

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

Injury No.: 10-021927

Employee: Lonnie Harris  
Employer: Bi-State Development Agency  
Insurer: Self-Insured

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we reverse the award and decision of the administrative law judge.

**Introduction**

The parties submitted the following issues for determination by the administrative law judge: (1) whether employee's carpal tunnel syndrome is an occupational disease that arose out of and in the course of her employment and is medically causally related to her work activities; (2) whether employer is liable for past medical expenses that remain unpaid to Dr. Prieb in the amount of \$200.00; (3) whether employer is liable for temporary total disability benefits for two time periods beginning June 1, 2010, through July 15, 2010, for 45 days, and from February 17, 2011, through April 13, 2011, for 55 days for a total of 100 days or 14.285 weeks totaling \$5,177.88; and (4) whether employer is liable for permanent partial disability benefits and disfigurement from carpal tunnel syndrome.

The administrative law judge rendered the following findings and conclusions: (1) Drs. Koo and Crandall's opinions are more credible than the opinions of Drs. Schlafly and Margolis; (2) employee did not meet her burden to show that carpal tunnel syndrome arose out of repetitive work activities that were the prevailing factor in the development of bilateral carpal tunnel syndrome and disability; and (3) all other issues are moot.

Employee filed a timely Application for Review with the Commission alleging the administrative law judge erred: (1) in crediting employer's experts over employee's experts; and (2) in finding that employee's non-work risk factors caused her diagnosis of carpal tunnel syndrome.

For the reasons set forth herein, we reverse the administrative law judge's award and decision.

**Findings of Fact**

Employee was 63 years of age at the time of the hearing before the administrative law judge. Before she started working for employer, employee was diagnosed with diabetes. Employee was initially able to control her diabetes by managing her diet, but eventually began taking oral medication for the condition. At about the same time

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employee began working for employer, employee was diagnosed with hypertension. Employee has also struggled with obesity.

Employee worked for employer for about 10 years as a van driver. Employee drove up to 100 miles a day throughout the St. Louis metropolitan area. Other than a break between passengers lasting 10 or 15 minutes, employee spent her entire 8-hour shift for employer driving passengers in the van. The van had automatic transmission and power steering, but the steering wheel in the van was harder for employee to turn than the steering wheel in her car, and required a more forceful grip. Employee explained that the handling of the van, especially over rough roads, could be unpredictable and required her to keep a tight grip on the steering wheel to maintain control of the van.

Employer also required employee to assist passengers in wheelchairs. Employee pushed or pulled passengers in manual wheelchairs onto the electric wheelchair lift. Once the passenger and their wheelchair were inside, employee used straps to secure the wheelchair to the floor. There were four straps, and each had to be tightened. Employee pressed a button to tighten the straps, then secured the remainder of the slack by tightening a knob. The knob took about 6 turns to tighten. Employee experienced her worst hand complaints while performing this activity. Employee assisted up to 6 wheelchair passengers per day. On certain weeks, employee had as few as 1 or 2 wheelchair passengers per week.

Employee's hand complaints began in 2008 and 2009 and progressed in intensity. On February 27, 2010, employee went to the emergency room with complaints of swelling in her hands while driving employer's van. Treating doctors diagnosed hand pain and hand tendonitis, and gave employee a hand splint and ice pack. Employee reported her hand problems to employer. Employer sent employee to BarnesCare, where Dr. Thomas Kibby diagnosed unspecified chronic arthropathy of the wrists, concluded employee's injuries were not work-related, and released employee with a recommendation that she see her personal physician.

On March 11, 2010, employee sought treatment with a hand surgeon, Dr. Kosit Prieb, who examined employee, ordered nerve conduction studies, and diagnosed bilateral carpal tunnel syndrome, advanced on the left. On June 1, 2010, Dr. Prieb performed a left carpal tunnel release. Dr. Prieb took employee off work from June 1, 2010, until July 15, 2010. Employee returned to work on July 16, 2010, without restrictions. On February 17, 2011, Dr. Bruce Schlafly performed a right carpal tunnel release. Dr. Schlafly took employee off work from February 17, 2011, until April 13, 2011.

