for a year; she left to make more money. Claimant next worked at Residence Inn in the housekeeping department for a year and a half. Claimant left the Residence Inn to go to Meridian.
3. In November 1989, Claimant started as a temp for Survival which later became Meridian. On January 2, 1990, Claimant began full time for Survival. Claimant worked in assembly for six months, then moved to housekeeping, then to an inspector. Meridian Manufacturing produces assembled syringes which are used for emergency bee stings and military use.
4. Claimant inspected syringes for particles in the medicine for about nine years. Inspecting syringes required holding and turning four or five syringes at one time and looking at the contents thereof for contaminants such as glass or lint. This is extremely light work not

involving any vibration, not requiring pressure or tight gripping, simply a gentle flexion, no rotation, no pushing with downward forces and nothing to aggravate the cubital or carpal canals.

5. Claimant has long-standing arthritis.
6. On August 16, 1999, Claimant fell on some stairs at work landing on her knees. X-rays showed arthritic and degenerative changes. The Musculoskeletal history recounts arthritis in both knees for two years. She was treated conservatively for de minimus injuries. There was no change in the knees from two months prior when she had x-rays in June.
7. Claimant says she injured her back on November 27, 2001, when her chair rolled out from under her. She also has testified the chair broke and collapsed. Her testimony was evasive. She looked away from me as if fabricating her testimony; she was very dramatic; her testimony was not believable. She also has testified she hurt her back in August of 1999, when her chair rolled away. Dr. Poetz treated her for three weeks in 1999. The accident and injuries are *de minimus* with no disability after healing. Dr. Poetz rated both injuries as causing 20% disability but did not apportion percentages to each accident.
8. Robert P. Poetz, DO examined Claimant on June 24, 2003. Claimant's chief complaints were arthritic. Dr. Poetz found Claimant to be morbidly obese. Dr. Poetz diagnosed degenerative joint disease of her knees. He believes Claimant suffered from left and right wrists and shoulder tendonitis caused at work by excessive and repetitive use of the tendons involved in that portion of the body. Dr. Poetz also stated that Claimant suffered from right lateral epicondylitis, from excessive and repetitive stress to the tendon where it inserts into the lateral epicondyle, due to inflammation, swelling and pain. (Ex. A pg. 11)
9. Dr. Poetz rated Claimant at 5% permanent partial disability to the lower right extremity as measured at the right, and 5% permanent partial disability to the lower left extremity as measured at the left knee, 10% permanent partial disability to the lower right extremity as measured at the right knee from a contusion; 10% permanent partial disability to the lower right extremity as measured at the right knee from another contusion. 15% permanent partial disability to the lower left extremity as measured at the right knee directly resultant from the August 16, 1999 injury. 10% permanent partial disability to the body as a whole as measured at the lumbar spine for Lumbar degenerative disc disease and degenerative joint disease. Pre-existing 10% permanent partial disability to the body as a whole as measured at the lumbar spine for a lumbar sprain in 1994. 20% permanent partial disability to the body as a whole as measured at the lumbar spine directly resultant from June 5, 2000 and November 27, 2001 work related injuries for Lumbar strain/contusion with exacerbation of degenerative disc disease and degenerative joint disease. 20% permanent partial disability to the body as a whole as measured at the lumbar spine directly resultant from June 5, 2000 and November 27, 2001 work related injuries for lumbar strain with exacerbation of degenerative disc disease and degenerative joint disease.

