

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

Injury No.: 09-040794

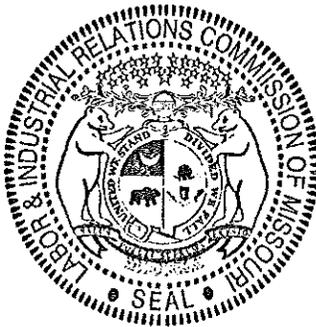
Employee: Ricky Volner
Employer: Meramec Group, Inc.
Insurer: Self-insured

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 10, 2017, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Marvin O. Teer, Jr., issued October 10, 2017, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 13th day of November 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



Robert W. Cornejo, Chairman

Reid K. Forrester, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee:	Ricky Volner	Injury No.:	09-040794
Dependents:	N/A		Before the
Employer:	Meramec Group, Inc.		Division of Workers'
Additional Party:	N/A		Compensation
			Department of Labor and Industrial
			Relations of Missouri
			Jefferson City, Missouri
Insurer:	Self-Insured c/o Cannon Cochran Management Services		
Hearing Date:	July 6, 2017	Checked by:	MOT;ls

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: June 1, 2009
5. State location where accident occurred or occupational disease was contracted: Sullivan, 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? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant alleges injuries to the upper extremity as a result of repetitive work related duties.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Bilateral hands and wrists
14. 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? \$0.00
- 17. Value necessary medical aid not furnished by employer/insurer? \$0.00
- 18. Employee's average weekly wages: \$510.00
- 19. Weekly compensation rate: \$340.00/\$340.00
- 20. Method wages computation: Pursuant to Section 287.250 RSMo.

COMPENSATION PAYABLE

21. Amount of compensation payable:

Employer

N/A

22. Second Injury Fund liability: N/A

TOTAL: \$0.00

23. Future requirements awarded: N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Ricky Volner	Injury No.: 09-040794
Dependents:	N/A	Before the
Employer:	Meramec Group, Inc.	Division of Workers'
Additional Party: N/A		Compensation
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Self-Insured c/o Cannon Cochran Management Services	

STATEMENT OF THE CASE

On July 6, 2017, Ricky Volner ("Claimant") appeared in person at the Missouri Division of Workers' Compensation St. Louis Office for a hearing to determine whether he contracted an occupational disease while in the employ of Meramec Group, Inc. ("Employer" or "Meramec"). Attorney Mark E. Moreland appeared for Claimant. Meramec was represented by Attorney Michael F. Banahan. The record closed after presentation of all the evidence. Venue is proper and jurisdiction for this matter lies within the Division of Workers' Compensation.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Did Claimant contract an occupational disease arising out of and in the course of his employment as a mold technician for Employer?
2. Is Claimant's work the medical cause of his condition?

EXHIBITS

The following Exhibits were offered into evidence and admitted without objection:

Employee Exhibits:

Exhibit 1 August 24, 2011 Deposition transcript for Testimony of Dr. Bruce Schlafly

Exhibit 2 January 22, 2014 Deposition Transcript for Testimony of Dr. Bruce Schlafly

- Exhibit 3** Certified medical records of Dr. Bruce Schlafly covering periods from September 7, 2010 to April 21, 2012
- Exhibit 6** Employees Injury Report of Meramec Group, Inc. for date: 5-27-09
- Exhibit 7** Supervisor's Incident Investigation report dated May 28, 2009
- Exhibit 9** Records of Austin Plaza Primary Care of Dr. Rustico Simpelo covering periods from February 7, 2008 to May 4, 2010
- Exhibit 10** Washington County Memorial Hospital Records

Employer/Insurer Exhibits:

- Exhibit A** Report of Dr. Sandra Tate
- Exhibit B** Report of Dr. Evan Crandall
- Exhibit C** June 3, 2014 Deposition transcript for Testimony of Dr. Evan Crandall
- Exhibit D** November 14, 2011 Deposition transcript for Testimony of Dr. Gerald Lionelli
- Exhibit E** September 15, 2014 Deposition transcript for Testimony of Dr. Gerald Lionelli

At the Hearing, Employee testified.

Note: Unless otherwise specifically noted below, any objections raised during the hearing or contained in the deposition exhibits, but not ruled on in this award, are overruled and the testimony is fully admitted into evidence in this case. Any notations made on the exhibits were not placed there by the undersigned Administrative Law Judge.

STIPULATED FACTS

1. Employer and Employee were operating under the provisions of Missouri Workers' Compensation Law ("The Act");
2. Employer's liability was fully insured;
3. Venue is proper in the City of St. Louis;
4. Employer had notice of the alleged occupational disease and the Claim for
5. Compensation was timely filed;

6. Employee's average weekly wage was \$510.00, yielding a compensation rate of \$340.00 for temporary total disability ("TTD"), and a rate of \$340.00 for permanent partial disability ("PPD");
7. Employer has paid no compensation to date for TTD benefits.
8. Claimant reached Maximum Medical Improvement on April 8, 2012 and returned to work on April 9, 2012;
9. If the claim is compensable, the employer will pay for outstanding medical bills. If the claim is denied the Employee will submit for payment through group insurance;
10. If the claim is compensable, the Employer will pay \$944.00 in TTD benefits for 6-weeks in lost time. If the claim is denied, the Employer will not make any TTD payments;
11. If the claim is compensable, the Employer will pay disfigurement as directed by ALJ Teer. If the claim is not compensable, the Employer will not pay for any disfigurement.

