

**FINAL AWARD ALLOWING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge  
with Supplemental Opinion)

Injury No. 11-093452

Employee: Lisa Cook  
Employer: Missouri Highway and Transportation Commission  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, heard the parties' arguments, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

**Discussion**

Medical causation

The administrative law judge determined that employee met her burden of proof with respect to the issue of medical causation. Employer appeals. While we agree with the result reached by the administrative law judge, we write to provide some additional comments and analysis.

The administrative law judge found that “[e]mployee expressed that she had multiple large scale data entry projects that would require frequent and significant use of a computer keyboard for approximately eight hours per work day.” *Award*, page 7. Employer challenges this finding, suggesting the administrative law judge misunderstood employee’s testimony about a large data entry project occurring in 2007.

We have carefully reviewed employee’s testimony. She did identify only one project occurring in 2007 that involved more than the usual amount of data entry work, so to the extent the administrative law judge’s finding suggests employee worked on “multiple” such projects, it may be characterized as inaccurate. See *Transcript*, page 17. But employee also credibly testified (and we so find) that her normal work duties involved keyboarding 85 to 90% of each day, and her medical expert, Dr. Bruce Schlafly, identified this specific work activity as the causative exposure which resulted in employee’s bilateral carpal tunnel syndrome. *Transcript*, pages 14, 172. Thus, regardless whether employee worked on one or more unusually large data entry projects, the credible evidence supports a finding that her *normal* work duties involved, in any event, repetitive motion of the hands in the form of typing throughout most of the work day. We so find.

The relevant question, then, is whether these occupational exposures were the prevailing factor causing employee to suffer the resulting medical condition of left carpal tunnel syndrome and disability. See § 287.067 RSMo. After careful consideration, we agree with

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the administrative law judge's choice to credit the opinions from Dr. Schlafly as to this question. Dr. Schlafly persuasively testified (and we so find) that employee's typing duties involved repetitive flexor tendon movements from repetitive motion of the fingers, which in turn created a process of gradual inflammation around the flexor tendons in the area of the median nerve and the carpal tunnel. We find that employee's occupational exposure to this gradual inflammation process is the prevailing factor causing employee to suffer the resulting medical condition of left carpal tunnel syndrome and attendant permanent partial disability.

Statute of limitations

Section 287.430 RSMo provides, as follows:

Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death.

Section 287.063.3 RSMo additionally provides, as follows:

The statute of limitation referred to in section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that an injury has been sustained related to such exposure, except that in cases of loss of hearing due to industrial noise said limitation shall not begin to run until the employee is eligible to file a claim as hereinafter provided in section 287.197.

The plain language of the foregoing sections makes clear that the statute of limitations does not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that an "injury" has been sustained related to the exposure. Section 287.020.3(1) RSMo provides that "[i]n this chapter, the term 'injury' is hereby defined to be an injury which has arisen out of and in the course of employment." It follows that the 2-year statute of limitations period did not begin to run for employee until it was reasonably discoverable and apparent to her that her left carpal tunnel syndrome amounted to an injury arising out of and in the course of employment related to her exposure to repetitive duties while working for employer. The determination of when this information became reasonably discoverable and apparent to employee is a factual one. *Lawrence v. Anheuser Busch Cos.*, 310 S.W.3d 248, 252 (Mo. App. 2010).

Employer argues that the 2005 legislative changes to § 287.063.3, by deleting the word "compensable," created a higher standard for employees than the prior language. Employer suggests we should focus on when employee's "condition" was reasonably discoverable and apparent, without regard to whether employee had the benefit of a diagnostician's opinion that she had carpal tunnel syndrome related to her work

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exposures. Employer's argument asks us to ignore both the definition of "injury" under § 287.020.3(1) as well as the legislative addition, in 2005, of the qualifier "related to such exposure" in § 287.063.3.

We presume that the legislature was aware of the pre-2005 case law suggesting that an occupational disease does not become "compensable" until an employee suffers some loss in earning capacity, e.g., *Garrone v. Treasurer of State*, 157 S.W.3d 237 (Mo. App. 2004). It appears to us that by removing the term "compensable" and adding the qualifier "related to such exposure," the legislature intended to shift the focus of our inquiry from the apparent *compensability* of an injury to the apparent *work-relatedness* of an injury.

In doing so, the legislature recognized that the "compensability" of any particular injury does not always turn on whether an employee has sufficient grounds for bringing a claim, but may involve a number of other factors which are not particularly relevant to the determination of when it becomes apparent an employee has suffered a work injury.<sup>1</sup> In our view, the legislature in 2005 simply made clear that the apparent work-relatedness of an injury must be our paramount concern in answering the question when the statute of limitations begins to run in occupational disease cases.

Employer asks us to find that the statute of limitations began to run as early as 2005, pointing to a diagnosis from Dr. A. B. Chaudhari of bilateral carpal tunnel syndrome on November 14, 2005. Employer fails to acknowledge, however, the results of a subsequent electromyogram and nerve conduction study of December 1, 2005, which Dr. Chaudhari deemed to be normal, with no evidence of denervation. *Transcript*, pages 241-42. Employee credibly testified (and we so find) that Dr. Chaudhari told her that these tests were negative for carpal tunnel syndrome, and that her upper extremity problems were instead related to her neck. As a result, we are not persuaded that it was reasonably discoverable and apparent to employee in late 2005 that she'd suffered carpal tunnel syndrome arising out of and in the course of employment related to her exposure to repetitive duties while working for employer.

Employer next argues that the statute of limitations began to run in 2007, because employee filed with employer a "Missouri Department of Transportation Workers' Compensation Field Injury Report" on September 19, 2007, complaining of pain in her bilateral wrists and forearms related to her computer data entry work and repetitive typing and filing. Employer fails to mention that its own authorized treating physician, Dr. Glen Cooper, diagnosed employee's condition in 2007 as bilateral extensor tendonitis of the wrists with tendonitis of the right elbow, *not* carpal tunnel syndrome. *Transcript*, page 273. Employer also fails to apprise this Commission of the opinion from its own evaluating expert, Dr. Evan Crandall, that there was no evidence that employee was suffering from carpal tunnel syndrome in 2007.<sup>2</sup> *Transcript*, pages 469-70.

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<sup>1</sup> An employee may suffer an injury that is "apparently" work-related but is not ultimately compensable. Examples include cases wherein the work exposure is deemed not to be the prevailing causative factor and/or when there is a failure to satisfy some other requisite to an award of benefits, such as compliance with the notice provisions of § 287.420 RSMo.

