

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

Injury No.: 03-115390

Employee: Kathleen Gibson-Knox  
Employer: Classic Printing  
Insurer: Allied Insurance  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

Date of Accident: October 27, 2003

Place and County of Accident: Osage Beach, Camden 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. We have reviewed the evidence, read the briefs of the parties, heard oral argument, and considered the whole record. Pursuant to section 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated April 4, 2005. The award and decision of Administrative Law Judge Robert J. Dierkes is attached hereto solely for reference.

1. The condition of employee's bilateral upper extremities, i.e., bilateral carpal tunnel syndrome, is not attributable to an occupational disease arising out of and in the course of her employment.

In the instant case, the employee seeks workers' compensation benefits due to bilateral upper extremity complaints, i.e., bilateral carpal tunnel syndrome, alleging her medical condition is attributable to an occupational disease arising out of and in the course of her employment. The applicable statutes are section 287.063 RSMo 2000 and section 287.067 RSMo 2000.

An informative legal analysis of occupational diseases pursuant to these Missouri statutes is found in *Kelley v. Banta and Stude Const. Co., Inc.*, 1 S.W.3d 43 (Mo. App. E.D. 1999), from which the following legal principles are cited:

[1,2] In order to support a finding of occupational disease, employee must provide substantial and competent evidence that he/she has contracted an occupationally induced disease rather than an ordinary disease of life. *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 299-300 (Mo. App. 1991). The inquiry involves two considerations: (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. *Polavarapu v. General Motors Corp.*, 897 S.W.2d 63, 65 (Mo. App. E.D. 1995); *Dawson v. Associated Electric*, 885 S.W.2d 712, 716 (Mo. App. W.D. 1994); *Hayes*, 818 S.W.2d at 300; *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413, 415 (Mo. App. 1988); *Jackson v. Risby Pallet and Lumber Co.*, 736 S.W.2d 575, 578 (Mo. App. 1987).

[3-6] Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Dawson* 885 S.W.2d at 716; *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 (Mo. App. W.D. 1992); *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo. App. 1991). Claimant must prove "a direct causal connection between the conditions under which the work is performed and the occupational disease." *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo. App. 1992); *Sellers*, 752 S.W.2d at 416; *Estes v. Noranda Aluminum, Inc.*, 574 S.W.2d 34, 38 (Mo. App. 1978). However, such

conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. *Hayes*, 818 S.W.2d at 299; *Sheehan v. Springfield Seed & Floral*, 733 S.W.2d 795, 797-8 (Mo. App. 1987). A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. *Dawson*, 885 S.W.2d at 716; *Sellers*, 776 S.W.2d at 504; *Sheehan*, 733 S.W.2d at 797. The opinion may be based on a doctor's written report alone. *Prater v. Thorngate, Ltd.*, 761 S.W.2d 226, 230 (Mo. App. 1988). Where the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is the most credible. *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872, 877 (Mo. App. 1984). Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *George v. Shop 'N Save Warehouse Foods, Inc.*, 855 S.W.2d 460, 462 (Mo. App. E.D. 1993); *Webber*, 826 S.W.2d at 54; *Hutchinson v. Tri-State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).

In the instant case the employee testified as to her employment history with the employer. Employee described her job activities and job duties in summary fashion as follows: she was a bookkeeper; at the time she was hired the employer was converting to what is referenced as a QuickBooks computer process; the employee entered customers into a database; invoices into a database; she also entered bills, checks, checkbooks, bounced checks, etc.; she answered the phone as necessary; she assisted in copying as well as collating; employee indicated on the average she spent seven hours per day typing out of a normal eight hour day; and she also performed log book activity for some of the employer's appraisers.

In approximately October 2003, the employee noticed physical problems, i.e., both hands were going numb. Employee testified that this condition had been occurring for approximately the preceding six months, and the condition was gradually worsening.

Employee testified that she consulted her family doctor, Dr. Osborn, on her own, approximately two months before reporting a possible work related medical condition and/or a work related injury to her employer.

Her employer authorized two evaluations in her behalf, one performed by Dr. Woodward and one performed by Dr. Koo.

