

**TEMPORARY AWARD ALLOWING COMPENSATION**  
(Modifying Award of March 9, 2011)

Injury No.: 09-056213

Employee: Betty Eaton  
Employer: AT&T/Southwestern Bell Telephone L.P.  
Insurer: Self-Insured

On March 9, 2011, we issued a temporary award or partial award. On March 18, 2011, employer filed a Motion to Modify or Amend the March 9, 2011, temporary or partial award. Employee filed a Motion to Dismiss employer's Motion to Modify or Amend to which employer/insurer responded. We have reviewed the parties' motions. We find that we failed to address an issue raised by employer in its Application for Review. As our award was only temporary, we retain jurisdiction to "modify the award from time to time to meet the needs of the case." Section 287.510 RSMo. We deny employee's Motion to Dismiss. We issue this award to correct our earlier oversight.

Pursuant to § 287.510, we modify our March 9, 2011, temporary or partial award on the issue of additional medical treatment.

The administrative law judge directed employer to provide additional medical treatment with Dr. Bruce Schlafly as the authorized treating physician. The administrative law judge was without authority to so direct. We reverse the administrative law judge's designation of Dr. Bruce Schlafly as the authorized treating physician.

Instead, employer shall provide such additional medical treatment as may reasonably be required to cure and relieve employee from the effects of the injury.

In all other respects, our March 9, 2011, temporary or partial award remains unchanged.

This award is only temporary or partial. It is subject to further order, and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

Given at Jefferson City, State of Missouri, this 30<sup>th</sup> day of March 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

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Secretary

Employee: Betty Eaton

**DISSENTING OPINION**

I have reviewed the Motion to Modify or Amend and the Motion to Dismiss. I would dismiss the Motion to Modify and leave our March 9, 2011, award unchanged. I respectfully dissent from the decision of the majority to modify our award.

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John J. Hickey, Member

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**TEMPORARY OR PARTIAL AWARD**

Employee: Ms. Betty Eaton Injury No. 09-056213  
Dependents: N/A  
Employer: AT&T / Southwestern Bell Telephone L.P.  
Additional Party: None  
Insurer: Self  
Appearances: Mr. Steve Taylor on behalf of the employee  
Mr. Bob Evans on behalf of the employer  
Hearing Date: July 13, 2010 Checked by: MM/rf

**SUMMARY OF FINDINGS**

1. Are any benefits awarded herein? Future medical benefits.
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? July 23, 2009.
5. State location where accident occurred or occupational disease contracted: Cape Girardeau, Cape Girardeau County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? 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 happened or occupational disease contracted: Employee spent her entire work shift each day taking calls from customers and entering/retrieving data into a computer.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Bilateral upper extremities.
14. Compensation paid-to date for temporary total disability: None.
15. Value necessary medical aid paid to date by employer-insurer? None.
16. Value necessary medical aid not furnished by employer-insurer? None.
17. Employee's average weekly wage: \$1,211.22.
18. Weekly compensation rate: The rate of compensation for temporary total disability and permanent total disability was \$807.48. The rate for permanent partial disability was \$422.97.
19. Method wages computation: Stipulation.
20. Amount of compensation payable:
  - Unpaid medical expenses: None.
  - Additional Medical Aid: See award.
  - TTD: None.

This award is only temporary and partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

**IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.**

## FINDINGS OF FACT AND RULINGS OF LAW

On July 13, 2010, the employee, Betty Eaton, appeared in person and by her attorney, Mr. Steve Taylor, for a hearing for a temporary award. The employer was represented at the hearing by its attorney, Mr. Bob Evans. 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

