

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

Injury No.: 06-121948

Employee: George Wolin
Employer: Swank Audio Visuals, Inc.
Insurer: Federal Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 19, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge John K. Ottenad, issued February 19, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: George Wolin

Injury No.: 06-121948

Dependents: N/A

Employer: Swank Audio Visuals, Inc.

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

Additional Party: Second Injury Fund (Open)

Insurer: Federal Insurance Company

Hearing Date: October 30, 2008

Checked by: JKO

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: (allegedly) September 30, 2006
5. State location where accident occurred or occupational disease was contracted: St. Louis City
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was employed as an audio technician for Employer and developed bilateral carpal tunnel syndrome allegedly from his work activities.
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 and Left Wrist
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$0.00

Employee: George Wolin

Injury No.: 06-121948

17. Value necessary medical aid not furnished by employer/insurer? N/A

18. Employee's average weekly wages: \$1,057.00

19. Weekly compensation rate: \$704.67 for TTD/ \$376.55 for PPD

20. Method wages computation: By agreement (stipulation) of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable:

Claim denied \$0.00

22. Second Injury Fund liability: Open

TOTAL: \$0.00

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: James M. Martin.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	George Wolin	Injury No.: 06-121948
Dependents:	N/A	Before the
Employer:	Swank Audio Visuals, Inc.	Division of Workers'
Additional Party:	Second Injury Fund (Open)	Compensation
Insurer:	Federal Insurance Company	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: JKO

On October 30, 2008, the employee, George Wolin, appeared in person and by his attorney, Mr. James M. Martin, for a hearing for a final award on his claim against the employer, Swank Audio Visuals, Inc., and its insurer, Federal Insurance Company. The employer, Swank Audio Visuals, Inc., and its insurer, Federal Insurance Company, were represented at the hearing by their attorney, Mr. John P. Kafoury. The Second Injury Fund is a party to this case, but the Fund Claim is being left open by agreement of the parties. At the time of the hearing, the parties agreed on certain stipulated facts and identified the issues in dispute. These stipulations and the disputed issues, together with the findings of fact and rulings of law, are set forth below as follows:

STIPULATIONS:

- 1) George Wolin (Claimant) has alleged an occupational disease claim with a date of injury of September 30, 2006.
- 2) Claimant was an employee of Swank Audio Visuals, Inc. (Employer).
- 3) Venue is proper in the City of St. Louis.
- 4) The Claim was filed within the time prescribed by the law.
- 5) At the relevant time, Claimant earned an average weekly wage of \$1,057.00, resulting in applicable rates of compensation of \$704.67 for total disability benefits and \$376.55 for permanent partial disability (PPD) benefits.
- 6) Employer has not paid any benefits to date.

ISSUES:

- 1) Did Claimant sustain an occupational disease?
- 2) Did the occupational disease arise out of and in the course of employment?
- 3) Are Claimant's injuries and continuing complaints, as well as any resultant disability, medically causally connected to his alleged exposure at work on or about September 30, 2006?
- 4) Did Claimant provide appropriate notice of his injury/occupational disease to Employer?
- 5) Is Employer liable for past medical expenses?
- 6) Is Claimant entitled to future medical care?
- 7) What is the nature and extent of Claimant's permanent partial disability attributable to this injury?

EXHIBITS:

The following exhibits were admitted into evidence:

Employee Exhibits:

- A. Chronology of medical issues concerning the development of the carpal tunnel syndrome
- B. A1c test information
- C. Certified medical treatment records from Signature Health
- D. Medical treatment records from Dr. Robert Tague
- E. Certified medical treatment records from Cardinal Neurosurgery & Spine, Inc.
- F. Stipulation for Compromise Settlement for Injury Number 04-138052 between Claimant and the Second Injury Fund
- G. Deposition of Dr. Jerome F. Levy, with attachments, dated February 5, 2008
- H. Medical treatment records and bills from Premier Care
- I. Medical treatment records from St. Anthony's Medical Center
- J. ***Withdrawn by Claimant***
- K. Certified medical treatment records and bills from Tesson Heights Orthopaedic & Arthroscopic Associates, P.C.