FINDINGS OF FACT

Claimant's Testimony Background

At the time of the hearing, Claimant is a 59 year old right-hand dominant male who works for Meramec Group Industries as a Mold Tech and has done so for over 30 years. Claimant is currently 5' 8" tall and weighs 218 pounds, and has been diagnosed with Type II diabetes controlled with oral medication, as well as medically controlled high blood pressure. Claimant is a former smoker and currently chews tobacco for over 14 years, consuming one can of Copenhagen every three days. Claimant testified that he likes to hunt and is an occasional gardner.

Claimant's Work History

Claimant provided credible and concise testimony wherein he has been employed at Meramec Valley Industries in Sullivan, Missouri since August 5, 1987. He has held the title and position of "mold tech" throughout his 30 years of employment with Meramec. As a mold tech, he assists in the making of shoe soles and knee pads. The job requires him to alternate between different functions daily. During the time frame of 2008-2010, the Claimant worked 8-hour days. He received two 10-minute breaks and one 20-minute break during his shift for 5 days a week. Claimant received 2 weeks of vacation time and had time off during 2 yearly "mandatory shut down weeks," for a total of 4 weeks off work or 48 weeks worked a year.

Claimant described his mold changing duties, which is one of his three other duties, at trial. Claimant testified that the molds [used to make soles or pads] ranges from 15 to 20 inches long, 8 to 12 inches wide, and 8 inches tall. The molds weigh between 35 and 100 lbs. For molds weighing 100 lbs, Claimant usually needed help. Claimant testified he performs between 10 and 30 mold changes per shift, and each mold is lifted about 8 times to get it on the table. The molds have latches to help with carrying them.

At the start of his day he removes four to six molds from the rack and places them on the cart to take them to the heat room, to heat them up for use. The molds are lifted off the cart and placed on a heater. After they are warm enough for use the molds are placed back on the cart, then wheeled to the table. Once at the table, Claimant removes a pin from the mold on the table, and places the mold in current use on his cart, then places a new mold on the table. Molds are handled two more times to take them off the table and placed back on the rack.

Claimant's mold changing duties also include changing the plate on the mold which required the use of a T-handle tool that was 11 to 12 inches long. The T-handle is used to remove 4 bolts on the plate. Claimant testified this job is performed for about half of his mold changes.

On the days where Claimant was not doing mold changes he rotates to another job on the line where he changes out the mixing barrels that contained the material shot into molds to make shoe soles. This requires Claimant to undo the gun that is attached to the mixer, knock off the mixing, and using a hammer to beat off fork handles. Barrel changes are done 30 to 40 times a shift.

On cross-examination, Claimant admitted he did the mold changing job duties every other day, approximately 5 out of 10 days in a pay period. In other words, he performs this duty either 2 or 3 days in a 5 day work week. Claimant also states the mixing barrels he lifts to refill do not weigh very much. During the mold changing days, Claimant also has to check a computer screen several times a day, clean the molds, and does some sweeping and maintenance. Claimant has performed the mold changing task since 1989 but did not begin experiencing symptoms of carpal tunnel until 2009. In roughly 2008, Claimant was diagnosed with diabetes and began taking an oral pill to control his diabetes. In 2009 Claimant reported problems of burning sensations in his lower extremities, thighs and legs, to Dr. Simpelo.

Claimant's Medical Condition

Claimant stated after he experienced issues with his hands on the job he reported those issues to his supervisor Linda Lee, and ultimately, Claimant was sent to Dr. Sandra Tate for evaluation. Dr. Tate did not treat the Claimant. Dr. Simpelo, Claimant's primary care doctor, performed a nerve conduction study ("NCS"), and referred Claimant to Dr. Bruce Schlafly. Dr.

Schlafly performed surgery on Claimant's left and right wrists. The Court noted Claimant has a slight scar of about 2 inches on each wrist.

Claimant states he has some loss of grip strength in both hands after his carpal tunnel release surgery. Claimant bought a drill to help remove hex bolts. He no longer has numbness and tingling in his hands since his surgery.

Following his carpal tunnel release, the Claimant experienced minimal scarring. He still has complaints of loss of grip strength. He is still able to drive, do chores around the house and go hunting.