1. **Covered Employer** - Employer was operating under and subject to the provisions of the Missouri Workers' Compensation Law, and duly qualified as a self-insured employer.
2. **Covered Employee** - On or about the date of the alleged occupational disease, the employee was an employee of AT&T and was working under the Missouri Workers' Compensation Law.
3. **Notice** - Employer had notice of employee's accident.
4. **Statute of Limitations** - Employee's claim was filed within the time allowed by law.
5. **Average Weekly Wage and Rate** - Employee's average weekly wage rate was \$1,211.22. The rate of compensation for temporary total disability and permanent total disability was \$807.48. The rate for permanent partial disability was \$422.97.
6. **Medical Aid Furnished** - Employer/Insurer has not paid any medical aid.
7. **Temporary Total Disability Paid** - Employer/Insurer has paid \$0.00 as temporary total disability benefits for 0 weeks of disability.
8. **Previously Incurred Medical** - There is no claim for previously incurred medical for the purposes of this hearing.
9. **Mileage or other medical (287.140 RSMo)** - There is no claim for mileage or other medical expenses under 287.140 RSMo for the purposes of this hearing.
10. **Additional TTD or TPD** - There is no claim for additional TTD or TPD benefits for the purposes of this hearing.
11. **Permanent Total Disability** - There is no claim for permanent total disability benefits for the purposes of this hearing.
12. **Permanent Partial Disability** - There is no claim for permanent partial disability benefits for the purposes of this hearing.

### ISSUES

1. **Occupational Disease** - There is a dispute as to whether the employee sustained an occupational disease arising out of and in the course of her employment.
2. **Medical Causation** - There is a dispute as to whether the employee's injury was medically causally related to the occupational disease.
3. **Additional or Future Medical** - Employee is claiming additional or future medical aid.

## **EXHIBITS**

The following exhibits were offered and admitted into evidence:

### Employee's Exhibits

Identifier	Description
A	Medical Records
B	Deposition of Dr. Schlafly

### Employer-Insurer's Exhibits

Identifier	Description
1	Deposition of Dr. Olinger
2	Wage Statement

## **SUMMARY OF EVIDENCE**

### *Testimony of Ms. Betty Eaton*

Ms. Eaton testified that she was born November 24, 1971. She stated that she has two children, ages 12 and 5, and that they live at 917 Lee in Sikeston, Missouri. Ms. Eaton testified that her husband works at Noranda and that they have been married for 15 years.

Ms. Eaton's testimony was that she had worked at a fast food restaurant for three years during High School as a supervisor and that during the course of that employment she had no complaints related to her upper extremities. Ms. Eaton testified that she worked in the fast food industry until 1994 when she married and stayed home as a homemaker for a period of time. When asked about whether she was under a doctor's care while staying at home she indicated that she was under the care of an OBGYN associated with childbirth. When asked specifically whether she had any symptoms of carpal tunnel syndrome during her pregnancies she responded "no".

It was Ms. Eaton's testimony that in 2000 she underwent gastric bypass surgery to treat her obesity at Barnes Hospital. According to Ms. Eaton, at her heaviest she weighed 385 pounds. When asked whether she was experiencing any symptoms of carpal tunnel syndrome prior to her gastric bypass surgery, she replied "no".

Ms. Eaton said that she went to work at Sikeston Gymnastics in approximately 2000 on a part time basis working 15 to 20 hours a week. Her testimony was that she was there for approximately 6 years on a part time basis and throughout the course of her employment at Sikeston Gymnastics she had no symptoms of carpal tunnel syndrome and had no work related injuries.

Ms. Eaton said she went to work at New Wave Communications in 2005. She said that when she began working at New Wave Communications that it was a second job as she continued her part time employment at Sikeston Gymnastics. Ms. Eaton said that at the time that she started at New Wave Communications she did not have any symptoms of carpal tunnel syndrome.

Ms. Eaton said that her job at New Wave Communications involved answering the phone, engaging in sales over the phone and typing for 40 hours a week with no overtime. Ms. Eaton said that as to the position of her upper extremities while at her desk at New Wave Communications she testified that the keyboard for her computer was lower than her desk. When asked whether the computer desk setup at New Wave Communications stressed her upper extremities less than the arrangement that she had at AT&T she replied "yes, the computer desk arrangement at New Wave Communications caused far less stress on my upper extremities". Ms. Eaton was asked how many hours of her work day was she typing at New Wave Communications and her testimony was that it was approximately half of her day.

Ms. Eaton said that she thereafter left her job at New Wave Communications to go to work for AT&T. Ms. Eaton testified specifically that she had no complaints related to her upper extremities at the time that she left New Wave Communications.

Ms. Eaton testified that in mid May, 2009 she began experiencing pain in her upper extremities that was worse during the day and caused her numbness, tingling in her hands and fingers and interfered with her ability to sleep. She said that at the time she wasn't sure what was going on and so she just tried to ignore the symptoms and continued to work.