On cross-examination, employee's job duties were thoroughly discussed, especially the work entailed by the use of QuickBooks. The Commission finds this cross-examination and the corresponding answers enlightening and probative as to whether or not there was a possible exposure leading to the contraction of the alleged occupational disease, carpal tunnel syndrome, vis-à-vis the condition being resultant of a non-occupational cause.

In addition to the cross-examination of employee concerning what her job duties actually entailed, the Commission also finds extremely enlightening and probative the testimony of the president of the company. The president's description of employee's job duties differed remarkably from the employee's; and indicated little if any type of sustained repetitive activities performed by employee. We accept his testimony as being more credible than the testimony of employee.

In summary, based on the employer's cross-examination of the employee and the testimony of the president of the company, which the Commission finds more believable, trustworthy and credible than the testimony of the employee and her witnesses, there was an absence of sustained keying activities being performed by the employee during her workday. The evidence offered by the employer as to the issue of sustained keying activities indicates there was very little if any type of repetitive motion activity to which the employee was exposed while employed with this employer.

Accordingly, the employee has failed to convince the Commission or establish by her testimony that there was exposure in the workplace sufficient to conclude that her alleged repetitive motion was capable of producing the resultant medical condition, bilateral carpal tunnel syndrome.

Furthermore, employee has also failed to establish by her testimony in conjunction with any expert testimony of the probability that her claimed occupational disease, bilateral carpal tunnel syndrome, was caused by conditions

in her work place. As stated above, the Commission finds the employer did not expose the employee to repetitive motion capable of producing employee's alleged medical condition. Employee's testimony as to her job activities was deficient in convincing the Commission that such activities were a substantial factor resulting in her complained of medical condition. Her description of her job activities is not deemed trustworthy and believable when compared with the description of her job activities rendered by the president of the company. Her testimony alone does not convince the Commission that there exists a probability that her claimed occupational disease arose out of and in the course of her workplace or was caused by the conditions of her workplace.

The Commission also finds that the medical expert opinion rendered by Dr. Koo, is believable, trustworthy, credible and persuasive concerning the issue of medical causation. Dr. Koo is a board certified plastic surgeon who is well familiar with treatment of carpal tunnel syndrome.

Dr. Koo had an opportunity to examine the employee. Dr. Koo rendered several opinions concerning her medical condition, and the medical causation of her condition.

Significantly, Dr. Koo testified that employee has diabetes (diagnosed a few months prior to her complaints), and it is "way out of control". Dr. Koo also suspicions that employee has hypothyroidism. According to Dr. Koo, it is medically accepted that people with either of these conditions are known to have peripheral neuropathies.

As stated by Dr. Koo, this particular employee has peripheral neuropathy to a significant degree. It is so irritating that she needs to take Neurontin. Dr. Koo further states that she takes the Neurontin due to the peripheral neuropathy in her bilateral lower extremities, and Dr. Koo is sure that the peripheral neuropathy due to her diabetic condition significantly affects her upper extremities.

Dr. Koo clearly is of the medical opinion that employee's peripheral neuropathies of both her bilateral upper extremities and bilateral lower extremities are related to her diabetic condition and are clearly not work related conditions. In addition, Dr. Koo testified that she was familiar with the computer program referenced QuickBooks, as she personally uses it at home and at work. Dr. Koo opined that if employee's activity for her eight-hour day entailed the use of QuickBooks, Dr. Koo is definitely of the opinion that employee's work had no contributing factor or is associated with her development of her carpal tunnel syndrome. As stated by Dr. Koo, the employee has two very significant factors that create, cause or contribute to the development of her peripheral neuropathies; and that is possible hypothyroidism and definitely diabetes. Dr. Koo further states that employee's diabetes is way out of control; it is even affecting her feet and legs; and she is bound to also have carpal tunnel syndrome due to her diabetic condition. Any treatment including surgery would in no way be related to the employee's employment activities in the opinion of Dr. Koo.

Dr. Koo stated that the employee would have to have been involved in sustained keying activities at least 30 minutes out of each hour of the workday, in order to possibly establish a medical causal link between carpal tunnel syndrome and her employment. The Commission specifically finds there was no such sustained keying activities or any exposure at work to repetitive motion capable of producing her complained of condition.