Claimant began to have symptoms in his hands in May of 2009, when he experienced pain in his right and left wrist with numbness in his fingers. Dr. Simpelo who recommended a nerve conduction study ("NCS"). The NCS was performed on 5/8/09 by Dr. Max Benzaquen. The impression from the NCS was right and left median neuropathy, and median ulnar nerve entrapments across the right and left carpal tunnels. Dr. Simpelo diagnosed the Claimant with Carpal Tunnel Syndrome. There are additional records from 2009 where Dr. Simpelo removed skin lesions and treated an abscess of the face. Blood tests on 3/5/10 showed a slight elevation in the serum glucose and slight elevation in the hemoglobin A1C test for diabetes. Dr. Simpelo treated Claimant for a urinary tract infection in April 2010. Dr. Simpelo also treated Claimant for high blood pressure, prescribing an oral medication.

Claimant was sent by Meramec to see Dr. Sandra Tate in June 2009. In Dr. Tate's report dated 6/11/2009, she mentions the outside nerve conduction study taken on 5/08/09 was difficult to interpret and it showed ulnar nerve entrapment, which does not relate to a carpal tunnel. She believed the outside nerve conduction studies appeared to be most compatible with a sensory motor polyneuropathy, and by the history of the patient it did not appear his job is significantly repetitive in nature to be the prevailing cause of his current hand complaints. Instead, the underlying neuropathy is most likely associated to his diabetes and possibly superimposed carpal tunnel syndrome.

Claimant saw Dr. Bruce Schlafly in September 2010. Dr. Schlafly diagnosed the Claimant with left carpal tunnel syndrome with tendonitis at the left shoulder and probable mild right carpal tunnel syndrome. Dr. Schlafly found work to be the prevailing factor that caused bilateral carpal tunnel syndrome and tendonitis of the left shoulder, but failed to detail how or why his job duties are the prevailing factor in his diagnosis. Dr. Schlafly performed the left carpal tunnel release on 2/28/12 and a right carpal tunnel release on 3/22/12.

Expert Medical Evidence

Bruce Schlafly, M.D.

Bruce Schlafly, M.D., evaluated Claimant at the request of his attorney. Claimant saw Dr. Schlafly on 9/7/2010. Dr. Schlafly opined the Claimant's work with his hands as a mold tech

at the Meramec factory caused the left-sided carpal tunnel syndrome. His opinion was based on the fact that the work requires him to lift and carry molds weighing 25 and 100 pounds, and he does some maintenance work. He opined that this [job] required use of force as well as repetition, and that the use of force in your upper extremities causes carpal tunnel.

When questioned on other risk factors associated with the Claimant, Dr. Schlafly stated that he is aware that the Claimant has high blood pressure but he is not aware that high blood pressure is a factor in the development of carpal tunnel syndrome. He is also not aware of any medical literature that discusses how the Claimant's chewing tobacco contributed to the cause of his carpal tunnel syndrome.

Dr. Schlafly also opined that the Claimant's work as a mold tech at the Meramec factory was the prevailing factor causing the Claimant's left shoulder tendinopathy. Dr. Schlafly recommended a left carpal tunnel release and a course of physical therapy and a cortisone injection for the left shoulder and then re-evaluation after that for the need for additional treatment.

On cross-examination, Dr. Schlafly stated that he formed his opinion based on physical examination, the claim for compensation, report of injury, incident report, mold tech job description, records from Dr. Simpelo, Dr. Tate, and Washington County Memorial Hospital, and viewing the video of the job duties. However, he admitted that he did not take any x-rays in 2010, nor did he review any x-rays, myelograms, or nerve conduction studies. He also did not order any tests. Dr. Schlafly also testified he limits his surgical practice to treatment of the upper extremities- hands, wrists, elbows. He does not do shoulder surgery. Dr. Schlafly also did not do any blood tests on the Claimant, nor did he evaluate his eyes or check his blood pressure.

Dr. Schlafly was questioned about the repetitiveness of the Claimant's job duties. He testified that the Claimant told him at the time of the exam that his work required him to lift molds weighing between 50 and 100 pounds, and that he did 10 to 30 line changes per shift, and each line change required retrieving up to 60 molds. Dr. Schlafly's testimony reveals he did not multiply out the number of line changes and mold retrievals.

Dr. Schlafly further testified the forces from lifting molds were great enough to cause carpal tunnel, but he was not sure how many times the mold would have to be lifted a night. He stated OSHA said on their website about 10 years ago that carrying 75 pounds once per shift could cause carpal tunnel syndrome. He also testified he does not know when he last looked at these regulations and it could have been eight years ago. Dr. Schlafly acknowledged that the Claimant is about 5'9" tall and weighs 218, pounds which would classify him as being obese.

Dr. Schlafly testified his diagnosis is more definite for the left hand than for the right hand. He also states he did not recommend any treatment or care on the right wrist or surgical intervention on the left shoulder. He also did not provide any assessment of disability on either wrist or the shoulder, nor did he place any limits on Claimant's ability to engage in physical

activity. Dr. Schlafly merely points to Claimant's complaints, electrical studies performed, and to some extent the physical exam to conclude Claimant had carpal tunnel in his left and right hands. He also finds the muscular tenderness, tension and strain from carrying heavy objects causes carpal tunnel.