Employer/Insurer Exhibits:

1. Claim for Compensation and Division acknowledgement form dated December 28, 2006 for Injury Number 06-121948
2. Claim for Compensation for Injury Number 04-138052
3. Certified medical treatment records from Dr. Robert Tague
4. Certified medical treatment records from Cardinal Neurosurgery & Spine, Inc.
5. Deposition of Dr. Henry Ollinger, with attachments, dated February 20, 2008

Notes: 1) *Unless otherwise specifically noted below, any objections contained in these Exhibits are overruled and the testimony fully admitted into evidence.*

2) *Some of the records submitted at hearing contain handwritten remarks or other marks on the Exhibits. All of these marks were on these records at the time they were admitted into evidence and no other marks have been added since their admission on October 30, 2008.*

FINDINGS OF FACT:

Based on a comprehensive review of the evidence, including Claimant's testimony, the expert medical opinions and depositions, the medical records and bills, the other documentation, and the testimony of Employer's witness, as well as my personal observations of Claimant and the other witness at hearing, I find:

- 1) **Claimant** is a 54-year-old male who worked for Employer for approximately 17 years, through 2008, as an audio technician. Prior to being hired as a regular full-time employee by Employer in 1991, he performed some freelance work for them in the 1980s. Claimant testified that his work days can range anywhere from 4 to 8 hours per day, and up to 17 hours per day, depending on the job. He states that his minimum workday is 4 hours per day. Claimant testified that he believes it is more complicated and hand-intensive to operate an audio board during a business meeting than a concert.
- 2) Claimant testified that his job duties include set up, repair and operation of audio boards for business conferences and concerts. Claimant testified that his job duties involve standing on a riser in the back of an auditorium during a business meeting or concert, and operating an audio board with his hands by adjusting the various sound levels on an audio board. He adjusts levels, faders, knobs and handles throughout the meeting or performance. Claimant testified that his hands are in a cocked position and he leans against the board as he maneuvers the fader buttons up and down the board with his fingers.
- 3) Medical treatment records from **Dr. Robert Tague** (Exhibits D and 3), Claimant's family physician, document treatment Claimant had for both diabetes and bilateral hand complaints going back to 1994. On April 15, 1994, Dr. Tague noted that Claimant complained of "carpal tunnel pain" which was present for 4 months, and

which would awaken him at night. Claimant described his job duties as “variable.” Blood tests run on that date showed high glucose levels and in subsequent notes, there are diagnoses of “DM” (diabetes mellitus) for which he was apparently prescribed diet and exercise. Claimant’s weight on that date was 233 pounds. Claimant’s continued blood tests, and office notes through the rest of the 1990’s, showed that the glucose levels would sometimes be down in the normal range, and at other times would be slightly high. Claimant initially lost some weight (30 pounds) and the hand complaints were apparently not as troublesome because they were not referenced again in the records until 2002/2003. There is an additional mention of carpal tunnel, left greater than right, on September 21, 1998, but it is under a section of the note entitled “PMH” which stands for past medical history. There was no contemporaneous reference to carpal tunnel syndrome complaints at that visit.

- 4) Claimant testified that in 2003 he began to have more severe problems with his wrists and so he sought further treatment for his complaints.
- 5) Dr. Tague sent Claimant for EMG and Nerve Conduction Study testing on the upper extremities to **St. Anthony’s Medical Center** (Exhibit I) on October 16, 2003. The testing revealed mild delays on the right median nerve and moderate delays on the left median nerve, consistent with mild right carpal tunnel syndrome and severe left carpal tunnel syndrome.
- 6) Claimant was then referred to **Dr. Daniel Kitchens at Cardinal Neurosurgery & Spine, Inc.** (Exhibits E and 4) for further evaluation of his hand complaints. Dr. Kitchens examined Claimant on November 25, 2003. He noted a several year history of left hand pain, numbness and tingling, and a more recent onset of right hand complaints. Dr. Kitchens noted that, “The numbness and tingling come[s] on when he is playing the bass and is flexing his wrist and using his fingers.” There is absolutely no reference to his work causing any of the hand problems, and in fact, the report indicates that, “he reports no occupational concerns.” Dr. Kitchens diagnosed bilateral carpal tunnel syndrome, severe on the left and mild on the right. He discussed treatment options with Claimant including surgery versus conservative care. Claimant wanted to consider his options and was instructed to contact Dr. Kitchens if he decided to proceed with the surgery.
- 7) Claimant continued to be followed for his diabetes by Dr. Tague, and as early as March 13, 2006, because of high glucose and A1c blood test results, he was placed on Actos for his diabetes.
- 8) Claimant testified that in June 2006 his left wrist began keeping him up at night and he began hanging it over the bed to try to get some relief of his complaints.
- 9) Claimant was then examined by **Dr. David Haueisen at Signature Health/Premier Care** (Exhibit C) on October 27, 2006. Claimant described having symptoms of numbness in the left hand for the last several years which have gotten worse over time. He described his left hand as much worse than his right hand. He told the doctor about his history of diabetes and that he is a bass player, “playing in multiple bands around town.” Other than mentioning he worked as an audio engineer, there

