

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

Injury No.: 02-145138

Employee: Winfred Collier

Employer: Ameren UE

Insurer: Self c/o CCMI

Date of Accident: Alleged November 01, 2002

Place and County of Accident: Alleged St. Louis City

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 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 December 15, 2004, and awards no compensation in the above-captioned case.

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

The Commission finds that the administrative law judge correctly weighed and evaluated the lay and medical testimony in reaching his conclusions as to the issues presented. *Reese v. Gary & Roger Link, Inc.*, 5 S.W.3d 522 (Mo. App. E.D. 2002), *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo. App. S.D. 2001), *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240 (Mo. Banc 2003).

An important point for consideration is the commencement of employee's hand and wrist complaints. The records in evidence from employee's personal physician, Dr. Chaowaratana, show a course of treatment since 1991 for various medical conditions. Not until October 2002 does employee indicate complaints of numbness and tingling in both arms. This complaint is followed the next month, November 2002, with complaints of waking up with numbness of both arms and pain and tingling of both hands. Studies were done at that time and showed moderately severe sensory motor carpal tunnel syndrome.

Dr. Ollinger notes the wide variance in employee's history of the onset of her hand symptoms. He notes that employee told Dr. Lionelli, in December 2002, that she had a seven to eight year history of complaints; the reference to the records of the personal physician; employee's deposition testimony referencing onset in 1999; and employee's history to him of the onset in 1995.

Employee's attempts to strike the proper timeline between the development of her complaints and her weight and hormonal changes are severely undermined by her own admission on cross examination that she "may not be exactly sure when the symptoms started."

Employer's expert, Dr. Ollinger, identifies employee's risk factors for the development of the condition of carpal tunnel syndrome. Dr. Ollinger's opinion is that the development of carpal tunnel syndrome in this employee is attributable to the risk factors of age, gender hormonal fluxes, perimenopausal status and several year history of morbid obesity. Dr. Ollinger points to the personal physician's records which disclose irregular periods in 1999 and employee's weight which is described as morbidly obese before 1999 for a period of three years and obese in 1999.

Employee's expert makes mention of certain metabolic conditions which are known to cause the development of

carpal tunnel syndrome and rules out their involvement in this case. However, he does not comment on the inherent factors such as weight, age and gender.

We find Dr. Ollinger to be the more credible as he understands the sequential nexus between employee's metabolic and body habitus changes, the stresses of the workplace and the development of employee's hand complaints. *Pulitzer Publishing Co. v. Labor & Ind. Rel. Comm'n*, 596 S.W.2d 413,417 (Mo. banc 1980).

Dr. Ollinger also notes the development of additional new complaints since the carpal tunnel surgery. This bespeaks the continuing manifestation of maladies unrelated to the workplace.

We are further persuaded by Dr. Ollinger's opinion that employee's work did not entail significant repetitions, significant force, contact stresses or vibrations and not requiring extremes of flexion or extension of the wrist. We find these expert conclusions to be credible. *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879, 884-885 (Mo. App. S.D. 2001).

Given at Jefferson City, State of Missouri, this 23rd day of August 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

I must respectfully disagree with the majority of the Commission. I would reverse the decision of the administrative law judge and award compensation.

The majority determines that a critical question in this case is the beginning of employee's hand complaints. We need look no further than the "Undisputed Facts" portion of the Award of the administrative law judge. There the administrative law judge recites employee's testimony that her symptoms began in the late 1990s.

Since this is an "Undisputed Fact" and adopted by the majority all else must flow from that timeline. The case is compensable.

In his "Rulings of Law" the administrative law judge provides us with a bold medical conclusion that "the medical condition resulting from repetitive trauma is called tenosynovitis, not carpal tunnel syndrome." The source of this conclusion is not indicated and is nowhere to be found in the record. Obviously, then, the administrative law judge is taking the opportunity of this Award to share his own views and conclusions. I consider this improper.

The administrative law judge makes mention of the "three month rule." This rule has no bearing on this case and allusions to the rule have no place in this decision.

The administrative law judge enlightens us further with a definition of ergonomics. It is one thing to interject material which is not in the case but quite another to interject material which is incorrect. Mr. Webster's dictionary advises that ergonomics is the "applied science of equipment design intended to reduce operator fatigue and

discomfort.” The administrative law judge, however, seems to equate exposure with ergonomics. No such requirement exists.