Claimant returned to see Dr. Schlafly again on 8/10/2012. At that time, he had performed a left carpal tunnel release on 2/28/2012 and a 3/22/2012 right carpal tunnel release. In his report, Dr. Schlafly described Claimant's grip strength measured significantly lower than his original grip strength. At his 8/10/12 appointment Claimant also complained about intermittent pain along the ulnar side of the left wrist and forearm. Dr. Schlafly's opinion is Claimant has a 25% permanent partial disability rating at each hand, based on the result obtained and improvement in the numbness with residual weakness.

Dr. Schlafly admitted Claimant had somewhat less range of motion of the wrist on 8/10/12 in comparison to his 9/7/11 appointment. Dr. Schlafly stated he took an x-ray on 3/12/12 to understand why Claimant was having dorsal wrist pain but the x-rays were normal. Dr. Schlafly also testified it is probably more common to take x-rays of wrists in an initial evaluation of carpal tunnel syndrome. He also could not say with a reasonable degree of medical certainty that the dorsal pain was related to the carpal tunnel release.

Dr. Schlafly was also questioned on a note from 1/13/12 from another office visit from Claimant. In this note, Dr. Schlafly had concerns that the Claimant was having problems with possibly cubital tunnel syndrome. This is the reason he ordered repeat electrical studies.

Dr. Schlafly released Claimant to return to work on light duty on 4/6/2012. He was permitted to return to work on 5/28/2012 at full duty. In February 2012, Dr. Schlafly ran labs on Claimant and his glucose was at 158 when the normal range was 70 to 110. Dr. Schlafly ran tests again the day of the second surgery 3/23/2012, and the glucose range for Claimant was 151. Dr. Schlafly admitted that this was an abnormally high glucose.

Gerald Lionelli, M.D.

Dr. Gerald Lionelli is a board certified plastic surgeon with a subspecialty in hand surgery and the upper extremities. Dr. Lionelli examined Claimant at the employer's request on 3/11/11 for an Independent Medical Examination ("IME"). Dr. Lionelli reviewed the Mold Tech job description and the Claimant's deposition in preparation of his 3/11/11 report. It was during the 3/11/11 appointment Claimant complained of wrist pain and numbness and tingling of multiple fingers on each hand. The left hand was worse than the right.

When questioned about his knowledge of Claimant's job description, Dr. Lionelli testified Claimant described three separate subtitles for the functions that they perform as a Mold Tech. There's the line worker-mold changer, the one footer, and the lid closer, and each of them

has a different function in the facility. Generally, a mold tech would do one of those functions for an eight hour shift, then rotate to the next one for an eight hour shift.

Dr. Lionelli listed several factors and signs that indicated Claimant was more at risk for diabetic neuropathy and carpal tunnel syndrome. In his 3/11/11 report, Dr. Lionelli reviewed Dr. Simpelo's records on Claimant's advancing diabetes. He saw several signs that the Claimant's diabetes was in poor or not great control. First, Dr. Lionelli placed emphasis on the abscess in the scrotum area as a hallmark for diabetic patients, often called Fournier's gangrene if they become really bad. Dr. Lionelli also took note that the Claimant had a urinary tract infection that is almost unheard of in adult men unless there is an underlying problem.

Dr. Lionelli also concluded there was no other reason for Claimant to report burning sensation in his thighs and legs except if he was experiencing diabetic neuropathy. He later mentions neuropathy may also be caused by elevated BMI, and Claimant's height was 5'9" and weight at 255 lbs, making his BMI slightly elevated.

Additionally, Dr. Lionelli noticed Claimant's history of hypertension was in poor control, which is typically associated with neuropathy. Dr. Lionelli testified tobacco use of any kind is also not good for the peripheral vasculature nerves. It was Dr. Lionelli's expert opinion that tobacco use causes vasoconstriction which decreases blood flow and could cause symptomatology of neuropathy.

Dr. Lionelli interpreted Dr. Benzaquen's findings of bilateral median ulnar entrapments across the carpal tunnel to mean Claimant has neuropathy in both nerves which go to the hand, the median nerve and the ulnar nerve. He is clear the ulnar nerve does not go through the carpal tunnel. However, he is suspicious Claimant's complaints of tingling in his little and ring finger indicated there were issues in the ulnar nerve. It is also uncommon for people with carpal tunnel to not be awakened by the condition at night, and Claimant is not awakened at night by hand or wrist pain. Dr. Lionelli also opined antihypertensive medication, like the one the Claimant takes, can cause median neuropathy.

Dr. Lionelli opined Claimant either had median neuropathy, polyneuropathy or diabetic neuropathy of multiple nerves in his body based on his physical examination, review of records, and the history given by Claimant. This includes the nerves in the thighs and legs as diagnosed by Dr. Simpelo. Dr. Lionelli also opined Claimant's employment as a Mold Tech was not the prevailing factor causing Claimant's median neuropathy, ulnar neuropathy, and polyneuropathy in the wrists. He also offered his expert opinion that most people believe there is no surgical treatment for diabetic neuropathy, that is, you can't surgically correct a systemic, metabolic problem. Dr. Lionelli also stated the work at Meramec did not give Claimant any permanent partial disability.