<sup>2</sup> Employer's failure to identify evidence on the record which squarely refutes its arguments is troubling, to say the least, and calls into question the candor with which employer approaches this tribunal.

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Employer's argument, as we understand it, is that despite Dr. Chaudhari's ruling out of carpal tunnel syndrome in 2005 based on the negative electrodiagnostic studies, and despite Dr. Cooper's opinion that employee's 2007 upper extremity problems were the product of extensor tendonitis, employee should have rejected the opinions from these diagnosticians and, relying solely on her own lay opinion that she had bilateral carpal tunnel syndrome related to her work for employer, filed a claim against employer for a 2005 or 2007 injury in the form of carpal tunnel syndrome. We are not persuaded.

The Missouri courts have cautioned that causation of carpal tunnel syndrome is not a question within lay understanding. "In cases in which a worker seeks compensation for carpal tunnel syndrome, he or she must submit a medical expert who can establish a probability that working conditions caused the disease..." *Decker v. Square D Co.*, 974 S.W.2d 667, 669 (Mo. App. 1998)(citation omitted). On the one hand, employer expects us to elevate employee's lay opinion regarding the proper diagnosis and work-relatedness of her upper extremity problems as sufficient to obligate her to file a claim for compensation, notwithstanding the unanimous opinions from the treating and evaluating physicians that she did not have carpal tunnel syndrome in 2005 or 2007. On the other, employer asks us to credit the opinion from Dr. Crandall that employee's carpal tunnel syndrome is, in any event, the product of a number of non-work-related risk factors.

Ultimately, and after careful consideration of the entire record, we find as a factual matter that it was first reasonably discoverable and apparent to employee that she'd suffered left carpal tunnel syndrome arising out of and in the course of employment related to her exposure to repetitive upper extremity duties as of October 25, 2012, when Dr. Victoria Kubik first made the diagnosis of left carpal tunnel syndrome. Employee filed her claim for compensation on January 10, 2012. We conclude that employee's claim is not barred by the statute of limitations.

#### Past medical expenses

Section 287.140.1 RSMo controls with respect to the issue of past medical expenses, and provides, in relevant part, as follows:

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

Employer's statutory duty to provide employee with reasonable and necessary medical treatment following a compensable work injury is "absolute and unqualified." *Abt v. Miss. Lime Co.*, 420 S.W.3d 689, 704 (Mo. App. 2014). Where, as here, an employer refuses or fails to fulfill that duty, an award of past medical expenses against the employer is appropriate. We have credited the opinions from Dr. Schlafly with regard to the issue of medical causation. Likewise, we hereby adopt as our own the administrative law judge's choice to credit the opinions from Dr. Schlafly with regard to the issue of past medical expenses. We conclude that the disputed treatment was reasonably required to cure and relieve from the effects of employee's compensable work injury of left carpal tunnel syndrome.

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Employer argues that it is not liable to pay employee's past medical expenses, because employee failed to prove that she remains liable for the bills. The courts have consistently held that an award of past medical expenses is supported when the record includes (1) the bills themselves; (2) the medical records reflecting the treatment giving rise to the bills; and (3) testimony from the employee establishing the relationship between the bills and the disputed treatment. See *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105, 111-12 (Mo. 1989). When these three elements are met, the burden shifts to the employer to prove some reason the award of past medical expenses is inappropriate (such as employee's liability for them has been extinguished, the charges are not reasonable, etc.). See *Farmer-Cummings v. Pers. Pool of Platte County*, 110 S.W.3d 818, 822-23 (Mo. 2003); *Ellis v. Mo. State Treasurer*, 302 S.W.3d 217, 225 (Mo. App. 2009); *Proffer v. Fed. Mogul Corp.*, 341 S.W.3d 184, 190 (Mo. App. 2011); and *Maness v. City of De Soto*, 421 S.W.3d 532, 544 (Mo. App. 2014).

Here, employee provided her bills, the medical records reflecting the treatment giving rise to the bills, and testimony identifying the bills and establishing that she received them as a result of the disputed treatment. We conclude that the burden was properly shifted to employer to demonstrate that employee "was not required to pay the billed amounts, that her liability for the disputed amounts was extinguished, and that the reason that her liability was extinguished does not otherwise fall within the provisions of section 287.270 [RSMo]." *Farmer-Cummings*, 110 S.W.3d at 823. Employer points to employee's testimony, elicited on cross-examination, that her insurance through employer paid for all of her medical expenses, and that "to her knowledge" those bills are "completely satisfied." *Transcript*, page 59. Employee also testified, however, that she is unaware whether she would be asked for reimbursement of these charges in the event the case is deemed compensable under workers' compensation.

There is no showing on this record that employee has any particular training or expertise with regard to the topics of medical billing, insurance law, or an employee's liability for past medical expenses incurred in the context of a disputed workers' compensation case. Employer did not provide any other evidence to demonstrate that employee's liability for her past medical bills has been extinguished, such as testimony from billing representatives with the healthcare providers or a representative from employee's insurance program with employer. After careful consideration, we do not deem employee's testimony to persuasively support a finding that her liability for her past medical expenses has been extinguished.

Employer also argues that, because employer is self-insured for workers' compensation purposes, any payment by employee's health insurance through employer must be deemed a payment directly from the employer, such that it is not precluded from our consideration by the terms of § 287.270 RSMo. Obviously, though, the fact that employer is self-insured for workers' compensation purposes reveals nothing with regard to the nature of employee's health insurance with employer. Employer did not provide any evidence with regard to that insurance policy, and thus failed to establish that such insurance is fully funded by the employer and does not involve any co-pays, co-insurance, deductibles, or monthly premiums payable by employee. In the absence of any such evidence, we are not persuaded to make a finding that payments from employee's insurance with employer constituted payments directly from employer for purposes of § 287.270.

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Ultimately, we are convinced that employer has failed to meet its burden of (1) demonstrating that employee's liability for her past medical expenses has been reduced or extinguished in any amount, and (2) showing that the reason employee's liability was extinguished does not otherwise fall within the provisions of § 287.270. For these reasons, we affirm the administrative law judge's conclusion that employer is liable for employee's past medical expenses in the amount of \$8,299.00.

