

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

Injury No.: 01-155232

Employee: Kelvin White
Employer: Young Dental Manufacturing Company
Insurer: Liberty Mutual Insurance Company
Date of Accident: Alleged July 19, 2001
Place and County of Accident: Alleged St. Louis 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. We have reviewed the evidence, read the briefs of the parties and considered the entire record. Pursuant to section 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated July 6, 2005. The award and decision of Administrative Law Judge John Howard Percy, is attached hereto solely for reference.

The dispositive issue is whether or not the employee sustained an occupational disease arising out of and in the course of his employment. Section 287.067.1 RSMo. The administrative law judge concluded that the employee did sustain an occupational disease arising out of and in the course of his employment, and awarded employee the following benefits: \$1,011.42 representing two and 4/7 weeks of temporary total disability benefits (2 4/7 x \$393.33); and \$7,659.02 representing 15% of the left leg at the 155 week level (155 x 15% x \$329.42).

The Commission disagrees with the conclusion reached by the administrative law judge, reverses the award, by concluding that the employee did not contract an occupational disease arising out of and in the course of his employment, rather, employee contracted an ordinary disease of life to which the general public is exposed outside of the employment, and consequently, its origin was not attributable to a risk connected with the employment.

I. Principles of Law

On or about July 19, 2001, employee developed a deep vein thrombosis in his left leg. Employee alleges that the development of this condition was caused by his occupation; i.e., more specifically, employee alleges that the condition developed as a result of prolonged periods of standing still or motionless at work while performing his job duties as a vulcanizer. Employer contends that employee's deep vein thrombosis was and is an ordinary disease of life, the development of which was idiopathic, and not medically causally related to his employment.

Occupational disease is defined by section 287.067.1 RSMo as follows:

"1. In this chapter the term 'occupational disease' is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence."

An employee must present substantial and competent evidence that he or she has contracted an occupationally induced disease rather than an ordinary disease of life. The courts have stated that the determinative inquiry involves two considerations: (1) whether there was an exposure to disease which was greater than or different from that which affects the public generally; and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296 (Mo. App. 1991). The employee must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the workplace. *Selby v. Transworld Airlines, Inc.*, 831 S.W.2d 221 (Mo. App. 1992).

II. Facts

In summary fashion, employee described his work as a vulcanizer: his duties principally involved numerous cycles of loading and unloading trays referred to as mold plates; these cycles lasted approximately five minutes; and employee estimated he stood still at his station approximately 60% of his actual working time. Employee did not stand still for more than a few minutes at a time, as his job involved movement/walking near his workstation.

As of the date of trial and the date of the alleged injury, Ms. Inez Bromberg was a manager of the employer. Ms. Bromberg testified that she was familiar with the job duties of the employee as a vulcanizer. Ms. Bromberg testified that it was not possible for a vulcanizer to stand absolutely still for a long period of time in performing the job duties required of the position. A vulcanizer continuously had to move back and forth in order to unload cups, load screws and had to turn and move in order to fulfill the job duties.

Ms. Bromberg testified employees were allowed lunch breaks and restroom breaks as necessary; employees were allowed two 15-minute breaks, in addition to the lunch break; and Ms. Bromberg testified that during her tenure of employment no other employee has ever complained or reported any similar type of injury to his or her lower extremities.

Employee's medical expert was Robert Poetz, D.O. The history given Dr. Poetz by the employee, and upon which Dr. Poetz relied, was that employee's job involved continuous standing while operating a press, with only a one-half hour daily lunch break in a 58-hour workweek. Dr. Poetz also reviewed a job description which indicated to Dr. Poetz that employee stood in one position for up to ten hours per day.

Based on employee's description of his job and the review of the medical records, Dr. Poetz opined that employee's prolonged standing at work caused employee to develop venous stasis, a well known triggering mechanism for the development of deep vein thrombosis which employee developed and which in turn caused the pulmonary emboli. Dr. Poetz testified that prolonged standing is a common cause of venous stasis and employee's prolonged standing was the most significant factor for the development of his condition.

On cross-examination, Dr. Poetz admitted he is not board certified in vascular medicine. His opinion was based on the premise that the employee was virtually standing still for 58 hours per week with a half-hour break for lunch while performing his work duties. On further cross-examination, Dr. Poetz testified that his opinion as to medical causation would not change even if he assumed employee moved frequently throughout the workday. On additional cross-examination, Dr. Poetz testified that prolonged standing is considered, by the medical community, to be a prime source of the development of deep vein thrombosis, and such relationship is contained in the medical literature in numerous places; however, he could not cite or refer "off the top of his head" to any medical literature, treatises, etc., that medically causally related prolonged standing to the development of deep vein thrombosis.

Wayne Flye, M.D., testified in behalf of the employer. Dr. Flye is board certified in vascular surgery. Dr. Flye was requested to examine and treat employee by the employee's initial treating physician, Dr. Siddiqui. Dr. Flye began treating employee on September 5, 2001. Dr. Flye has conducted both clinical and basic research in the area of vascular medicine, and his findings have been published in scholarly scientific journals. Dr. Flye has experience in determining etiology of deep vein thrombosis and pulmonary emboli.

Dr. Flye disagreed with the assertion of Dr. Poetz that prolonged standing is considered by physicians to be a

prime source of the development of deep vein thrombosis. Dr. Flye testified that a person standing absolutely motionless could cause deep vein thrombosis. However, that occurs infrequently. Dr. Flye explained that motion by someone standing, even though they are in the same place for hours on end, brings into play the muscular pump, which are the calf muscles. The mere fact that muscles are moving tends to contract and empty the veins. The muscular pump is a very important component in keeping the blood flowing. Dr. Flye testified that a person taking steps accentuates the muscular pump even more. However, if a person could stand absolutely still for several hours at a time, it could be a cause. It is very unusual for a normal person with normal sensation to be able to stand absolutely still for any length of time.

Dr. Flye was questioned about various occupational factors and their affect on the development of deep vein thrombosis. Regarding standing, Dr. Flye testified that the critical factor is what the individual is doing while standing, not the length of time the individual stands.

Dr. Flye testified that the most common cause of a deep vein thrombosis is an injury to the lower extremity or sitting (not standing) for a long time, such as prolonged immobilization with the legs dependent while traveling on prolonged flights. Dr. Flye was unable to identify the cause of employee's deep vein thrombosis. In the opinion of Dr. Flye, who actually treated the employee, employee had idiopathic deep vein thrombosis, emphasizing that the cause was unknown. Dr. Flye noted it was not unusual for an individual to have deep vein thrombosis and be unaware of the reason for the occurrence.

On cross-examination, Dr. Flye stated that it was very unusual for deep vein thrombosis to be caused by prolonged standing. In his opinion, it occurred with bank tellers and cashiers who are sitting most of the time.

III. Findings of Fact and Conclusions of Law

Upon reviewing the entire record, carefully reviewing the testimony of all witnesses, as well as the various exhibits offered and admitted into evidence, the Commission determines and concludes that the more believable evidence supports a finding that employee did not sustain an occupational disease arising out of and in the course of his employment as required by section 287.067 RSMo.

The ultimate determination of credibility of witnesses rests with the Commission; however, the Commission should take into consideration the credibility determinations made by an administrative law judge. When reviewing an award entered by an administrative law judge the Commission is not bound to yield to his or her findings including those relating to credibility, and is authorized to reach its own conclusions. An administrative law judge is no more qualified than the Commission to weigh expert credibility from a transcript or deposition. *Kent vs. Goodyear Tire and Rubber Company*, 147 S.W.3d 865 (Mo. App. 2004).

As stated previously, employee contends he contracted an occupational disease principally due to prolonged standing at work while performing his job duties. In contrast, employer contends that employee's contraction of deep vein thrombosis was idiopathic, not related to his employment and is simply an ordinary disease of life with no recognizable link to his employment.

As to this principal issue, the Commission finds the testimony and medical opinions of Dr. Flye to be credible, persuasive, and worthy of belief. In contrast, the Commission finds both the qualifications and medical opinions of Dr. Poetz to be lacking in comparison. Furthermore, the Commission finds that Dr. Poetz did not have an accurate description of employee's job duties or was not fully aware of his job description and activities during the workday, further impugning his opinions.

The Commission also determines through the testimony of the employee, that employee did not engage in motionless standing for any extended period of time while at work. Employee described picking up mold plates and moving them; the employee described this process as taking approximately five minutes; during these cycles employee testified he would walk maybe two steps over to obtain a motor plate, step over to it, place it on a mold plate, let it load, etc. There simply is no competent and substantial evidence to base a conclusion that the employee stood motionless or stood still for any extended period of time in order to determine the existence of a recognizable link between his employment and his development of deep vein thrombosis.

The expert medical evidence proffered by the employer, through the testimony of Dr. Flye, is clear, convincing and unequivocal. Dr. Flye was the treating physician of the employee, taking the case on referral from Dr. Siddiqui. Employer had no input in the selection of Dr. Flye as the treating vascular physician.

Dr. Flye treated the employee from September 5, 2001 through April 8, 2002. Dr. Flye was of the opinion that employee's occupation did not place him at significant risk for the development of deep vein thrombosis, because the vulcanization employment, as described by the employee, indicated to Dr. Flye there was more movement than standing in one place or being motionless. Dr. Flye explained that deep vein thrombosis usually occurs following injury to a lower extremity or to an individual who sits for long time without moving, i.e., such as sitting in an airplane. Standing, by itself, is not a primary cause of deep vein thrombosis. If a person could stand absolutely still for several hours at a time it could indeed be a cause; however, it would be highly unusual for a normal person with normal sensation to be able to stand absolutely still for such length of time.

As found above, the Commission cannot find from this evidence that as a matter of routine employee stood still or motionless for any extended period of time to lead to the development of deep vein thrombosis.

Also, the testimony of Dr. Poetz is not persuasive given the fact he has no expertise in vascular medicine; he assumed the employee stood virtually motionless for ten hours per day at work; and Dr. Poetz was unwilling to reconsider his opinion even if he were to assume that the employee was not motionless throughout the workday, and in fact, moved throughout the workday.

We find the testimony of Dr. Flye to be truthful, persuasive and convincing, when Dr. Flye states it is difficult to know what might have been the contributing factors to the development of employee's deep vein thrombosis. As Dr. Flye testified, some conditions occur that medical science cannot fathom. When this occurs, it is idiopathic and in the opinion of Dr. Flye, employee contracted idiopathic deep vein thrombosis, not related to his employment.

IV. Conclusion

The Commission determines and concludes that employee did not sustain an occupational disease arising out of and in the course of his employment. The Commission finds that employee contracted an ordinary disease of life, deep vein thrombosis, which did not have its origin in a risk connected with the employment.

