

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

Injury No.: 03-143998

Employee: Jacquelyn Courtney  
Employer: Springfield Rehabilitation and Healthcare Center  
Insurer: Self-Insured  
Date of Accident: Occupational Disease from July 1, 2002 onward  
Place and County of Accident: Springfield, Greene County, Missouri

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 September 19, 2006. The award and decision of Administrative Law Judge Robert House, issued September 19, 2006, is attached and incorporated by this reference.

The Commission further approves and affirms 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 7<sup>th</sup> day of June 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

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Attest:

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**AWARD**

Employee: Jacquelyn Courtney Injury No. 03-143998 & 03-145417

Employer: Springfield Rehabilitation and Healthcare Center

Insurer: Self-Insured

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial

Hearing Date: July 10, 2006

Relations of Missouri  
Jefferson City, Missouri

Checked by: RHH

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? YES
2. Was the injury or occupational disease compensable under Chapter 287? YES
3. Was there an accident or incident of occupational disease under the Law?  
YES
4. Date of accident or onset of occupational disease: OCCUPATIONAL DISEASE FROM 7/1/02 ONWARD
5. State location where accident occurred or occupational disease was contracted: SPRINGFIELD, GREENE COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
YES
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment?  
YES
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:  
REPETITIVE LIFTING AND TRANSFERRING OF PATIENTS
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: BILATERAL ARMS
14. Nature and extent of any permanent disability: 12.5% BODY AS A WHOLE FOR 03-145417 AND 5% LEFT ARM AT 232-WEEK LEVEL FOR 03-143998
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-
17. Value necessary medical aid not furnished by employer/insurer? \$7926.83
18. Employee's average weekly wages: \$285.85
19. Weekly compensation rate: \$190.56
20. Method wages computation: BY AGREEMENT

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$7926.83

-0- weeks of temporary total disability (or temporary partial disability)

50 (12.5% BODY AS A WHOLE FOR 03-145417 ) and 11.6 (5% AT 232 for 03-143998) weeks of permanent partial disability from Employer

1 week of disfigurement from Employer for 03-145417

Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime

22. Second Injury Fund liability: Yes No X Open

0 weeks of permanent partial disability from Second Injury Fund

0 Uninsured medical/death benefits

0 Permanent total disability benefits from Second Injury Fund: weekly differential (0) payable by SIF for 0 weeks beginning and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded:

Said payments to begin JULY 1, 2004, and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

TIMOTHY B. O'REILLY

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

Employee: Jacquelyn Courtney

Injury No: 03-143998 & 03-145417

Employer: Springfield Rehabilitation and Healthcare Center

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Insurer: Self-Insured

Checked by: RHH

Two injury numbers were presented for determination at a hearing on July 10<sup>th</sup>, 2006. Injury Number 03-145417 involved a claim for bilateral carpal tunnel disease. The following issues were presented for determination in that case: 1. Whether claimant sustained an injury by occupational disease. Within that issue is the underlying question as to whether claimant was exposed to the hazards of an occupational disease. 2. Whether claimant was entitled to temporary total disability benefits from June 29, 2004, to August 16, 2004, for 6 6/7 weeks. 3. The liability

of the employer/insurer for past medical care. The parties agree that the issue of past medical benefits rises and falls with the issue claimants having sustained an injury by occupational disease. The parties further agreed that the past medical benefits amounted to \$7,926.83. That is the amount that Gretchen Long, Assistant Attorney General, representing the Department of Social Services, agreed to accept as medical having been provided by Medicaid for the alleged work-related occupational disease. The attorneys for the claimant and the employer/insurer agreed with the attorney for the Department of Social Services to that amount. 4. Nature and extent of disability.

5. Disfigurement.

Injury No. 03-143998 involving a left shoulder injury was also heard. The only issue in that case was the nature and extent of disability.

The parties agree that no benefits under the Workers' Compensation Law have been paid by the employer/self-insured. The parties additionally agreed that the average weekly wage was \$285.85 and that the workers' compensation rate for all purposes was \$190.56 per week.

Two witnesses testified at the hearing, claimant and Russell Lawler, director of nursing services at employer. Also testifying by deposition were Dr. P. Brent Koprivica, a board certified occupational medicine specialist (testifying on behalf of claimant) and Richard Evan Crandall, a board certified plastic surgeon with additional certification for hand surgery (testifying on behalf of employer/self-insured).

Claimant is a certified nurse assistant at Springfield Rehabilitation and Healthcare Center in Springfield, Missouri. She has worked for her employer since July 1, 2002. From claimant's testimony and the medical records, it appears the claimant was diagnosed as having carpal tunnel syndrome prior to her employment with Springfield Rehabilitation and Healthcare Services. Her employer at the time of her initial diagnosis of carpal tunnel syndrome was an employer for which she performed services as a certified nurse assistant.