The administrative law judge advises us that repetitive or cumulative trauma cannot be. Apparently, one cannot endure thirty odd years of wear and tear before a problem begins. Life experiences and common sense indicate the fallacy of this assertion. Again, where does the record support his dicta. The administrative law judge should decide the case before him without providing the help or hindrance of his own views and opinions.

The administrative law judge relies on employer’s expert’s conclusion that employee is obese and has been morbidly obese. Weight is not the determining factor defining obesity. We are not favored with the basis of the conclusion of obesity. Was the percent of body fat measured? If so, when and how?

The administrative law judge considers employee’s duties as “not repetitive in nature.” Nowhere is this supported. Even employer’s expert admits that the duties are repetitive. He questions the degree of repetition and not the fact of repetition.

The administrative law judge states that there was “not enough trauma to induce the alleged condition of carpal tunnel syndrome.” All parties agree that employee has had surgery on each of her hands to correct the condition of carpal tunnel surgery. Why the alleged?

I would reverse the award of the administrative law judge. I would award temporary and permanent disabilities and disfigurement.

The standard of proof employed by this administrative law judge is unique to him and at odds with the statutory requirement.

John J. Hickey, Member

AWARD

Employee:	Winfred Collier	Injury No.: 02-145138
Dependents:	N/A	Before the
Employer:	Ameren UE	Division of Workers’ Compensation
Additional Party:	N/A	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-Insured	
Hearing Date:	September 10, 2004	Checked by: JED:tr

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: N/A
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: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Winfred Collier Injury No.: 02-145138

17. Value necessary medical aid not furnished by employer/insurer? \$16,595.16
18. Employee's average weekly wages: \$1,000.00
19. Weekly compensation rate: \$649.32/\$340.12
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: N/A

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:	Winfred Collier	Injury No.: 02-145138
Dependents:	N/A	Before the
Employer:	Ameren UE	Division of Workers'
Additional Party:	N/A	Compensation
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Self-Insured	Checked by: JED:tr

This case involves a disputed claim of bilateral carpal tunnel syndrome alleged occupational disease claim involving alleged injuries to the claimant's right and left hands. The employer admits that claimant was employed on said date and any liability is fully insured. Both parties are represented by counsel. The case does not proceed under a Hardship petition.

Issues for Trial

1. Incidence of occupational disease including exposure and causation;
2. Unpaid medical expenses including authorization;
3. Temporary total disability; and
4. Nature and extent of permanent partial disability.

FINDINGS OF FACT

Undisputed Facts

The claimant is a 55-year-old female who worked for Union Electric and Ameren UE for 33 years. After 1976 she worked as a customer service representative. During the last two years of her employment she worked as a credit advisor.

The claimant testified that she is currently 5 feet 1 ½ inches tall and weighs 165 pounds. The claimant retired from Ameren UE effective January 1, 2003. This was a voluntary retirement. Claimant's retirement coincided with the early retirement of other individuals at Ameren UE.

Claimant testified that her job at Ameren UE involved using a headset and keyboard as well as a mouse to retrieve and enter information into a computer. The headset was used to talk on the phone while retrieving and entering information into the computer. She worked 8 hours a day and on some occasions worked up to 12 hours a day. She received two fifteen minute breaks during the day and also had thirty minutes for lunch. She estimated that she received approximately 100 to 200 calls per shift. She stated that when she received a call she would have to enter information into a keyboard. She stated that at the end of the call she had to document information about the call into the computer.

The claimant stated that some calls only required minor updates and that she tried to keep things brief so she could handle a large volume of calls.

The claimant testified that in the late 1990's she began noticing symptoms in her hands. She did not notify anyone at her employer right away about her symptoms and did not ask for medical treatment from the employer.

Claimant went to see her primary care physician, Dr. Chaowaratana on her own. She admitted that she did not give the employer the opportunity to provide her treatment. Dr. Chaowaratana had electrical studies performed and referred her to Dr. Lionelli who recommended surgery. The claimant underwent a right open carpal tunnel release on December 18, 2002 performed by Dr. Lionelli at Christian Hospital. The claimant underwent a left open carpal tunnel release on February 21, 2003 performed by Dr. Lionelli. At no time during the course of her treatment did the claimant request medical treatment be provided by her employer.