Dr. Lionelli concluded diabetes caused Claimant's peripheral neuropathy. He explained diabetes affects "our muscles, our nerves, our tendons, every aspect of our body, how our skin heals, or vasculature..." Adding in the fact Claimant has hypertension, which can affect the

nerves, the fact that he is overweight and has an elevated BMI, the fact that he chews tobacco which is a vasoconstrictive agent “which decreases the blood flow to all parts of the body including the nerves will in my opinion, can lead to an exacerbation of his neuropathy.”

The doctor based his opinion on the tobacco use by Claimant. Claimant has chewed tobacco for 14 years. Dr. Lionelli recalls his work in veterans hospitals where the patients have lost their limbs due to being lifetime smokers. He also discusses how Claimant drinks a lot of caffeine which is also a vasoconstricting agent.

Overall, Dr. Lionelli did not think Claimant had carpal tunnel syndrome. He stated “Carpal tunnel syndrome is median neuropathy secondary to a tight carpal canal, and the carpal—the transverse carpal ligament pressing down on the nerve underneath it.”

Dr. Lionelli testified he does not believe Claimant has any work related conditions, and he believes the Claimant is capable of working full duty.

Dr. Lionelli testified a person can have diabetic neuropathy and have carpal tunnel syndrome. He also noted skin abscesses can come from a number of different reasons. Dr. Lionelli did not know Claimant’s date of diagnosis with diabetes but he stated diabetic neuropathy comes on over time and we do not know exactly how long any type 2 diabetic has been diabetic.

Dr. Lionelli did not examine Claimant’s lower extremities. At the time Dr. Simpelo diagnosed problems in the thigh, Claimant was also experiencing muscle strain and spasms. However, Dr. Lionelli explained there was nothing in Dr. Simpelo’s records which implied the Claimant had impingement of any nerves or degenerative joint disease. He denied that the thigh issue could cause radiating pain in the low back.

When asked whether Claimant’s diabetes is controlled, Dr. Lionelli stated “even people who are in good control still have the sequel of the disease.” Claimant’s attorney also questioned Dr. Lionelli on how the outcome of surgery would suggest the real problem is diabetes and not carpal tunnel syndrome. Dr. Lionelli emphasized his opinion was broader than just diabetes as there are the issues of tobacco use and antihypertensive medicines which particularly affect the nerve going through the canal. Moreover it was his opinion the bigger picture here was more than just entrapment or just diabetes, tobacco use, weight, or hypertension individually. He also predicted eventually everyone with diabetes will have neuropathy.

Dr. Lionelli also saw the Claimant in April 2013. During that appointment Claimant reported he no longer had numbness and tingling in his fingertips but the pain in his wrists prior to the surgery had not changed. He stated the pain was the same in the wrists, and he had pops and clicks in his wrists. On examination Claimant had a positive radial tunnel exam, with a positive middle finger extension test which shows irritation of another radial nerve located in the

upper extremities. Dr. Lionelli also wrote in his report Claimant had a positive scaphoid shift test and positive ANA test at the scaphoid bone, scapholunate ligament test and finger extension

test. These tests show there was ligament laxity, which can lead to neuropathy because the bones aren't held in position appropriately, pressing against the median nerve which just lies right on the other side of the scaphoid bone. About a year prior to Claimant's appointment with Dr. Lionelli, he had bilateral carpal tunnel releases. Dr. Lionelli again opined Claimant's employment at Meramec Industries was not the prevailing factor causing Claimant's bilateral median neuropathy. He further opined Claimant sustained no permanent partial disability as a result of his employment with Meramec Industries.

R. Evan Crandall, M.D.

Claimant scheduled a visit Dr. Evan Crandall, a board certified plastic surgeon, on 3/26/2014 but Claimant did not attend the visit. Dr. Crandall reviewed Claimant's medical records from Dr. Simpelo, the NCS, Dr. Tate, Dr. Schlafly, Claimant's deposition dated 3/26/10, the deposition of Dr. Lionelli dated 11/14/11 with Dr. Lionelli's 3/11/11/ report and Claimant's job description for mold technician, the deposition of Dr. Schlafly from 8/24/11 with his 9/7/10 report and 9/6/10 narrative, as well as Dr. Schlafly's 1/22/14 deposition and 8/10/12 report. On May 20, 2014, Dr. Crandall issued his opinion Claimant has a permanent partial disability of 10% of the right upper extremity at the wrist level secondary to the carpal tunnel syndrome and the surgery needed to treat it. He also opined Claimant has a permanent partial disability of 10% of the left upper extremity at the wrist level secondary to the carpal tunnel syndrome and the surgery needed. He did not believe Claimant suffered a 25% disability for each wrist as stated by Dr. Schlafly because this is the equivalent of a 2 finger amputation and he did not believe the patient has a disability that great. Moreover, Dr. Crandall also opined Claimant's injuries were not work related.