Claimant testified that her duties at Springfield Rehabilitation and Healthcare Services involved performing the work of a certified nurse assistant which included getting patients up and dressed, brushing their teeth, brushing their hair, helping them to get dressed, changing their clothes when necessary (including changing Attends), lifting patients, repositioning patients, and bathing patients. Claimant testified that approximately 75 percent of the work she performed each day involved lifting and repositioning her patients. Claimant believed that lifting and repositioning the patients is what caused most of her problems with her hands and her shoulder. Claimant testified that over time, her hands would tingle and go numb and that she would also suffer pain in her hands. She stated that the problems gradually got worse over time.

Claimant first was treated conservatively by Dr. Griffin. She was later referred by Dr. Griffin to Dr. Edwin N. Roeder for surgery. Dr. Roeder performed bilateral carpal tunnel surgery on claimant. The surgery on the left hand was performed on July 1, 2004, and the surgery on the right hand was performed on July 15, 2004. Dr. Roeder noted that claimant had had early injections in her wrist and had used a cock-up wrist splint at night without benefit. He also noted that she had taken Tylenol and Naprosyn without benefit.

Dr. Koprivica, claimant's examining physician, opined that claimant's work was a substantial factor in the development of her bilateral carpal tunnel syndrome. Dr. Crandall, who examined claimant on behalf of employer/insurer, disagreed and found that claimant's work had no relationship at all to her carpal tunnel syndrome.

Section 287.063 sets forth the statutory basis for occupational disease. Relevant portions of that section are as follows:

1. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists, subject to the provisions relating to the occupational disease due to the repetitive motion, as is set forth in subsection

7 or Section 287.067, RSMo.

2. The employer liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease for which claim is made regardless of the length of time of such last exposure.

The last exposure rule established in Section 283.063 is not a rule of causation. *Johnson v Denton*, 991 S.W.2d 286 (Mo. Banc. 1995). The starting point for determining last exposure under the law is to determine the last employer before claim is filed if that employer exposed the employee to the hazard of the occupational disease. *Endicott v Display Technologies, Inc.*, 77 S.W.3d 612 (Mo. Banc. 2002).

The initial question in Injury No. 03-145417 is whether claimant has met her burden of proof under Missouri Workers' Compensation Law. The burden of proof is the same whether dealing with injuries by accident or occupational disease. *Pippin v St. Joe Minerals Corp.*, 799 S.W.2d 989 (Mo. App. S.D. 1990). Claimant must prove by a reasonable probability that she was exposed to the hazards of an occupational disease and not that her occupational disease (carpal tunnel syndrome) was "caused" by her work for employer. The word 'probable' has been defined many times as appearing to be founded in reason and experience which inclines the mind to believe, but leaves room for doubt. Moreover, the "Workers' Compensation Law should be interpreted in a liberal manner in favor of the employee. *Minnick v South Metro Fire Prot. Dist.*, 926 S.W.2d 906, 909 (Mo. App. 1996). Questions regarding the right of the employee to benefits must be resolved in the injured employee's favor. *Id.* However, the claimant in the workers' compensation proceeding has the burden of proving all elements of the claim to a reasonable probability. *White v Henderson Implement Co.*, 879 S.W.2d 575, 577 (Mo. App. 1994)." *Avery v City of Columbia*, 966 S.W.2d 315 (Mo. App. WD 1998).

Consequently, the ultimate issue for resolution is whether claimant was exposed to the hazards of an occupational disease while she was employed at Springfield Rehabilitation and Healthcare, and not whether her carpal tunnel syndrome was caused by her work. As stated earlier, the issue is not medical causation but exposure. Dr. Crandall specifically opined that the physical activities of claimant's work were not "a substantial factor in the cause, aggravation or precipitation of her carpal tunnel symptoms. CNA work is intermittent. It is not hand intensive and it does not have the rapid pace, intensiveness, or vibration necessary to be considered an ergonomic risk factor. Therefore, it is not an exposure to activity that could cause carpal tunnel syndrome." Instead, Dr. Crandall noted the claimant had the medical risk factors of high blood pressure, high body mass index, and diabetes, which were major risk factors for carpal tunnel syndrome. I must note that there is no indication in the record of any diagnosis that claimant had diabetes at the time of her diagnosis for carpal tunnel syndrome. However, following claimant's carpal tunnel surgeries, she was diagnosed as having diabetes (October 2004) and is being treated for that condition presently.

Dr. Crandall additionally indicated that he had done the type of jobs that a CNA performs and was familiar with those tasks from his personal experience and that he believed claimant's work as a CNA would be insufficient physical activity under OSHA criteria to be considered hand intensive.