Claimant received follow up care with Dr. Lionelli and was released from treatment by Dr. Lionelli on May 6, 2003.

Medical Evidence

The claimant was evaluated by Dr. David Volarich on October 15, 2003. Dr. Volarich was advised that her symptoms of numbness and tingling in both hands and pain began in approximately 1995 or 1994. He noted that she discontinued working on September 15, 2002 due to an unrelated medical condition. Dr. Volarich diagnosed overuse syndrome of the right and left upper extremity consistent with median nerve entrapment of the wrist (carpal tunnel syndrome) status post open carpal tunnel releases. Dr. Volarich stated that the repetitive nature of her work as a customer service representative as was described to him was the substantial contributing factor causing the bilateral carpal tunnel syndrome that required surgical repair. Dr. Volarich believed that the claimant had reached maximum medical improvement at the time of his examination and provided her with a permanent partial disability of 40% of the right upper extremity, 40% of the left upper extremity and 15% load factor.

The employer had the claimant evaluated by Dr. Henry Ollinger on March 1, 2004. Dr. Ollinger stated that the claimant had risk factors for carpal tunnel syndrome including her age and gender with hormone fluxes of her perimenopausal status and a several year history of being morbidly obese which escalates risks by 3 to 4 times over a non obese person. He noted that this was all it would have taken for her to develop carpal tunnel syndrome. Dr. Ollinger noted that her work for Ameren UE did not present to him as having significant repetition in reference to determining that her work was the proximate cause or a substantial factor for the development of carpal tunnel syndrome. He stated that clearly her work did not contain elements of significant force, contact stresses or vibrations and there is no indication that the work required extremes of flexion or extension of the wrists. He believes she was at maximum medical improvement when he evaluated her on March 1, 2004. Notwithstanding causation Dr. Ollinger believed that she had sustained a permanent partial disability of 7% of each wrist in relationship to the decompression of her carpal tunnels.

Dr. Lionelli did not address medical causation in his reports or records.

RULINGS O F LAW

Occupational Disease: Exposure and Medical Causation

The Missouri WC law permits recovery for hand symptoms that result from the workplace under the category of occupational disease only if the symptoms are the result of “repetitive motion.” Section 287.067.7 RSMo (2000). The medical condition resulting from repetitive trauma is called tenosynovitis, not carpal tunnel syndrome, per se.^[1] Thus, the legislature limits employer liability for hand symptoms to those cases in which the symptoms result only from “repetitive motion.” *Id.* In the same subsection, the legislature imposes the “*three month*” rule to insulate successive employers from repetitive motion exposures sustained at prior employers.^[2] This exposure to repetitive motion must be proven like any other element of Claimant’s case.

The science of work place exposure is called ergonomics.^[3] Ordinary diseases of life, not traceable to the workplace, are not compensable under the WC law. Section 287.067.1 RSMo (2000). Thus, in order to recover for repetitive motion, Claimant must prove an exposure (to repetitive motion) in the work place that caused her hand symptoms. Pain and inability to work is not an evidentiary proof of medical causation. Aggravation of symptoms is not proof that the alleged

repetitive activity is a substantial cause. Common sense dictates that many types of activity imposed on sore tissue will aggravate symptoms but this does not also mean that the imposed activity is the *cause* of the pathology.

In this case, Claimant's testimony was credible but not probative of medical causation. Medical causation, which is not within the common knowledge or experience of lay understanding, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. McGrath v. Satellite Sprinkler's Sys., 877 S.W.2d 704, 708 (Mo. App. 1994). Here, Claimant's exposure to typing and telephone use is undisputed. The exposure was essentially unchanged since 1970. However, despite constant exposure to the alleged repetitive motion, Claimant's first symptoms manifest after more than twenty years on the job. Claimant's position is untenable for several reasons.