Employee's hands improved after surgery, but employee still has pain and numbness in her hands and fingers. Employee continues to experience pain and tingling in her fingers, as well as weakness, and difficulty with prolonged activity. Employee has difficulty holding a book to read, and is unable to open bottles like she could before. Employee has one and a half inch long scars in the palm of each hand from her carpal tunnel release surgeries. Employee also has scarring on her hands from childhood burns; employee credibly testified (and we so find) that the scarring from her childhood burns never caused her any problems with her hands.

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Expert medical opinions

Employee presents the treating surgeon Dr. Schlafly, who opined that employee's work as a van driver for employer is the prevailing factor in causing bilateral carpal tunnel syndrome. Dr. Schlafly believes that employee's carpal tunnel syndrome resulted from her repetitive work of gripping and twisting the steering wheel of the van, as well as the more forceful work of securing the wheelchairs into place by pulling straps and tightening knobs.

Employee also presents Dr. Margolis, who opined that employee's work for employer was the prevailing factor in causing her to develop symptomatic bilateral carpal tunnel syndromes and permanent partial disability which he rated at 35% of the left hand and 30% of the right hand. Dr. Margolis also recommended that a multiplicity factor be added. Dr. Margolis did not assign any specific restrictions but opined that employee should avoid activity which exacerbates discomfort. Dr. Margolis opined that employee did not suffer any permanent partial disability from childhood burns on employee's palms and fingers.

Employer presents Dr. Michele Koo, who examined employee, reviewed medical records and a job summary, and who opined that employee's bilateral carpal tunnel syndrome is not related to her work for employer. Dr. Koo believes that employee's carpal tunnel syndrome is caused by her non-work risk factors, such as obesity, diabetes, age, gender, and a sedentary life style. Dr. Koo opined that employee's work was not repetitive and did not require firm or repeated grasping in a manner that would cause carpal tunnel syndrome.

Employer also presents Dr. Evan Crandall, who opined that driving a van cannot cause, change, or aggravate carpal tunnel syndrome. Dr. Crandall does not believe moving a steering wheel involves repetitive stress to the flexor tendons or muscles of the forearm. Dr. Crandall opined that the prevailing factors causing employee's carpal tunnel syndrome are osteoarthritis, diabetes, high body mass index, high blood pressure, age, gender, and menopause. Dr. Crandall rated employee's permanent partial disability at 10% of each wrist.

We note that employee's job duties involved not only driving but also maneuvering and securing passengers in wheelchairs. We conclude and find that these duties did require firm, repetitive grasping and involved repetitive stress to the flexor tendons and muscles of employee's forearms. We find that the opinions of Drs. Schlafly and Margolis are supported by these facts as found. We adopt their opinions (and so find) that employee's work for employer is the prevailing factor in causing her bilateral carpal tunnel syndrome and associated disability. We also find persuasive Dr. Margolis's opinion that a multiplicity factor should be added to account for the synergistic effect of employee's bilateral carpal tunnel syndrome.

**Conclusions of Law**Occupational disease arising out of and in the course of employment

Section 287.067.1 RSMo provides, as follows:

In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an

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identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

We have credited the opinions from Drs. Schlafly and Margolis that employee suffers from bilateral carpal tunnel syndromes, and that work is the prevailing factor in causing these conditions. The credible findings of Drs. Schlafly and Margolis demonstrate that employee sustained an occupational disease that appears to have had its origin in a risk connected with the employment, and that appears to have flowed from that source as a rational consequence. We conclude employee sustained an occupational disease arising out of and in the course of employment for purposes of the foregoing section.

Medical causation

Section 287.067.2 RSMo provides, as follows:

An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

In the context of occupational disease, the courts have clarified that:

A claimant must submit medical evidence establishing a *probability* that working conditions caused the disease, although they need not be the sole cause. Even where the causes of the disease are indeterminate, a single medical opinion relating the disease to the job is sufficient to support a decision for the employee.