In conclusion, based on the more believable testimony proffered by the employer regarding the employee's actual job related activities, and the credible and persuasive medical opinions of Dr. Koo concerning causation, there was not significant exposures to activities which involved forceful or repetitive movements which might lead to the development of bilateral carpal tunnel syndrome. Consequently employee did not sustain an injury due to an occupational disease arising out of and in the course of her employment.

The award and decision of Administrative Law Judge Robert J. Dierkes, issued April 4, 2005, is attached.

Given at Jefferson City, State of Missouri, this 27<sup>th</sup> day of September 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

DISSENTING OPINION FILED

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John J. Hickey, Member

Attest:

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Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Worker's Compensation Law, I believe the decision of the administrative law judge should be affirmed.

The decision of the majority of the Commission finds the following:

Dr. Koo clearly is of the medical opinion that employee's peripheral neuropathies of both her bilateral upper extremities and bilateral lower extremities are related to her diabetic condition and are clearly not work related conditions.

The majority overstates Dr. Koo's causation opinion regarding employee's upper extremity neuropathies. Dr. Koo testified that if employee is suffering from peripheral neuropathy in her lower extremities caused by her diabetes, then Dr. Koo believes employee's median nerve would be affected as well. However, Dr. Koo did not rule out a work-related compression neuropathy in the form of carpal tunnel syndrome, as suggested by the majority. In her report Dr. Koo wrote:

If indeed the patient keys with both of her hands five to six hours out of an eight hour day, I would then find her work activities at Classic Print to be an aggravating factor for her development of bilateral carpal tunnel syndrome even in the face of having two systemic illnesses, hypothyroidism and diabetes, which are both known to be correlated with causing carpal tunnel syndrome. If the number of hours can be verified to be at least five hours out of an eight-hour day of relatively continuous keying, then her work would be the primary aggravating factor for the development of severe carpal tunnel syndrome. If, however, her hours are fewer than that per day, then I think she certainly has more than enough contributing factors to her carpal tunnel syndrome from her diabetes, her hyperthyroidism, and her obesity. . .

Dr. Woodward and Dr. Koo agree that if employee performed enough sustained keyboarding, then her work was a primary causative factor in her development of her carpal tunnel syndrome. Dr. Woodward believes four hours of keyboarding out an eight-hour day is enough to meet the threshold. Dr. Koo believes it must be at least five hours.

Employee testified that she was performing keyboarding work for approximately seven hours per day. Mr. Bleile, employer's president and employee's supervisor, testified that employee only performed keyboarding one and one-half hours per day.

Employee testified that she maintained and keyed the logbook entries for all of employer's appraisers (up to ten). Three former co-workers testified that employee performed their logbook work. Mr. Bleile testified that employee was only instructed to perform logbook work for Mr. Bleile and if she was doing it for others he did not know about it and it was outside her job duties. Mr. Bleile's testimony is contradicted by the testimony of four witnesses. Mr.

Bleile's testimony is simply not credible.

I find employee's testimony credible. I find that employee performed keyboarding work for approximately seven hours per day. Employee's sustained keyboarding activity exceeded the thresholds of both Dr. Woodward and Dr. Koo. I agree with the administrative law judge that employee's keyboarding work for employer was a substantial factor in her development of carpal tunnel syndrome.

I would affirm the temporary or partial award of the administrative law judge. I respectfully dissent from the decision of the majority of the Commission to deny benefits in this case.

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John J. Hickey, Member

## TEMPORARY OR PARTIAL AWARD

Employee: Kathleen Gibson-Knox

Injury No. 03-115390

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

Dependents: N/A

Employer: Classic Printing

Additional Party: Second Injury Fund

Insurer: Allied Insurance Company

Hearing Date: February 4, 2005

Checked by: RJD/tmh

### 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: Approximately October 27, 2003.
5. State location where accident occurred or occupational disease contracted: Osage Beach, Camden 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 developed bilateral carpal tunnel syndrome from the use of a computer keyboard.

12. Did accident or occupational disease cause death? No. Date of death? N/A.

13. Parts of body injured by accident or occupational disease: Both wrists.

14. Compensation paid to-date for temporary disability: None.

15. Value necessary medical aid paid to date by employer/insurer? None.

16. Value necessary medical aid not furnished by employer/insurer? \$1,590.00.

Employee: Kathleen Gibson-Knox      Injury No. 03-115390

17. Employee's average weekly wages: \$390.00.

18. Weekly compensation rate: \$260.00.

19. Method wages computation: Stipulation.

#### COMPENSATION PAYABLE

20. Amount of compensation payable:

Unpaid medical expenses: \$1,590.00

56 4/7 weeks of temporary total disability: \$14,708.57

Employer and Insurer are ordered to provide Claimant with additional medical treatment and temporary total disability benefits as set forth more fully herein.

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or 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.

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: Susan Brown

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kathleen Gibson-Knox

Injury No: 03-115390

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

Dependents: N/A

Employer: Classic Printing

Additional Party: Second Injury Fund

Insurer: Allied Insurance Company  
Checked by: RJD/tmh

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### **ISSUES DECIDED**

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An evidentiary hearing was held in this case in Jefferson City on February 4, 2005, on Claimant's request for a temporary or partial award. The record was held open for the filing of the transcript of the deposition of Dr. Michele Koo, which deposition was scheduled February 16, 2005. The transcript was filed on February 22, 2005. The parties also requested leave to file post-hearing briefs, which leave was granted, and the case was submitted on March 18, 2005. The evidentiary hearing was held to decide the following issues:

1. Whether Claimant sustained an occupational disease arising out of and in the course of her employment with Classic Printing;

2. Whether Employer and Insurer shall be ordered to reimburse Claimant for medical bills and charges she has incurred;
3. Whether Employer and Insurer shall be ordered to provide Claimant with medical care and treatment pursuant to Section 287.140, RSMo; and
4. Whether Employer and Insurer shall be ordered to provide temporary total disability (“TTD”) benefits, and, if so, for what period(s) of time.

## STIPULATIONS

The parties stipulated as follows:

1. The Division of Workers’ Compensation has jurisdiction over this case;
2. Venue for the evidentiary hearing is proper in Camden County and adjoining counties; the parties agree to a change of venue to Cole County for purposes of conducting the evidentiary hearing;
3. The claim is not barred by Section 287.430 or Section 287.420;
4. Both Employer and Employee were covered under the Missouri Workers’ Compensation Law at all relevant times;
5. The rates of compensation are \$260.00/\$260.00, based on an average weekly wage of \$390.00;
6. Allied Insurance Company fully insured Classic Printing for Missouri Workers’ Compensation purposes at all relevant times; and
6. Employer and Insurer paid no benefits.

## EVIDENCE

The evidence consisted of the testimony of Claimant, Kathleen Gibson-Knox; the deposition testimony of Michael Bleile, owner of Classic Printing; the medical report and deposition testimony of Dr. Michele Koo; the testimony of witnesses Patrick J. Rehmer, Martin D. Dubbs, Michael Gregory Daniels, and Sara Bull; medical records, including narrative reports of Dr. Jeffrey L. Woodward; and medical bills.

## FINDINGS OF FACT AND RULINGS OF LAW

I find that Claimant, Kathleen Gibson-Knox, was born on October 19, 1951, and was employed by Employer, Classic Printing, as a bookkeeper. Claimant worked for Classic Printing from April 2001 through sometime in February 2004.

Classic Printing is a printing company located in Osage Beach, Missouri and owned by Michael Bleile. When Claimant was first hired, Employer was converting from a handwritten accounting system to Quick Books, i.e., a computer-based accounting system. This conversion process required Claimant to enter all of the handwritten data into the computer. Once the conversion was done, the computer work required for accounting was significantly lessened. The accounting duties consisted of payroll, accounts receivable, accounts payable, and processing payroll checks and accounts payable checks. Claimant also answered the phone and would copy blueprints. Claimant would also perform other customer service duties when other employees were too busy to do so.