Dr. Crandall was also asked about the Claimant's grip strength after surgery. He stated that about 25 to 50 percent of people still have some soreness from their surgery and, therefore their grip strength has not returned all the way to normal. It will return to normal with enough time and exercise because carpal tunnel surgery does not permanently diminish grip strength because grip strength is powered by the forearm, and ulnar nerve muscles. Dr. Crandall also testified the range of motion should not be affected by carpal tunnel surgery because only the skin is divided and no ligaments are involved.

Dr. Crandall did not feel Dr. Schlafly's rating was accurate. Although Dr. Crandall was not able to physically examine Claimant, he looked at the date from Dr. Schlafly's reports since he's the only one who had descriptors of what Claimant said happened since the surgery, describing scars, strength, and subjective components after surgery, and reviewing the nerve conduction studies prior to the surgery. With this in mind, Dr. Crandall concluded Claimant had a 10% impairment of each upper extremity at the wrist level.

RULINGS OF LAW

Occupational Disease/Medical Causation

Claimant did not sustain an occupational disease or injury that arose out of and in the course of his employment which was medically causally related to his work activities.

Claimant contends he developed bilateral carpal tunnel syndrome as a result of his employment as a mold tech with Meramec Industries. Employer denies his work activities are the prevailing factor in causing both his medical condition and disability. Carpal Tunnel Syndrome has been long recognized by Missouri Courts as a known occupational disease. Weniger v. Pulitzer Pub. Co., 860 S.W.2d 359,360 (Mo. App. 1993). However, simply because someone has been diagnosed with this common condition, does not make it a compensable occupational disease under Missouri Workers' Compensation Act.

Section 287.067 defines the term “**occupational disease**” as:

1. [a]n injury due to repetitive motion is recognized as an occupational disease. 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. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. 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.
2. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational disease was the prevailing factor in causing both the resulting medical condition and disability. The “**prevailing factor**” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by normal activities of day-to-day living shall not be compensable.

A claimant's medical expert in an occupational disease case must establish within a “reasonable probability” that the disease was caused by conditions in the work place. Pippin v. St. Joe Minerals Corp., 799 S.W.2d 898, 902 (mo App. 1999). Where the opinions of medical experts are in conflict, the [fact finder] determines whose opinion is the most credible. Hawkins v. Emerson Electric Co., 676 S.W.2d 872,877 (MO.App. 1984).

Section 287.808, provides “the burden of proving an entitlement to compensation under this chapter is on the employee or dependent.” In a worker’s compensation claim, the Claimant

has the sole burden of proving all material elements of his claim. Meilves v. Morris, 422 S.W.2d 335, 335 (Mo.App. 1968). In order to meet this burden and have a compensable injury, the Claimant must show he was injured as a result of an injury which arose out of and in the course of the employment, establishing essential elements including causal connection between the incident and injury. Johnson v. City of Kirksville, 855 S.W.2d 396 (Mo.App. 1993). The essential elements include evidence that the work in question was the prevailing factor causing the condition and resulting disability. Id.

“Medical causation,” not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. Brundige v. Boehringer Ingelheim, 812 S.W.2d 200, 202 (Mo.App.1994); McGrath v. Satellite Sprinkler Systems, Inc., 877 S.W.2d 704, 708(Mo.App. 1994). The development of carpal tunnel syndrome and other occupational diseases are medical conditions not within common knowledge which are treated by physicians specializing in the treatment of upper extremities. A Claimant must present credible medical evidence to support a finding that carpal tunnel syndrome arose out of his or her employment and that the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.

Therefore, in order to determine the outcome of the present case and discern whether Claimant has met his burden of proof, the Court must turn to the expert medical evidence. Claimant relies on the testimony and opinions of Dr. Bruce Schlafly which is not persuasive for the reasons stated below

Although Claimant goes to great lengths to describe his duties as a mold tech, he mostly focuses on the line worker or mold changing function, which is just one of his three major job functions the Claimant performs. Claimant alternates daily between two other job functions which do not require him to lift molds. Dr. Lionelli’s records and testimony give the most insight into these three job functions, which he describes as the line worker, one footer, and the lid closer. At most the Claimant performs the mold changing duties 2 or 3 days in a 5-day work week. In between lifting and moving molds, Claimant also has to check computer screens several times a day, clean molds, and perform general maintenance duties such as sweeping. Claimant admits at least one of the other job functions does not require heaving lifting, stating the mixing barrels as a lid closer do not weigh very much. After reviewing a video of the job functions and reviewing the job description, Dr. Schlafly, Claimant’s doctor, described Claimant’s duties as a mold tech as “mildly repetitive.” He further stated for any one particular assignment “[t]here were a variety of different jobs, but any one job was not severely repetitive.” Claimant is not performing the job duty he believes to be most repetitive on the daily basis. Additionally, Dr. Schlafly’s conclusion Claimant’s job functions are mildly repetitive suggest they are not the prevailing factor that caused Claimant’s injury.