Claimant must establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. Dawson at 716: Selby v. Trans World Airlines, Inc., 831 S.W. 2d 221, 223 (Mo.App. 1992); Brundige v. Boehringer, 812 S. W. 2d 200 (Mo.App. 1991). The claimant must prove "a direct causal connection between the conditions under which the work is performed and the occupational disease." Sellers v. Trans World Airlines, Inc., 752 S.W. 2d 413, 416 (Mo.App. 1988); Webber v. Chrysler Corp., 826 S.W. 2d 51, 54 (Mo.App. 1992); Estes v. Noranda Aluminum, Inc., 574 S.W. 2d 34, 38 (Mo.App. 1978).

In all events, and with all proofs in complex medical evidence a medical expert's opinion must be supported by facts and reasons proven by competent evidence that will give the opinions sufficient probative force to be substantial evidence. Silman v. Wm. Montgomery & Assoc., 891 S. W. 2d 173, 176 (Mo.App. 1995), citing Pippin v. St. Joe Mineral Corp., 799 S.W. 2d 898, 904 (Mo.App. 1990). Any weakness in the underpinnings of an expert opinion goes to the weight and value thereof. Hall v. Brady Investments, Inc., 684 S.W. 2d 379 (Mo.App. 1984).

The record in this case does not support a finding of compensability. The claimant's job duties for the employer were not repetitive in nature. Claimant's own testimony belies sufficient work related repetitive trauma to induce the alleged conditions of carpal tunnel syndrome. Although claimant's job duties involved working on a keyboard, most of the claimant's work involved short entries. She also used a mouse in assisting her with working on the computer. The claimant's job activities as described did not involve continuous typing all day long. Her hand tasks were varied and interrupted each of which provides a rest interval dimension to the ergonomics that must be part of an assertion of medical causation.

Dr. Ollinger's opinions in this case are more credible than that of Dr. Volarich. Dr. Ollinger is a board certified plastic surgeon specializing in the care and treatment of the hands and upper extremities. He routinely performs carpal tunnel surgeries as part of his practice where as Dr. Volarich is not a hand specialist and does not perform the types of medical procedure involved in this case. Dr. Volarich's report was curiously silent about Claimant's gynecological health and general health. Although Dr. Volarich noted she was not pregnant, his report cannot rebut Dr. Ollinger's comments about her perimenopausal condition and morbid obesity.

In addition, Dr. Ollinger noted that the employee's numbness and tingling in her hands coincided with the onset of hot flashes and irregular periods in 1999 and he also noted that she had other risk factors for the development of carpal tunnel syndrome regardless of her work activities including her age, gender and weight.

Given Dr. Ollinger's opinion that her work activities were not sufficiently repetitious to be the proximate cause or a substantial factor for her situation. In addition, evidence of alternative causes were un rebutted and Claimant failed to establish her burden with respect to medical causation. This opinion evidence together with the illogic that Claimant endured the same exposure for over thirty years and suddenly manifests a work related repetitive trauma compels a finding that her condition is not work related. [\[4\]](#)

However, it should be noted that the record is clear that at no time did the claimant ever request that her employer, Ameren UE, provide her with medical treatment to cure and relieve the effects of her condition. The employee selected to seek treatment on her own with Dr. Chaowaratana and then with Dr. Lionelli without requesting that the employer provide her with medical treatment. Therefore had the claimant been able to establish her burden with respect to medical causation, nonetheless, she would not have been entitled to reimbursement of past medical expenses given her failure to request medical treatment from the employer. C.

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. Claim denied. The other issues are moot.

Date: _____ Made by: _____

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

A true copy: Attest:

Gary J. Estenson
Acting Director
Division of Workers' Compensation

[1] While treatment involves examination of the carpal ligament and the structures bound within it, classic carpal tunnel *syndrome* is a compression or entrapment that presents idiopathically or, irrespective of “repetitive motion,” in conjunction with chemical imbalances. For example, it is medically correct to say, as many hand surgeons have testified, that an employee with work related bilateral surgical releases (of the carpal ligament) does not technically have “carpal tunnel syndrome.”

[2] The subsection anomalously presumes consecutive employments without instance of unemployment gaps.

[3] The ergonomics of a repetitive motion in the work place is defined in terms of position, duration or force and repetitions.

[4] No expert identified such latency as being recognized in repetitive trauma medicine. Also, such latency is contrary to the legislative history underlying the promulgation of the *90 day* (“three month”) *rule* found in subsection 7 (cited above).