Accordingly, the award of the administrative law judge issued July 6, 2005, is reversed; and, consequently, the employee is not entitled to any amount of compensation payable. Due to this finding, all remaining issues and motions filed with the Commission are moot.

The award and decision of Administrative Law Judge John Howard Percy, issued July 6, 2005, is attached hereto and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 9th day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

I must respectfully dissent from the award and decision of the majority of this Commission reversing the award of compensation in this case. I would modify the award of the administrative law judge.

Dr. Poetz credibly testified that prolonged standing is a risk factor for venous stasis. Dr. Poetz credibly testified that being overweight is a risk factor for the development of deep vein thrombosis. After eliminating employee's exposure to other known risk factors, Dr. Poetz determined within a reasonable degree of medical certainty that employee's prolonged standing at work was a substantial factor in causing his development of deep vein thrombosis. Employer's expert, Dr. Flye, agreed it is possible that prolonged standing can cause deep vein thrombosis. Dr. Flye, a vascular surgeon, admitted that he takes precautions against developing DVT while he stands performing surgery. I agree with the administrative law judge's assessment that Dr. Poetz's opinion regarding causation is the most credible.

In a workers' compensation proceeding, all doubts should be resolved in favor of the employee and in favor of coverage, but a claim will not be validated where some essential element is lacking. The claimant has the burden of proving all the essential elements of the claim and must establish a causal connection between the accident and the injury. The claimant does not, however, have to establish the elements of his case on the basis of absolute certainty. It is sufficient if he shows them by reasonable probability. "Probability means founded on reason and experience which inclines the mind to believe but leaves room for doubt."

Cook v. Sunnen Prods. Corp., 937 S.W.2d 221, 223 (Mo. App. 1996) (citations omitted).

I believe employee has established by a reasonable probability that his work activities caused his deep vein thrombosis. I believe the administrative law judge correctly concluded that employee established medical causation. The Commission majority errs in reversing this conclusion.

Dr. Poetz testified that employee needs ongoing medical care to cure and relieve him of the effects of his deep vein thrombosis and I would modify the administrative law judge award to include an award of future medical care.

In all other respects, I would affirm the award of the administrative law judge. For the foregoing reasons, I respectfully dissent from the award of the Commission.

John J. Hickey, Member

AWARD

Employee: Kelvin White

Injury No.: 01-155232

Dependents: N/A

Before the
Division of Workers'
Compensation
Department of Labor and Industrial
None Relations of Missouri
Jefferson City, Missouri

Employer: Young Dental Manufacturing Company

Additional Party:

Insurer: Liberty Mutual Insurance Company

Hearing Date: January 25 and March 29, 2005

Checked by: JHP:tr

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: July 19, 2001
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Missouri
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:
Prolonged standing caused deep vein thrombosis in left leg.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Left leg below the knee
14. Nature and extent of any permanent disability: 15% of left leg below the knee
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Kelvin White Injury No.: 01-155232

17. Value necessary medical aid not furnished by employer/insurer? None claimed
18. Employee's average weekly wages: \$590.00
19. Weekly compensation rate: \$393.33 TTD/\$329.42 PPD
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

2 4/7 weeks of temporary total disability	\$1,011.42
23.25 weeks of permanent partial disability from Employer	\$7,659.02

22. Second Injury Fund liability: No

TOTAL: \$8,670.44

23. Future requirements awarded: None

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

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

Steve D. Brooks

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Kelvin White	Injury No.:	01-155232
Dependents:	N/A	Before the	
Employer:	Young Dental Manufacturing Company	Division of Workers'	
Additional Party:	None	Compensation	
Insurer:	Liberty Mutual Insurance Company	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	JHP

A hearing in this proceeding was held on January 25, 2005 pursuant to Employee's request for a temporary award as provided in Section 287.510 Mo. Rev. Stat. (2000). The hearing date was advanced on the docket pursuant to Employee's request made under the provisions of Section 287.450. Employee requested an award of compensation for past temporary total disability pursuant to Section 287.170. The record was left open for additional evidence which was admitted into evidence on March 29, 2005. Both parties submitted proposed awards, the latter of which was received on April 15, 2005. The record comprises 260 pages of medical records and reports and 205 pages of medical depositions. Additional time was required in issuing this award due to the voluminous record and complexities of this case.

STIPULATIONS

The parties stipulated that on or about July 19, 2001:

1. the employer and employee were operating under and subject to the provisions of the Missouri Workers' Compensation Law;

2. the employer's liability was insured by Liberty Mutual Insurance Company;
3. the employee's average weekly wage was \$590.00; and
4. the rate of compensation for temporary total disability was \$393.33 and the rate of compensation for permanent partial disability was \$329.42.

The parties further stipulated that:

1. the employer had notice of the alleged occupational disease and a claim for compensation was filed within the time prescribed by law;
2. no compensation has been paid; and
3. employer/insurer have not paid any medical expenses.

ISSUES

The issues to be resolved in this proceeding are:

1. whether claimant was exposed to an occupational disease due to prolonged standing which arose out of and in the course of claimant's employment;
2. if the employee was exposed to an occupational disease by his work-related activities, whether he sustained an injury as a result of the occupational disease exposure;
3. if the employee sustained a compensable injury, whether he is entitled pursuant to Section 287.170 Mo. Rev. Stat. (2000) to compensation for temporary total disability for any periods of time subsequent to February 18, 2003; and
4. if the employee sustained a compensable injury, whether and to what extent employee sustained any permanent partial disability which would entitle him to an award of compensation.

OCCUPATIONAL DISEASE

There is no dispute that Kevin White, employee herein, developed a deep vein thrombosis in his left leg on or about July 19, 2001. Employee claims that he developed that condition as a result of prolonged periods of standing in one position while performing his work as a vulcanizer for Young Dental Manufacturing Company. Employer/insurer contend that employee's deep vein thrombosis was idiopathic and not related to his work.

An employee's claim for compensation due to an occupational disease is to be determined under Section 287.067 Mo. Rev. Stat. (2000). It defines occupational disease as:

an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. (1993 additions underlined)

Section 287.067.2, which was added in 1993, provides that an occupational disease is compensable "if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor." Subsection 2 of section 287.020 provides that an injury is clearly work related "if work was a substantial factor in the cause of the resulting medical condition or disability."^[1]

Subsection 3(1) of section 287.020 provides that an injury must arise out of and in the course of the employment and be incidental to and not independent of the employment relationship and that "ordinary, gradual deterioration or progressive degeneration of the body caused by aging" is not compensable unless it "follows as an incident of employment."

Subsection 3(2) of section 287.020 provides that an injury arises out of and in the course of the employment "only if (a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and (b) It can be seen to have followed as a natural incident of the work; and (c) It can be fairly traced to the employment as a proximate cause; and (d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life[.]"

Much of new subsection 3(2) of section 287.020 was contained in the prior definition of an occupational disease set forth in Section 287.067. Section 287.020.3(2)(b), (c), and (d) were part of the former occupational disease statute. Section

287.020.3(2)(a) is a revision of the prior requirement of a direct causal connection between the conditions under which the work was performed and the occupational disease. Direct causal connection is now defined as "a substantial factor in causing the injury." The Supreme Court held in Kasl v. Bristol Care, Inc., 984 S.W.2d 501 (Mo. 1999) that the foregoing language overruled the holdings in Wynn v. Navajo Freight Lines, Inc., 654 S.W.2d 87 (Mo. 1983), Bone v. Daniel Hamm Drayage Company, 449 S.W.2d 169 (Mo. 1970), and many other cases which had allowed an injury to be compensable so long as it was "triggered or precipitated" by work. A substantial factor does not have to be the primary or most significant causative factor. Bloss v. Plastic Enterprises, 32 S.W.3d 666, 671 (Mo. App. 2000); Cahall v. Cahall, 963 S.W.2d 368, 372 (Mo. App. 1998). The additional language in section 287.020.3(1) concerning deterioration or degeneration of the body due to aging probably does not overturn any prior court decisions.

Since the 1993 amendments pertaining to occupational diseases have largely readopted the prior statute, caselaw interpreting the prior statute is of some significance. In repetitive motion cases,¹²¹ as practically all movements of the human body done during the course of employment are also replicated in nonworking environments and as most occupationally induced diseases also sometimes occur in the public at large, the courts have focused on a particular risk or hazard to which an employee's exposure is greater or different than the public at large. Collins v. Neevel Luggage Manufacturing Co., 481 S.W.2d 548, 552-54 (Mo. App. 1972); Prater v. Thorngate, Ltd., 761 S.W.2d 226, 230 (Mo. App. 1988); Hayes v. Hudson Foods, Inc., 818 S.W.2d 296, 299-300 (Mo. App. 1991). Claimant must present substantial and competent evidence that he or she has contracted an occupationally induced disease rather than an ordinary disease of life. The Courts have stated that the determinative inquiry involves two considerations: "(1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort". Id. at 300; Dawson v. Associated Elec., 885 S.W.2d 712, 716 (Mo. App. 1994); Prater at 230; Jackson v. Risby Pallet and Lumber Co., 736 S.W.2d 575, 578 (Mo. App. 1987); Polavarapu v. General Motors Corp., 897 S.W.2d 63, 65 (Mo. App. 1995); Sellers v. Trans World Airlines, Inc., 752 S.W.2d 413, 415 (Mo. App. 1988).

Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. Dawson at 716; Selby v. Trans World Airlines, Inc., 831 S.W.2d 221, 223 (Mo. App. 1992); Brundige v. Boehringer, 812 S.W.2d 200, 202 (Mo. App. 1991). Claimant must prove that work was "a substantial factor" in causing "the resulting medical condition or disability." Section 287.020.2. Moreover, "an occupational disease is not compensable merely because work was a triggering or precipitating factor." Section 287.067.2 Mo. Rev. Stat. (1994). The Supreme Court held in Kasl v. Bristol Care, Inc., 984 S.W.2d 501 (Mo. 1999) that the foregoing language overruled the holdings in Wynn v. Navajo Freight Lines, Inc., 654 S.W.2d 87 (Mo. 1983), Bone v. Daniel Hamm Drayage Company, 449 S.W.2d 169 (Mo. 1970), and many other cases which had allowed an injury to be compensable so long as it was "triggered or precipitated" by work. On the other hand, injuries which are triggered or precipitated by work may nevertheless be compensable if the work is found to be the "substantial factor" in causing the injury. Kasl, supra.