Dr. Schlafly’s opinions of simply lifting the molds was enough to cause carpal tunnel syndrome is not persuasive. Dr. Schlafly reported Claimant stated he lifted molds weighing

between 50 and 100 lbs. However, Dr. Schlafly fails to note Claimant has help carrying the heavier molds. Moreover, he uses a cart to transport the molds from the rack, to the heating room, and the table. Dr. Schlafly's medical opinion that lifting an object weighing over 75 lbs just once could cause carpal tunnel is based on information he read on the OSHA website from over 10 years ago. In these cases, the weight and value of evidence is determined by the trier of fact. See Missouri Dept of Soc. Servs. v. Beem, 478 S.W.3d 461 (Mo. Ct. App. 2015). In an ever-changing medical community, the evidence fails to support, without more, the information from a website, last reviewed 10 years ago.

Other Risk Factors

The evidence showed Claimant's issues with his upper extremities did not surface until after he was diagnosed with diabetes by Dr. Simpelo in 2008. At the time of his diabetic diagnosis, Claimant had worked as a mold tech for about 20 years with no prior upper extremity complaints. Dr. Lionelli explained how diabetes affects "our muscles, our nerves, our tendons, every aspect of our body, how our skin heals, or vasculature...". When asked whether Claimant has diabetic neuropathy, Dr. Schlafly stated it was possible Claimant does have diabetic neuropathy. However, he was not aware of medical literature showing chewing tobacco or high blood pressure could contribute to the cause of carpal tunnel.

Dr. Schlafly did not fully address Claimant's medical history which shows his diabetes was in poor control at the time he began to experience upper extremity issues. This history was well documented in Dr. Simpelo's records which present that the claimant was experiencing burning sensations in his lower extremities, thighs and legs soon after his diabetic diagnosis, which is an indicator of diabetic neuropathy. Claimant also had an abscess in the scrotum area for which Dr. Lionelli described as hallmark for diabetic patients. Dr. Simpelo also treated Claimant for a urinary tract infection in April 2010, which Dr. Lionelli testified is almost unheard of in men unless there is an underlying problem. Dr. Schlafly also admitted that around the times of his surgeries the Claimant had abnormally high glucose levels ranging in the 150s where normal levels are between 70 and 110. Even if the Claimant's diabetes was in good control, Dr. Lionelli testified in his expert opinion, even people with good control still have the sequel of the disease.

Claimant's 14 plus years of chewing tobacco, antihypertensive medications, and BMI also places him at significant risk of neuropathy. Dr. Lionelli offered extensive testimony on how tobacco use of any kind is not good for the peripheral vascular, nerves. It was Dr. Lionelli's expert opinion tobacco use causes vasoconstriction which decreases blood flow to all parts of the body including the nerves and can lead to an exacerbation of his neuropathy. Dr. Lionelli also testified that an elevated BMI can cause neuropathy. At the time of his visit with Dr. Lionelli, 3/11/11, Claimant was 5'9" tall and weighed about 255lbs, which made his BMI slightly elevated. Additionally, Dr. Lionelli opined that antihypertensive medication, like the one Claimant takes, can cause median neuropathy. He also discusses how Claimant drinks a lot of caffeine which is a vasoconstricting agent.

The evidence supports the finding it is the combination of medical conditions and social factors that are most likely to have caused Claimant's issues with his upper extremities. Dr.

Lionelli effectively supported the view Claimant had median neuropathy, polyneuropathy or diabetic neuropathy of multiple nerves in the body. Moreover, Dr. Lionelli gave credible testimony Claimant's risk factors- diabetes, tobacco use, antihypertensive medications, and weight contributed to his neuropathy. Dr. Lionelli did not believe Claimant's work at Meramec gave the Claimant any permanent partial disability. Dr. Crandall's testimony also supports Dr. Lionelli claims diabetes, tobacco use, hypertension, and BMI are risk factors for carpal tunnel. For these reasons, it can be found by a preponderance of the evidence Claimant's issues with his upper extremities are caused by his pre-existing issues and not repetitive trauma.

Claimant's wrist pain diagnoses were too inconsistent for a definite carpal tunnel diagnosis. In the NCS performed by Dr. Benzaquen in 2009, the findings were right and left median neuropathy, and median ulnar nerve entrapments across the right and left carpal tunnels. In Dr. Tate's report dated 6/11/2009 she found that the NCS by Dr. Benzaquen was difficult to interpret because issues with the ulnar nerve are unrelated to carpal tunnel. She believed that the outside nerve conducted studies appeared to be most compatible with a sensory motor polyneuropathy and that the underlying neuropathy is most likely associated with his diabetes. Likewise, Dr. Lionelli was suspicious of Dr. Benzaquen's NCS because the ulnar nerve does not go through the carpal tunnel. Dr. Lionelli also was suspicious of the carpal tunnel diagnosis because the Claimant was not awakened at night with wrist pain like most patients with carpal tunnel. Dr. Schlafly admitted that he did not take any x-rays in 2010. He also did not order any tests. Therefore, the fact that Dr. Schlafly based the need for surgery and his causation opinion on Dr. Benzaquen's NCS makes Dr. Schlafly's opinion significantly less reliable.