10. Dr. Poetz is not credible. He does not understand Claimant's job duties. Claimant merely holds fives syringes and gives them a quarter to a half turn and looks for particulate matter. There is no grasping, forceful twisting, no pressure, or tight gripping. Further, he rates every contusion, bump and bruise Claimant reported to a physician with disability.
11. On November 27, 2001, Dr. Poetz also rates 10% permanent partial disability to the body as a whole measured at the right hip, pre-existing right hip degenerative joint disease; March 2001, 25% permanent partial disability to the body as a whole as measured at the right hip resultant from the work related injury for right hip stress fracture with exacerbation of degenerative joint disease. In 1987 and 1993, 15% permanent partial disability to the upper right extremity as measured at the right wrist for right wrist tendinitis. In 1991 and 1993, 15% permanent partial disability to the upper left extremity as measured at the left wrist for left wrist tendinitis and 15% permanent partial disability to the upper left extremity as measured at the left wrist for bilateral wrist tendinitis. In 1989, 5% permanent partial disability to the upper right extremity as measured at the right hand for a crush injury to the right index finger. In 1997 and 1999, 20% permanent partial disability to the upper right extremity as measured at the right shoulder for right shoulder tendinitis and 20% permanent partial disability to the upper right extremity as measured at the right shoulder for right shoulder strains. In 1999, 15% permanent partial disability to the upper right extremity as measured at the right elbow for right elbow lateral epicondylitis, with 10% permanent partial disability to the body as a whole as measured at the cervical spine for cervical strain. Dr. Poetz opined that the combination of the present and prior disabilities results in a total which exceeds the simple sum by 15%. Again, his ratings are ridiculous. He fails to apportion disability between accidents and seems to believe every visit to the doctor must result in a disability rating.
12. Dr. Schlafly also looked at Claimant and found pain and tenderness at the right wrist at the base of the thumb.
13. Dr. Schlafly's impression was that Claimant's pain was caused by osteoarthritis at the base of the thumb at the right wrist. Dr. Schlafly could not confirm the carpal tunnel syndrome diagnosis and was unaware that she had work related flexor tenosynovitis of the hands and wrists.
14. According to Claimant at trial, her job at Meridian gave her a great deal of repetitive use of both of her hands. Claimant described a repetitive pinching and gripping of the syringes and vigorous shaking of them using her hands and wrists. This is not an accurate description of her job.
15. Dr. Poetz's opinion regarding disability is one of the most not credible opinions I have ever seen. It is absurd and ridiculous. He has rated over 700 weeks of disability in a case where there is no preexisting surgery. This Claimant should be inert with all the disability he has rated. The fact the Claimant would report all these injuries to health providers and then be such a poor historian at trial is very suspicious.

16. Dr. Schlafly diagnosed painful osteoarthritis at the base of the thumb in both hands due to her repetitive work with her hands during her years of employment at Meridian as the substantial and prevailing factor in the cause of the painful osteoarthritis at the base of her thumbs and the need for treatment.
17. Dr. Schlafly performed surgery at the CMC joint at the base of the right thumb.
18. The pathology report showed degeneration of cartilage at the CMC joint.
19. Claimant received therapy at Rehab 1 Network Clinic.
20. Dr. Schlafly concluded that Claimant was unable to perform the factory work that she had been performing at the Meridian factory. Dr. Schlafly found that she was unemployable at her previous job at Meridian, and unable to perform repetitive work with her hands as she had been performing at Meridian factory.
21. On September 21, 2007, Claimant returned to Dr. Schlafly again describing pain and stiffness and weakness in both hands, intermittent swelling in the right hand when she uses it. Claimant also has shooting pains extending from the right hand. Dr. Schlafly did not confirm a diagnosis of flexor tenosynovitis of the hands and wrists or carpal tunnel syndrome. He gave 30% permanent partial disability of the right hand at the level of the right wrists and 25% permanent partial disability of the left hand at the level of the left wrist, on the basis of work related painful osteoarthritis at the base of her thumbs. Dr. Schlafly pointed out the condition of multiplicity exists due to both hands being involved. He said a loading factor applied to the permanent partial disability ratings. He further concluded that Claimant may be permanently totally disabled and referred issue to a vocational rehabilitation counselor.
22. Mr. Israel, a vocational rehabilitation counselor, believes Claimant is unable to compete in the open labor market. (Ex. C, depo Ex. B pg. 8)
23. On February 11, 2008, Claimant experienced increased post claim degenerative problems with arthritis all through her body. Dr. Graham examined Claimant for left shoulder, left knee and leg area pain. She reported her left shoulder started hurting six months previously without any injury or trauma. Claimant reported problems down the right leg from the back and increasing problems on the left leg behind the knees for the previous several months. The left knee film shows degenerative changes in the patellofemoral joint. Dr. Graham's diagnosis was a left shoulder rotator cuff and biceps tendinitis, with left knee arthritis. These conditions post-date either claimed injuries.
24. Dr. Schlafly's opinion is not credible. His rating of the thumbs at the level of the wrist is not credible. Claimant has thumb arthritis not wrist arthritis. It is also based on a wildly inaccurate description of Claimant's job duties. His testimony on other disabilities completely contradicts Dr. Poetz's and I find neither has any idea what, if any, disability this Claimant has from work.