**Conclusion**

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Maureen Tilley, issued March 24, 2015, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

We approve and affirm the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this   1<sup>st</sup>   day of December 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

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Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**FINAL AWARD**

Employee: Lisa Cook

Injury No. 11-077426  
11-093452

Dependents: N/A

Employer: Missouri Highway and Transportation Commission

Additional Party: Second Injury Fund (11-093452 only)

Insurer: Self-Insured

Hearing Date: 12-15-2014

Checked by: MT/rf

**SUMMARY OF FINDINGS**

1. Are any benefits awarded herein?  
11-077426: Yes.  
11-093452: Yes.
2. Was the injury or occupational disease compensable under Chapter 287?  
11-077426: Yes.  
11-093452: Yes.
3. Was there an accident or incident of occupational disease under the Law?  
11-077426: Yes.  
11-093452: Yes.
4. Date of accident or onset of occupational disease?  
11-077426: 9-8-2011.  
11-093452: 11-18-2011.
5. State location where accident occurred or occupational disease contracted:  
11-077426: Scott County, Missouri.  
11-093452: Scott County, Missouri.

6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
11-077426: Yes.  
11-093452: Yes.
7. Did employer receive proper notice?  
11-077426: Yes.  
11-093452: Yes.
8. Did accident or occupational disease arise out of and in the course of the employment?  
11-077426: Yes.  
11-093452: Yes.
9. Was claim for compensation filed within time required by law?  
11-077426: Yes.  
11-093452: Yes.
10. Was employer insured by above insurer?  
11-077426: Yes.  
11-093452: Yes.
11. Describe work employee was doing and how accident happened or occupational disease contracted:  
11-077426: Employee sustained bilateral carpal tunnel syndrome as a result of repetitive work at her place of employment.  
11-093452: Employee sustained bilateral carpal tunnel syndrome as a result of repetitive work at her place of employment.
12. Did accident or occupational disease cause death?  
11-077426: No.  
11-093452: No.
13. Parts of body injured by accident or occupational disease:  
11-077426: Right wrist.  
11-093452: Left wrist.
14. Nature and extent of any permanent disability:  
11-077426: 20% permanent partial disability of the right wrist at the 175 week level.  
11-093452: 20% permanent partial disability of the left wrist at the 175 week level.
15. Compensation paid to-date for temporary total disability:  
11-077426: None.  
11-093452: None.
16. Value necessary medical aid paid to-date by employer-insurer:

- 11-077426: None.
- 11-093452: None.
- 17. Value necessary medical aid not furnished by employer-insurer:
  - 11-077426: \$8,346.00
  - 11-093452: \$8,299.00
- 18. Employee's average weekly wage:
  - 11-077426: \$648
  - 11-093452: \$648
- 19. Weekly compensation rate:
  - 11-077426: PPD \$425.19; and TTD \$432
  - 11-093452: PPD \$425.19; and TTD \$432
- 20. Method wages computation:
  - 11-077426: By agreement.
  - 11-093452: By agreement.
- 21. Amount of compensation payable:
  - 11-077426: See findings.
  - 11-093452: See findings.
- 22. Second Injury Fund liability:
  - 11-077426: N/A
  - 11-093452: See findings.
- 23. Future requirements awarded:
  - 11-077426: None.
  - 11-093452: None.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The Compensation awarded to the Employee 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 Employee: Kurt Hoener.

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

On December 15, 2014, the employee, Lisa Cook, appeared in person and by her attorney, Kurt Hoener, for a hearing for a final award. The employer was represented at the hearing by its attorney, Matthew W. Murphy. The Missouri State Treasurer as Custodian of the Second Injury Fund was represented at the hearing by its attorney, Mathew Kincade (11-093452 only). There was a claim against the Second Injury Fund only in 11-093452. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

### **UNDISPUTED FACTS:**

#### **11-077426**

1. Covered Employer: Employer was operating under and subject to the provisions of the Missouri Workers' Compensation Law and liability was fully self-insured.
2. Covered Employee: On or about the date of the occupational disease, the employee was an employee of Missouri Highway and Transportation Commission (MoDOT) and was working under the Missouri Workers' Compensation Law.
3. Average Weekly Wage and Rate: Employee's average weekly wage rate was \$648.00. The rate of compensation for temporary total disability and permanent total disability is \$432.00. The rate for permanent partial disability is \$425.19.
4. Medical Aid Furnished: Employer-Insurer has paid medical aid in the amount of \$0.00.
5. Temporary Total Disability Paid: Employer-Insurer has paid \$0.00 in temporary benefits.

#### **11-093452**

1. Covered Employer: Employer was operating under and subject to the provisions of the Missouri Workers' Compensation Law and liability was fully self-insured.
2. Covered Employee: On or about the date of the occupational disease, the employee was an employee of Missouri Highway and Transportation Commission (MoDOT) and was working under the Missouri Workers' Compensation Law.
3. Average Weekly Wage and Rate: Employee's average weekly wage rate was \$648.00. The rate of compensation for temporary total disability and permanent total disability is \$432.00. The rate for permanent partial disability is \$425.19.
4. Medical Aid Furnished: Employer-Insurer has paid medical aid in the amount of \$0.00.
5. Temporary Total Disability Paid: Employer-Insurer has paid \$0.00 in temporary benefits.

### **ISSUES:**

#### **11-077426**

1. Occupational Disease: There is a dispute as to whether the employee suffered an occupational disease as a result of her employment with employer.

2. Notice: There is a dispute as to whether or not the employee provided adequate notice as required by §287.420.
3. Statute of Limitations: There is a dispute as to whether the employee filed a Claim for Compensation within the time allowed by law.
4. Medical Causation: There is a dispute as to whether the employee's injury was medically causally related to the accident.
5. Previously Incurred Medical Expenses: Employee is claiming past medical expenses incurred in the amount of \$8,346.00. Employee disputes liability for these amounts based on Authorization, Reasonableness, Necessity, and Causal Relationship to the employment.
6. Temporary Total Disability: Employee is claiming temporary total disability benefits in the amount of \$432.00 for the one (1) week period from November 28, 2012, through December 5, 2012.
7. Permanent Partial Disability: Employee is claiming permanent partial disability benefits.
8. Disfigurement: Employee is claiming benefits for disfigurement pursuant to §287.190.4.