In Bock v. Broadway Ford Truck Sales, Inc., the Missouri Court of Appeals approved the Commissions denial of a request for past medical expenses for Claimant's back condition, where employer's physician opined that Claimant's original problem was related to diabetic neuropathy and was unrelated to Claimant's work as a truck mechanic, and claimant should not have undergone a surgical procedure because it was not medically necessary or reasonable. Bock v. Broadway Ford Truck Sales, Inc., 55 S.W.3d 427 (Mo. Ct. App. 2001). As Dr. Lionelli stated, it is the common belief amongst physicians that surgery will not help with diabetic neuropathy, so he did not recommend a carpal tunnel release for Claimant. Id. at 25. Likewise, the evidence shows the surgery in this case was unnecessary because the real cause of Claimant's symptoms were his pre-existing conditions, including diabetic neuropathy.

Even after surgery, Claimant reported to Dr. Schlafly in his 2012 exam that he had dorsal wrist pains and a somewhat less range of motion in his wrists. Dr. Schlafly ordered x-rays and another NCS to determine if Claimant had cubital tunnel syndrome. Both tests came back normal. Dr. Schlafly, could not say with a reasonable degree of medical certainty the dorsal pain was related to the carpal tunnel release, nor did he offer another explanation for Claimant's continued issues.

Claimant also had complaints of "pops and clicks" in his wrists when he visited Dr. Lionelli in April 2013. At this time Dr. Lionelli found Claimant tested positive for ligament laxity, which is another cause of neuropathy, and Claimant also had a positive radial tunnel exam. Dr. Crandall's testimony corroborates the laxity issue because he stated range of motion should not be affected by carpal tunnel surgery because only the skin is divided and no ligaments

are involved. Dr. Lionelli also found Claimant had a positive scaphoid shift test and positive ANA test at the scaphoid bone, as well as positive scapholunate ligament tests and positive finger extension tests. The evidence shows Dr. Lionelli's explanation of ligament laxity to be a better cause of Claimant's wrist complaints in 2012 and 2013 where Dr. Schlafly offers no other explanation for the continued pain after surgery.

At trial, Claimant still had complaints about grip strength, Dr. Crandall also opined that carpal tunnel surgery does not permanently diminish grip strength because grip strength is powered by the forearm, and ulnar nerve muscles. If Claimant is still experiencing loss of grip strength more than 5 years after surgery, it is likely carpal tunnel was not the underlying cause of his issues.

It is also important to note Claimant's left shoulder complaints subsided over time in the medical records. Although Claimant originally alleged that he also had problems with his left shoulder and that these problems were work-related, Claimant was never treated nor did his complaints continue beyond Dr. Schlafly. Dr. Schlafly opined Claimant's work as a mold tech was the prevailing factor causing his left shoulder tendinopathy. Dr. Schlafly recommended a cortisone injection and physical therapy. Dr. Schlafly admitted Claimant did not complain about his left shoulder at his final appointment on 8/10/12. Therefore, the issues of the left shoulder are moot at this time.

The evidence shows Claimant suffered no permanent partial disability as a result of his occupation at Meramec. It was Dr. Schlafly's opinion Claimant suffered a 25% permanent partial disability rating at each hand based on the result obtained, and improvement in the numbness with residual weakness. His opinion was the injury was a result of Claimant's work at Meramec. Dr. Crandall issued his opinion Claimant has a permanent partial disability of 10% of the right upper extremity at the wrist level secondary to the carpal tunnel syndrome and the surgery. He also opined Claimant has a permanent partial disability of 10% of the left upper extremity at the wrist level secondary to the carpal tunnel syndrome. He did not believe Claimant suffered a 25% disability for each wrist as stated by Dr. Schlafly because this is the equivalent of a 2 finger amputation and he did not believe the patient has a disability of sufficient magnitude. Dr. Crandall bases his opinion of the AMA guidelines that follow the Missouri guidelines for claims and finds that he doesn't even believe a carpal tunnel release would amount to a 1 finger amputation unless there are serious complications. However, Dr. Crandall did not find the injuries are work related.

The evidence shows Dr. Schlafly's testimony, for reasons discussed above, does not support a finding of causation. Therefore, the issue of permanency is moot.

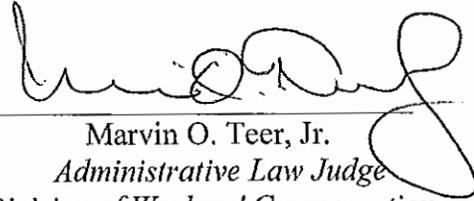
CONCLUSION

Claimant has failed to meet his burden to prove causation under the Act. All other issues are moot. The Claim is hereby denied.

I certify that on 10-10-17,
I delivered a copy of the foregoing award
to the parties to the case. A complete
record of the method of delivery and date
of service upon each party is retained with
the executed award in the Division's case file.

By MP

Made by:



Marvin O. Teer, Jr.
Administrative Law Judge
Division of Workers' Compensation