Dr. Koprivica, on the other hand, based upon the medical literature and his experience as an occupational medicine specialist, opined that claimant's patient transferring tasks, where she was physically helping patients by moving them, sliding them into bed, helping them to stand, transferring them from bed to wheelchair, bathing them and dressing them were substantial contributors, based upon her sustained grasping with high forces used, in her developing carpal tunnel syndrome. He also noted that claimant's body mass index, her subsequent diabetes and hypertension were also risk factors. Dr. Koprivica opined that claimant's repetitive activity over time resulted in a cumulative trauma, or repetitive trauma, for which her work was a substantial contribution to her condition. Dr. Koprivica opined that based upon his experience and the medical literature involving carpal tunnel, there is a wide continuum for repetitive motion that does not require highly repetitive work only. Dr. Koprivica testified "the force, the posture when you're doing that force – as I told you, if your wrist is straight versus if your wrist is bent when you do it, there's a big difference in terms of the relative force in the carpal canal – the sustained nature of the force, how long you're having to sustain it while you're doing your task. So all of those are factors involved as to whether or not it's going to be aggravating or not." Additionally, in citing the literature, Dr. Koprivica specifically found that force alone applied at work was a risk factor irrespective of how often the task was being performed. Indeed he found that the literature supported a finding that an individual was 2.9 times more likely to develop carpal tunnel syndrome when performing activities with 3 kilograms of force.

Claimant and Russell Lawler testified that claimant would have to reposition, lift and transfer patients on a regular basis, Claimant believed up to 75 percent of the time; Mr. Lawler believed up to 25 to 30 percent of the time. Nevertheless, Mr. Lawler admitted that the work of a CNA involved significant heavy lifting at times.

Based upon all of the evidence presented in this case, and specifically the testimony of claimant and Dr. Koprivica, I find that claimant has met her burden of proof. Claimant's burden of proof is by reasonable probability. I find that there is sufficient evidence, supported by the medical literature, that claimant was exposed to the hazards of an occupational disease, specifically carpal tunnel, by her repetitive activities with force, including the lifting, transferring and repositioning of patients. Claimant certainly had other risk factors during the time her carpal tunnel syndrome was aggravated while working for her employer. Nevertheless, I find Dr. Koprivica's testimony to be credible that claimant's work exposed her to the hazards of the occupational disease of carpal tunnel syndrome. There may be doubts concerning this issue as a result of Dr. Crandall's testimony. However, I find that based upon the testimony of claimant and Russell Lawler, claimant performed sufficient tasks on a repetitive basis using sufficient force while lifting, transferring and repositioning patients to expose her to the hazards of the occupational disease of carpal tunnel syndrome.

Claimant has sought temporary total disability benefits. Claimant was aware that light duty work was available. Russell Lawler testified that claimant was offered light duty work but did not accept that offer. As a result, I deny claimant's request for temporary total disability benefits. *Cooper v Medical Center of Independence*, 955 S.W. 2d 570 (Mo. App. W.D. 1997).

Claimant has also sought past medical benefits, which the parties have agreed rise or fall with the determination of compensability in this case. Since I have found the case to be compensable, I found that employer/self-insured shall pay the Medicaid lien as agreed upon by the parties in the amount of \$7,926.83.

Claimant has sought disfigurement in this case. After viewing claimant's hands, I find that claimant has 1 week disfigurement on her left wrist as a result of her carpal tunnel surgery. I order employer/self-insured to pay claimant \$190.56 for that 1 week of disfigurement.

Claimant has also sought permanent partial disability as a result of her injury. Dr. Koprivica rated claimant's disability to be 20 percent to each wrist at the 175-week level based upon her continuing pain, numbness and tingling. It's clear from the testing of both Drs. Koprivica and Crandall that claimant no longer has positive signs for continued carpal tunnel syndrome. Nevertheless, she continues to have weakness, loss of grip strength and pain following her surgeries. I find the claimant has disability to the extent of 12.5 percent to the body as a whole as a result of her bilateral carpal tunnel syndrome for a total of 50 weeks of compensation at the agreed upon rate of \$190.56 for a total of \$9,528.

Claimant has also sought permanent partial disability for her shoulder injury. The only issue concerning the shoulder injury was the nature and extent of disability. Dr. Koprivica has rated claimant's shoulder injury to be 10 percent to the left shoulder at the 232-week level. It is clear from claimant's testimony that she continues to have shoulder problems, mainly ongoing left shoulder pain because of her impingement syndrome. Her ongoing weakness and limitations as described by Dr. Koprivica limit her ability to lift above the shoulder level because of her pain. I find and conclude that claimant has sustained a 5 percent permanent partial disability to the shoulder at the 232-week level representing 11.6 weeks of disability. I order employer/insurer to pay claimant 11.6 weeks of disability at the agreed upon rate of \$190.56 for a total of \$2,210.50.

Claimant's attorney has sought an attorney's fee of 25 percent of all amounts awarded herein, which I find to be a reasonable request. As a result, I allow Tim O'Reilly, of the law firm of O'Reilly & Jensen, an attorney's fee of 25 percent of all amounts awarded herein which will constitute a lien upon this award.

Date: October 16, 2007

Made by: /s/ Robert H. House  
Robert House  
*Associate Administrative Law Judge  
Division of Workers' Compensation*

A true copy: Attest:

/s/ Patricia "Pat" Secrest  
Patricia "Pat" Secrest  
*Director  
Division of Workers' Compensation*