A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. Dawson at 716; Sellers v. Trans World Airlines, Inc., 776 S.W.2d 502, 504 (Mo. App. 1989); Sheehan at 797. The opinion may be based on a doctor's written report alone. Prater v. Thorngate, Ltd., 761 S.W.2d 226, 230 (Mo. App. 1988). "A medical expert's opinion must be supported by facts and reasons proven by competent evidence that will give the opinion sufficient probative force to be substantial evidence." Silman v. Montgomery & Associates, 891 S.W.2d 173, 176 (Mo. App. 1995); Pippin v. St. Joe Minerals Corp., 799 S.W.2d 898, 903 (Mo. App. 1990). Where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible. Hawkins v. Emerson Electric Co., 676 S.W.2d 872, 877 (Mo. App. 1984). Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. George v. Shop 'N Save Warehouse Foods, 855 S.W.2d 460 (Mo. App. 1993); Webber v. Chrysler Corp., 826 S.W.2d 51, 54 (Mo. App. 1992); Hutchinson v. Tri-State Motor Transit Co., 721 S.W.2d 158, 163 (Mo. App. 1986). An administrative law judge may not constitute himself or herself as an expert witness and substitute his or her personal opinion of medical causation of a complicated medical question for the uncontradicted testimony of a qualified medical expert. Wright v. Sports Associated, Inc., 887 S.W.2d 596 (Mo. 1994); Bruflat v. Mister Guy, Inc., 933 S.W.2d 829, 835 (Mo. App. 1996); Eubanks v. Poindexter Mechanical, 901 S.W.2d 246, 249-50 (Mo. App. 1995). However, even uncontradicted medical evidence may be disbelieved. Massey v. Missouri Butcher & Cafe Supply, 890 S.W.2d 761, 763 (Mo. App. 1995); Jones v. Jefferson City School Dist., 801 S.W.2d 486, 490 (Mo. App. 1990).

Findings of Fact

Based on my observations of claimant's demeanor during his testimony, I find that he is a reasonably credible witness and that his testimony is partially credible. Based on that portion of claimant's testimony which I find to be credible and on the medical records, I make the following findings of fact.

Description of Work

Claimant began work at Young Dental manufacturing Company as a vulcanizer/press operator on December 8, 1999. His work as a vulcanizer involved, among other things, numerous cycles of loading and unloading of plates and buffing them. Each plate weighed about 50 pounds. He used an air gun to remove excess material and a power buffer to buff the plates. Each cycle lasted approximately five (5) to seven (7) minutes. During each cycle, employee stood in one place approximately three-fifths (3/5) of the time. He moved a couple of steps between each cycle to place the finished plate on a rack and to pick up another plate from the press. In December of 1999 he worked 40 hours per week. During this period he produced 54 plates per shift. In July of 2000 he began working 58 hours per week (10 hours each weekday and 8 hours on Saturday). During this period he produced 70 plates per shift. In October of 2000 he worked 50 hours per week (10 hours each weekday). During this period his production was changed to 300 per week or 60 per shift. His only regular break was thirty minutes for lunch. (Claimant's Testimony)

Medical Treatment

On June 25, 2001 claimant sought treatment from Dr. Jeffrey S. Boberg, a podiatrist, for pain in both heels which had been present on and off for over a year. It began after 2 to 3 hours of standing at work. Dr. Boberg diagnosed claimant with bilateral plantar fasciitis and prescribed proper shoes and Prednisone. On July 9 employee reported that he had been on vacation and that his condition had improved. On July 19 employee complained of intense pain and swelling in his left leg.^[3] Suspecting a deep venous thrombosis, Dr. Boberg referred employee for a venous Doppler duplex study of his leg. He noted that the results were positive for a deep vein thrombosis.^[4] (Claimant's Exhibit C)

Mr. White was admitted to St. Elizabeth's Hospital in Belleville, Illinois on July 19 for treatment of a deep vein thrombosis involving the femoral, popliteal, and calf veins of the left leg. He was initially placed on Heparin, Lovenox and Coumadin therapy.^[5] (Claimant's Exhibit K, depo ex 2, p. 2) He was discharged on July 20. (Claimant's Testimony)

Claimant was examined by Dr. Mohammed Siddiqui, who had been treating him for hypertension, on June 23. Claimant then weighed 225 pounds. He noted pain and swelling in the left leg. Dr. Siddiqui ordered CT scans of the chest and pelvis. They were performed on June 26 and demonstrated a pulmonary embolism involving the lower lobe branch of the right main pulmonary artery, smaller emboli in the right lower lobe, and smaller emboli on the left side. There was no evidence of any embolus in the iliac or inguinal veins or in the inferior vena cava. On June 27 claimant had no complaints. He was to continue on with Lovenox and Coumadin. (Claimant's Exhibits E, Pages 4-6 & H, Pages 3-5)

Dr. Siddiqui reexamined claimant on July 30 and August 7. Employee's leg was edematous and itchy. Dr. Siddiqui noted that Mr. White had developed post-phlebitis changes in his leg and advised him to wear a long stocking and continue with Coumadin. (Claimant's Exhibit E, Pages 9-10) On August 7 Dr. Siddiqui released claimant to return to work with the restriction of no standing on his left leg. Employer accommodated the restriction and claimant returned to work. (Claimant's Exhibit I, Pages 1 & 4)

Claimant sought a second opinion from Dr. M. Wayne Flye, a vascular surgeon at Washington University School of Medicine. Dr. Flye noted that the circumference of his left calf was 1-1/2 centimeters greater than the circumference of his right calf. He ordered a repeat Doppler duplex study of the leg and a CT scan of the pelvis. The Doppler study showed a residual clot in the deep venous system up to the level of the femoral vein. The CT scan showed no extension into the iliac system. Dr. Flye increased the dosage of his Coumadin and released claimant to regular employment as long as he exercised his leg episodically and wore a support stocking. (Claimant's Exhibit G)

On September 20, 2001 claimant experienced chest pains and shortness of breath and sought treatment at the DePaul Health Center emergency department. He was given Ativan for anxiety and diagnosed with an anxiety reaction and probable acute hyperventilation syndrome.^[6] (Claimant's Exhibit B, Pages 5, 6 & 19) He was examined by Dr. Siddiqui the next day. Dr. Siddiqui indicated that perfusion defects were noted on a "lung scan". Claimant had no chest pain or leg pain. They discussed a filter placement. (Claimant's Exhibit E, Page 12) Claimant returned to Dr. Siddiqui and reported recurrent chest pain and occasional shortness of breath. Dr. Siddiqui requested another CT scan of the chest. (Claimant's Exhibit E, Page 13)

Dr. Flye reexamined claimant on September 26. Claimant told him about the episode of shortness of breath. Mr. White also stated that he underwent a CT scan of the chest which showed no emboli.^[7] He did not have at that time any chest or left leg pain. He was wearing stockings. On examination Dr. Flye noted only 1/2+ pitting edema in the left ankle. The examination was otherwise normal. He recommended a pulmonary function test to evaluate his pulmonary function,^[8] but

counseled against placement of a vena cava filter. (Claimant's Exhibit G)

Claimant underwent placement of a Greenfield filter in the inferior vena cava on September 28, 2001. (Claimant's Exhibit H, Page 1)

Claimant returned to Dr. Siddiqui on February 4, 2002 and reported no pain in his legs, shortness of breath or chest pain. On examination he had no calf tenderness or leg edema. (Claimant's Exhibit E, Page 16)

Dr. Flye reexamined claimant on April 8, 2002. Claimant reported that he underwent filter placement because of his fear of an embolism. He reported no further episodes of shortness of breath. On examination Dr. Flye noted only ½+ pitting edema in the left ankle to mid pretibia. The examination was otherwise normal. He advised claimant to discontinue taking Coumadin and take aspirin. He recommended that he continue to wear support hose and elevate his leg at night. (Claimant's Exhibit G)

Claimant returned to Dr. Siddiqui on May 10, 2002. Claimant told him that he had symptoms of shortness of breath and pain in his leg. Dr. Siddiqui noted that employee was doing well except for a slight elevation of his hypertension. He was examined by Dr. Abid Nisar on June 14 who noted that employee's hypertension was well-controlled. (Claimant's Exhibit E, Page 17)

Claimant underwent Doppler duplex scanning of both legs on June 20, 2002. The study demonstrated no evidence of deep vein thrombosis in either leg. There was chronic thrombotic process with evidence of recanalization at the level of the superficial femoral and popliteal veins in the left leg. (Claimant's Exhibit E, Page 18)

Claimant returned to Dr. Nisar on June 21, 2002 and complained of pain and discomfort in his left leg. Dr. Nisar advised him to wear a Jobst stocking for chronic swelling and to continue taking aspirin. (Claimant's Exhibit E, Page 19)

On August 2, 2002 claimant sought treatment from Dr. Robert A. Shively, an orthopedic surgeon, for left knee pain which began insidiously six weeks earlier. Dr. Shively ordered an MRI to rule out a meniscal tear. He opined that his ongoing leg pain represented post-phlebitis syndrome and that employee should return to Dr. Flye. (Employer/Insurer's Exhibit 3, Pages 11-12) He underwent an MRI of the left knee on August 16, 2002 which showed a mild area of bone bruising along the lateral tibial plateau, early cartilage loss from the medial femoral condyle, a subchondral cyst within the tibia, myxoid degeneration of the menisci, but no other evidence of a tear, and mild thickening of the iliotibial band, likely secondary to a chronic injury. (Employer/Insurer's Exhibit 3, Pages 30-31)

Claimant sought treatment for left leg and knee pain from Dr. Donald K. King on August 12, 2002. On examination there no evidence of any deep vein thrombosis. He prescribed Vicodin. Dr. King reexamined claimant on December 30, 2002. Employee complained of severe bilateral leg pain during the prior two months and pain his knees and hands. Dr. King prescribed Vicodin and Vioxx. (Employer/Insurer's Exhibit 4, Pages 4-5)

Medical Opinions

Dr. Robert Poetz testified by deposition on behalf of claimant on January 4, 2005. He reviewed the medical records and examined Mr. White on November 19, 2002. Claimant told him that his job involved continuous standing while operating a press and that from July of 2000 to December of 2000 he was required to work 58 hours per week and was allowed only a one-half daily lunch break. He reviewed a job description from employer which indicated that claimant stood in one position for up to ten hours per day. He noted that employee's past medical history was significant only for hypertension. (Claimant's Exhibit K, Pages 7-10, 23, 48 & 50)