was no detailed description of his job activities, nor of any impact his job had on his complaints, or vice versa. Dr. Haueisen discussed the need for a left carpal tunnel release, but Claimant had “some musical gigs that he wants to get out of the way first.”

- 10) On December 13, 2006, Claimant first filed an original **Claim for Compensation** (Exhibit 1) in this case alleging injury to both wrists and forearms from recurrent bilateral carpal tunnel syndrome, allegedly related to his work activities for Employer. Claimant alleged a date of accident from June 2006 through September 2006. The Division’s acknowledgement form, sending the Claim to Employer for an Answer, was dated December 28, 2006.
- 11) Dr. Haueisen performed the left carpal tunnel release on Claimant at The Surgery Center of St. Louis on December 18, 2006. In an office follow-up note dated January 11, 2007, Dr. Haueisen noted that Claimant was doing well on the left side following surgery, but he still had numbness on the right side. He confirmed that the nerve conduction studies from October 16, 2003 showed mild right carpal tunnel syndrome, and he discussed the need for a right carpal tunnel release with Claimant. Claimant apparently told the doctor he would check his schedule and would most likely schedule the surgery in the near future.
- 12) For the first time in a letter dated February 19, 2007 from **Dr. David Haueisen** (Exhibits C and I), Claimant describes his job for Employer as including “repetitive lifting and multiple activities.” He described good relief of his complaints in the left hand, except for an occasional sharp pain, and noted continued numbness in the right hand. Claimant was to follow up with Dr. Haueisen again in six weeks. Despite now having at least some description of Claimant’s work, Dr. Haueisen still did not include any opinion in this report as to whether the carpal tunnel syndrome was related to Claimant’s employment activities or not.
- 13) According to the records in evidence, Claimant was last examined by **Dr. David Haueisen** (Exhibit H) on September 20, 2007 for ongoing right carpal tunnel syndrome complaints. Claimant reported still having some slight numbness in the left hand despite the surgical treatment, and further reported that his right hand complaints have gotten progressively worse. He reported increased numbness with computer work, and with riding his motorcycle, which he rides approximately an hour per week. He again described his job activities for Employer and reported that he has legal representation to “make his carpal tunnel syndrome a workers’ compensation case.” The physical examination revealed slight numbness in the median nerve distribution of the left hand, but normal sensation in the right hand. There was no thenar weakness or atrophy bilaterally. Tinel’s test was negative on the left, but positive on the right, and Phalen’s test was negative bilaterally. Dr. Haueisen recommended obtaining up-to-date nerve conduction studies to evaluate his current nerve functioning in the right wrist. Dr. Haueisen also wrote, “We discussed carpal tunnel syndrome and the possible relationship of his work activities to the development of carpal tunnel syndrome. We discussed the multifactorial nature of carpal tunnel syndrome.”