*Vickers v. Mo. Dep't of Pub. Safety*, 283 S.W.3d 287, 292 (Mo. App. 2009)(citations omitted)(emphasis in original).

Again, we have credited the opinions from Drs. Schlafly and Margolis that employee suffers from bilateral carpal tunnel syndromes, and that work is the prevailing factor in causing these conditions. Given the credible findings from Drs. Schlafly and Margolis, we conclude that employee's occupational exposure was the prevailing factor in causing the resulting medical conditions of bilateral carpal tunnel syndromes and associated disability to the extent of 15% permanent partial disability of the right upper extremity at the 175-week level, and 17.5% permanent partial disability of the left upper extremity at the 175-week level.

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Past medical expenses

Section 287.140.1 RSMo provides, 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.

The courts have held that an award of past medical expenses is supported when the employee provides (1) the bills themselves; (2) the medical record reflecting the treatment giving rise to the bill; and (3) testimony identifying the bills. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105, 111-12 (Mo. 1989). Here, employee claims unpaid past medical expenses for treatment she received with Dr. Prieb in the amount of \$200.00. Employee provided the bill, the medical records reflecting the treatment giving rise to the bill, and testimony describing her course of treatment with Dr. Prieb. We conclude that employee is entitled to her past medical expenses in the amount of \$200.00.

Temporary total disability

Section 287.170 RSMo provides for temporary total disability benefits to cover the employee's healing period following a compensable work injury. The test for temporary total disability is whether, given employee's physical condition, an employer in the usual course of business would reasonably be expected to employ her during the time period claimed. *Cooper v. Medical Ctr. of Independence*, 955 S.W.2d 570, 575 (Mo. App. 1997). We have found, based on the records from Drs. Prieb and Schlafly, that employee was ordered off work in connection with her bilateral carpal tunnel release surgeries from June 1, 2010, until July 15, 2010, and from February 17, 2011, until April 13, 2011. We conclude that employee was temporarily and totally disabled during these time periods. We conclude employer is liable for 14 and 3/7 weeks of temporary total disability benefits at the stipulated rate of \$362.47 per week, for a total of \$5,229.92.

Permanent partial disability

Section 287.190 RSMo provides for the payment of permanent partial disability benefits in connection with employee's compensable work injury. We have found that employee sustained a 15% permanent partial disability of the right upper extremity at the 175-week level, and a 17.5% permanent partial disability of the left upper extremity at the 175-week level as a result of the injury. We have also credited Dr. Margolis's opinion that a multiplicity factor should be added in light of the bilateral nature of this work injury; we deem a 15% multiplicity factor to be appropriate. This amounts to 65.41 weeks of permanent partial disability at the rate of \$362.47. We conclude, therefore, that employer is liable for \$23,709.16 in permanent partial disability benefits.

Section 287.190.4 RSMo also provides for the payment of additional weeks of compensation where the employee has suffered serious and permanent disfigurement of the head, neck, hands, or arms. We have found that employee's surgeries left her with one and a half inch long scars in the palms of each hand. We conclude employee

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is entitled to 2 weeks of additional compensation for employee's disfigurement resulting from the work injury at the \$362.47 rate, for a total of \$724.94.

**Award**

We reverse the award of the administrative law judge. Employer is liable for \$5,229.92 in temporary total disability benefits, \$23,709.16 in permanent partial disability benefits, \$200.00 in past medical expenses, and \$724.94 for disfigurement.

This award is subject to a lien in favor of Nile Griffiths, Attorney at Law, in the amount of 25% for necessary legal services rendered.

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

The award and decision of Administrative Law Judge Suzette Carlisle, issued January 31, 2013, is attached solely for reference.

Given at Jefferson City, State of Missouri, this 23<sup>rd</sup> day of August 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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DISSENTING OPINION FILED  
James G. Avery, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

Employee: Lonnie Harris

### **DISSENTING OPINION**

Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I am convinced that the decision of the administrative law judge was correct and should be affirmed.