**11-093452**

1. Occupational Disease: There is a dispute as to whether the employee suffered an occupational disease as a result of her employment with employer.
2. Notice: There is a dispute as to whether or not the employee provided adequate notice as required by §287.420.
3. Statute of Limitations: There is a dispute as to whether the employee filed a Claim for Compensation within the time allowed by law.
4. Medical Causation: There is a dispute as to whether the employee's injury was medically causally related to the accident.
5. Previously Incurred Medical Expenses: Employee is claiming past medical expenses incurred in the amount of \$8,299.00. Employee disputes liability for these amounts based on Authorization, Reasonableness, Necessity, and Causal Relationship to the employment.
6. Temporary Total Disability: Employee is claiming temporary total disability benefits in the amount of \$432.00 for the two (2) week period from December 18, 2012, through January 2, 2013.
7. Permanent Partial Disability: Employee is claiming permanent partial disability benefits.
8. Second Injury Fund Liability: Employee is claiming benefits against the Fund pursuant to §287.220 (2011).
9. Disfigurement: Employee is claiming benefits for disfigurement pursuant to §287.190.4.

**EXHIBITS**

The following exhibits were offered and admitted into evidence:

Employee's Exhibits:

1. Workers' Compensation Field Injury Report (9/8/2011)
2. Workers' Compensation Field Injury Report (11/18/11)
3. Medical records of Mercy Hospital (Dr. Victoria Kubik) (10/25/12)
4. Medical records of Dr. Bruce Schlafly (11/14 - 12/28/12)
5. Itemized statement of Dr. Bruce Schlafly (11/14 - 12/28/12) (\$3,775.00)
6. Itemized statement of Twin City Surgery Center (11/28 & 12/18/12) (\$10,710.00)
7. Itemized statement of Revere Anesthesiology (11/28 & 12/18/12) (\$1,104.00)
8. Itemized statement of Anesthesiology Consultants (11/28 & 12/18/12) (\$1,056.00)
9. Report of Dr. Bruce Schlafly dated 7/2/13
10. Deposition of Dr. Bruce Schlafly dated 3/26/14
11. Medical records of SEMO Hospital (Dr. Chaudhari) (2000 – 2006)
12. Medical records of Dr. Colleen Hunter –Pearson (12/7/04 – 12/16/11)
13. Medical records of Saint Francis Medical Center – Occupational Medicine (9/19/07 – 11/6/07)

Employer-Insurer's Exhibits:

- A. Wage Statement – 11/18/2011
- B. Wage Statement – 9/8/2011
- C. Medical records Southeast Health, Certified
- D. Medical records Dr. Hunter-Pearson, Certified
- E. Claim for Compensation (11-077426)
- F. Claim for Compensation (11-093452)
- G. Keystroke Analysis
- H. Report of Dr. Crandall (October 12, 2011)
- I. Report of Dr. Crandall (January 31, 2012)
- J. Report of Dr. Crandall (May 14, 2014)
- K. Deposition of Lisa Cook
- L. Deposition of Dr. Crandall
- M. Workers' Compensation Field Injury Report (9/17/2007)
- N. Workers' Compensation Field Injury Report (9/8/2011)
- O. Workers' Compensation Field Injury Report (11/18/2011)
- P. 07-089273 Minute Sheet
- Q. Medical record of Dr. Phillips

Second Injury Fund Exhibits:

*No Exhibits offered.*

**FINDINGS OF FACT:**

**Employee's Deposition (Exhibit L) and Employee's Testimony at Hearing**

Employee was born on November 23, 1959, and was 55 years old at the time of the hearing. She worked at the State of Missouri Department of Transportation as an Administrative Technician. Employee has been an employee for Employer for approximately ten years, in which she performed clerical tasks and data entry work. At the time of the hearing, Employee was in charge of handling and processing property claims concerning damage to Department of Transportation property by the public. Such property claims included damages resulting from motor vehicle accidents or vandalism.

At the hearing and at Employee's deposition (Exhibit L), Employee testified that her job is predominantly a desk job. She was also responsible for conducting a CPR course for other employees. Employee would have to carry paper, teaching supplies, mannequins, books, and TVs at times. However, Employee did not express that she engaged in any frequent heavy lifting while working for Employer beyond her CPR course lifting duties (Exhibit L at 14-15).

Employee expressed that she had multiple large scale data entry projects that would require frequent and significant use of a computer keyboard for approximately eight hours per work day. Employee in particular notes a massive archival project commencing at some point in 2007, in which Employee would have to convert a significant amount of handwritten entries to computer typed entries. Approximately four weeks into the project, on or around September 19, 2007, Employee completed a Workers' Compensation Field Injury Report (Exhibit M) in which she alleged symptoms of pain in both wrists and forearms due to "data entry" and "repetitive typing & filing" due to "entering archive data" into a computer database. Employee also noted that she attempted to treat her pain condition with Motrin, heat, and ice before completing and filing the Field Injury Report to Employer. Employee also testified that her supervisor would also assign Employee to other tasks requiring significant typing and keyboarding, including converting all handwritten labels to typed labels (Exhibit L at 34).

Employee testified that she was placed on limited duty for approximately three weeks by Dr. Glenn Cooper due to the 2007 archival project (Exhibit L at 36:18-25). Upon returning to full duty, Employee noted that she keyboarded roughly six to seven hours per work day (Exhibit L at 37). Employee continued to work on the 2007 archival project, in addition to her other job duties, from 2007 to 2011. Between 2007 and 2011, Employee expressed that she would at times require over-the-counter anti-inflammatory medication in order to control wrist pain while she slept or typed, or whenever she would experience numbness in her wrists (Exhibit L at 38-39).

On September 22, 2011, Employee completed a second Workers' Compensation Field Injury Report (Exhibit 1 & Exhibit N). Employee referenced the 2007 archival project as a source for pain complaints in her right hand and wrist. She stated that she developed pain and numbness in her right wrist and hand which required over-the-counter medication for relief. However, she expressed that her right wrist symptoms progressed to the point where she could not sleep at night, could not engage in self-care tasks like putting on makeup or fixing her hair, could not perform household tasks, and could not perform her job duties.

Employee followed up with Dr. Daniel Phillips on October 11, 2011, due to her right wrist symptoms. Employee underwent an electrical diagnosis and it was her understanding that she showed symptoms of carpal tunnel in her right wrist. Employee further followed up with Dr. Evan Crandall on October 12, 2011. Employee complained of numbness, tingling, and pain in her right wrist (Exhibit H). Even though Dr. Crandall noted that the left upper extremity examination was unremarkable, Employee testified at hearing that symptoms in her left wrist began approximately at the time she made her September 22, 2011 Field Injury Report concerning her right wrist. Employee testified at hearing that Dr. Crandall recommended a right carpal tunnel release in order to improve her condition, and did not inform her that she was at maximum medical improvement for her right wrist condition. Employee also understood that further conservative treatment would not alleviate her right wrist condition. Dr. Crandall allowed Employee to return to full time duty on October 12, 2011.