Ms. Eaton testified that she began working at AT&T in July 2008 and that her trainer was Scott, her first supervisor was Donna and her second supervisor was Jama. Ms. Eaton said that at the time that she began her work at AT&T that she had no complaints with her upper extremities. It was Ms. Eaton's testimony that her position at AT&T was retention and that that job involved wearing a headset and keeping her hands on a keyboard throughout the entire course of her day.

Ms. Eaton said that unlike New Wave Communications, at AT&T the keyboard was not located beneath the computer but was instead sitting on the same level as the computer screen making it higher off the ground and causing more of a bend and stress on her upper extremities to enter data on the keyboard. Ms. Eaton said that even when she was not typing data into the computer her hands remained on the keyboard in position to type and that this position was held throughout the course of her day. She testified that her work hours were 8:45 a.m. to 7:15 p.m. and that she got a 30 minute lunch break and two 15 minute breaks per day. Her typical day was described as arriving at 8:45 a.m., accepting calls and keying information until leaving at 7:15 p.m. Ms. Eaton was asked about how many calls she took per day and she estimated that it could be anywhere from 50 to 55 calls per day all day long, however she added that the number of calls varied from day to day and depended upon how talkative each caller was, the extent of the services that she addressed during the course of the phone call, etc. She said that it was impossible to say exactly how many calls she took per day; that she was simply estimating. Ms. Eaton was asked if she recalled her deposition by counsel for AT&T and she replied that she did. Ms. Eaton was asked if she was simply estimating when she opined the number of calls she took each day and she indicated that she was indeed only estimating during her deposition as she

never kept a log of how many calls she took each day. She testified that she was not paid based on the number of calls that she took each day therefore she had no reason to log the number of calls she took.

Ms. Eaton was asked whether she had had any aches, pains, numbness or tingling in her upper extremities prior to May, 2009 similar to what she had been experiencing since that time and she responded “no”.

It was Ms. Eaton’s testimony additionally that she never counted the number of key strokes required to do any part of her data entry job and that when asked in her deposition if a certain number sounded reasonable she was simply agreeing with counsel for AT&T. She specifically testified that she never did count how many key strokes it took to enter a person’s name, enter someone’s account, enter a new service for a customer, and so forth.

When asked if Ms. Eaton thought that there was anything about her work station at AT&T that she felt contributed to her medical problems she stated that she felt having the keyboard placed higher than is ergonomically correct as well as the fact that she had no wrist pad definitely contributed to her development of carpal tunnel syndrome.

Ms. Eaton testified that on July 17, 2009 she told Rhonda that she was having pain in her upper extremities by telephone and that she needed to take some time off work. Ms. Eaton said that she arrived at work at AT&T on July 20, 2009 wearing a wrist splint and that that same day AT&T terminated her and cited absenteeism due to Ms. Eaton’s doctor’s appointment for her carpal tunnel syndrome. Ms. Eaton said that she had been given warnings about absenteeism in that she had missed a week of work in April when her daughter was in the hospital but that she had had no other absences aside from that.

Ms. Eaton testified that she is continuing to suffer from the same pain, numbness and tingling in her upper extremities that she has been constantly experiencing since May, 2009 and that she has not re-injured herself at home or otherwise since her work injury of July, 2009.

Ms. Eaton said that she applied for unemployment and that although AT&T asserted that she had been fired for cause that ultimately it was determined that she was fired without cause and her unemployment benefits were approved. She said that the Division of Unemployment concluded she was entitled to benefits for “wrongful discharge”. Ms. Eaton was asked whether she had filed a report of injury at AT&T and she stated that she had indeed filed a report of injury with supervisor Jama and that she reported carpal tunnel syndrome on or about July 30, 2009. Ms. Eaton said that she had requested a copy of that Report of Injury but that she had never received one.

When asked about whether she had any hobbies outside of work that involved the repetitive use of her upper extremities she testified that the only hobby that she had ever had involving repetitive use of her upper extremities was scrapbooking and that she had not done that in 10 years.

Ms. Eaton was asked if she had ever experienced blotching or swelling in her wrists due to hormonal issues or whether she had been diagnosed with or treated for any thyroid condition she replied that she had not. Ms. Eaton testified that before July, 2009 she had never sought treatment for pain, numbness or tingling in her upper extremities but that in 2008 she was under a doctor's care for headaches and had been receiving B12 injections since her gastric bypass surgery.