I disagree with the majority's choice to credit Drs. Schlafly and Margolis over the opinions from Drs. Koo and Crandall in this matter. Drs. Schlafly and Margolis opined that employee's driving a van for employer caused her carpal tunnel syndrome, but neither provided any explanation as to why this activity should be seen as the prevailing factor in the face of employee's overwhelming array of non-work risk factors for carpal tunnel syndrome, which includes diabetes, age, osteoarthritis, menopause, obesity, hypertension, and gender. Nor did employee's hired experts provide any explanation as to *how* driving a van caused employee's carpal tunnel syndrome. Instead, both rendered their ultimate opinions in conclusory, generalized fashion, providing testimony of the type that the courts have deemed to be insufficient to meet an employee's burden of proof. See, e.g., *Royal v. Advantica Rest. Group, Inc.*, 194 S.W.3d 371, 378 (Mo. App. 2006)(affirming the Commission's denial of workers' compensation benefits where the employee's expert "failed to provide any legitimate, persuasive explanation" for her opinions and made "only a conclusory and unsupported statement that was insufficient to carry [the employee's] burden of proof.")

Dr. Schlafly also endorsed employee's lay theory that it was employee's "more forceful work" of securing wheelchairs into place on the van that caused her carpal tunnel syndrome. But both Dr. Schlafly and Dr. Margolis neglected to even take a history from employee as to how often she engaged in this work. According to employee's own testimony, she spends a maximum total of 6 minutes per day engaged in the activity of tightening straps and twisting knobs to secure wheelchair passengers.

I also wish to draw attention to Dr. Margolis's ratings, which are incredibly high. At the time of Dr. Schlafly's initial evaluation, he opined that employee would suffer a 30% permanent partial disability of the left wrist if she didn't get any further treatment. But employee did get that treatment, and she testified that it improved the condition of her left wrist. Despite employee's uncontested testimony that she improved following her left wrist surgery, Dr. Margolis rated employee's disability at 35% permanent partial disability of the left wrist—5% higher than Dr. Schlafly's pre-surgery rating.

The courts have made clear that credible expert medical testimony is a prerequisite to recovery in an occupational disease case:

The cause and development of an occupational disease is not a matter of common knowledge. There must be medical evidence of a direct causal connection. The question of causation is one for medical testimony, without which a finding for claimant would be based on mere conjecture and speculation and not on substantial evidence.

*Vickers v. Mo. Dep't of Pub. Safety*, 283 S.W.3d 287, 292 (Mo. App. 2009)(citations omitted).

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Where Dr. Margolis revealed his bias by issuing incredibly high permanent partial disability ratings and where Dr. Schlafly identified as a causative factor a work activity that *at most* employee performed for 6 minutes per day, I must seriously question whether employee has met her burden as described in the foregoing quote from *Vickers*.

I find the testimony from Drs. Schlafly and Margolis in this matter to be wholly unpersuasive. I believe the administrative law judge correctly weighed the medical evidence and reached the appropriate result. I would affirm the decision of the administrative law judge.

Because the majority has determined otherwise, I respectfully dissent.

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James G. Avery, Jr., Member

# AWARD

Employee: Lonnie Harris Injury No.: 10-021927

Dependents: N/A

Employer: Bi-State Development Agency

Additional Party: Second Injury Fund (Dismissed)

Insurer: Self-Insured

Hearing Date: October 31, 2012

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by: SC

## FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: Alleged March1, 2010
5. State location where accident occurred or occupational disease was contracted: Alleged St. Louis City
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Claimant alleged she developed bilateral carpal tunnel syndrome from repetitive work activities as a van driver.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Bilateral hands
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$543.71
- 19. Weekly compensation rate: \$362.47
- 20. Method wages computation: Stipulated

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Unpaid medical expenses:	None
weeks of temporary total disability (or temporary partial disability)	None
weeks of permanent partial disability from Employer	None

- 22. Second Injury Fund liability: Denied

TOTAL: None

- 23. Future requirements awarded: N/A

Said payments to begin and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Nile Griffith

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

Employee:	Lonnie Harris	Injury No.: 10-021927
Dependents:	N/A	Before the
Employer:	Bi-State Development Agency	<b>Division of Workers'</b>
Additional Party:	Second Injury Fund (Dismissed)	<b>Compensation</b>
Insurer:	Self-Insured	Department of Labor and Industrial
Hearing Date:	October 31, 2012	Relations of Missouri
		Jefferson City, Missouri
		Checked by: SC

**PRELIMINARIES**

The parties appeared before the undersigned administrative law judge on October 31, 2012 for a hearing to determine the Employer’s liability for benefits at the request of Lonnie Harris (“Claimant”).<sup>1</sup> Attorney Nile Griffiths represented Claimant. Attorney Kevin Adrian represented Bi-State Development Agency (“Employer”), who is self-insured.<sup>2</sup> Venue is proper and jurisdiction properly lies with the Division of Workers’ Compensation. The court reporter was Kathy Rethemeyer. Prior to the start of the hearing, Claimant voluntarily dismissed the Second Injury Fund claim.

The parties stipulated that on or about March 1, 2010:

1. Claimant was employed by Employer in St. Louis, Missouri.
2. Claimant and Employer operated pursuant to Chapter 287 RSMo.<sup>3</sup>
3. Employer’s liability was fully self-insured.
4. Claimant filed the claim within the time allowed by law.
5. Employer received proper notice of the claim.
6. Claimant’s average weekly wage was \$543.71, and resulted in a temporary total disability (“TTD”) rate and a permanent partial disability (“PPD”) rate of \$362.47.
7. Employer paid no TTD and medical benefits.

The parties identified the following issues for disposition:

1. Is Claimant’s carpal tunnel syndrome (“CTS”) an occupational disease that arose out of and in the course of employment and is it medically causally related to her work activities?
2. Is Employer liable for past medical expenses totaling \$200.00 to Dr. Priebe?

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<sup>1</sup> Claimant requested a temporary award, however no benefits were awarded and Employer denied the case, so a final award was issued

<sup>2</sup> References in this award to the Employer also refer to the Insurer. During the hearing the Employer was referred to as “Metro.”

<sup>3</sup> All references in this award are to the 2005 Revised Statutes of Missouri unless otherwise stated.

3. Is Employer liable for TTD benefits totaling \$5,177.88, for 214.285 weeks (100 days)?
4. What is the nature and extent of SIF liability for PPD benefits, if any?

### *Exhibits*

Claimant's Exhibits A through F and Employer's Exhibits 1 and 2 were offered and received into evidence without objection. To the extent there are marks or highlights contained in the exhibits, those markings were made prior to being made part of this record, and were not placed thereon by the administrative law judge.

### **FINDINGS OF FACT**

All evidence was reviewed but only evidence that supports this award is discussed below.

Claimant testified live. At the time of the hearing Claimant was 63 years old. From 1996 to 1999, Claimant worked for a school district serving food, cleaning tables, handling money, cleaning dishes, pots and pans. By March 1, 2010, Claimant had worked for Employer for 10 years as a Call-A-Ride van driver.

Each morning Claimant is given a manifest (list) of passengers to pick up. There were not large breaks between pickups. Claimant drove more than 100 miles per day throughout the metropolitan St. Louis area. The number of miles varied each day. She operated a power steering wheel, and the transmission was automatic. Claimant drove different vans each day. Claimant had a 15 minute break.

Claimant picked up and dropped off passengers from home, work and doctor's offices for eight hours a day. She transported up to 18 passengers per day.

Claimant gripped the steering wheel to avoid pot holes to maintain control of the van to avoid back end swaying and vibration.

In addition to driving the van, Claimant picked up wheelchair passengers. She exited the bus for each passenger, and pushed and pulled passengers who were seated on manual wheelchairs onto an electric wheelchair lift, then pulled passengers onto the van, and secured them to straps attached to the floor of the van.<sup>4</sup> It was difficult to pull passengers onto the wheelchair lift.

Claimant loaded up to six wheelchair-bound passengers onto the van each day, a maximum of three at a time. The minimum number of wheelchair passengers was one to two per week.

Several times a week, Claimant drove a workshop route where she picked up two to three additional passengers that were wheelchair bound in addition to the other passengers.

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<sup>4</sup> Twice in ten years the wheelchair lift was inoperable and had to be manually lifted. Also, some passengers had electric wheelchairs, which did not require pushing and pulling like the manual wheelchairs.

Claimant alternated use of both hands to tighten straps to wheelchairs. She pressed a button to tighten the strap. The remainder of the slack was removed by turning a knob up to six times clockwise. It took 60 seconds to tighten all four straps. The maximum time spent securing straps was 6 minutes, less with fewer passengers. She attached the strap to the wheelchair by twisting and turning a knob. Claimant placed a shoulder strap on the passengers.

Claimant pushed and pulled wheelchairs to unloaded passengers. Straps were released by pushing a button.

When tightening straps, Claimant experienced left hand symptoms. She alternated hands when symptoms caused her to jump. Tightening and twisting of straps caused more symptoms than other activities.

Claimant's hand complaints began between 2008 and 2009 and progressed until she reported it in 2010 because of swelling and a jolt pain in her hand.

On February 27, 2010, Claimant treated at Touchette Regional Hospital with complaints of pain and swelling in her left hand that started when she was driving.

BarnesCare treated Claimant one time for both hands, and referred her to her private physician.

In March 2010, Dr. Prieb, examined Claimant, ordered diagnostic tests, diagnosed left carpal tunnel syndrome, and performed a carpal tunnel release on June 1, 2010. Claimant remained off work until July 15, 2010. Dr. Prieb returned Claimant to work full duty and released her from medical care on July 16, 2010. The surgical scar is about 1 ½ inches long in the palm of the hand.

Dr. Schlafly diagnosed right carpal tunnel syndrome, and on February 17, 2011 performed a right carpal tunnel release. Claimant missed work from February 17, 2011 until April 13, 2011, and then returned to work full duty. Left hand pain decreased after surgery. The surgical scar in the right hand is about 1 1/2 inches long.

Claimant disagreed she has limited range of motion of her finger due to burns sustained as a child. She denied any knowledge of arthritis in her fingers until she was diagnosed with CTS.

As a child, Claimant sustained burns to the palms of both hands. Scars covered the palms of each hand and hard spots were on her fingers. She did not have problems with her hands before the carpal tunnel symptoms began.

Claimant was diagnosed with diabetes prior to working for Employer. Around 1998, the diabetes was controlled by diet and exercise. Later she was placed on medication. She has taken oral medication since 2000. Currently she is not currently having any symptoms, and has not missed work. However, if she misses her medication, her sugar level increases.

Claimant was diagnosed with high blood pressure around the time she began working for Employer. She has taken blood pressure medication for a decade.

In the past, Claimant was not compliant with taking prescribed medication for diabetes and high blood pressure.

Claimant disagreed with Dr. Crandall's statement that her left hand improved after surgery. But she agreed that her right hand improved after surgery.

Current complaints include numbness in the long finger, tingling in her fingers when reading a book, elbow tingling with pressure. She cleans the house in shifts. Pain radiates up her arm at night. Pain medication helps. She has difficulty opening bottles.

At the hearing Claimant stood 5'6" tall and weighed 195 pounds. In February 2010 she weighed 229 pounds.

### *Medical Treatment*

Claimant treated at Touchette Regional Hospital for left hand and forearm pain and swelling for three days. An x-ray dated February 27, 2010 showed normal bony structures for Claimant's age. Claimant was diagnosed with tenosynovitis of the hand, hypertension, and controlled diabetes. At discharge, a splint and medication were prescribed.

On March 1, 2010, Claimant treated at BarnesCare with Kibby Thomas, M.D., for bilateral wrist pain, left worse than right, after tying down wheelchairs and turning knobs. Claimant weighed 250 pounds, and gave a history of diabetes and high blood pressure.

Left wrist x-rays revealed osteoarthritis of the distal radius and the first carpometacarpal joint. Right wrist x-rays revealed osteoarthritis of the first carpometacarpal joint.

Dr. Kibby diagnosed chronic arthropathy, unspecified, of the bilateral hands. Dr. Kibby concluded the condition was not work related and referred Claimant to her personal physician for additional treatment.

A March 11, 2010 nerve conduction study showed advanced left CTS and reported Claimant weighed 249 pounds.

A May 24, 2010 nerve conduction study revealed right CTS and Claimant weighed 247 pounds. On June 1, 2010, Kosit Prieb, M.D., performed a left carpal tunnel release, and returned Claimant to work with no restrictions on July 16, 2010. Dr. Prieb noted Claimant's left CTS may be work related.

### *Expert Medical Opinion*

On April 19, 2010, **Michele D. Koo, M.D.**, wrote a report after examining Claimant at the Employer's request. Dr. Koo noted Claimant weighed 250 pounds at 5'6" tall. Dr. Koo diagnosed bilateral CTS, left worse than right, and bilateral thumb CMC arthritis, left worse than right.

Dr. Koo opined the medical conditions were not caused or aggravated by Claimant's work activities as a van driver. She noted Claimant has significant risk factors that would cause CTS: She is a 60 year old female, obese, with diabetes and hypertension, and a sedentary lifestyle.

Dr. Koo further opined Claimant's work activities were not repetitive and did not require firm or repeat grasping that would not permit rest. Also, the work lacked sufficient stress to cause bilateral CTS or CMC thumb arthritis.

Dr. Koo recommended a left carpal tunnel release, and a nerve conduction study for the right upper extremity, followed by surgery.

On October 15, 2010, **Dr. Bruce Schlafly** diagnosed bilateral CTS and opined it was caused by repetitive gripping and twisting the steering wheel, and securing wheelchairs into place by pulling straps and tightening knobs.

Also, Dr. Schlafly diagnosed arthritis of the hands, non-insulin dependent diabetes, hypertension, and childhood burn scars on the palms of both hands. Dr. Schlafly noted mild limitation with extension of the fingers on the right hand, related to the burns. However, Dr. Schlafly found no functional impairment from the scars.

He also noted joint swelling which he attributed to arthritis at the interphalangeal joints of the index and long fingers, and CMC joints at the base of both thumbs. He noted Claimant weighed 229 pounds and stood 5'6" in height but did not diagnose obesity.

He recommended repeat nerve conduction studies of the left hand, therapy, and a right carpal tunnel release. However, if no additional treatment was provided, Dr. Schlafly rated 25% PPD of the right hand and 30% PPD of the left hand, and he recommended a loading factor for multiplicity.

Nerve conduction studies dated January 20, 2011 show bilateral carpal tunnel syndrome. On July 17, 2011, Dr. Schlafly performed a right carpal tunnel release.

On September 6, 2011, **Robert P. Margolis, M.D.**, examined Claimant, and reviewed medical records at the request of her attorney. Dr. Margolis opined Claimant's work activities as a Call-A-Ride driver were the prevailing factor that caused bilateral CTS and the need for treatment.

Dr. Margolis rated 35% PPD of the left wrist and 30% PPD of the right wrist, and recommended a loading factor.

Dr. Margolis found no "ongoing significant disability" from diabetes, hypertension, and childhood burns to the hands.

On November 2, 2011, **R. Evan Crandall, M.D.**, examined Claimant at the Employer's request. Claimant stood 5'6" tall and weighed 232 pounds, with a body mass index of 37.5. X-rays revealed substantial osteoarthritis of the distal phalangeal joints and the CMC joints. In addition to medical records, Dr. Crandall reviewed a job description for van operators, and a Work Comp Analysis about Claimant's job. The job description and analysis are not in evidence.

Dr. Crandall concluded Claimant's work was not the prevailing factor that caused CTS. He noted driving a van cannot cause, change or aggravate CTS. Driving a van lacks the "biomechanical risk factors" to damage muscles and tendons of the hand. Also, it is not a repetitive stressor of muscles or tendons of the forearm to move the steering wheel. Shoulders are used to move steering wheels, not forearms. Dr. Crandall did not address the impact of strapping wheelchair passengers on the development of CTS.