On November 18, 2011, Employee completed a third Workers' Compensation Field Injury Report (Exhibit 2 & Exhibit O). Employee again referenced the 2007 archival project as a source of pain and numbness complaints for her left hand and wrist. She noted that her left hand and wrist became "tender and uncomfortable" following the 2007 archival project. Employee controlled her left wrist complaints "for the most part with limited use, rest, and . . . pain relievers." However, her left wrist complaints progressed to the point where she had issues sleeping at night, performing self-care tasks, performing household tasks, and her ability to keyboard, write, or file at work. She also expressed numbness or burning sensations with respect to her lower left arm and wrist.

Employee, by and through her attorney, filed a workers' compensation claim with respect to the right wrist (Exhibit E) on January 10, 2012. Employee alleged that she possessed a previous permanent partial disability with respect to a low back injury in the 1970s. Employee, by and through her attorney, filed a workers' compensation claim with respect to the left wrist (Exhibit F) on January 10, 2012. Employee also alleged that she possessed a previous permanent partial disability with respect to a 1970s low back injury in this claim as well.

Employer referred Employee to Dr. Bruce Schlafly on or around November 14, 2012 for further medical treatment with respect to her hands. She complained of continuing pain and numbness. Dr. Schlafly performed a right carpal tunnel release on November 28, 2012, and a left carpal tunnel release on December 18, 2012. Employee testified that she was off work from November 28, 2012, to December 5, 2012, for the right carpal tunnel release. Employee testified that she was off work from December 18, 2012, to January 2, 2013, for the left carpal tunnel release. Dr. Schlafly released Employee from his care on or around January 2, 2013.

Employee testified at the hearing and her deposition that her wrists are “not a hundred percent” following Dr. Schlafly’s surgeries (Exhibit L at 43:17). Employee complained of “[w]eakness, loss of grip, pain, cramps, inability to carry things, inability to pick up [grandchildren], inability to stir anything when cooking” (Exhibit L at 43:21-23), inability to do gardening (Exhibit L at 50), and occasional “all-over numbness.” (Exhibit L at 44:24). Employee specified that “occasional” was synonymous with conditions in which she overused her wrist or if she required pain medication on an as-needed basis. At the date of the hearing, Employee used the keyboard approximately six hours per day as opposed to the seven-to-eight hour estimate back in 2007. Employee denied receiving any kind of special accommodations from Employer and attributed the decrease in keyboarding time to the variable nature of her job requirements.

At the hearing, Employee did not provide any testimony with respect to her 1970s low back injury noted on her Claim for Compensation. Employee also testified about a period of neck pain before the primary injury. Employee testified in her deposition that she went to ReStart Rehabilitation Services in Sikeston for approximately four weeks to address her neck issues at an unspecified date. Employee did not have any complaints with her neck at the time of her final visit with Dr. Schlafly in 2013 or at the time of her deposition. Employee did not provide any testimony with respect to any injury besides her alleged bilateral wrist injuries at hearing.

The employee testified that she was first diagnosed with pre-hypertension in 2004, which had been successfully controlled with medication. She also testified that she began to go through menopause in 2001. She also testified that she was diagnosed with Hiroshimoto’s disease, which causes an unstable thyroid, in 1979, and that that condition had also been well-controlled with medication.

On November 18, 2011, the employee filed a Field Injury Report for occupational injury to her left wrist based on the fact that she was having similar symptoms in the left wrist as she had on the right wrist, although the symptoms were not as severe.

The employee testified that on or about November 18, 2011, the employer had someone take a 45-minute video of her at work in which she was asked to show the examples of each type of work that she performed. The tape did not record or reflect how much time she spent doing each task. In addition, the employer put a ghost key counter on her keyboard from November 18 – December 9, 2011. The employee testified that counting the key strokes during that period was not an accurate reflection of her normal work requirements in that most of the contractors she worked with were not working at that time (as they were either out hunting, or not getting jobs because it was the winter season), and this period also covered winter holidays.

## **Medical Records & Testimony**

### **Records of Dr. Phillips**

Employee first consulted with Dr. Daniel Phillips on October 11, 2011, with respect to her right wrist symptoms (Exhibit Q). Dr. Phillips noted a past medical history of pre-hypertension and past surgical history of a dorsal right wrist ganglion cyst removal several years

prior to 2011. After a physical examination of the right wrist and an EMG of the right wrist, Dr. Phillips diagnosed moderate to severe demyelinating sensory motor median neuropathy across Employee's right carpal tunnel.

#### Records and Testimony of Dr. Crandall

On October 12, 2011 (Exhibit H), Dr. Crandall performed a physical examination of Employee. Employee testified that Dr. Crandall did not perform an examination of her left wrist at the time of this visit. However, Dr. Crandall recorded active range of motion, flex, and grip strength for both the right and left wrists in his October 12, 2011 report. Dr. Crandall found the left upper extremity evaluation to be unremarkable and diagnosed moderately severe right carpal tunnel syndrome. Dr. Crandall also stated that it is "predictive that conservative treatment will not be helpful" and that Employee will require additional surgical treatment through a right carpal tunnel release for improvement. Dr. Crandall expressed willingness to perform the surgery and released Employee to work without restrictions. In a 24-Hour Quick Report dated October 12, 2011 (referred within Exhibit), Dr. Crandall did not place Employee at maximum medical improvement for the right wrist injury, did not provide an anticipated date for maximum medical improvement, and noted that further treatment or testing would be necessary.

On or around November 18, 2011 to December 9, 2011, Employer compiled a keystroke analysis for Employee (Exhibit G), which detailed an average of 13,020 keystrokes per day for Employee during that time period. Employer later forwarded the keystroke analysis, a video tape concerning the job activities of Employee, and a job description of the Senior Office Assistant position to Dr. Crandall for further evaluation. Dr. Crandall surmised that Employee types approximately four pages per day by estimating one page of his own report as containing 3,500 keystrokes. Dr. Crandall noted that "[i]n order to exceed OSHA guidelines a person has to have over 4 hours of continuous typing per day. [Employee] has no continuous typing. In order to exceed the American Standards Institute guidelines one has to type over 15,000 keystrokes per hour" (Exhibit I). He further opined that "[Employee's] level of keyboard work would be considered at a pace and rate which is known to be noncontributory for carpal tunnel syndrome." Dr. Crandall believed that Employee's other risk factors, including hypertension, age, gender, and menopause (Exhibit H at 3), were the prevailing factor in the cause of her carpal tunnel syndrome.