25. Mr. Israel said in his judgment that Claimant's employability was a result of her last injuries at work to her wrists and hands combined with the pre-existing disabilities. His opinion is not credible because Claimant has had no work related injuries to her wrists and hands from work in these two claims.
26. Dr. Brown diagnosed Claimant with arthritis not related to work. (ex.1, p.12) Dr. Brown is the only physician who actually understood what claimant does at work. "She described her job to me as inspecting syringes full of medicine. She actually showed me how she did it. (Ex.1, p.8, l. 3-6). There are several reasons claimant's arthritis is not work related. Her condition is not confined to her hands; it is systemic and increases as we get older. Arthritis in the base of the thumbs is very common in women in the late forties and fifties, probably due to anatomics but not due to work, and epidemiologically, arthritis increases as the population sample ages. His testimony was unimpeached and uncontradicted due to employees wavier of cross examination.

### **DISCUSSION**

1. Dr. Poetz assigns a 20% disability rating for the sprain incident on November 21, 2001 and a June 5, 2000 injury but fails to apportion the disability between the two incidents. This failure of expert testimony is fatal. Miller v Wefelmeyer, 890 SW2.372 (Mo App E.D. 1994) (overruled on other grounds). There may have been a de minimus accident but it has only produced de minimus and non compensable minor back injuries. No compensation is awarded for an incident on November 27, 2001 when her chair rolled away from her.
2. For the 2005 occupational disease claim, Claimant has not suffered from a work related occupational disease that arose out of and in the course of her employment. Claimant has arthritic thumbs and a totally degenerated skeleton none of which has anything to do with her light work at Meridian. The work Claimant performed at Meridian is so light that long term performance of the job over multiple years would not constitute exposure to an occupational disease. There is simply no forceful, repetitive gripping, grasping, pushing, pulling or difficult maneuvering. This is an extremely easy and light job.
3. Remarkably, Mr. Gerritzen waived his right to cross examine Dr. Brown on a theory entitled "stacking of doctors". The theory is that apparently a party can have only one physician testify. Nevertheless, Mr. Gerritzen solicited both Dr. Schlafly and Dr. Poetz to testify. I overrule Mr. Gerritzen's "Stacking of doctors" objection as being contrary to any known precept of law and completely without authority, citation or force of logic.
4. Last and finally Claimant has failed to establish a rate in the 2005 claim. She asserted it as an issue but presented no credible evidence as to what the pay was on the date the occupational disease arose. She asserted some evidence regarding irrelevant time periods. Thus the default \$40.00 rate minimum is appropriate.
5. Therefore, the second claim is also denied.

6. Claimant contends in her brief that her disability from the primary 2001 claim is 10% of the body as a whole. This figure does not meet Second Injury Fund thresholds §287.220. There is no other evidence to support a higher figure. The Second Injury Fund is hereby awarded costs of \$1,000 for Claimant's prosecution of a claim for synergistic disability in the primary 2001 claim on no reasonable ground. The Second Injury Fund is dismissed. The threshold could not be met.
  
7. I find most of Claimant's testimony not believable. It seems very fabricated. Employee is one of those workers who complains of every ache and pain ever experienced. Her expert rates many minor aches with a 5, 10 or 15% disability rate assigned to each bump and bruise. These claims are simply not credible.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Matthew D. Vacca  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest: