

**TEMPORARY AWARD ALLOWING COMPENSATION**  
(Modifying Award and Decision of Administrative Law Judge)

Injury No. 05-089838

Employee: Stanley White

Employer: Ameren UE

Insurer: Self-Insured

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

**Introduction**

The parties asked the administrative law judge to resolve the following issues: (1) whether employee sustained one or more occupational diseases to the upper extremities arising out of and in the course of his employment with employer; (2) whether the notice requirement of § 287.420 RSMo shall serve as a bar to the claim for compensation or any portion thereof; (3) if employee is found to have sustained an occupational disease, whether said occupational disease is a substantial factor in the cause of any or all of the injuries and/or conditions alleged in the evidence; (4) the nature and extent of employee's permanent partial disability, if any; (5) whether employer/insurer shall be ordered to reimburse employee for past medical expenses; and (6) whether employer/insurer shall be ordered to provide future medical benefits pursuant to § 287.140 RSMo.

The administrative law judge rendered the following findings and conclusions: (1) employee sustained an occupational disease arising out of and in the course of his employment with employer in the form of bilateral carpal tunnel syndrome; (2) employee has not sustained an occupational disease with respect to either shoulder; (3) employee's claim for occupational disease is not barred by § 287.420, because the notice requirement under that section is not applicable to claims for occupational disease under the law in effect when employee's claim accrued; (4) because employee did not demand that employer/insurer furnish medical treatment prior to obtaining his right carpal tunnel release surgery, employee exercised his right under § 287.140 to seek medical treatment at his own expense, and thus employer/insurer is not responsible for the cost of that surgery; (5) employer/insurer is obligated to provide treatment for employee's work-related left carpal tunnel syndrome; and (6) as a result of his work-related bilateral carpal tunnel syndrome, employee has a 20% permanent partial disability of the right wrist and a 20% permanent partial disability of the left wrist, and as a result of the bilateral nature of these injuries, a 10% multiplicity factor should be imposed.

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Employee filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in crediting the opinions of employer/insurer's medical expert over those of employee's medical expert; and (2) in not awarding permanent partial disability, past due medical aid, and future medical aid in connection with the claimed work-related occupational disease to both shoulders.

### **Discussion**

#### *Employee's motion to strike employer's answer to employee's application for review*

On March 20, 2014, employer/insurer filed its answer to employee's application for review. Therein, employer/insurer alleged that the administrative law judge erred in awarding compensation for employee's bilateral wrist injuries, and asked the Commission to reverse the administrative law judge's award referable to those issues. On March 28, 2014, employee filed "Petitioner's Motion to Strike Respondent's Answer to Application for Review or, Alternatively, Petitioner's Answer to Respondent's Application for Review" (Motion). On April 11, 2014, employer/insurer filed "Respondent's Response to Petitioner's Motion to Strike Portions of Respondent's Answer to Application for Review."

Even if we were to reweigh the evidence referable to the issues involved in the administrative law judge's determinations that employee suffered compensable left and right wrist injuries by occupational disease in the form of bilateral carpal tunnel syndrome, we agree with the administrative law judge's findings, analysis, and conclusions as to those issues, and we are ultimately adopting those findings, analysis, and conclusions herein. Accordingly, we must deny employee's Motion as moot.

#### *Left carpal tunnel syndrome*

As noted above, we agree with and hereby adopt the administrative law judge's determinations that employee suffered compensable left and right wrist injuries by occupational disease in the form of bilateral carpal tunnel syndrome. We note, however, that the administrative law judge ordered employer/insurer to furnish medical treatment referable to the left wrist, including surgery, but also entered an award of permanent partial disability referable to the left wrist. These results are incompatible, because we cannot assess the nature and extent of employee's permanent disability referable to left carpal tunnel syndrome until employee's condition reaches a state of maximum medical improvement. *Cardwell v. Treasurer of Mo.*, 249 S.W.3d 902, 910 (Mo. App. 2008).

Both of the medical experts who testified in this matter opined that employee's left carpal tunnel syndrome would be appropriately treated by a left carpal tunnel release surgery, and at oral argument in this matter, employee's counsel indicated that employee wishes to undergo this procedure. It thus appears that employee will undergo additional surgery to correct his left carpal tunnel syndrome, and we find therefore that he has not yet reached maximum medical improvement with respect to this condition.

As a result, we must modify the administrative law judge's award on this point as follows: we disclaim his factual findings with respect to the issue of permanent partial disability referable to the left wrist, vacate his award of \$12,777.80 in permanent partial disability benefits referable to the left wrist, as well as the \$2,555.56 award for multiplicity, and enter instead this temporary award, subject to further order.

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Left shoulder

Section 287.067.1 RSMo defines an occupational disease, as follows:

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.

Employee's claim for compensation alleges a left shoulder injury by repetitive use with a date of injury of August 16, 2005. But the record suggests (and we so find) that employee did not seek any treatment for left shoulder issues until February 2009. As noted in the administrative law judge's award, employee began seeing Dr. James Schaberg for right shoulder problems in December 2005. Although employee continued to see Dr. Schaberg for evaluations and to receive cortisone injections in his right shoulder, Dr. Schaberg's records do not contain any suggestion that employee suffered from left shoulder symptoms until February 20, 2009. In Dr. Schlafly's report of February 12, 2008, he made only passing mention of the left shoulder, reciting employee's suspicion that he was developing arthritis in his left shoulder, noting some restricted range of motion, and suggesting additional evaluation in the form of diagnostic studies.

The courts have linked the "date of injury" in occupational disease cases to the date the disease first becomes "compensable," which typically has been interpreted to mean the date an employee first experiences some disability from the disease. See *Garrone v. Treasurer of State*, 157 S.W.3d 237, 242 (Mo. App. 2004)(holding that an employee's carpal tunnel syndrome did not become a compensable injury until the date he missed work for surgery, as he worked without restriction up until that date), and *Coloney v. Accurate Superior Scale Co.*, 952 S.W.2d 755, 759 (Mo. App. 1997)(noting that "Missouri courts have interpreted section 287.063 to provide that an employee with an occupational disease is 'injured' ... when the disease causes a 'compensable injury'").

At oral argument in this matter, employee's counsel suggested that employee could have been suffering from symptoms referable to his left shoulder prior to August 16, 2005, but chose to focus on seeking treatment for his more pressing right shoulder and carpal tunnel issues instead. This may be so, but the record before us simply does not support such a finding. Employee, in his own testimony, was unable to persuasively identify the timing of the onset of his left shoulder symptoms with any specificity.

In his report of July 9, 2013, Dr. Schlafly opined that employee's work duties caused his bilateral shoulder impingement syndrome and rotator cuff tendonitis, but did not specifically indicate (1) that employee suffered any identifiable disease of the left shoulder up to and including August 16, 2005, or (2) that employee's work caused such a condition. While we

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are convinced that employee was suffering significant left shoulder problems at least as of February 2009, we believe Dr. Schlafly's causation opinion ultimately provides no support for employee's actual claim, which is for a left shoulder injury by occupational disease up to and including August 16, 2005. Because there is no other credible evidence on this record that employee suffered any identifiable disease of the left shoulder (related to work or otherwise) as of August 16, 2005, we must conclude that employee did not suffer a compensable occupational disease affecting his left shoulder through August 16, 2005. For this reason, we deny employee's claim for compensation referable to the left shoulder.

Right shoulder

The administrative law judge determined that employer/insurer's expert, Dr. Rotman, provided more persuasive opinions regarding the cause of employee's bilateral shoulder impingement syndrome. With respect to the right shoulder, we disagree, for the following reasons.

Dr. Rotman believes that impingement syndrome or rotator cuff tendonitis can never constitute a compensable occupational disease unless one's job requires repetitive overhead work at least 4 hours per day. Dr. Rotman did not refer to any medical literature or scientific study to support this hypothesis; it thus appears that this 4 hour per day "threshold" is of Dr. Rotman's own creation. But Dr. Rotman did not describe the origin of this hypothesis, or provide any testimony to specifically link it to his own clinical experience.

Where a medical expert declines to engage with the particular facts and circumstances attendant to an employee's work, and instead relies upon the application of a personal, per se "threshold," the origin of which is unexplained, we are not inclined to afford much weight to the expert's ultimate opinions. For this reason, we cannot credit Dr. Rotman's causation opinion in this matter.

This leaves us with the opinion from Dr. Schlafly that employee's repetitive and forceful physical labor duties as a gas serviceman constitute a substantial factor causing his shoulder impingement syndrome and rotator cuff tendonitis. Employee persuasively testified (and we so find) that his right shoulder symptoms in 2002 when he sought treatment from Dr. Orell affected a different part of his shoulder than the symptoms he previously experienced referable to his 1994 rotator cuff tear and surgery. We are also convinced by employee's testimony (and we so find) that his work as a gas service man required strenuous, repetitive use of his arms at or above shoulder level for at least 2 hours per day, or about 25% of his work day. In light of these findings, and after careful consideration, we deem Dr. Schlafly's opinion sufficiently persuasive with respect to the right shoulder to meet employee's burden of proof.

We conclude that employee's right shoulder impingement syndrome and rotator cuff tendonitis constituted an "occupational disease" for purposes of § 287.067.1 RSMo, and that employee's occupational disease resulted in a compensable injury for purposes of §§ 287.067.2, 287.020.2 and 287.020.3 RSMo, because it is clearly work related, the employment/work was a substantial factor in causing the resulting medical condition or disability, it can be seen to have followed as a natural incident of employee's work as a

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gas serviceman, it can be fairly traced to the employment as a proximate cause, and it did 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.

We conclude that employer/insurer is obligated to furnish medical treatment to employee consistent with the provisions of § 287.140 RSMo, which treatment shall include, but shall not be limited to, the arthroscopic surgery that both Drs. Rotman and Schlafly agree is appropriate to treat employee's condition. As with employee's left wrist carpal tunnel syndrome, we must defer any determination of permanent disability referable to the right shoulder until employee has reached the point of maximum medical improvement.

We turn now to the issue of past medical expenses. Employee claims \$3,312.00 for his treatments with Dr. Schaberg between December 2, 2005, and March 2, 2011. Dr. Schaberg's notes reflect that employee received treatment for his right shoulder condition on the following dates: December 2 and 12, 2005, and January 9, February 6, and March 17, 2006. The total charges for these dates of service amount to \$708.00; in light of the unanimous and persuasive opinions from both Drs. Rotman and Schlafly that these treatments were reasonably required to cure and relieve the effects of employee's right shoulder injury, we conclude that employer/insurer is liable for these expenses under § 287.140 RSMo.

However, Dr. Schaberg's treatment notes referable to charges incurred on and after February 20, 2009, suggest that employee received treatment for both his right and left shoulder complaints on those dates, and the related bills do not clearly indicate which charges correspond to treatments specifically referable to the right shoulder. Because we have determined that employee did not prove a compensable left shoulder injury by occupational disease herein, we cannot, at this time, award these expenses. Of course, because we are entering a temporary award in this matter, nothing precludes employee from later providing evidence sufficient to delineate the charges incurred specifically for treatment referable to his compensable right shoulder injury.

### **Conclusion**

We modify the award of the administrative law judge as to the issue of permanent partial disability referable to the left wrist. Employee's left wrist injury by occupational disease has not yet reached the point of maximum medical improvement. Accordingly, the award of \$12,777.80 in permanent partial disability benefits referable to the left wrist, as well as the award of \$2,555.56 for multiplicity, is hereby vacated, and the issue of permanent disability referable to the left wrist is deferred until a final award can be entered.

We additionally modify the award of the administrative law judge with respect to employee's right shoulder injury. Employee suffered a compensable right shoulder injury by occupational disease. Employer/insurer is ordered to provide medical treatment, including, but not limited to the arthroscopic surgery recommended by Drs. Rotman and Schlafly. Employer/insurer is additionally ordered to pay employee \$708.00 in past medical

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expenses for treatment of his right shoulder injury. The issue of permanent disability referable to the right shoulder is deferred until a final award can be entered.

The administrative law judge's award of \$12,777.80 in permanent partial disability benefits for employee's compensable right wrist injury is affirmed, and employer/insurer is hereby ordered to pay same to employee.

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued February 21, 2014, is attached hereto and incorporated by this reference to the extent not inconsistent with our findings, conclusions, decision, and modifications herein.

This award is subject to a lien in favor of Scott P. Holwitt, Attorney at Law, in the amount of 25% for necessary legal services rendered.

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

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

Given at Jefferson City, State of Missouri, this 23<sup>rd</sup> day of October 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: **Stanley White**

Injury No. **05-089838**

Dependents:

Employer: **Ameren UE**

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

Additional Party: **Second Injury Fund (deferred)**

Insurer: **Self-Insured**

Hearing Date: **January 14, 2014**

Checked by: **RJD/njp**

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? **Yes.**
2. Was the injury or occupational disease compensable under Chapter 287? **Yes.**
3. Was there an accident or incident of occupational disease under the Law? **Yes.**
4. Date of accident or onset of occupational disease: **August 16, 2005.**
5. State location where accident occurred or occupational disease was contracted: **Pike 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? **Employer is self-insured.**
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
**Employee developed bilateral carpal tunnel syndrome as a result of repetitive use of tools and computer keyboard.**
12. Did accident or occupational disease cause death? **No.** Date of death? **N/A.**
13. Part(s) of body injured by accident or occupational disease: **right wrist; left wrist.**
14. Nature and extent of any permanent disability: **20% permanent partial disability of each wrist; 10% multiplicity factor.**
15. Compensation paid to-date for temporary disability: **None.**
16. Value necessary medical aid paid to date by employer/insurer? **None.**

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17. Value necessary medical aid not furnished by employer/insurer? **Unknown.**
18. Employee's average weekly wages: **\$1073.20.**
19. Weekly compensation rate: **\$696.97 for temporary total disability benefits; \$365.08 for permanent partial disability benefits.**
20. Method wages computation: **Stipulation.**

**COMPENSATION PAYABLE**

From Employer:

**77 weeks of permanent partial disability benefits** **\$28,111.16**

**Employer is also ordered to provide future medical benefits as set forth more fully herein.**

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:

**Scott Holwitt**

Employee: **Stanley White**

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Employee: **Stanley White**

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## **FINDINGS OF FACT AND RULINGS OF LAW**

Employee: **Stanley White**

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Dependents:

Employer: **Ameren UE**

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

Additional Party: **Second Injury Fund (deferred)**

Insurer: **Self-Insured**

Hearing Date: **January 14, 2014**

### **ISSUES DECIDED**

The evidentiary hearing in this case was held on January 14, 2014 in Hannibal. The parties requested leave to file post-hearing briefs, which leave was granted, and the case was submitted on February 4, 2014. The hearing was held to determine the following issues:

1. Whether Stanley White (“Claimant”) sustained one or more occupational diseases to the upper extremities while working for Ameren UE (“Employer”);
2. Whether the notice requirement of §287.420 serves as a bar to the claim for compensation;
3. If Claimant is found to have sustained any occupational disease, whether said occupational disease is a substantial factor in the cause of any or all of the injuries and/or conditions alleged in the evidence;
4. The nature and extent of Claimant’s permanent partial disability, if any;
5. Whether Employer shall be ordered to reimburse Claimant for medical expenses heretofore incurred; and
6. Whether Employer shall be ordered to provide future medical benefits pursuant to §287.140, RSMo.

### **STIPULATIONS**

The parties stipulated as follows:

1. That the Missouri Division of Workers’ Compensation has jurisdiction over this case;
2. That venue for the evidentiary hearing is proper in Pike County and adjoining counties; the parties agree to hold the hearing in Marion County;

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3. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
4. That the Claim for Compensation was filed within the time allowed by the statute of limitations, §287.420, RSMo;
5. That Claimant's average weekly wage is \$1073.20, with compensation rates of \$696.97 for temporary total disability benefits and \$365.08 for permanent partial disability benefits;
6. That Employer has paid no medical benefits and no temporary disability benefits; and
7. That Ameren UE was an authorized self-insured for Missouri Workers' Compensation purposes at all relevant times.

### **EVIDENCE**

The evidence consisted of the testimony of Claimant, Stanley White; the testimony of Donald Schaper, Claimant's supervisor; the narrative reports and deposition testimony of Dr. Mitchell Rotman; the narrative reports of Dr. Bruce Schlafly; medical records; certified records of the Missouri Division of Workers' Compensation; and nine photographs.

### **DISCUSSION**

Stanley White ("Claimant") was born on February 7, 1952. Claimant began work for Employer in 1979, and has worked for Employer continuously since that time. From 1979 through 1993, Claimant's position was that of "pipefitter/welder"; that position required significant overhead work and hand-intensive work. As a pipefitter/welder, Claimant used jackhammers, welders, grinders and other vibrating tools. Since 1993 or 1994, Claimant's position has been "gas service worker". As a gas service worker, Claimant services both commercial and residential customers in a large geographic area. Claimant drives a heavy duty pickup truck furnished by Employer. Until 2001, the trucks had five-speed manual transmissions; since that time the trucks have had automatic transmissions.

On August 25, 2005, Claimant filed with the Missouri Division of Worker's Compensation his "Claim for Compensation" alleging a date of accident or occupational disease of August 16, 2005, and claiming injury to "(l)eft and right shoulders, arms, hands and wrists" and further stating: "(i)n the course and scope of employment, constant and repetitive use of his hands and arms has led to the development of injuries". The Claim for Compensation clearly posits a theory of occupational disease due to repetitive motion. The evidence presented at the hearing, as well as the post-hearing briefs, further define Claimant's alleged injuries due to the alleged occupational disease(s) to be right carpal tunnel syndrome, left carpal tunnel syndrome, and bilateral shoulder impingement syndrome and rotator cuff tendinitis. Employer has denied the allegations of the Claim for Compensation, and no medical benefits or other benefits have been provided under Chapter 287, RSMo.

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In 1994, Claimant suffered a rotator cuff tear in his right shoulder for which he underwent surgery. About a year post-surgery, Claimant's right shoulder again became symptomatic with pain, weakness and soreness; injections in his shoulder provide only temporary relief.

In March 2002, Claimant was seen by Dr. Robert Orell for right hand and right shoulder complaints. Dr. Orell's initial diagnoses were right shoulder impingement syndrome and Raynaud's phenomenon of the right hand. Claimant's shoulder was injected on March 19, 2002; on May 17, 2002 Claimant told Dr. Orell that his shoulder was much better following the injection. Claimant did not see Dr. Orell again until January 15, 2004, when an additional injection was done of the right shoulder. Claimant then saw Dr. Orell again on April 19, 2004; on that visit Claimant stated that the injection improved his shoulder approximately 60%. Also on that visit Dr. Orell noted that Claimant had a new complaint of left carpal tunnel syndrome which had been present for three years but had gotten worse over the past three months. On June 8, 2004, Claimant indicated to Dr. Orell that his left carpal tunnel symptoms were much better and that his right shoulder was better. Also on June 8, 2004 Dr. Orell noted that nerve conduction/EMG testing showed bilateral carpal tunnel syndrome, worse on the right. Claimant canceled his appointment with Dr. Orell on October 19, 2004, but returned to see Dr. Orell on March 22, 2005; Claimant's right shoulder was injected.

In April 2005, Claimant had an accident at home when a large engine struck his right hand. Claimant saw Dr. Orell on June 15, 2005 and Dr. Orell suspected tendon damage in the right hand as a result of the accident, and referred Claimant to Dr. Subbaro Polenini. Claimant underwent surgery with Dr. Polenini on August 17, 2005 to repair extensor tendon lacerations caused by the accident; a right carpal tunnel release and right trigger thumb release were also performed by Dr. Polenini at the same time. (Dr. Polenini performed additional surgery on the tendons on April 14, 2006.)

On September 20, 2005, Claimant again saw Dr. Orell, who injected Claimant's right shoulder again. Discussion was held concerning right shoulder surgery, left carpal tunnel release surgery and left index finger surgery; on that date Claimant wished to defer all surgeries.

On December 2, 2005, Claimant was seen by Dr. James Schaberg at Dr. Polenini's request for right shoulder pain. Another shoulder injection was done on that date. A rotator cuff tear was suspected, therefore a right shoulder MRI was performed on December 6, 2005 which showed no tearing but suggested impingement syndrome. Physical therapy was started.

Claimant was seen at the request of his attorney by Dr. Bruce Schlafly on February 12, 2008 for an evaluation. Dr. Schlafly opined in his report of that date that Claimant had developed work-related bilateral carpal tunnel syndrome, and that Claimant's repetitive work with his hands while working for Employer was the substantial and prevailing factor in the cause of the bilateral carpal tunnel syndrome. Dr. Schlafly recommended left carpal tunnel release and noted that Claimant had already undergone right carpal tunnel release. Dr. Schlafly also recommended that Claimant consider surgery on his right shoulder, and that "given the type of work that he has been performing over the years for Ameren UE, including carrying the heavy gas meters, it is probable that these work activities are the substantial and prevailing factor in the need for additional treatment of the right shoulder." There is no mention of the left shoulder in Dr. Schlafly's report of February 12, 2008.

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At Employer's request, Claimant was seen by Dr. Mitchell Rotman. At the time of his initial evaluation on October 8, 2008, Dr. Rotman noted that Claimant had chronic problems with his right shoulder ever since his original injury in the mid-1990's. Dr. Rotman recommended an MRI scan be obtained of the left shoulder, although Dr. Rotman felt that the need for the MRI could not be clearly related to any type of work related injury. Dr. Rotman also believed that the need for any further treatment with respect to the right shoulder would be related to his incident back in the 1990's.

With respect to the bilateral carpal tunnel syndrome, Dr. Rotman stated that in his opinion, Claimant did not do a repetitive job in that his jobs are spaced apart with prolonged driving from one job to the other, although admittedly, his job requires heavy use of the hands and occasionally may have involved use of some power tools or hand tools. He noted that Claimant's job based on his description did not fit the criteria for a work related carpal tunnel syndrome.

Dr. Rotman evaluated Claimant again on November 21, 2011. Dr. Rotman believed that Claimant did not do repetitive overhead work and, therefore, he did not see any evidence of a work related injury to the left shoulder; Dr. Rotman believed that the left shoulder findings were simply age related. Dr. Rotman again noted that he did not see any evidence of a work related injury to Claimant's hands or shoulders. Dr. Rotman's deposition testimony was consistent with his narrative reports.

Claimant continued to treat with Dr. Schaberg periodically off and on through September 23, 2011, undergoing injections to both shoulders. An MRI of the left shoulder was also done on February 23, 2009, which revealed tendonopathy of the supraspinatus tendon and AC joint hypertrophic changes and mild bursitis of the deltoid bursa. Dr. Schaberg treated Claimant conservatively with injections and physical therapy, with the diagnosis being impingement syndrome. Dr. Schaberg's records do not contain any mention of causation with respect to Claimant's bilateral shoulder conditions.

Dr. Bruce Schlafly evaluated Claimant again on July 9, 2013. Dr. Schlafly's diagnoses were rotator cuff tendinitis and impingement of both shoulders and bilateral carpal tunnel syndrome. In Dr. Schlafly's opinion, Claimant's repetitive and forceful physical labor duties performed by him in the course of his employment as a gas service man were the substantial and prevailing factor in the cause of his bilateral carpal tunnel syndrome and bilateral shoulder impingement and rotator cuff tendonitis and the need for treatment. Dr. Schlafly recommends a left carpal tunnel release as well as bilateral shoulder arthroscopies as recommended by Dr. Rotman. Dr. Schlafly noted that if Claimant was not able to obtain additional treatment, then he has a 35% permanent partial disability of the left hand due to the left carpal tunnel syndrome and 45% of the left shoulder due to impingement syndrome and rotator cuff tendonitis. Dr. Schlafly also reiterated his prior ratings of 25% permanent partial disability of the right hand and 45% permanent partial disability of the right shoulder.

The testimony of Claimant and the testimony of his supervisor, Donald Schaper, were quite consistent regarding Claimant's duties as a gas service worker. Schaper testified that the job requires lots of overtime and long hours. Schaper testified that Claimant's work is hand intensive with the use of tools and that approximately ¼ of Claimant's work day consists of the

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use of hand intensive tools. Schaper also agreed that Claimant's work requires approximately 2 hours of computer keyboard work per day.

### **FINDINGS OF FACT AND RULINGS OF LAW**

After carefully considering all of the evidence, in addition to those facts and legal conclusions to which the parties stipulated, I find the following:

1. Claimant's work as a gas service worker was hand intensive and repetitive to such an extent that his work was a substantial factor in the cause of bilateral carpal tunnel syndrome;
2. Dr. Bruce Schlafly's conclusions regarding the cause of Claimant's bilateral carpal tunnel syndrome are more persuasive than those of Dr. Mitchell Rotman;
3. Claimant has sustained an occupational disease arising out of and in the course of his employment with Employer, said occupational disease being bilateral carpal tunnel syndrome;
4. Claimant's work as a gas service worker required Claimant to use his upper extremities at or above shoulder level for approximately 10% of his work day;
5. Dr. Mitchell Rotman's conclusions regarding the cause of Claimant's bilateral shoulder impingement syndrome are more persuasive than those of Dr. Bruce Schlafly;
6. Claimant's work as a gas service worker was not sufficient to cause an occupational disease due to repetitive motion affecting his shoulders;
7. Claimant has not sustained an occupational disease with respect to either shoulder;
8. Claimant's claim for occupational disease accrued prior to the effective date of SB1 (2005); prior to SB1, the notice requirement of Section 287.420, RSMo, was not a bar to Claimant's action, as that section was held to be inapplicable to claims of occupational disease per *Endicott v. Display Technologies*, 77 S.W.3d 612 (Mo. 2002);
9. No demand for treatment was made to Employer prior to Claimant's right carpal tunnel release surgery; and, therefore, Claimant clearly exercised his right under §287.140 to seek medical treatment at his own expense, and thus Employer is not responsible for the cost of that surgery;
10. Claimant is clearly in need of medical treatment for his work related left carpal tunnel syndrome, and it is Employer's responsibility to provide such treatment pursuant to §287.140, RSMo; and
11. As a result of his work-related bilateral carpal tunnel syndrome, Claimant has a 20% permanent partial disability of the right wrist (35 weeks) and a 20% permanent partial

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disability of the left wrist (35 weeks); as a result of the bilateral nature of these injuries, a 10% multiplicity factor should also be imposed (7 weeks).

**ORDER**

Employer is ordered to pay Claimant the sum of \$28,111.16 for permanent partial disability benefits.

Employer is ordered to provide Claimant with all medical treatment necessary to cure and relieve Claimant from the effects of left carpal tunnel syndrome, including, but not limited to, carpal ligament release surgery. Employer is ordered to bear all costs of such medical treatment.

Claimant's attorney, Scott Holwitt, is allowed 25% of all permanent partial disability benefits awarded herein as and for necessary attorney's fees, and the amount of such fees shall constitute a lien on those benefits.

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

Made by /s/Robert J. Dierkes 02/21/2014  
Robert J. Dierkes  
Chief Administrative Law Judge  
*Division of Workers' Compensation*