- 14) Although, according to Exhibit A, Claimant had the recommended right wrist nerve conduction studies performed by Dr. Kumar on July 7, 2008, I was unable to find the actual test results contained anywhere in the record of evidence in this case.
- 15) Claimant testified that he never “put it together” that the carpal tunnel syndrome was work related. He admitted that he never filed any written paperwork with Employer about his carpal tunnel syndrome. He never told his supervisor, Mr. Pape, that he believed his carpal tunnel syndrome was work related. Claimant admitted that he never even talked to Mr. Pape about his carpal tunnel syndrome being work related after his appointments with Dr. Haueisen. Claimant confirmed that he never requested authorization for medical treatment for his wrist complaints from Employer and he obtained all of the medical treatment so far on his own.
- 16) Claimant is seeking the right wrist treatment recommended for the carpal tunnel syndrome, and he also wants all of the payments in Exhibit H that he and his insurance company made to be repaid as a part of the award in this case.
- 17) Regarding other activities Claimant has outside of work, Claimant testified that he has been a right-handed bass guitar player since he was a kid. He has also been riding motorcycles and rehabbing cars since he was a kid. Claimant estimated that he played in a band a couple of times a month. He rode his motorcycle a couple of times a month (mostly during the summer and weekends). He worked on cars perhaps one time a month as well.
- 18) The deposition of **Dr. Jerome Levy** (Exhibit G) was taken by Claimant on February 5, 2008 to make his opinions in this case admissible at hearing. Dr. Levy is a board certified surgeon. He examined Claimant on two occasions, May 25, 2006 and June 7, 2007, at the request of Claimant’s attorney. He provided no medical treatment for any of Claimant’s complaints or diagnoses.
- 19) Following the May 25, 2006 examination, Dr. Levy issued a report dated June 4, 2006. The primary focus of that examination and report appears to be a December 3, 2004 left knee injury, and the conditions and disabilities Claimant had that pre-existed that left knee injury. Despite the long history documented in the medical records of bilateral wrist complaints, testing and treatment going back into the 1990’s, there is absolutely no reference to any wrist complaints or wrist diagnoses listed in this initial report from Dr. Levy.
- 20) Following the June 7, 2007 examination, Dr. Levy issued his second report dated July 25, 2007. The primary focus of this examination and report is the bilateral hand complaints that are the subject of this Claim. Dr. Levy writes in his report that he did not examine Claimant’s hands the first time, because he was lacking some information from Claimant and that was not the purpose of the first exam. Claimant provides a history of working as an audio mixer for about 17 years using his hands “constantly to turn levers and switches throughout concerts and rehearsals.” The report contains a discussion of the onset of the complaints in 1993 and the worsening of the complaints in 2006. There is absolutely no mention in the report of Claimant’s other activities outside of work (playing in a band, riding a motorcycle or working on

cars), and more importantly there is absolutely no history given to the doctor of Claimant's diagnosis of diabetes going back to the onset of these wrist complaints in the 1990's. Dr. Levy diagnoses bilateral carpal tunnel syndrome and rates Claimant as having 30% permanent partial disability of the left wrist and 20% permanent partial disability of the right wrist, "pre-existing the accident of December 3, 2004." He provided no opinion as to whether the carpal tunnel syndrome was related to Claimant's work activities or not.

- 21) Finally, on January 6, 2008, Dr. Levy issued his last report in this case. He wrote that he reviewed the additional records and reports sent to him by Claimant's attorney and it was now his opinion that Claimant's work activities were the prevailing and substantial cause of his carpal tunnel syndrome, "and not the possibility that he has diabetes."
- 22) Dr. Levy testified consistent with the reports and opinions described above. On cross-examination, Dr. Levy admitted that he had no history from Claimant of a diagnosis or treatment for diabetes, nor any history of outside activities in which Claimant was engaged at the time he wrote his July 25, 2007 report. His understanding of the extent of Claimant's work activities came from Claimant's description of them to him, and it was his understanding that there was no change in Claimant's work activities in or around 2006 to account for the increase in his hand complaints. It was Dr. Levy's understanding that the work activities remained basically the same throughout his employment with Employer. Finally, Dr. Levy confirmed that he had not seen or reviewed Dr. Tague's records prior to issuing his July 25, 2007 report, but he had apparently seen them before issuing the final letter on January 6, 2008.
- 23) The deposition of **Dr. Henry Ollinger** (Exhibit 5) was taken by Employer on February 20, 2008 to make his opinions in this case admissible at hearing. Dr. Ollinger is board certified in plastic and reconstructive surgery. He examined Claimant on one occasion, September 26, 2007, at the request of Employer's attorney. He provided no medical treatment for any of Claimant's complaints or diagnoses.
- 24) Following his examination, Dr. Ollinger issued a report with the same date of September 26, 2007. Dr. Ollinger's report contained a complete history of Claimant's diagnosis of diabetes in the 1990's which was treated by diet until about two years prior to the examination, when he was placed on Actos. The report listed his activities outside of work including playing in a band, riding motorcycles and working on cars. It also contained a detailed description of his work activities for Employer. Dr. Ollinger reviewed Claimant's medical treatment records, specifically those from Dr. Tague going back to the 1990's, regarding the onset of the hand complaints, and the testing and diagnosis of those complaints. On physical examination, Dr. Ollinger found that the Phalen's test was weakly positive on the right and negative on the left. Other peripheral nerve provocative tests were negative.
- 25) Dr. Ollinger diagnosed bilateral carpal tunnel syndrome, diabetes and obesity. Dr. Ollinger wrote, "The prevailing factor for Mr. Wolin's bilateral carpal tunnel syndromes is his medical risk of his diabetes and to some degree his obese status at

the time of record documentation of symptom onset.” Dr. Ollinger continued, “His work at Swank Audio is not the prevailing factor for bilateral carpal tunnel syndromes.”