Dr. Crandall examined Employee on May 14, 2014, at Employer's request (Exhibit J). Dr. Crandall noted that Employee had a medical history of a ganglion removal of the right wrist in 1998 and physical therapy for the neck in the past. However, Employee did not report any physical problems with respect to her neck at the time of the examination. Dr. Crandall also stated that no treating physician proved or confirmed the existence of carpal tunnel syndrome in Employee's left wrist due to the lack of a nerve conduction study or objective testing of the left hand. Dr. Crandall noted that the left hand was asymptomatic also according to Employee's own self-evaluation taken on October 12, 2011. Dr. Crandall stated "[j]ust because the surgery, in the patient's opinion, worked, it does not mean that it was the appropriate treatment. She could easily have been treated just as well with a safer option such as therapy, medications or injections." Dr. Crandall did not believe that Employee's employment was the prevailing cause of her right

carpal tunnel syndrome and did not believe that Dr. Schlafly’s left carpal tunnel release was necessary due to the lack of objective findings of left carpal tunnel syndrome.

Dr. Crandall placed her at maximum medical improvement and opined that Employee had a 5% permanent partial disability of the right wrist due to carpal tunnel syndrome, and 5% permanent partial disability of the left wrist due to *possible* carpal tunnel syndrome. Dr. Crandall found that neither of her disabilities was related to work.

Dr. Crandall was deposed on November 24, 2014. He stated that in November of 2007, there wasn’t evidence that Employee had carpal tunnel syndrome.

Records and Testimony of Dr. Schlafly

Dr. Schlafly initially examined Employee on November 14, 2012. Employee had continuing complaints of numbness in both of her hands extending to the thumb, index, and long fingers. Employee also reported to Dr. Schlafly that her right hand symptoms were worse than her left hand symptoms. Dr. Schlafly noted that Employee had a positive Tinel’s sign at the median nerve of the left wrist and a positive Phalen’s test for carpal tunnel syndrome at the right wrist. Dr. Schlafly opined a diagnosis of bilateral carpal tunnel syndrome and recommended a bilateral carpal tunnel release.

Dr. Schlafly performed the right carpal tunnel release on November 28, 2012, and released Employee to return to work on November 30, 2012, as tolerated. Dr. Schlafly performed the left carpal tunnel release on December 18, 2012. Dr. Schlafly saw Employee on December 28, 2012, for a suture removal and released Employee to return to full duty work on January 2, 2013.

Dr. Schlafly evaluated Employee at the request of her attorney. In Dr. Schlafly’s report dated July 2, 2013, he noted that Employee’s time off work while she was under his care was necessary and reasonable for the treatment of bilateral carpal tunnel syndrome.

Dr. Schlafly testified that his treatment of the employee’s work injuries was reasonable and necessary and that the bills for the surgeries that he performed, from the various providers, were also reasonable and necessary.

The bills for Dr. Schlafly’s treatment were as follows:

**RE: Injury #11-077426**

Dr. Bruce Schlafly	\$1,935.00
Twin Cities Surgery	\$5,355.00
Revere Anesthesiology	\$ 540.00
Anesthesia Consultants of Jefferson Co.	\$ 516.00

**RE: Injury #11-093452**

Dr. Bruce Schlafly	\$1,840.00
Twin Cities Surgery	\$5,355.00
Revere Anesthesiology	\$ 564.00
Anesthesia Consultants of Jefferson Co.	\$ 540.00

Employee reported that the carpal tunnel releases were successful in eliminating the numbness in both of her hands, but still complained of some weakness in both hands.

Dr. Schlafly reviewed Employee's prior medical records and also reviewed Dr. Crandall's reports. Dr. Schlafly noted that Dr. Crandall misquoted OSHA and NIOSH guidelines and stated that neither organization ever stated that there are a minimum number of keystrokes per day to trigger occupational carpal tunnel syndrome.

Dr. Schlafly opined that Employee's repetitive work with her hands during her employment with the Department of Transportation was the prevailing factor in the cause of her bilateral carpal tunnel syndrome and the need for bilateral carpal tunnel releases (Exhibit 9 at 5). He further opined that Employee had a 25% permanent partial disability of the left wrist due to carpal tunnel syndrome and the subsequent release, and 25% permanent partial disability of the right wrist due to carpal tunnel syndrome and the subsequent release.

Dr. Schlafly noted that a loading factor should apply due to the permanent partial disability in opposite extremities. Dr. Schlafly did not find that Employee "carried any significant disability prior to the development of her bilateral carpal tunnel syndrome" (Exhibit 9 at 6). Dr. Schlafly also addressed this finding in his deposition, in which he testified that he did not have an opinion on any pre-existing condition as of September 8, 2011 (Exhibit 10 at 19:13).

**Records of Dr. Hunter-Pearson**

Employee initially consulted Dr. Hunter-Pearson on December 7, 2004, due to complaints of pain in her right elbow. An x-ray did not reveal a fracture, but did reveal small density at the tip of the ulnar head. The small density was "due to superimposing different shadow or could be due to old trauma."

Employee returned to Dr. Hunter-Pearson on July 11, 2005, due to bilateral elbow pain. Employee could not recount a specific incident. Dr. Hunter-Pearson's assessment was bilateral lateral epicondylitis. Employee returned on September 19, 2005, due to bilateral wrist pain with numbness and tingling in the first, second, and third digits; lower back pain; sinus issues; and some irritation in her left arm which could have been caused by ticks. Employee suspected that she might have had mild carpal tunnel syndrome. Employee continued to experience bilateral wrist pain during her October 18, 2005 visit.

On May 20, 2010, Employee complained of burning and numbness in both arms and hands. Employee expressed concern that it could have been carpal tunnel syndrome and that she experienced numbness in both hands and digits #3 through #5 while performing activities like driving, making her hair, and other daily activities. Dr. Hunter-Pearson felt that Employee's wrist issues related to Employee's neck and upper back, and her impression was upper back radiculopathy. An MRI revealed mild disc dehydration, some osteoarthritis and minimal narrowing of neural foramen at C3-4 on the left side, and a bulging disc with minimal narrowing of neural foramen on the right side at C4-5 and C6-7. X-Rays suggested minimal osteoarthritis.