Dr. Crandall concluded Claimant has nearly all the risk factors that caused CTS: Osteoarthritis of the CMC joints, diabetes, obesity, high blood pressure, age, gender, and menopause. Therefore, Claimant's risk factors were the prevailing factor that caused CTS.

Dr. Crandall rated 10% PPD of the each wrist, and concluded Claimant had reached maximum medical improvement.

### **FINDINGS OF FACT & RULINGS OF LAW**

Claimant asserts she developed CTS from driving the van, pushing and pulling wheelchairs, and strapping passengers into wheelchairs. Having given careful consideration to the evidence, including Claimant's testimony at the hearing, and based on the workers' compensation law in the State of Missouri, I find Claimant did not meet her burden to show her work activities were the prevailing factor that caused bilateral CTS for the reasons stated below.

Despite the statutory changes, the basic burden of proof is constant. Claimant must establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 (Mo. App. 1992). 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).

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. 1993)

A claimant has the burden to prove all elements of his claim to a reasonable probability. *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 911 (Mo.App. 2008). Section 287.808 requires claimants to establish the proposition is more likely to be true than not true. Section 287.067(1 and 3) provide:

1. An "**occupational disease**" is a disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not be foreseen or expected but after its

contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

3. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined as the primary factor, in relation to any other, causing both the medical condition and disability.

However, I find Drs. Koo and Crandall's opinions more credible than the opinions of Drs. Schlafly and Margolis. Dr. Koo concluded Claimant's bilateral CTS was caused by "significant" risk factors: Age, diabetes, obesity, high blood pressure and a sedentary lifestyle. Dr. Crandall further concluded Claimant had "almost all" the risk factors for developing CTS: Osteoarthritis of the CMC joints, diabetes, obesity, high blood pressure, age, gender, and menopause.

On the other hand, Dr. Schlafly did not explain why Claimant's CTS was caused by work and not her arthritic hands, diabetes, hypertension, or obesity. Similarly, Dr. Margolis did not explain why Claimant's diabetes, hypertension or obesity did not cause "significant disability" to cause CTS.

Also, Dr. Koo concluded Claimant's job was not repetitive and did not require firm or repeat grasping without benefit of rest. Additionally, the work was not at a heavy stress level that would cause bilateral CTS or CMC thumb arthritis.

Dr. Crandall concluded he was unaware of any literature that connects driving with the development of CTS. Driving lacks the "biomechanical risk factors" needed to damage muscles or tendons in the hand. Also, driving is not a repetitive stressor on the forearms when moving a steering wheel.

Dr. Schlafly relied on Claimant's description of her duties which was not consistent with her testimony at the hearing. Claimant told Dr. Schlafly she transported at least six wheelchair passengers per week in manual wheelchairs. At the hearing, Claimant testified some weeks she transported one or two wheelchair passengers, and some passengers had electric wheelchairs, which did not require pushing and pulling like the manual wheelchairs. Dr. Schlafly's history does not mention the electric lift Claimant used to lift wheelchairs into the van or the button she pressed to start tightening straps. It took 60 seconds to tighten all four straps. The maximum time spent securing straps during the day was six minutes, less with fewer passengers.

In addition, Claimant told Dr. Schlafly it was harder to grip and turn the steering wheel of her van than an automobile due to vibration, but the vans had power steering and an automatic transmission.

Based upon credible evidence by Drs. Koo and Crandall, medical reports, and records, and less than credible testimony by Claimant about her job activities, I find Claimant did not meet her burden to show CTS arose out of repetitive work activities that were the prevailing factor in the development of bilateral CTS and disability. Having found CTS was not work-related, all other issues are moot.

**CONCLUSION**

Claimant did not sustain an occupational disease which arose out of and in the course of her employment.

Made by: \_\_\_\_\_  
Suzette Carlisle  
*Administrative Law Judge*  
*Division of Workers' Compensation*