In 2002, Michael Bleile started a second company, a real estate appraisal company. The offices for the appraisal company were in the same building as Classic Print’s offices. There is no dispute in the evidence that, beginning in 2002, Claimant’s duties also included payroll and accounts receivable duties for the appraisal company. Claimant testified that

her duties also included keeping the computerized "logbooks", required for all appraisals by the State of Missouri, for all of the appraisers. Claimant testified that she was working 40 to 45 hours each week, and that she was averaging seven hours per day doing keyboard work.

In the Spring of 2003, Claimant began noticing that both of her hands were going numb. Claimant eventually went to see her family doctor in Osage Beach, Dr. Howard Osborn, who believed Claimant had carpal tunnel syndrome. This was in October 2003. Dr. Osborn prescribed Prednisone. At this time, Claimant also purchased and used a wrist brace for her right upper extremity, and a gel pad for her keyboard. Also at this time, Claimant notified Michael Bleile of her problems, and requested to see a doctor, which request was ignored.

In late 2003 or early 2004, Employer hired an additional bookkeeper, Janet Hurst. Sometime in February 2004, Claimant was discharged from the employ of Employer. In March 2004, Claimant saw Dr. Jeffrey L. Woodward of Springfield Neurological Institute. Dr. Woodward suspected bilateral carpal tunnel syndrome, and performed electrodiagnostic studies. Dr. Woodward's conclusions after the diagnostic studies were performed were:

1. Electrodiagnostic evidence of right and left severe median neuropathy at the carpal tunnel.
2. No electrodiagnostic evidence diabetic peripheral polyneuropathy.

Claimant has not worked since being discharged from Employer's employ.

On November 17, 2004, Claimant was evaluated by Dr. Michele Koo, a St. Louis plastic surgeon, at the request of Employer-Insurer. Dr. Koo concluded that Claimant had "bilateral severe carpal tunnel syndrome", and recommended bilateral carpal tunnel release surgeries.

#### **Occupational disease**

Claimant is claiming that she has sustained an occupational disease, i.e., bilateral carpal tunnel syndrome, due to her work for Employer. Employer's position is that Claimant's bilateral severe carpal tunnel syndrome is caused by other health conditions of Claimant, including diabetes and hypothyroidism.

Claimant is on thyroid replacement medication (synthroid), but has never been diagnosed with hypothyroidism. Claimant testified that she has been on synthroid since age 16 to regulate her periods. Dr. Koo testified that she did not know whether Claimant was hypothyroid, but simply made that conclusion because of Claimant's use of prescribed synthroid. Dr. Koo testified that she was aware of synthroid being prescribed for patients without hypothyroidism, for reasons such as weight control. I find no real evidence of hypothyroidism in Claimant.

Claimant does not dispute that she has diabetes, nor does Claimant dispute that she suffers from symptoms of diabetic neuropathy in her feet. Claimant testified that she was first diagnosed with diabetes in 2003 (i.e., approximately the same time as her bilateral hand numbness began). Claimant testified that her diabetes was initially being treated with pills (apparently Glucophage), but due to her unemployment status, she can no longer afford the pills, and, with her doctor's permission, is currently treating her diabetes with insulin left over from her late husband.

It appears to me that the crucial question in this case is the amount of keyboard work Claimant performed for Employer. Dr. Woodward's "Special Report" of March 12, 2004, was in evidence, and it states:

I have been asked to make comment regarding the amount of time per work shift doing keyboard work required in my opinion to cause substantial contribution to the development of carpal tunnel syndrome. From past work comp carpal tunnel diagnosis experience, I would indicate that performance of computer keyboard work daily four or more hours per day definitely constitutes substantial work-related contribution. In my opinion, two hours or less of daily computer keyboard work as job duty would not constitute substantial contribution. In my opinion, two to four hours daily computer keyboard work represents indeterminable amount of contribution with regard to work-related carpal tunnel condition.

Dr. Koo's report stated (in part):

If the number of hours can be verified to be at least five hours out of an eight-hour day of relatively continuous keying, then her work would be the primary aggravating factor for the development of severe carpal tunnel syndrome. If, however, her hours are fewer than that per day, then I think she certainly has more than enough contributing factors to her carpal tunnel syndrome from her diabetes, her hypothyroidism and her obesity.