Employee saw Dr. Hunter-Pearson on December 16, 2011, due to her left wrist pain. Employee expressed that she would like to resolve this issue through the workers' compensation system, in which Dr. Hunter-Pearson provided a wrist splint.

#### Records of Dr. Chaudhari

Dr. John Askew referred Employee to Dr. Chaudhari on or around March 1, 2000, due to a 4-5 year history of headaches. Employee complained of frequent headaches, short-term memory issues, and awareness issues. Dr. Chaudhari also detailed complaints of a "cold or wet feeling to [Employee's] right hand with or without headache" (Exhibit 11, March 1, 2000 Letter). An MRI scan of Employee's brain was reportedly normal. Employee reported improvement in her memory when she stopped taking Zyrtec, and Dr. Chaudhari's impression was an onset of Adult Attention Deficit Disorder (Exhibit 11, June 21, 2000 Patient Progress Note). Employee also visited Dr. Chaudhari on May 17, 2000, due to depression complaints, coinciding with contemporaneous personal life issues.

On or around November 14, 2005, Dr. Hunter-Pearson referred Employee to Dr. Chaudhari due to a "6-8 month history of pain in both upper extremities from the elbows to her hands accompanied by numbness in the lateral 3 ½ fingers of each hand." Employee reported a 7-8 out of 10 pain pertaining to her hands. Employee also made complaints of grip loss and weakness in both hands. Employee also complained of low back pain that "occasionally" radiated into either leg and increased during some bowel movements, bending, and lying flat. Dr. Chaudhari's impressions were carpal tunnel syndrome bilaterally, with the right worse than left, bilateral tennis elbow, C5-6 discogenic disease and cervical spondylosis with interfacetal arthrosis.

Dr. Chaudhari performed an EMG and nerve conduction study on Employee on December 1, 2005, due to "pain in the neck" and "pain and numbness in the upper extremities." Dr. Chaudhari did not find any compression radiculopathy or neuropathy. He further noted that "[t]his is basically a normal electromyogram study in both upper extremities without any evidence of denervation activity." Dr. Chaudhari also performed an MRI of Employee's neck, which suggested a moderate degree of discogenic degeneration at C4-5, C5-6, and C6-7 with some bulging, but no compression of the spinal cord or its roots. Dr. Chaudhari termed the findings as "minimally abnormal." Dr. Chaudhari also found some discogenic disease at L4-5 and L5-S1 that was "moderately abnormal."

On Employee's visit on January 17, 2006, Employee reported decreasing pain. Dr. Chaudhari prescribed the use of a Lidoderm patch over painful areas. Employee did not consult with Dr. Chaudhari further for wrist, back, or neck pain. Dr. Chaudhari did not assess any permanent disability with any of Employee's complaints following her visits.

#### Records of Dr. Cooper

Employee saw Dr. Cooper on September 19, 2007, due to bilateral wrist pain complaints (Exhibit 9 Records). Employee reported that she had a "gradual onset of wrist pain following a new task at the office." Employee also reported swelling in her right wrist. Dr. Cooper diagnosed over-use tendonitis at both wrists and that her symptoms were expected to take two or three, or possibly more, weeks to subside provided Employee limited her data entry work by 50%. On November 6, 2007, Employee reported that she no longer experienced pain and that her hands were fully functional. Dr. Cooper opined that her tendonitis was resolved and released her back to work without restrictions.

#### **RULINGS OF LAW:**

##### ***Issue 1. Occupational disease (11-077426 and 11-093452); and Issue 4. Medical causation.***

Dr. Crandall surmised that Employee types approximately four pages per day by estimating one page of his own report as containing 3,500 keystrokes. Dr. Crandall noted that "[i]n order to exceed OSHA guidelines a person has to have over 4 hours of continuous typing per day. [Employee] has no continuous typing. In order to exceed the American Standards Institute guidelines one has to type over 15,000 keystrokes per hour" He further opined that "[Employee's] level of keyboard work would be considered at a pace and rate which is known to be noncontributory for carpal tunnel syndrome." Dr. Crandall believed that Employee's other risk factors, including hypertension, age, gender, and menopause were the prevailing factor in the cause of her carpal tunnel syndrome. Dr. Crandall never diagnosed Employee with carpal tunnel syndrome in her left hand.

The employee testified that she was first diagnosed with pre-hypertension in 2004, which had been successfully controlled with medication. She also testified that she began to go through menopause in 2001. She also testified that she was diagnosed with Hiroshimoto's disease, which causes an unstable thyroid, in 1979, and that that condition had also been well-controlled with medication.

The employee testified that on or about November 18, 2011, the employer had someone take a 45-minute video of her at work in which she was asked to show examples of each type of work that she performed. The tape did not record or reflect how much time she spent doing each task. In addition, the employer put a ghost key counter on her keyboard from November 18 – December 9, 2011. The employee testified that counting the key strokes during that period was not an accurate reflection of her normal work requirements

Dr. Schlafly reviewed Employee's prior medical records and also reviewed Dr. Crandall's reports. Dr. Schlafly noted that Dr. Crandall misquoted OSHA and NIOSH guidelines and stated that neither organization ever stated that there are a minimum number of keystrokes per day to trigger occupational carpal tunnel syndrome.

Dr. Schlafly opined that Employee's repetitive work with her hands during her employment with the Department of Transportation was the prevailing factor in causing Employee's bilateral carpal tunnel syndrome.

Based on all of the evidence presented, I find that the opinions of Dr. Schlafly on the issues of occupational disease and medical causation are more persuasive than the opinions of Dr. Crandall on those issues. Based on all of the evidence presented, including the credible testimony of Employee, I find that Employee sustained right and left carpal tunnel syndrome arising out of and in the course of her employment. I further find that Employee's right and left carpal tunnel syndrome was medically causally related to her employment at Missouri Highway and Transportation Commission. Furthermore, I find that Employee's work at Missouri Highway and Transportation Commission was the prevailing factor in causing her right and left carpal tunnel syndrome.

### ***3. Statute of Limitations (11-077426 and 11-093452).***

In 2005, Dr. Chaudhari notes that Employee has bilateral carpal tunnel syndrome. In 2007, Dr. Hunter-Pearson notes that Employee may have mild carpal tunnel syndrome. She also notes that Employee's work involves repetitive movements to the wrist including typing work. In 2010, Dr. Hunter-Pearson notes that Employee is concerned that she may have carpal tunnel.