Based on employee's description of his job and his review of the medical records, Dr. Poetz opined that the prolonged standing at work caused claimant to develop venous stasis (i.e. pooling of the blood in the veins of the legs) which caused swelling and discomfort. He testified that venous stasis is a well known triggering mechanism for the development of deep vein thrombosis which employee developed and which in turn caused the pulmonary emboli. (Claimant's Exhibit K, Pages 12-14 & 17) Dr. Poetz added that claimant was mildly overweight which increased his risk factor slightly. He reiterated that employee's prolonged standing over long periods of time was the most significant factor for the development of venous stasis. Dr. Poetz found no evidence of any trauma to claimant's legs in the records. (Claimant's Exhibit K, Pages 15-16)

On cross examination Dr. Poetz indicated that his opinion on causation would not change even if employee took a step from time to time throughout the day because of the many (57) hours of dependency on his veins in his legs.¹⁹¹ On the

other hand, he indicated that if claimant were walking or stepping continuously, that would make a big difference. (Claimant's Exhibit K, Pages 24-25 & 51) Dr. Poetz explained that the Greenfield filter is designed to trap any clots coming from the leg to prevent them from entering the inferior vena cava and going to the lungs. (Claimant's Exhibit K, Page 30)

On cross examination Dr. Poetz testified that he reviewed the blood tests performed at the time of claimant's admission to St. Elizabeth's Hospital on July 19 2001 and they did not show any evidence of any preexisting coagulopathy (clotting disorder) or diabetes.^[10] He stated that prolonged standing is considered by all physicians to be a prime source of the development of deep vein thrombosis. (Claimant's Exhibit K, Pages 27 & 38-39)

Dr. Flye testified by deposition on behalf of employer/insurer on January 19, 2005. He indicated that the emboli which were seen on the first CT scan of the lungs and not seen according to claimant on the late September CT scan of the lungs had probably resolved. (Employer/Insurer's Exhibit 9, Page 11) He did not understand why the filter had been placed without any documentation on the lung except for the history of shortness of breath (which may have been due to anxiety). (Employer/Insurer's Exhibit 9, Pages 12-13)

Dr. Flye testified that the most common cause of a deep vein thrombosis is an injury to the lower extremity or sitting for a long time on an airplane. He stated that standing absolutely still could also cause a deep vein thrombosis, though it occurs less frequently. He explained that standing motionless slows the blood circulation and sets up stasis which can lead to a thrombosis. He added that moving around causes the calf muscles to contract the veins and empty the veins. He stated that shifting one's weight from leg to leg would activate the muscular pump and taking a few steps would accentuate it even more. He added that if one could stand absolutely still for several hours at a time, it could cause a deep vein thrombosis. He said that few people can stand absolutely still for long periods of time because the feet get tired which causes people to move around. (Employer/Insurer's Exhibit 9, Pages 18-20)

Dr. Flye was unable to identify the cause of claimant's deep vein thrombosis. He noted that claimant did not tell him of any trauma or any long travel plans. He said that it is very hard to test for genetic factors and that he was unable to perform coagulation tests since they are dependent on the patient being off anticoagulation drugs. (Employer/Insurer's Exhibit 9, Page 27-29)

On cross examination Dr. Flye stated that it was very unusual for a deep vein thrombosis to be caused by prolonged standing. It occurs with bank tellers and cashiers who are sitting most of the time. (Employer/Insurer's Exhibit 9, Page 39) He said that it was hard to state how many hours of standing would put someone at risk of developing a deep vein thrombosis. Dr. Flye indicated that he was at risk because he stands eight to ten hours at an operating table. He wears support hose and tries to move around the table. He indicated that if someone is older, or is a smoker, or is overweight, standing for even an hour may put him or her at a greater risk than a younger and healthier person standing for the same length of time. (Employer/Insurer's Exhibit 9, Page 40)

Dr. Flye considered claimant to be overweight at 5' 10" and 230 pounds; he said that his weight would be an independent risk factor. He agreed that an overweight person who stands for prolonged periods would be at a greater risk of developing a deep vein thrombosis. He agreed that if that person were standing pretty much in one place for an hour and not moving from side to side or taking any steps, he would be at a greater risk of developing a deep vein thrombosis. Dr. Flye thought that claimant described moving about rather than standing in one place. (Employer/Insurer's Exhibit 9, Pages 40-43)

After agreeing that claimant did not have any predisposing genetic factors, had not sustained any trauma, had not had a prior stroke, was not a smoker, and did not have cancer, Dr. Flye concluded that claimant had an idiopathic deep vein thrombosis. He did not know what caused his deep vein thrombosis. (Employer/Insurer's Exhibit 9, Pages 52-55 & 59)

Additional Findings

It is not clear whether claimant's 3/5 estimate of time standing still applied to each 5 to 7 minute cycle or to each 9.5 hour shift. Claimant's numbers do not account for all of his time. He indicated that he produced 70 plates per shift spending 5 to 7 minutes per cycle. Using a 7 minute cycle would account for 490 minutes (8 hours and 10 minutes). It is unclear what claimant did during the remaining 1 hour and 20 minutes of his shift. If claimant spent 3/5 of his 9.5 hours standing still, he would have stood still for 5.7 hours per shift. If, on the other hand, he spent 3/5 of the 490 minutes of cycle time standing still, he would have stood still for 294 minutes (almost 5 hours) per shift. It is also unclear how many steps claimant took between each cycle and during the remaining 1 hour and 20 minutes of his shift. In either case, 5 hours represents a lot of time standing still day after day. Employer's Human Resources Manager acknowledged that claimant's job required "standing in one position for long periods of time at a press" during a workday of 10 hours. (Claimant's Exhibit I, Page 1)

While it is entirely possible that claimant developed an idiopathic deep vein thrombosis, the evidence points a little more strongly in the direction of prolonged standing by an employee with an additional risk for being overweight being the cause of employee's blood clot. Though Dr. Flye thought that claimant's clot was idiopathic, he acknowledged that prolonged standing with little movement was a known cause of deep vein thrombosis and the risk was enhanced in an overweight person. Dr. Flye assumed there was some movement with employee's job, but he did not know how much. Dr. Poetz assumed that employee stood still most of the day, but he did not know that claimant may have moved as much as 3 hours during each shift. Neither expert was posed a hypothetical containing the crucial facts.

In considering the expert opinions, I find the opinion of Dr. Poetz on causation is slightly more credible than the opinion of Dr. Flye. Based on the credible opinion of Dr. Poetz, I find that claimant developed on July 19, 2001 a deep vein thrombosis in his left leg and emboli in both lungs as a result of prolonged standing while working as a vulcanizer for Young Dental Manufacturing Company.

TEMPORARY TOTAL DISABILITY

Employee is seeking temporary total disability compensation for the period from July 19, 2001 through August 7, 2001.

Section 287.170 Mo. Rev. Stat. (2000) provides that an injured employee is entitled to be paid compensation during the continuance of temporary total disability up to a maximum of 400 weeks. Total disability is defined in Section 287.020.7 as the "inability to return to any employment and not merely ... [the] inability to return to the employment in which the employee was engaged at the time of the accident." Compensation is payable until the employee is able to find any reasonable or normal employment or until his medical condition has reached the point where further improvement is not anticipated. Vinson v. Curators of Un. of Missouri, 822 S.W.2d 504 (Mo. App. 1991); Phelps vs. Jeff Wolk Const. Co., 803 S.W.2d 641, 645 (Mo. App. 1991); Williams v. Pillsbury Co., 694 S.W.2d 488 (Mo. App. 1985).

With respect to possible employment, the test is "whether any employer, in the usual course of business, would reasonably be expected to employ the claimant in his present physical condition." Brookman v. Henry Transp., 924 S.W.2d 286, 290 (Mo. App. 1996). The refusal of an employer to allow an employee, who has been released by the treating physician to return to light duty work, to return to such work is some evidence that the employee could not find any reasonable or normal employment. Herring v. Yellow Freight System, Inc., 914 S.W.2d 816, 821 (Mo. App. 1995). However, an employer is not required to either provide light duty or pay temporary total disability compensation solely because the employee is still receiving medical treatment for a condition which is reasonably expected to improve. Cooper v. Medical Center of Independence, 955 S.W.2d 570, 575 (Mo. App. 1997).

Findings

I previously found that claimant was admitted to Memorial Hospital in Belleville on July 19, 2001 for treatment of a deep vein thrombosis in his left leg. Upon discharge Dr. Siddiqui monitored his treatment. I also previously found that Dr. Siddiqui released claimant to return to work as of August 7, 2001 with the restriction of no standing on his left leg. Employer accommodated the restriction and employee returned to work.

Based on the foregoing findings, I further find that claimant was temporarily and totally disabled from July 19 to August 7, 2001, a period of 2-4/7 weeks.

PERMANENT DISABILITY

The employee must prove the nature and extent of any disability by a reasonable degree of certainty. Downing v. Willamette Industries, Inc., 895 S.W.2d 650, 655 (Mo. App. 1995); Griggs v. A. B. Chance Company, 503 S.W.2d 697, 703 (Mo. App. 1974). Such proof is made only by competent and substantial evidence. It may not rest on speculation. Idem. Expert testimony may be required where there are complicated medical issues. Goleman v. MCI Transporters, 844 S.W.2d 463, 466 (Mo. App. 1993); Griggs at 704; Downs v. A.C.F. Industries, Incorporated, 460 S.W.2d 293, 295-96 (Mo. App. 1970). However, where the facts are within the understanding of lay persons, the employee's testimony or that of other lay witnesses may constitute substantial and competent evidence. This is especially true where such testimony is supported by some medical evidence. Pruteanu v. Electro Core Inc., 847 S.W.2d 203 (Mo. App. 1993); Reiner v. Treasurer of State of Mo., 837 S.W.2d 363, 367 (Mo. App. 1992); Ford v. Bi-State Development Agency, 677 S.W.2d 899, 904 (Mo. App. 1984); Fogelson v. Banquet Foods Corporation, 526 S.W.2d 886, 892 (Mo. App. 1975).

The determination of the degree of disability sustained by an injured employee is not strictly a medical question.

While the nature of the injury and its severity and permanence are medical questions, the impact that the injury has upon the employee's ability to work involves factors which are both medical and nonmedical. Accordingly, the Courts have repeatedly held that the extent and percentage of disability sustained by an injured employee is a finding of fact within the special province of the Commission. Sellers v. Trans World Airlines, Inc., 776 S.W.2d 502, 505 (Mo. App. 1989); Quinlan v. Incarnate Word Hospital, 714 S.W.2d 237, 238 (Mo. App. 1986); Banner Iron Works v. Mordis, 663 S.W.2d 770, 773 (Mo. App. 1983); Barrett v. Bentzinger Brothers, Inc., 595 S.W.2d 441, 443 (Mo. App. 1980); McAdams v. Seven-Up Bottling Works, 429 S.W.2d 284, 289 (Mo. App. 1968). The fact finding body is not bound by or restricted to the specific percentages of disability suggested or stated by the medical experts. It may also consider the testimony of the employee and other lay witnesses and draw reasonable inferences from such testimony. Fogelson v. Banquet Foods Corporation, 526 S.W.2d 886, 892 (Mo. App. 1975). The finding of disability may exceed the percentage testified to by the medical experts. Quinlan v. Incarnate Word Hospital, at 238; Barrett v. Bentzinger Brothers, Inc., at 443; McAdams v. Seven-Up Bottling Works, at 289. The uncontradicted testimony of a medical expert concerning the extent of disability may even be disbelieved. Gilley v. Raskas Dairy, 903 S.W.2d 656, 658 (Mo. App. 1995); Jones v. Jefferson City School Dist., 801 S.W.2d 486 (Mo. App. 1990). The fact finding body may reject the uncontradicted opinion of a vocational expert Searcy v. McDonnell Douglas Aircraft Co., 894 S.W.2d 173, 177-78 (Mo. App. 1995).

Claimant's Testimony

Claimant testified that as a result of the blood clot in his left leg, he has given up playing basketball and running. He claims that his left leg is painful three days out of the week. He claims that he is not able to walk long distances or stand for long periods of time.

Though claimant stated that he is taking Vicodin for his left calf pain, the incomplete medical records appear to indicate that it was first prescribed on August 12, 2002 by Dr. Donald King for left knee and leg pain. On December 30, 2002 employee complained of arthralgias in his hands, knees, and legs. (Employer/Insurer's Exhibit 3, Page 4)

Medical Opinions

Claimant told Dr. Poetz that he had chronic pain in both legs, the left being worse than the right, that his legs swelled up with prolonged sitting, standing, and walking, and that he had trouble with chest tightness and breathing. (Claimant's Exhibit K, Pages 6-7)

On physical examination Dr. Poetz found that his lungs revealed some scattered rales, that he had a positive Homan's sign with tenderness in the left calf, and that the circumference of his left calf was 1 centimeter larger than the circumference of the right calf. (Claimant's Exhibit K, Page 11)

Dr. Poetz opined that claimant's prognosis was guarded due to the continuation of symptoms following the deep vein thrombosis. He recommended that claimant continue to wear support hose, elevate his lower extremities, and avoid prolonged standing and walking. (Claimant's Exhibit K, Pages 14-15)

Dr. Poetz opined that claimant sustained 50% permanent partial disability of the left leg and 40% permanent partial disability of the lungs due to the work-related deep vein thrombosis and pulmonary emboli. (Claimant's Exhibit K, Page 16)

On cross examination Dr. Poetz conceded that he had no way to prove or disprove the presence of a blood clot in claimant's leg as of November 19, 2002. He also conceded that he was aware of no lung capacity test which documented any deficiency in claimant's lungs. (Claimant's Exhibit K, Pages 34-36)

On cross examination Dr. Poetz acknowledged that a positive Homan sign (i.e. pain in the calf muscle produced by either dorsiflexion of the foot or digital pressure on the calf muscle) without edema and discoloration of the leg from that point down would not be diagnostic. (Claimant's Exhibit K, Pages 43-44)

Dr. Flye testified that if claimant had any disability in his lungs, it would be due to pulmonary emboli. Disability from emboli would be due to reduced oxygenation of the area of the lungs with the emboli. He indicated that the subsequent CT scan of employee's lungs showed that the emboli had resolved. In Mr. White's case the clots dissipated as a result of the body's natural lytic processes as augmented by anticoagulation therapy. Dr. Flye therefore assigned no permanent disability to the lungs. (Employer/Insurer's Exhibit 9, Pages 21-23)

At the time of his last examination of claimant on April 8, 2002 he did not notice any continuing disability other than ½+ pitting edema of the lower leg, which was likely to continue for several years. (Employer/Insurer's Exhibit 9, Pages 14-

Dr. Flye testified that the only disability which he saw in the left leg was swelling due to a residual clot and scarring of the vein. He noted that the swelling was well-controlled by the stocking. He thought that claimant had 3 to 5% permanent partial disability of the left leg due to residual scarring and swelling. (Employer/Insurer's Exhibit 9, Pages 23-24)

On cross examination Dr. Flye agreed that he wrote a letter to Young Dental Manufacturing Company in which he stated that claimant was released to perform his regular duties, but recommended that he not perform any overtime. Dr. Flye explained that he made the overtime recommendation because claimant was tired all the time because of the overtime and was still having some swelling in the leg. He added that there was no medical basis for him not to work overtime. (Employer/Insurer's Exhibit 9, Pages 35-38)

Dr. Flye indicated that a young person with an episode of deep vein thrombosis who is treated for six months with anticoagulants without having another episode has no more than a five to eight percent risk of a recurring episode. He added that that risk can be lowered by wearing stockings and not sitting in one place for a long length of time. (Employer/Insurer's Exhibit 9, Pages 48-49)

Dr. Flye indicated that claimant needed lifelong care consisting of wearing stockings to keep the swelling down and elevation of the leg. He stated that men's dress stockings which reach just below the knee are acceptable. He could also buy Jobst stockings; most patients do not need them. Dr. Flye opined that claimant will always be at a higher risk for swelling if he sits for long periods of time with his feet down. (Employer/Insurer's Exhibit 9, Pages 49-52)

Findings

Mr. White's current symptoms include a small amount of swelling and tenderness in the left calf. He is able to control the swelling by wearing above-the-calf stockings. Claimant is able to walk and stand without restriction. He has been advised to keep his left leg elevated when he sits for any period of time.

There is no evidence of any reduced oxygenation of the lungs. Though the second CT scan of the lungs was not in evidence, claimant told Dr. Flye that it showed no remaining clots. Claimant could have introduced the report of the radiologist into evidence had it showed any significant findings. Claimant apparently also underwent pulmonary function tests. Though the findings were not in evidence, claimant could have introduced the report of the pulmonologist into evidence had it showed any significant findings. There is no objective evidence of any disability in employee's lungs. I find Dr. Poetz' assignment of disability to the lungs to be not credible.

Based on the credible opinion of Dr. Flye, I find that claimant sustained no disability to his lungs as a result of the pulmonary emboli which resulted from the work-related deep vein thrombosis.

Taking account all of the evidence and the medical opinions, I find that sustained 15% permanent partial disability of the left leg below the knee as a result of the work-related deep vein thrombosis.

ATTORNEY'S FEES

This award is subject to a lien in the amount of 25% of the additional payments hereunder in favor of the employee's attorney, Steve D. Brooks, for necessary legal services rendered to the employee.

Date: _____

Made by: _____

John Howard Percy
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

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

Injury No.: 03-011145

Employee: Kelvin White
Employer: Young Dental Manufacturing Company
Insurer: Liberty Mutual Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged February 18, 2003
Place and County of Accident: Alleged St. Louis 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 July 6, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge John Howard Percy, issued July 6, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 9th day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Kelvin White

Injury No.: 03-011145

Dependents: N/A

Employer: Young Dental Manufacturing Company

Additional Party:

Insurer: Liberty Mutual Insurance Company

Hearing Date: January 25 and March 29, 2005

Before the
Division of Workers'
Compensation
Department of Labor and Industrial
Second Injury Fund Relations of Missouri
Jefferson City, Missouri

Checked by: JHP:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
3. 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
6. Date of accident or onset of occupational disease: N/A
7. State location where accident occurred or occupational disease was contracted: N/A
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? No
10. 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: N/A
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
15. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Kelvin White

Injury No.:

03-011145

17. Value necessary medical aid not furnished by employer/insurer? None
19. Employee's average weekly wages: \$602.00
19. Weekly compensation rate: \$401.33 TTD/\$340.12 PPD
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21.Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: NONE

23. Future requirements awarded: None

Said payments to begin N/A 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 N/A 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: Kelvin White

Injury No.: 03-011145

Dependents: N/A

Before the
Division of Workers'

Employer: Young Dental Manufacturing Company

Compensation

Additional Party: None

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

Insurer: Liberty Mutual Insurance Company

Checked by: JHP

A hearing in this proceeding was held on January 25, 2005 pursuant to Employee's request for a temporary award as provided in Section 287.510 Mo. Rev. Stat. (2000). The hearing date was advanced on the docket pursuant to Employee's

request made under the provisions of Section 287.450. Employee requested medical treatment pursuant to Section 287.140 and an award of compensation for past temporary total disability pursuant to Section 287.170. The record was left open for additional evidence which was admitted into evidence on March 29, 2005. Both parties submitted proposed awards, the latter of which was received on April 15, 2005. The record comprises 260 pages of medical records and reports and 205 pages of medical depositions. Additional time was required in issuing this award due to the voluminous record and complexities of this case.

STIPULATIONS

The parties stipulated that on or about February 18, 2003:

5. the employer and employee were operating under and subject to the provisions of the Missouri Workers' Compensation Law;
6. the employer's liability was insured by Liberty Mutual Insurance Company;
7. the employee's average weekly wage was \$602.00; and
8. the rate of compensation for temporary total disability was \$401.33 and the rate of compensation for permanent partial disability was \$340.12.

The parties further stipulated that:

1. the employer had notice of the alleged occupational disease and a claim for compensation was filed within the time prescribed by law;
4. no compensation has been paid; and
5. employer/insurer have not paid any medical expenses.

ISSUES

The issues to be resolved in this proceeding are:

1. whether claimant was exposed to an occupational disease due to repetitive trauma which arose out of and in the course of claimant's employment;
2. if the employee was exposed to an occupational disease by his work-related activities, whether he sustained an injury as a result of the occupational disease exposure;
3. if the employee sustained a compensable injury, whether he should be provided with any medical treatment for the injury; and
4. if the employee sustained a compensable injury, whether he is entitled pursuant to Section 287.170 Mo. Rev. Stat. (2000) to compensation for temporary total disability for any periods of time subsequent to February 18, 2003.

OCCUPATIONAL DISEASE

Kevin. White, employee herein, claims that he developed bilateral carpal tunnel syndrome, an occupational disease, as a result of repetitive hand activities in connection with his work as a vulcanizer for Young Dental Manufacturing Company. Employer/insurer contend that claimant does not have carpal tunnel syndrome and further contend that whatever medical condition affects employee's upper extremities is not work-related.

An employee's claim for compensation due to an occupational disease is to be determined under Section 287.067 Mo. Rev. Stat. (2000). It defines occupational disease as:

an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. (1993 additions underlined)

Section 287.067.2, which was added in 1993, provides that an occupational disease is compensable "if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor." Subsection 2 of section 287.020 provides that an injury is clearly work related "if work was a substantial factor in the cause of the resulting medical condition or disability."[\[11\]](#)

Subsection 3(1) of section 287.020 provides that an injury must arise out of and in the course of the employment and be incidental to and not independent of the employment relationship and that "ordinary, gradual deterioration or progressive degeneration of the body caused by aging" is not compensable unless it "follows as an incident of employment."

Subsection 3(2) of section 287.020 provides that an injury arises out of and in the course of the employment "only if (a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and (b) It can be seen to have followed as a natural incident of the work; and (c) It can be fairly traced to the employment as a proximate cause; and (d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life[.]"

Much of new subsection 3(2) of section 287.020 was contained in the prior definition of an occupational disease set forth in Section 287.067. Section 287.020.3(2)(b), (c), and (d) were part of the former occupational disease statute. Section 287.020.3(2)(a) is a revision of the prior requirement of a direct causal connection between the conditions under which the work was performed and the occupational disease. Direct causal connection is now defined as "a substantial factor in causing the injury." The Supreme Court held in Kasl v. Bristol Care, Inc., 984 S.W.2d 501 (Mo. 1999) that the foregoing language overruled the holdings in Wynn v. Navajo Freight Lines, Inc., 654 S.W.2d 87 (Mo. 1983), Bone v. Daniel Hamm Drayage Company, 449 S.W.2d 169 (Mo. 1970), and many other cases which had allowed an injury to be compensable so long as it was "triggered or precipitated" by work. A substantial factor does not have to be the primary or most significant causative factor. Bloss v. Plastic Enterprises, 32 S.W.3d 666, 671 (Mo. App. 2000); Cahall v. Cahall, 963 S.W.2d 368, 372 (Mo. App. 1998). The additional language in section 287.020.3(1) concerning deterioration or degeneration of the body due to aging probably does not overturn any prior court decisions.

Since the 1993 amendments pertaining to occupational diseases have largely readopted the prior statute, caselaw interpreting the prior statute is of some significance. In repetitive motion cases,^[12] as practically all movements of the human body done during the course of employment are also replicated in nonworking environments and as most occupationally induced diseases also sometimes occur in the public at large, the courts have focused on a particular risk or hazard to which an employee's exposure is greater or different than the public at large. Collins v. Neevel Luggage Manufacturing Co., 481 S.W.2d 548, 552-54 (Mo. App. 1972); Prater v. Thorngate, Ltd., 761 S.W.2d 226, 230 (Mo. App. 1988); Hayes v. Hudson Foods, Inc., 818 S.W.2d 296, 299-300 (Mo. App. 1991). Claimant must present substantial and competent evidence that he or she has contracted an occupationally induced disease rather than an ordinary disease of life. The Courts have stated that the determinative inquiry involves two considerations: "(1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort". Id. at 300; Dawson v. Associated Elec., 885 S.W.2d 712, 716 (Mo. App. 1994); Prater at 230; Jackson v. Risby Pallet and Lumber Co., 736 S.W.2d 575, 578 (Mo. App. 1987); Polavarapu v. General Motors Corp., 897 S.W.2d 63, 65 (Mo. App. 1995); Sellers v. Trans World Airlines, Inc., 752 S.W.2d 413, 415 (Mo. App. 1988).

Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. Dawson at 716; Selby v. Trans World Airlines, Inc., 831 S.W.2d 221, 223 (Mo. App. 1992); Brundige v. Boehringer, 812 S.W.2d 200, 202 (Mo. App. 1991). Claimant must prove that work was "a substantial factor" in causing "the resulting medical condition or disability." Section 287.020.2. Moreover, "an occupational disease is not compensable merely because work was a triggering or precipitating factor." Section 287.067.2 Mo. Rev. Stat. (1994). The Supreme Court held in Kasl v. Bristol Care, Inc., 984 S.W.2d 501 (Mo. 1999) that the foregoing language overruled the holdings in Wynn v. Navajo Freight Lines, Inc., 654 S.W.2d 87 (Mo. 1983), Bone v. Daniel Hamm Drayage Company, 449 S.W.2d 169 (Mo. 1970), and many other cases which had allowed an injury to be compensable so long as it was "triggered or precipitated" by work. On the other hand, injuries which are triggered or precipitated by work may nevertheless be compensable if the work is found to be the "substantial factor" in causing the injury. Kasl, supra.

A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. Dawson at 716; Sellers v. Trans World Airlines Inc., 776 S.W.2d 502, 504 (Mo. App. 1989); Sheehan at 797. The opinion may be based on a doctor's written report alone. Prater v. Thorngate, Ltd., 761 S.W.2d 226, 230 (Mo. App. 1988). "A medical expert's opinion must be supported by facts and reasons proven by competent evidence that will give the opinion sufficient probative force to be substantial evidence." Silman v. Montgomery & Associates, 891 S.W.2d 173, 176 (Mo. App. 1995); Pippin v. St. Joe Minerals Corp., 799 S.W.2d 898, 903 (Mo. App. 1990). Where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible. Hawkins v. Emerson Electric Co., 676 S.W.2d 872, 877 (Mo. App. 1984). Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. George v. Shop 'N Save Warehouse Foods, 855 S.W.2d 460 (Mo. App. 1993); Webber v. Chrysler Corp., 826 S.W.2d 51, 54 (Mo. App. 1992); Hutchinson v. Tri-State Motor Transit Co., 721 S.W.2d 158, 163 (Mo. App.

1986). An administrative law judge may not constitute himself or herself as an expert witness and substitute his or her personal opinion of medical causation of a complicated medical question for the uncontradicted testimony of a qualified medical expert. Wright v. Sports Associated, Inc., 887 S.W.2d 596 (Mo. 1994); Brufat v. Mister Guy, Inc., 933 S.W.2d 829, 835 (Mo. App. 1996); Eubanks v. Poindexter Mechanical, 901 S.W.2d 246, 249-50 (Mo. App. 1995). However, even uncontradicted medical evidence may be disbelieved. Massey v. Missouri Butcher & Cafe Supply, 890 S.W.2d 761, 763 (Mo. App. 1995); Jones v. Jefferson City School Dist., 801 S.W.2d 486, 490 (Mo. App. 1990).

Findings of Fact

Based on my observations of claimant's demeanor during his testimony, I find that he is a reasonably credible witness and that his testimony is partially credible. Based on that portion of claimant's testimony which I find to be credible and on the medical records, I make the following findings of fact.

Description of Work

Claimant began work at Young Dental manufacturing Company as a vulcanizer/press operator on December 8, 1999. His work as a vulcanizer involved, among other things, numerous cycles of loading and unloading of plates and buffing them. Each plate weighed about 50 pounds. He used an air gun to remove excess material and a power buffer to buff the plates. Each cycle lasted approximately five (5) to seven (7) minutes. During each cycle, employee stood in one place approximately three-fifths (3/5) of the time. He moved a couple of steps between each cycle to place the finished plate on a rack and to pick up another plate from the press. In December of 1999 he worked 40 hours per week. During this period he produced 54 plates per shift. In July of 2000 he began working 58 hours per week (10 hours each weekday and 8 hours on Saturday). During this period he produced 70 plates per shift. In October of 2000 he worked 50 hours per week (10 hours each weekday). During this period his production was changed to 300 per week or 60 per shift. (Claimant's Testimony) His workweek was reduced to 40 hours (4 days of 10 hours) on August 7, 2001. The workweek was increased to 48 hours in late October of 2001. It was reduced to 40 hours in January of 2002. He continued to produce 70 plates per shift. (Claimant's Exhibit I, Pages 1-2) His only regular break through 2002 was thirty minutes for lunch. (Claimant's Testimony)

Medical Treatment

Claimant first noticed pain in his arms in July of 2002.^[13] He felt stiffness while buffing the plates. One morning he woke up with his fingers "stuck together". He told his supervisor at work that he had pain and numbness in his hands and requested permission to go to the emergency room.^[14] (Claimant's Testimony)

Eventually claimant developed burning pain in his arms. (Claimant's Testimony) He sought treatment from Dr. Donald R. King, his personal medical physician, on December 30, 2002.^[15] A blood test for rheumatoid arthritis was negative. (Employer/Insurer's Exhibit 4, Pages 5 & 14)

Mr. White sought treatment from the Barnes Jewish Hospital West County emergency room on February 12, 2003 when his arms and wrists locked up and felt like fire going through them.^[16] (Claimant's Testimony and Employer/Insurer's Exhibit 3, Page 6)

Dr. King referred claimant to Dr. Juan C. Escandon, a neurologist, who examined Mr. White on March 7, 2003. Claimant told Dr. Escandon that his problems began six or seven months earlier with morning stiffness of his fingers. The stiffness improved with movement of his hands. He also experienced diffuse pain in his hands, forearms, and shoulders. Two weeks earlier he experienced swelling, numbness and tingling in his right hand. Employee told him that recent blood tests had ruled out arthritis. On examination employee had tenderness to palpation in his right forearm in the area near the wrist extensor tendons, mild tenderness to palpation of the intrinsic hand muscles, and tenderness to palpation in the metatarsal area on the right foot. (Employer/Insurer's Exhibits 4, Pages 25-27, and 6, Pages 3-6)

Dr. Escandon thought that the morning stiffness was characteristic symptom of arthritis and that the paresthesias were most likely a secondary manifestation of an inflammatory or arthritic disorder. He recommended a formal rheumatological evaluation. He also recommended performance of a nerve conduction study to rule out any underlying carpal tunnel or cubital tunnel syndromes. (Employer/Insurer's Exhibits 4, Pages 27-28, and 6, Pages 1-2) Dr. Escandon performed a nerve conduction of the upper extremities on April 4, 2003. He found no evidence of any peripheral nerve entrapment. (Employer/Insurer's Exhibit 4, Pages 16-17)

Claimant was examined by Dr. Josephine Huang in Orthopaedic Surgery at Washington University Medical Center on

April 17, 2003. Mr. White complained of numbness and tingling and swelling of both hands and forearms during the prior nine months. He told her that he used his hands extensively as a laborer. He also stated that he had taken Celebrex and Vioxx without much benefit. On examination he had decreased sensation in some of the fingers of both hands and a couple of positive provocative tests. Outside EMG studies showed no significant findings of carpal tunnel or cubital tunnel syndrome. Dr. Huang indicated that his symptoms may or may not be consistent with peripheral neuropathy. She therefore recommended a steroid injection into the left carpal tunnel. (Employer/Insurer's Exhibit 3, Pages 2-3)

Dr. Paul R. Manske in Orthopaedic Surgery at Washington University Medical Center also examined Mr. White on April 17, 2003. Claimant told him that he had been experiencing numbness and pain in both hands for the prior nine months. Dr. Manske noted a positive Tinel's sign over the median nerve at the wrist. He told Mr. White that his symptoms could be coming from the cervical spine or he might be one of the unusual cases of carpal tunnel where nerve conduction tests are normal. He injected the left carpal tunnel with Kenalog-40. (Employer/Insurer's Exhibit 3, Pages 4-5)

Dr. Manske reexamined Mr. White on May 15, 2003. Claimant told him that the injection had not provided any relief and that he continued to experience numbness and tingling in his fingers. Provocative tests over the left median nerve were mildly positive. Claimant reported that he was experiencing pain, tingling and cramping in both feet. Dr. Manske was concerned that employee had a more global neurological problem. He advised claimant to see a neurologist. (Employer/Insurer's Exhibit 3, Pages 1 & 10)

Claimant underwent a neurological examination by Dr. Jeffrey Faron on June 4, 2003. Claimant complained of pain, stiffness, swelling and loss of strength in his hands. The examination was normal. (Employer/Insurer's Exhibit 2, Pages 3-5)

Claimant stopped working at Young Dental Manufacturing Company on June 18, 2003 because of pain in his arms. (Claimant's Testimony)

Mr. White apparently suffered a fainting spell and went to the emergency room at Barnes Jewish West County on June 19, 2003 and complained of numbness in his arms and legs. A CT scan of his head was normal. (Employer/Insurer's Exhibit 3, Page 24)

Claimant sought treatment for his various aches and pains from Dr. Charlene Zeisset who examined him on June 20, 2003. He told her that his symptoms began in July of 2002. She thought that he had proximal weakness and radicular pain in a C7-8 distribution. She initially suspected a central cord lesion and possible myopathy. She ordered various blood tests, an MRI of his cervical spine, and an EMG. ^[17] (Employer/Insurer's Exhibit 8, Pages 6-7)

An MRI of the cervical spine with and without contrast performed on June 25, 2003 did not reveal any bulging or herniated disks. No abnormality was seen within the cervical cord. An MRI of the brain was recommended to examine the posterior fossa. (Employer/Insurer's Exhibit 8, Page 15) An MRI of employee's brain performed on August 8, 2003 was normal. (Employer/Insurer's Exhibit 2)

An EMG and nerve conduction studies were performed on both of employee's upper extremities by Dr. David A. Carpenter, a neurologist at St. John's Mercy Medical Center, on June 27, 2003. Claimant told Dr. Carpenter that he was experiencing burning pain in his back and neck. Dr. Carpenter concluded that all of the studies were normal; there was no evidence of upper extremity neuropathy, radiculopathy, or myopathy. (Employer/Insurer's Exhibit 8, Page 16)

Dr. Zeisset reexamined claimant on June 30 and July 25, 2003. He still complained of proximal weakness and headaches. (Employer/Insurer's Exhibit 8, Pages 8-11)

Mr. White was reexamined by Dr. Faron on August 12, 2003. Claimant complained of numbness, weakness, stiffness in his hands, head, neck and back pain and pain in both legs and feet. (Employer/Insurer's Exhibit 2, Page 6)

Dr. T. Z. Chen at Greater St. Louis Pain Management examined claimant on September 8, 2003. Employee told Dr. Chen that he had been experiencing bilateral hand pain for over a year and that it was located on both sides of his hands and associated with a tingling sensation. He also complained of pain in both shoulders, the lower back, both buttocks, and both legs. The pain diagrams completed by employee show pain in many different areas of his body. Reflexes were normal in upper and lower extremities. Pinprick of the extremities was within normal limits. Dr. Chen's clinical impression was carpal tunnel syndrome and chronic fibromyalgia. Dr. Chen gave employee a Lidoderm skin patch and prescribed Ibuprofen and Pamelor. Dr. Chen authorized him to return to work on September 15. (Employer/Insurer's Exhibit 8, Pages 17-20 & 33) ^[18]

Claimant was reexamined by Dr. Zeisset on September 11, 2003. She noted that Dr. Chen had diagnosed fibromyalgia

and that the recent EMG and nerve conduction studies were normal and ruled out carpal tunnel syndrome. (Employer/Insurer's Exhibit 8, Pages 12-13)

Claimant returned to Dr. Chen on September 23. Methadone was prescribed. (Employer/Insurer's Exhibit 8, Pages 2 & 30-31) On October 21 Dr. Chen noted that claimant was diagnosed with fibromyositis. (Employer/Insurer's Exhibit 8, Page 4)

On February 20, 2004 claimant told Dr. Chen that the methadone was not helping. Employee underwent a neurolytic lumbar sympathectomy (i.e. injection of medicine into the sympathetic nerve root chain). (Employer/Insurer's Exhibit 8, Pages 25-28) On March 2, 2004 Dr. Chen noted that claimant was being treated for fibromyalgia and low backpain. (Employer/Insurer's Exhibit 8, Page 3)

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Medical Opinions

Dr. Michael E. Beatty, a plastic surgeon specializing in cosmetic and reconstructive surgery of the face, hand and neck, trunk and extremities, testified by deposition on behalf of claimant on January 5, 2005. He examined Mr. White on June 21, 2004. Employee wanted another opinion concerning further treatment on his hands. Claimant told him that he was having numbness and tingling involving the fingers of both hands with associated pain over at least the previous two years which he felt was possibly related to his work. (Claimant's Exhibit J, Pages 9-10)

Employee told Dr. Beatty that he had tried splinting and anti-inflammatory medications and had received a cortisone injection from Dr. Manske of Washington University. Dr. Beatty performed a routine examination of the upper extremities and found a positive Tinel sign involving the palm side of both wrists and a positive Phalen's test involving both hands. (Claimant's Exhibit J, Pages 9-11) He found no significant swelling in employee's hands. (Claimant's Exhibit K, Page 44) Dr. Beatty diagnosed claimant with bilateral carpal tunnel syndrome. Dr. Beatty was aware of claimant's two prior negative nerve conduction studies. He opined that an individual could have carpal tunnel syndrome even with a negative nerve conduction study. Dr. Beatty recommend surgical release of the carpal tunnel. (Claimant's Exhibit J, Pages 11-13)

Approximately ten (10) weeks after Kelvin White's examination, claimant's counsel submitted medical records to Dr. Beatty and requested that he review the records and provide a written report. (Claimant's Exhibit K, depo ex 6)

In his September 24, 2004 letter report to claimant's counsel, Dr. Beatty noted that Mr. White had undergone multiple evaluations and apparently had several negative nerve conduction studies. Dr. Beatty noted that Dr. Manske had indicated that it was possible to have a negative nerve conduction study yet still have carpal tunnel syndrome, although he did not note that Dr. Manske went on to say that such a situation would be "somewhat unusual." He also failed to mention that Dr. Manske had injected cortisone into claimant's wrist, and that the injection had had no effect on Mr. White's symptoms, or that Dr. Manske "was concerned that [Kelvin White] had a more global neurological problem." (Claimant's Exhibit K, depo ex 5) Dr. Beatty again recommended carpal tunnel surgery. Dr. Beatty opined that surgery would "settle the issue and hopefully provide improvement in [Mr. White's] symptoms." Dr. Beatty concluded his letter report by recommending another nerve conduction study. (Claimant's Exhibit K, depo ex 5)

Dr. Beatty reviewed claimant's job description (Claimant's Exhibit K, depo ex 4). He described it as repetitive activities in a dental laboratory. He opined that claimant's job as a vulcanizer was a substantial factor in causing his hand symptoms to occur and the development of carpal tunnel syndrome or the worsening of preexisting carpal tunnel syndrome. (Claimant's Exhibit K, Pages 15-16)

When told that claimant had not worked at his job as a vulcanizer for a year before Dr. Beatty's examination of June 21, 2004, Dr. Beatty opined that claimant's hand situation should have improved if he stopped performing the activity which was the causative agent in the development of the problem. (Claimant's Exhibit K, Pages 18-19)

On cross examination Dr. Beatty acknowledged that he had not reviewed Dr. Zeisset's clinical notes nor the medical records of Dr. Chen. (Claimant's Exhibit K, Pages 27-28 & 31)

When asked about the results of the nerve conduction studies performed by Dr. Escandon, Dr. Beatty testified that he would have no reason to disagree with Dr. Escandon's finding that there was no evidence of peripheral nerve entrapment. (Claimant's Exhibit K, Page 36)

On cross examination Dr. Beatty stated that he did not think that claimant needed another nerve conduction study unless Mr. White wanted one for his own benefit. Dr. Beatty added that assuming that employee's complaints and the examination remained the same, he would recommend proceeding with surgery. (Claimant's Exhibit K, Page 41)

Dr. Beatty acknowledged that the results of the nerve conduction studies and the electromyography performed by Dr. Carpenter on June 27, 2003 were normal. (Claimant's Exhibit K, Pages 45-47)

Dr. David M. Brown, a plastic surgeon specializing in hand surgery, testified by deposition on behalf of employer/insurer on January 25, 2005. Dr. Brown referred to carpal tunnel syndrome as the most common problem which he diagnoses and treats. He indicated that he has performed thousands of carpal tunnel surgeries. (Employer/Insurer's Exhibit 7, Page 5)

Dr. Brown examined Mr. White on December 1, 2004. Employee described to Dr. Brown his job as a vulcanizer from December 8, 1999 to June 18, 2003. Dr. Brown reviewed the medical records of Drs. Manske, Escandon, Carpenter, Black,^[19] and Beatty. Dr. Brown noted that Dr. Manske had injected claimant's carpal tunnel with a steroid mixture which had not provided any relief. He noted that the nerve conduction studies performed by Dr. Escandon in April of 2003 and Carpenter in June of 2003 were both normal. (Employer/Insurer's Exhibit 7, Page 7)

Employee complained of constant pain 24 hours a day. He described his hands as "feeling like they were...dying on the inside..." He stated that his hands were painful when he tried to straighten his fingers out; they were numb, painful, dry and itchy. He was having severe pain and numbness in both his hands and elbows, and severe pain when he touched anything. (Employer/Insurer's Exhibit 7, Page 8) He told Dr. Brown that his symptoms had begun in June of 2002 and had not improved since he stopped working at Young Dental Manufacturing a year earlier; they had actually worsened. (Employer/Insurer's Exhibit 7, depo ex 2, p. 1)