Ms. Eaton testified that she had sought treatment for her upper extremity complaints from FNP Kim Keser who had been recommended by numerous people at AT&T as a healthcare provider that was familiar with AT&T. Ms. Eaton said that nurse Keser referred her to Dr. David Deisher and then Dr. Deisher referred her to Dr. Stahly for nerve condition studies which had objectively diagnosed her with carpal tunnel syndrome. Ms. Eaton testified that thus far her medical bills had been paid by her health insurance but she added that in the event she is awarded benefits through the Missouri Workers' Compensation Act that her health insurance will require her to repay them for any benefits they have paid for treatment related to this work injury. She said that her health insurance is through United Healthcare.

Ms. Eaton testified that she is continuing to suffer from the same pain, numbness and tingling in her upper extremities that she has been constantly experiencing since May, 2009 and that she has not re-injured herself at home or otherwise since her work injury of July, 2009.

Ms. Eaton testified that she has not worked since July 2009 and that she has not suffered from any traumatic injuries to her upper extremities or engaged in any repetitive use of her upper extremities since being terminated by AT&T in July, 2009. Ms. Eaton testified that her pain remains a 6 to 7 on a scale of 1 to 10 and that the pain is constant. She says that she is continuing to suffer from numbness and tingling and it interferes with her sleep, her performance of household activities and other household chores. Ms. Eaton testified that her upper extremity complaints make it difficult to care for herself and her family. She testified she is requiring more assistance with household chores from her family than she did prior to her development of carpal tunnel at AT&T. Ms. Eaton said she is taking Tylenol and other over-the-counter medications to cope with this pain.

Ms. Eaton testified that she had been evaluated by Dr. Bruce Schlafly and that he had done an extremely thorough physical examination that took approximately 30 minutes or longer. Ms. Eaton testified that the employer sent her to Dr. Ollinger who only spent approximately 5 to 10 minutes with her, never made eye contact with her and did only a fraction of the physical examination that Dr. Schlafly did.

On redirect Employee testified that there were numerous other employees at AT&T who had filed workers' compensation claims due to carpal tunnel syndrome.

### ***Review of the Medical Evidence***

Ms. Eaton was seen July 17, 2009 for complaints of wrist pain that had been present for two weeks along with tingling that was greater on the left side. (Exhibit A, Section 1 at Page 1). The records reflect that Nurse Keser ordered an EMG and Nerve Conduction Study and

recommended that Ms. Eaton avoid weight bearing, RICE therapy, ice therapy, heat therapy, and usage of some type of wrap on her upper extremities. (Exhibit A, Section 1 at Page 2).

When Ms. Eaton returned to see Nurse Keser on July 30, 2009 her complaints remained unchanged and it was noted that “precipitating event was constant typing”. (Exhibit A, Section 1 at Page 3). Nurse Keser diagnosed Ms. Eaton with carpal tunnel syndrome and indicated she was referring Ms. Eaton to a specialist. (Exhibit A, Section 1 at Page 4).

An EMG Nerve Conduction Study was performed at Southeast Missouri Hospital by Dr. Randal Stahly on July 23, 2009. (Exhibit A, Section 2 at Page 1). The impression was “mild to moderate bilateral carpal tunnel syndrome. (Exhibit A, Section 2 at Page 1). Dr. David Deisher saw Ms. Eaton on August 19, 2009 as a new patient for complaints of numbness in her hands that was worse on the left. (Exhibit A, Section 3 at Page 1). Dr. Deisher diagnosed Ms. Eaton with carpal tunnel syndrome bilaterally and recommended an injection. (Exhibit A, Section 3 at Page 1).

When Ms. Eaton returned to see Dr. Deisher on August 26, 2009 he noted her diagnosis was carpal tunnel syndrome and that she had failed conservative treatment with splints, anti-inflammatories and injection and that he recommended surgery. (Exhibit A, Section 3 at Page 2). Dr. Deisher noted that he discussed the work comp issue with Ms. Eaton and that he had advised her that he would not do surgery until the workers’ compensation case either settled or was approved by the workers’ compensation carrier. (Exhibit A, Section 3 at Page 2).