26) Dr. Ollinger testified consistent with his report and opinions described above. He opined that Claimant’s work activities for Employer were not the prevailing factor in the development of his bilateral carpal tunnel syndrome. He also explained his opinion in that regard in more detail. Dr. Ollinger opined that Claimant’s work, as Claimant had described it to him, did not have the risk factors of force, rate of repetition, and contract stresses to cause carpal tunnel syndrome, and certainly not enough of those things to supersede the risk of his diabetes or his obese status.

27) Claimant’s supervisor, **Paul Pape**, testified live at hearing in this case. He noted that he had been Claimant’s supervisor since 2001. Prior to December 28, 2006, Mr. Pape testified that Claimant never reported any job-related hand injury to him. He confirmed that Claimant never asked him to provide any Workers’ Compensation benefits for his hands either. Mr. Pape explained the normal procedure for reporting injuries at Employer. He also testified that if Claimant’s injury had been properly reported, he could have investigated. He noted that investigations are more accurate if they are done closer in time to the injury.

RULINGS OF LAW:

Based on a comprehensive review of the evidence described above, including Claimant’s testimony, the expert medical opinions and depositions, the medical records and bills, the other documentation, and the testimony of Employer’s witness, as well as my personal observations of Claimant and the other witness at hearing, and based on the applicable statutes of the State of Missouri, I find the following:

Given the nature of this Claim and the evidence submitted, the first three issues in this case can be addressed at the same time.

Issue 1: Did Claimant sustain an occupational disease?

Issue 2: Did the occupational disease arise out of and in the course of employment?

Issue 3: Are Claimant’s injuries and continuing complaints, as well as any resultant disability, medically causally connected to his alleged exposure at work on or about September 30, 2006?

Considering the date of the injury, it is important to note that the new statutory provisions are in effect including, **Mo. Rev. Stat. § 287.800 (2005)**, which mandates that the Court “shall construe the provisions of this chapter strictly” and that “the division of workers’ compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when

weighing evidence and resolving factual conflicts.” Additionally, **Mo. Rev. Stat. § 287.808 (2005)** establishes the burden of proof that must be met to maintain a claim under this chapter. That section states, “In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.”

I find that there is no dispute in this case, and the evidence clearly shows, that Claimant has bilateral carpal tunnel syndrome, based on the physical examinations of the various physicians and the electrodiagnostic testing. This finding is supported by the treatment records of Dr. David Haueisen, as well as the reports and opinions of Dr. Daniel Kitchens, Dr. Jerome Levy and Dr. Henry Ollinger. The real disputes have to do with whether or not Claimant’s job exposed him to an occupational disease of repetitive motion and whether the carpal tunnel syndrome is medically causally related to his work for Employer.

Under **Mo. Rev. Stat. § 287.067.1 (2005)**, occupational disease is defined as “an identifiable disease arising with or without human fault out of and in the course of the employment.” Additionally, under **Mo. Rev. Stat. § 287.067.3 (2005)**, “An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.” That section then defines “prevailing factor” as “the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.” It continues, “Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.”

In a case such as this one where there are conflicting opinions from the medical experts, it is a well-settled principle of law that, “where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible.” *Kelley v. Banta & Stude Construction Co., Inc.*, 1 S.W.3d 43, 48 (Mo.App. E.D. 1999).

In order to meet his burden of proof on the presence of an occupational disease and on medical causation, Claimant needed to present credible medical evidence to support his claim that there was an occupational disease that arose out of and in the course and scope of his employment and which was medically causally connected to it. In this case, there were opinions from two medical experts submitted at trial, who agreed on the diagnosis of bilateral carpal tunnel syndrome, but who disagreed on the presence of an occupational disease, its relationship to work and whether or not it was medically causally connected to it. Dr. Jerome Levy testified on behalf of Claimant that the bilateral carpal tunnel syndrome was related to Claimant’s work, while Dr. Henry Ollinger testified that Claimant’s work was not the prevailing factor in the development of the condition and, thus, it was not work-related. Dr. Ollinger opined that instead, Claimant’s diabetes was the prevailing factor in the development of the carpal tunnel syndrome.