Likewise, Dr. Koo testified:

I don't think in her case in terms of causation it's an issue of what program she used or what she did. Like I said here, I think the causation is to be determined depending, really the numbers of – I should have said true keying that she did per day, and that really is the bottom line. I don't care if she used Quick Books, Quicken, what it is she used, pull-down menus, it's the number of key strokes and keying that she truly did, and that would determine her – the amount of contribution of the work. That's really the bottom line. That's why I left it open. I totally gave her the benefit of the doubt. If she keyed that many hours, truly keyed five to six hours, her work would absolutely be an aggravating factor.

Claimant testified that she averaged seven hours a day on the keyboard after the appraisal business started. Michael Bleile testified that Claimant would have averaged 1½ hours per day on the keyboard. Claimant (as well as three other witnesses) testified that she kept the logbooks for all the appraisers (perhaps as many as ten appraisers at a time). Bleile testified that Claimant kept only Bleile's logbook, and no others. Clearly, if Claimant did not keep all of the logbooks, she would have approached, but not surpassed, the four-hour (per Dr. Woodward) or five-hour (per Dr. Koo) keyboarding "threshold" on a regular basis. However, if Claimant kept all of the logbooks, as she, Patrick Rehmer, Martin Dubbs, and Greg Daniels testified, then she clearly averaged keyboarding in excess of five hours per day.

Patrick Rehmer testified that he worked for Bleile's appraisal business from July 2002 through November 2004. He testified that "for a time" he (Rehmer) "more or less ran the lake part of the appraisal company". Rehmer testified that Claimant kept his logbook as well as the logbooks of the other appraisers. Martin Dubbs testified that he worked as an appraiser for Bleile's appraisal business, that he worked with Claimant for a one-year period, and that during that one-year period Claimant kept the logbooks for all the appraisers. Michael Gregory ("Greg") Daniels testified that he was a former co-worker of Claimant's and that Daniels' office and Claimant's office were "right next door". Daniels testified that Claimant was the bookkeeper for both of Bleile's companies, did all the invoicing, and kept the logbooks of the appraisers, including Daniels.

On cross-examination, Michael Bleile testified:

Q. You indicated that Miss Gibson-Knox maintained your logbook; is that correct?

A. Yes.

Q. Do you know whether she maintained anyone else's logbook in the office?

A. If she did, she didn't do it for our purposes.

Q. Can you clarify what that would mean?

A. The logbooks are the responsibility of the percentage employee. It's their responsibility to take care of them. Now, if she was doing it for any of the other people in the company, that would have been something that she would have talked to them about or done for them.

Q. But they would be employees –

A. Commission –

Q. From your office, right?

A. Commissioned employees. There was only two other people that were eligible to even have a logbook.

Q. Who were they?

A. Huh?

Q. Who were they?

A. That would have been Pat Rehmer and Shannon Akin.

It is obvious that either Michael Bleile is not being truthful, or Claimant, Rehmer, Dubbs, and Daniels are not being truthful. If Claimant, Rehmer, Dubbs, and Daniels are being truthful, there were clearly more than two people (other than Bleile) who were to keep logbooks. If Claimant, Rehmer, Dubbs, and Daniels are being truthful, then Claimant kept the logbooks for *several* appraisers, not just for Bleile.

On redirect examination, Bleile testified:

Q. Mike, you indicated that to the best of your knowledge that Kate only maintained your logbook; is that accurate?

A. Yes.

Q. And if she maintained the logbooks for either Pat Rehmer or Shannon Akin, would that have been considered

work within the scope and course of her employment of – of your employment of her?

A. No.

Q. Okay. Would it be fair to say that if she kept the logbooks of Pat Rehmer and Shannon Akin, that would have been work over and above whatever work you employed her to do?

A. Yes.

Q. And at any point in time did you – as a part of the services she performed for your company was she supposed to keep track of the logbooks of either Pat Rehmer or Shannon Akin?