The deposition of Dr. Bruce Schlafly was marked Exhibit “B” and admitted into evidence. Dr. Schlafly testified that he had taken a history from Ms. Eaton, had performed a physical examination and reviewed medical records regarding her treatment. Dr. Schlafly testified that he had indeed taken a job description regarding Ms. Eaton’s duties at AT&T. Dr. Schlafly stated that based upon the foregoing he believed that Ms. Eaton’s repetitive work with her hands during the course of her employment at AT&T was the prevailing factor causing her bilateral carpal tunnel syndrome and causing her need for bilateral carpal tunnel releases. Dr. Schlafly noted that Ms. Eaton was obese prior to, during and even after employment with AT&T but that she developed the complaints of carpal tunnel syndrome during her year of employment at AT&T. Dr. Schlafly specifically stated that her case “fits with criteria outlined by the Centers for Disease Control for occupational “work related” carpal tunnel syndrome”.

Dr. Ollinger’s testimony was essentially about the number of key strokes performed daily by Ms. Eaton. That based upon an OSHA report he determined that the number of key strokes estimated from Ms. Eaton that some articles indicated that work related carpal tunnel syndrome could not be developed. Dr. Ollinger testified that he had reviewed 117 different articles that concluded that there was not sufficient evidence to support the finding that keyboarding was a risk for carpal tunnel syndrome. Dr. Ollinger adopted a 1994 article that stated occupational factors are insufficient to cause carpal tunnel syndrome. Dr. Ollinger agreed that prior to her employment at AT&T Ms. Eaton did not have symptoms of carpal tunnel syndrome. Dr. Ollinger also said that he had in the past determined on a case by case basis that highly repetitive keyboarding was a factor in causing carpal tunnel syndrome.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### *Issues 1. and 2. Occupational Disease & Medical Causation*

“In this chapter the term ‘occupational disease’ is hereby defined to mean ... an identifiable disease arising with or without human fault out of and in the course of the employment.” **RSMo §287.067.1**

The parties do not seem to be in disagreement that Ms. Eaton suffers from carpal tunnel syndrome, an identifiable disease. Both experts concur in this diagnosis. Therefore, the issue of ‘occupational disease’ is reduced to whether or not the carpal tunnel syndrome “arose ... out of and in the course of employment.” This is simply a restatement of medical causation issue. Therefore, Issues 1 and 2 both turn on the same finding: Did Ms. Eaton’s carpal tunnel syndrome arise out of and in the course of employment. I find that it did.

Both parties presented qualified experts that disagreed as to whether or not Ms. Eaton’s employment is the prevailing factor resulting in the carpal tunnel syndrome. I find Dr. Schlafly’s opinion to be more credible on this issue. Dr. Ollinger’s opinion seems to be based on unrealistic estimation of the amount of typing performed by Ms. Eaton.

Ms. Eaton credibly testified that she spends her entire working day on the phone with customers. While on the phone with the customers, she enters information, using a keyboard, into various applications on her computer. The notion that she performs approximately 155 keystrokes per customer simply does not seem to be consistent with the actual number of keystrokes performed per customer.<sup>1</sup>

I find that the prevailing factor resulting in Ms. Eaton suffering from carpal tunnel syndrome is the fact that she spends her entire work day using a keyboard to enter and retrieve data from various applications in the course and scope of her employment.

### *Issue 3. Future Medical Treatment*

The credible testimony of Dr. Bruce Schlafly was that Ms. Eaton is in need of further medical treatment. As the Court has previously set forth above, the testimony of Dr. Bruce Schlafly is found to be credible and I find that Ms. Eaton is entitled to medical care consistent with his opinion.

The employer/insurer is therefore ordered to provide additional medical treatment in accordance with **RSMo. §287.140**. I further order that the employer/insurer provide the additional treatment with Dr. Bruce Schlafly as the authorized treating physician. If Dr. Schlafly is not available or refuses to accept the position, the employee’s treatment may be transferred to another physician chosen by the Employee.

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<sup>1</sup> The sentence owning this footnote contains 169 characters, including spaces. This is more than the number of ‘keystrokes’ that Dr. Ollinger assumed where associated with each customer contact which he used as the basis for his opinion.

**ATTORNEY’S FEE**

Mr. Steve Taylor, 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.

As previously indicated this is a temporary or partial award. The award is therefore subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

Made by:

\_\_\_\_\_  
Matthew W. Murphy  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson  
*Division of Workers' Compensation*

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