Dr. Brown stated that the physical examination was unremarkable with the exception of pain to light palpation from the upper arm to the wrist. It was not localized to any specific area. There was no swelling. Employee exhibited good range of motion in both extremities. Tinel signs were negative at the cubital tunnels of both elbows and at both carpal tunnels as well as the ulnar nerve at the wrist. Phalen's tests were negative. (Employer/Insurer's Exhibit 7, Pages 8-9)

Dr. Brown diagnosed claimant with diffuse nonspecific upper extremity pain. The examination was not significant for a peripheral compression neuropathy such as carpal tunnel syndrome. Dr. Brown noted that most of the physicians who had evaluated Mr. White were in agreement that he did not have carpal tunnel syndrome. (Employer/Insurer's Exhibit 7, Page 9)

Dr. Brown added that it was important to note that the steroid injection by Dr. Manske into the carpal tunnel did not improve employee's symptoms. He stated that was important because several studies have shown that if a patient fails to respond at least temporarily to a steroid injection into the carpal tunnel, which decreases swelling around the nerve, the lack of improvement suggests that the carpal tunnel is not the source of the problem. He recommended that Mr. White not undergo a carpal tunnel release. (Employer/Insurer's Exhibit 7, Pages 9-10)

Dr. Brown opined that Mr. White's diffuse symptoms in both upper extremities were more consistent with a diagnosis of fibromyalgia. On cross examination Dr. Brown explained that fibromyalgia is a poorly understood rheumatological condition that can cause diffuse nonspecific extremity complaints. He thought that it should be a differential diagnosis for Mr. White and recommended that he discuss fibromyalgia with his primary care physician. Dr. Brown said that the causes of fibromyalgia are unknown; however, it is not due to repetitive motion. He did not know of any association between a work environment and fibromyalgia. (Employer/Insurer's Exhibit 7, Pages 10 & 24-25) Dr. Brown also thought that Mr. White should be evaluated for a psychiatric problem. He noted that Dr. Escandon, a neurologist, recommended it. Dr. Brown added that patients with psychiatric conditions can manifest with severe persistent complaints in their arms. Dr. Brown noted that the medical records documented a history of panic attacks.^[20] (Employer/Insurer's Exhibit 7, Pages 31-32)

Dr. Brown concluded that Mr. White's symptoms were not related to his employment because they had not improved during the year and a half since he last worked for Young Dental Manufacturing Company. He stated that employee's symptoms should have improved somewhat after he stopped working there. Dr. Brown added that as employee's symptoms had not improved, the lack of any improvement suggests that they were not related to his job. (Employer/Insurer's Exhibit 7, Page 10)

Dr. Brown acknowledged that a patient can have carpal tunnel syndrome with normal nerve conduction studies. He indicated that medical literature has established that 8 to 10% of patients can have carpal tunnel syndrome with normal nerve^[21]

studies. Dr. Brown testified that where the symptoms and findings on examination are consistent with the carpal tunnel syndrome, but the nerve conduction studies are normal, it is reasonable to inject the carpal tunnel with steroid. He explained that steroid decreases the swelling around the nerve. If that nerve has pressure on it and the pressure is decreased by the steroid and the symptoms improve, that suggests that the patient has carpal tunnel syndrome even with a negative nerve study. Mr. White's carpal tunnel was injected with a steroid mixture which failed to result in improvement in his symptoms. Dr. Brown testified that "strongly suggests that Mr. White would not benefit from a carpal tunnel release." (Employer/Insurer's Exhibit 7, Page 12)

On cross examination Dr. Brown opined that any one of the three provocative tests for carpal tunnel syndrome is not diagnostic for carpal tunnel syndrome. He noted that the false positive rate is very high for the Tinel sign. He added that there is a 20% false positive rate for Phalen's testing. He agreed that a negative Tinel sign and Phalen's test does not necessarily rule out carpal tunnel syndrome. He said it is necessary to consider the whole picture: the symptoms, examination, nerve conduction studies, and diagnostic tests. (Employer/Insurer's Exhibit 7, Page 17)

Dr. Brown opined that claimant described a fairly hand-intensive type of job which would put the person performing it at risk for developing carpal tunnel syndrome. Dr. Brown added that causation is not the issue in this case; the issue is diagnosis. He stated that if claimant had carpal tunnel syndrome, he would consider it to be work-related. (Employer/Insurer's Exhibit 7, Pages 18-19)

Dr. Brown testified that claimant had normal grip-strength tests, which was significant because he appeared to have good muscle tone in his hands; he did not have the type of hands of someone who was suffering from severe carpal tunnel syndrome. (Employer/Insurer's Exhibit 7, Pages 22-23)

Additional Findings

While both medical experts agree that claimant's work at Young Dental Manufacturing Company exposed him to carpal tunnel syndrome, a judicially recognized occupational disease, they differed in their opinions as to whether claimant was suffering from carpal tunnel syndrome. After considering all of the evidence, I find Dr. Brown's opinions far more persuasive than those of Dr. Beatty.

Dr. Brown relied on nerve conduction studies performed on employee's upper extremities in March and June of 2003 and an EMG performed in June of 2003, all of which were normal. While negative electrodiagnostic testing does not rule out compression neuropathy in all cases, successive tests which fail to demonstrate any evidence of abnormality increase the likelihood that claimant does not have a compression neuropathy. In addition, the failure of the steroid injection administered by Dr. Manske in April of 2003 to the left carpal tunnel to provide any relief also suggests that claimant's hand complaints do not emanate from his carpal tunnels. Had claimant's symptoms been caused by swelling in his carpal tunnel, the steroid injection would have reduced that swelling and provided at least a temporary reduction in his symptoms. Dr. Brown explained the importance of this test in cases where a diagnosis is unclear. Dr. Beatty ignored this important test. Furthermore, after claimant stopped working for Young Dental Manufacturing Company in June of 2003, his upper extremity symptoms did not improve, as would be expected if they had been caused by employee's work activities; rather they worsened. Dr. Brown opined that this pattern supports the conclusion that claimant's upper extremity complaints were not caused by his work activities. Even Dr. Beatty acknowledged this expectation. He gave an ambiguous explanation of why employee's symptoms worsened. Lastly, Dr. Brown, Dr. Manske, and Dr. Chen all noted that claimant had symptoms which were global in nature, suggesting that he had a condition other than carpal tunnel syndrome. Dr. Escandon pointed out that the morning stiffness in his fingers was a characteristic symptom of arthritis. Even the pain diagrams completed by Mr. White in September of 2003 showed that he had pain in many areas of his body. Dr. Chen tried treating him for fibromyositis at that time. Dr. Beatty ignored the global nature of employee's complaints.

Based on the credible opinions of Dr. Brown, I find that claimant does not have carpal tunnel syndrome or any other work-related condition affecting his upper extremities. The claim for compensation is therefore denied.

SECOND INJURY FUND LIABILITY

Employee is also seeking an award of additional permanent disability from the Second Injury Fund pursuant to Section 287.220.1 Mo. Rev. Stat. (2000). Under that Section an employee who has a permanent partial disability and who subsequently sustains a compensable injury may recover from the Second Injury Fund any additional permanent disability caused by the combination of the preexisting disability and the disability from the subsequent injury. The employer is liable only for the disability caused by the work-related accident. The Second Injury Fund is liable for the difference between the sum of the two disabilities considered separately and independently and the disability resulting from their combination.

Cartwright v. Wells Fargo Armored Serv., 921 S.W.2d 165, 167 (Mo. App. 1996); Searcy v. McDonnell Douglas Aircraft Co., 894 S.W.2d 973 (Mo. App. 1995); Brown v. Treasurer of Missouri, 795 S.W.2d 479 (Mo. App. 1990); Anderson v. Emerson Elec. Co., 698 S.W.2d 574, 576-77 (Mo. App. 1985). In order to recover from the Second Injury Fund the employee must prove a prior permanent partial disability, whether from a compensable injury or not, a subsequent compensable injury, and a synergistic combination of the preexisting and subsequent disabilities.

As I have previously found that claimant failed to prove a compensable injury against the employer/insurer, the claim against the Second Injury Fund is denied.

Date: _____

Made by: _____

John Howard Percy
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

[1] Subsection 2 of Section 287.020 repeats the exclusion of injuries where work was merely a triggering or precipitating factor.

[2] The 1993 addition of section 287.067.7, which modifies the last exposure rule with respect to occupational diseases due to repetitive motion, could be construed as a legislative recognition that injuries caused by repetitive activities may be viewed as due to an occupational disease.

[3] Though the medical record states "right" leg, this is an obvious error.

[4] The written report of the study was not in evidence.

[5] The hospital records were not in evidence.

[6] He experienced a similar episode on February 20, 2003. (Employer/Insurer's Exhibit 4, Pages 21-23)

[7] The report of this scan was not in evidence.

[8] Dr. Flye testified that claimant underwent the tests, but was not informed of the results.. (Employer/Insurer's Exhibit 9, Page 14) The report of the pulmonologist was not in evidence.

[9] This number would be incorrect as claimant had a one-half hour daily lunch break, which would reduce the remaining maximum possible standing hours to 55.

[10] The records of claimant's initial hospitalization were not in evidence.

[11] Subsection 2 of Section 287.020 repeats the exclusion of injuries where work was merely a triggering or precipitating factor.

[12] The 1993 addition of section 287.067.7, which modifies the last exposure rule with respect to occupational diseases due to repetitive motion, could be construed as a legislative recognition that injuries caused by repetitive activities may be viewed as due to an occupational disease.

[13] The histories given to some of the treating physicians refer to June of 2002.

[14] Any such record is not in evidence.

[15] Some of the pages of Dr. King's records are blank.

[16] The BJC emergency room record is not in evidence.

[17] The results of the various blood tests ordered by Dr. Zeisset are contained in Claimant's Exhibit A.

[18]

Pages 21 and 22 of Employer/Insurer's Exhibit 8 are blank.

[\[19\]](#) The record of Dr. Joseph Black's February of 2003 examination was not admitted into evidence.

[\[20\]](#) On September 20, 2001 employee went to the DePaul Health Center emergency department. He was given Ativan for anxiety and diagnosed with an anxiety reaction and probable acute hyperventilation syndrome. (Claimant's Exhibit B, Pages 5, 6 & 19) He experienced a similar episode on February 20, 2003. (Employer/Insurer's Exhibit 4, Pages 21-23) That record referred to several prior episodes. (Employer/Insurer's Exhibit 4, Page 21) Dr. King prescribed Paxil, an antidepressant also used for panic disorder, in March of 2003. (Employer/Insurer's Exhibit 4, Page 9)

[\[21\]](#) On cross examination he stated that he agreed with Dr. Manske's statement that there are cases of carpal tunnel syndrome with normal nerve conduction tests. (Employer/Insurer's Exhibit 7, Page 15)