After consideration of all of the medical evidence regarding Claimant’s hand complaints and diagnoses, as well as after a thorough review of the basis of each doctor’s opinion, I find that Dr. Ollinger’s opinions on medical causation and the relationship of the bilateral carpal tunnel syndrome to Claimant’s diabetes and not his work for Employer, are more credible and persuasive than the opinions of Dr. Levy in that regard.

Although I find each physician is equally qualified to render competent medical causation opinions in this type of case, I further find that Dr. Ollinger had a more complete understanding of Claimant's job duties, Claimant's activities outside of work, and of Claimant's medical history and treatment for his hands and his diabetes, such that his opinions in this matter are more competent, credible and persuasive than the opinions of Dr. Levy. Based on what was contained in their respective reports and their testimony, it is clear to me that Dr. Ollinger had a much more thorough understanding of the job duties Claimant performed on a regular basis for Employer. Whereas Dr. Levy's report had generalizations from Claimant about the type of work he performed, Dr. Ollinger had specifics on the actions involved and the amount of time Claimant would perform these activities with his hands. Dr. Ollinger had a complete picture of Claimant's other activities outside of work including playing in a band, riding a motorcycle and working on cars. Dr. Levy had no history of any of these potentially hand-intensive activities. Finally, Dr. Ollinger had a full history of Claimant's diabetic condition and the prior hand complaints including the pre-existing medical treatment records from Dr. Tague before he rendered his opinions in this case. Dr. Levy, in connection with his first two reports, had none of the prior treatment records from Dr. Tague, and no history of the prior diabetes at all. The only history he was given in connection with the 2007 examination was of the work history and activities. Further, in reviewing their testimony, I find that Dr. Ollinger more clearly explained and supported his opinions than did Dr. Levy. It is for all these reasons that I find Dr. Ollinger's opinions more competent, credible and persuasive than the opinions of Dr. Levy.

I also find that the medical treatment records, specifically those from Dr. Tague, support Dr. Ollinger's conclusions that the diabetes was the prevailing factor in the development of the carpal tunnel syndrome, not Claimant's work activities. On April 15, 1994, when the records first mention carpal tunnel pain, Claimant is noted to be overweight and he is then diagnosed with diabetes based on the running of some blood tests. Claimant subsequently controlled his diabetes with diet. His weight came down, as did his blood sugar numbers, and there are really no further references to hand complaints for a number of years. Claimant noted that in the early to mid 2000's his hand and wrist complaints increased resulting in the running of the EMG/nerve conduction study test and eventually resulting in the left wrist surgery in 2006. It was also apparently in early 2006, that Claimant was placed on a medication, Actos, to try to better control his diabetes, as the diet was apparently not doing the trick anymore. I find that these records support the position that when Claimant's weight was up and diabetes was not controlled, he had hand problems, but when his weight and diabetes was under better control, he did not. In that respect, I find that they support Dr. Ollinger's credible opinion that the diabetes, not the work activities, is the prevailing factor in the development of Claimant's bilateral carpal tunnel syndrome.

Accordingly, on the basis of Dr. Ollinger's competent, credible and persuasive opinion, and also conversely, by finding that Dr. Levy's medical causation opinion is not competent, credible or persuasive, I find that Claimant has failed to meet his burden of proving the presence of an occupational disease of bilateral carpal tunnel syndrome that arose out of and in the course of employment for Employer, and which was medically causally connected to it. Claimant's Claim against Employer for this condition is, thus, denied.

As the denial of the Claim based upon Claimant's failure to meet his burden of proof on these initial issues is dispositive of the case, the rest of the issues in this matter are now moot and will not be decided in this award.

CONCLUSION:

Claimant failed to meet his burden of proving that he sustained a compensable injury/occupational disease arising out of and in the course of his employment for Employer, which was medically causally connected to it. Claimant failed to meet that burden of proof on these issues by failing to provide a competent, credible and persuasive medical causation opinion to support his Claim. Based on the entirety of the evidence, Dr. Ollinger's opinion that the diabetes was the prevailing factor in the development of the carpal tunnel syndrome was more competent, credible and persuasive than Claimant's contrary opinion from Dr. Levy. The Claim for Compensation is denied on this basis and no benefits are awarded in this matter as a result.

Date: _____

Made by: _____

JOHN K. OTTENAD
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Peter Lyskowski
Acting Director
Division of Workers' Compensation