

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

Injury No.: 01-086001

Employee: Kimberly Allen

Employer: Verizon Communications

Insurer: American Home Assurance

Date of Accident: Alleged July 28, 2001

Place and County of Accident: Alleged St. Louis County

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 15, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued August 15, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19<sup>th</sup> day of December 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Kimberly Allen

Injury No.: 01-086001

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Verizon Communications

Additional Party: N/A

Insurer: American Home Assurance

Hearing Date: June 8, 2007

Checked by: JED: sw

**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: Alleged July 28, 2001
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No
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:  
N/A
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Kimberly Allen

Injury No.: 01-086001

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$596.00
19. Weekly compensation rate: \$397.33/\$329.42
20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: 0

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

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

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

Employee:	Kimberly Allen	Injury No.: 01-086001
Dependents:	N/A	Before the
Employer:	Verizon Communications	<b>Division of Workers'</b>
Additional Party:	N/A	<b>Compensation</b>
Insurer:	American Home Assurance	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: JED: sw

This case involves a disputed allegation of upper extremity repetitive trauma resulting to Claimant with the reported onset date of July 28, 2001. Employer admits Claimant was employed on said date and that any liability is fully insured. Both parties are represented by counsel.

### Issues for Trial

1. Incidence of occupational disease (exposure and medical causation);
2. Nature and extent of permanent partial disability.

### FINDINGS OF FACT

The Claimant, formerly a customer service representative for the Employer, alleges that she suffers from an occupational disease in her right, non-dominant, wrist as a result of her work for the Employer. The Claimant testified that as a customer service representative her job duties including

inputting and searching for information on a computer and answering customer telephone calls. She explained that she had a headset to answer telephone calls, and that she would then fill in fields on the computer screen and type some narrative entries. She stated that she usually worked 8 to 9 hours a day, 5 to 6 days every week. The Claimant testified that she was eventually terminated from the Employer in April of 2002.

On July 28, 2001, the Claimant testified that while performing her duties, she experienced excruciating pain in her right wrist but stated that she did not report her symptoms to management on that date, and instead completed her shift. The Claimant presented to her primary care physician, who referred her to Dr. Martin Boyer. Dr. Boyer first saw the Claimant on August 7, 2001 for complaints of right hand and wrist pain going up to the elbow. Dr. Boyer noted that the Claimant's history did not include an antecedent injury nor any history of previous injury. Dr. Boyer's examination revealed no signs of dorsal carpal ganglion, no signs of carpal instability or pain, and had a negative Watson's Test. Dr. Boyer initially diagnosed mild tennis elbow.

In January 15, 2002, Dr. Boyer, felt that she had symptoms suggestive of a dorsal carpal mass over the scapholunate ligament. On July 15, 2002, the Claimant was evaluated by Dr. David Brown, a hand surgeon. Dr. Brown took an extensive history of the Claimant's job duties and noted that although the Claimant had not worked since April of that year, her symptoms had not improved. Dr. Brown also noted that the Claimant had diabetes but this observation was not stated to be diagnostic. Although Dr. Brown opined that the source of the Claimant's subjective complaints was unclear, he recommended nerve conduction studies and an MRI of the right elbow.

The MRI of October 9, 2002 showed no abnormality and the nerve conduction study on October 28, 2002 and was a normal study. The Claimant returned to Dr. Brown on November 12, 2003, continuing to complain of pain in the right neck radiating down the arm, pain in the mid-dorsum of the right wrist, pain in the right forearm, and numbness and tingling in all fingers. Dr. Brown's physical examination was grossly normal, and he opined that the Claimant's multiple subjective complaints were not substantiated by objective findings. Dr. Brown opined that her symptoms were not related to her work at the Employer, as they had worsened despite not working there for over a year and a half.

The Claimant followed up with Dr. Boyer, and underwent an ultrasound which was found to be normal. On September 14, 2004, Dr. Boyer suggested the possibility of cervical involvement as the etiology of her symptoms and referred her to Dr. Adam LaBore. However, Dr. LaBore's impression was that the Claimant suffered from on-going wrist pain which appeared to be a local phenomenon merely associated with some neck pain.

At the request of her attorney, the Claimant was then evaluated by Dr. Shawn Berkin on February 16, 2006. In his report of July 16, 2006, Dr. Berkin noted the Claimant's complaints of pain and tenderness to her right hand, numbness to her fingers, and difficulty gripping. Dr. Berkin's examination was unremarkable except for a positive Phalen's Sign on the right, and he diagnosed a cumulative trauma disorder of the right arm with overuse tendinitis of the right wrist.

After leaving the Employer, the Claimant went to work for a relative part-time in the home health field. The Claimant explained that this job involves making appointments, house calls, and filling in information on a clipboard.

## RULINGS OF LAW

Claimant failed to meet her burden of proof in establishing that she sustained an occupational disease while working for the Employer. The opinions of Dr. David Brown are more persuasive than those of the Claimant's expert, Dr. Berkin. Dr. Boyer did not testify. Dr. Brown saw the Claimant in 2002 and 2003, much closer in time to the alleged onset date than did Dr. Berkin, who saw the Claimant in 2006. Dr. Brown saw the claimant at several visits, and ordered an MRI and nerve conduction study to be performed. The objective testings performed in this case, consisting of x-rays, an MRI scan, a nerve conduction study, and an ultrasound scan all failed to reveal any type of injury. The record of treatment is essentially diagnostic or palliative.

Further, Dr. Berkin confirmed this, testifying that there was no objective test that showed any kind of trauma disorder of the right upper extremity or tendonitis. Additionally, although Dr. Berkin evaluated the claimant in February of 2006, he did not issue his report until July of that year. Dr. Boyer, who treated the Claimant for 2 years, was never able to successfully diagnose the Claimant's symptoms, eventually opining that he felt they were related to her neck. Therefore, Dr. Berkin's opinions regarding the diagnosis of the Claimant's symptoms in her non-dominant hand are not credible. Claimant's testimony is uncorroborated by a reliable diagnosis and convincing treatment plan. Claimant seeks permanent disability benefits, not treatment.

Dr. Brown correctly points out that although the Claimant had not been working for the Employer for over a year and a half at the time of his 2003 evaluation, her complaints had not improved, and in fact, had worsened. At the time of the hearing, the Claimant had not worked for the Employer for 5 years, and reportedly continued to have complaints, none of which have ever been supported by an objective test or definite clinical findings. Dr. Brown's opinions regarding causation are more persuasive.

### Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have failed to sustain her burden of proof that her complaints are the result of a work related condition/exposure. Claim denied.

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

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

Joseph E. Denigan  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
*Jeffrey W. Buker*  
*Director*  
*Division of Workers' Compensation*