A. No. Just mine.

Q. So just so I understand your testimony, you don't know whether or not she did maintain the logbooks of any other person, it's just your testimony that she was only supposed to keep track or maintain your logbook; is that accurate?

A. Yes, it is.

Bleile testified that he was in the office 25 to 30 hours each week, apparently observing Claimant closely enough that he could testify with precision what amount of keyboarding she was doing each day; yet he also testified that he didn't know whether Claimant maintained other appraisers' logbooks. It would seem to me that if Bleile was observant enough to know what amount Claimant spent each day on each job task, he would surely know if Claimant was doing things (allegedly) "outside the scope and course of her employment".

There is another aspect of Bleile's testimony that is troubling. Bleile testified that Claimant was only required to spend 1½ hours per day doing keyboarding work, and that the remainder of Claimant's day was spent doing work that had nothing to do with bookkeeping, *per se*. Yet Bleile also testified that he hired another bookkeeper approximately two months before he discharged Claimant because his companies "were so busy". The fact that another bookkeeper was hired because they "were so busy", seems to bolster Claimant's position in the case, not Bleile's.

I find that Claimant was required to keep the logbooks for multiple appraisers, and thus was averaging more than five hours each day of keyboarding. Therefore, I find that Claimant's keyboarding work for Employer was a substantial factor in the cause of her bilateral severe carpal tunnel syndrome. I find that Claimant did sustain the occupational disease of bilateral carpal tunnel syndrome arising out of and in the course of her employment for Employer.

#### **Medical bills and charges**

Claimant has presented medical bills totaling \$1,670.00, of which \$80.00 was for reports. The remaining \$1,590.00 was for diagnosis of Claimant's bilateral carpal tunnel syndrome (\$1,272.00 of which was for the electrodiagnostic studies). Employer and Insurer are ordered to pay Claimant the sum of \$1,590.00 for the medical charges.

#### **Medical care**

Employer and Insurer are ordered to provide Claimant with 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 her bilateral carpal tunnel syndrome, including, but not limited to, bilateral carpal tunnel release surgeries, pursuant to the mandates of Section 287.140, RSMo.

#### **TTD benefits**

Claimant has not worked since being discharged by Employer in February 2004. Claimant has bilateral severe carpal tunnel syndrome, which is, and has been, in need of surgery.

When TTD benefits are being claimed, the question is whether Claimant, in her current physical condition, could compete on the open market for employment. *Cooper v. Medical Center of Independence*, 955 S.W.2d 570, 575 (Mo.App.W.D. 1997). A claimant can be totally disabled even if able to perform sporadic or light duty work. *Cooper* at 575. In *Brookman v. Henry Transportation*, 924 S.W.2d 286 (Mo.App.E.D. 1996), a mechanic who was not capable of doing his former job nor competing on the open market for employment and whose condition had not reached maximum medical improvement **was** entitled to TTD benefits, despite the fact that, due to economic necessity, he swept floors for two weeks, did remodeling work for four weeks and worked as a telemarketer for three weeks.

Claimant has not reached maximum medical improvement, and will not do so until sometime after the surgeries

are performed. Her condition is severe. I find that Claimant, in her current physical condition, cannot be expected to compete on the open market for employment. Therefore, Claimant is entitled to TTD benefits.

It is unclear exactly when Claimant was terminated by Employer, but both Claimant and Bleile agreed that it was in February 2004. Therefore, giving Employer the benefit of the doubt, I find that Claimant is entitled to TTD benefits of \$260.00 per week beginning March 1, 2004, and to continue until Claimant has reached maximum medical improvement, or is able to compete on the open market for employment, or until 400 weeks of TTD benefits have been paid, whichever first occurs. As of March 31, 2005, 56 4/7 weeks of benefits have accrued, totaling \$14,708.57.

Claimant's attorney, Susan Brown, is allowed 25% of the accrued TTD benefits awarded to Claimant hereunder and 25% of the medical bills awarded to Claimant hereunder as and for necessary attorney's fees, and the amount of such fees shall constitute a lien thereon. Interest shall accrue as per applicable law.

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

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

Made by:

\_\_\_\_\_  
ROBERT J. DIERKES  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*