In September of 2007, Employee filled out a Field Injury Report regarding her left and right wrists and forearms. The Employer-Insurer provided medical care, in which Employee treated conservatively with Dr. Cooper. Employee was ultimately diagnosed with "Extension tendonitis bilaterally." Dr. Cooper noted that the tendonitis was resolved. Employee was released from this care on November 9, 2007.

Dr. Crandall examined Employee on October 12, 2011. Dr. Crandall diagnosed Employee with right carpal tunnel syndrome. He did not believe work was the prevailing factor in causing her right carpal tunnel syndrome. Furthermore, Dr. Crandall never actually diagnosed Employee with carpal tunnel syndrome in her left hand.

Dr. Hunter-Pearson stated that Employee's work involved repetitive movements; however Dr. Schlafly was the first doctor to actually connect Employee's work to her bilateral carpal tunnel syndrome. Dr. Schlafly made this diagnosis on July 2, 2013.

Lawrence v. Anheuser Busch Cos., 310 S.W. 3d 248, 251 (Mo.App. 2010) states that the statute of limitations on a claim for occupational disease does not begin to run until the disease is reasonably discoverable and connected to the employment.

For both injury numbers, Employee's claims for compensation were filed on January 10, 2012, before Dr. Schlafly connected Employee's work to her bilateral carpal tunnel syndrome.

Therefore, based on all of the evidence presented, I find that Employee's claims for compensation in 11-077426 and 11-093452 were filed within the time allowed by law.

***Issue 2. Notice (11-077426 and 11-093452).***

Section 287.420 states that " No proceedings for compensation for any occupational disease or repetitive trauma shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove that the employer was not prejudiced by failure to receive the notice."

Dr. Schlafly diagnosed Employee with carpal tunnel syndrome on July 2, 2013, which was the first time a doctor stated that Employee's work was the prevailing factor in causing Employee's bilateral carpal tunnel syndrome

In this case, Employee filled out a Field Injury Report regarding her right hand on 9-22-11. Employee filled out a Field Injury Report on 11-18-11 regarding her left hand. Both of the Field Injury Reports were filled out before Dr. Schlafly diagnosed Employee with bilateral carpal tunnel syndrome. Therefore, based on all of the evidence presented, proper notice was given to Employer-Insurer in Injury Numbers 11-077426 and 11-093452.

***Issue 5. Claim for previously incurred medical aid (11-077426 and 11-093452).***

Dr. Schlafly testified that his treatment of the employee's work injuries were reasonable and necessary. He also testified that the bills for the surgeries that he performed were also reasonable and necessary. Based on all of the evidence presented, I find that the medical treatment the employee received from Dr. Schlafly for her work injuries was reasonable necessary. I also find that the medical bills for that treatment were reasonable and necessary. The employer offered no evidence that the employee could not become liable for reimbursement of the medical bills. Therefore, based on all of the evidence presented, I find that the medical bills were reasonable and necessary. Furthermore, based on the previous finding of medical causation, I find that the need for Employee's medical treatment was caused by Employee's occupational disease. The Employer-Insurer also disputed the authorization of Employee's medical treatment, however the Employer-Insurer denied Employee's claim for compensation. Therefore, Employee's only option was to treat on her own. Based on all of the evidence presented, I find that for Injury No. 11-077426, Employer-Insurer is directed to pay Employee \$8,346.00 for Employee's previously incurred medical aid. I also find that for Injury No. 11-093452 the Employer-Insurer is directed to pay Employee \$ 8,299.00 in previously incurred medical aid.

***Issue 6. Additional temporary total disability (11-077426 and 11-093452).***

Dr. Schlafly also testified that he had Employee off work as a result of the surgeries he performed. He stated that he had Employee off work from November 28, 2012, until about one week after the first operation and from December 18, 2012 through January 1, 2013 (which was after the second operation). Therefore, based on all of the evidence presented, I find that Employee was temporarily totally disabled from November 28, 2012 through December 5, 2012, (Injury No. 11-077426) and December 18, 2012 through January 2, 2013 (11-093452). Therefore, for Injury Number 11-077426, I find Employer-Insurer is directed to pay Employee for one week of temporary total disability in the amount of \$432.00. For Injury Number 11-093452 I find that Employer-Insurer is directed to pay Employee for two weeks of temporary total disability in the amount of \$864.00

***Issue 7. Permanent Partial disability (11-077426 and 11-093452); and Issue 9. Disfigurement (11-077426 and 11-093452).***

Based on all of the evidence presented, I find that Employee sustained 20 % permanent partial disability of the right hand at the 175 week level from Injury No. 11-077426. This equals 35 weeks. Furthermore, Employee is entitled to one week of scarring. This is a total of 36 weeks for permanent partial disability and scarring. Employee's rate for permanent partial disability is \$425.19. Therefore, Employer-Insurer is directed to pay Employee a total of \$15,306.84 for Employee's permanent partial disability and disfigurement.

Based on all of the evidence presented, I find that Employee sustained 20 % permanent partial disability of the left hand at the 175 week level from injury 11-093452. This equals 35 weeks. Furthermore, Employee is entitled to one week of scarring. This is a total of 36 weeks for permanent partial disability and scarring. Employee's rate for permanent partial disability is \$425.19. Therefore, Employer-Insurer is directed to pay Employee a total of \$15,306.84 for Employee's permanent partial disability and disfigurement.

***Issue 8. Second Injury Fund Liability (11-093452 only).***

Employee argues that her right wrist carpal tunnel syndrome should be considered a disability that pre-existed her left wrist carpal tunnel syndrome. However, Dr. Schlafly diagnosed Employee with bilateral carpal tunnel syndrome on July 2, 2013. Dr. Schlafly stated that work was the prevailing factor in causing the bilateral carpal tunnel syndrome. Dr. Schlafly stated "I do not find that Ms. Cook carried any significant disability prior to her development of her bilateral carpal tunnel syndrome." Based on all of the evidence presented, Employee did not meet her burden of proof that her right carpal tunnel syndrome pre-existed her left carpal tunnel syndrome. Furthermore, Dr. Schlafly did not assign any preexisting disability ratings to any other body part. Therefore, Employee did not meet her burden of proof regarding Second Injury Fund liability. Employee's claim against the Second injury fund is denied.

**ATTORNEY'S FEE:**

Kurt Hoener, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

**INTEREST:**

Interest on all sums awarded hereunder shall be paid as provided by law.

Employee: Lisa Cook

Injury No. 11-077426 & 11-093452

Made by:

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Maureen Tilley  
*Administrative Law Judge*  
*Division of Workers' Compensation*