

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

Injury No.: 03-116924

Employee: Casey Hudson  
Employer: Bi-State Development Agency  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: October 30, 2003  
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 11, 2005, as supplemented herein, and awards no compensation in the above-captioned case.

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

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 claim, after reviewing the entire record, the Commission agrees with the determination of the administrative law judge that the employee has failed to establish by his testimony as well as medical expert testimony the probability that his claimed occupational disease was caused by or substantially related to conditions in his work place. The employee did not satisfy his burden of proof that the employer’s workplace and work conditions exposed the employee to repetitive motion capable of producing employee’s alleged medical condition, i.e., carpal tunnel syndrome. The Commission agrees with the finding of the administrative law judge that the testimony of employee’s medical expert was woefully deficient in establishing that the employee was exposed to repetitive motion remotely capable of producing employee’s alleged resultant medical condition.

The Commission agrees with the determination made by the administrative law judge that the more credible medical expert opinion concerning the existence or non-existence of a possible exposure of the employee in the workplace to repetitive motion capable of producing the alleged resultant medical condition were the opinions rendered by the employer’s medical expert, Dr. Randolph.

In summary fashion, the facts are as follows: as of the date of the hearing before the administrative law judge the employee had been a bus driver for the employer for approximately 18 years; on or about October 30, 2003, the employee developed numbness and tingling in his right hand; the condition was eventually diagnosed to be right carpal tunnel syndrome; a right carpal tunnel syndrome release was performed on February 17, 2004; none of the treating doctors offered any opinion as to whether or not employee’s medical condition was due to an occupational disease; employee attempted to satisfy his burden of proof as to an occupational exposure pursuant to the testimony of Dr. Lipede; and employer relied on the medical expert testimony of Dr. Randolph.

The issue presented to the Commission on appeal is certainly not a novel issue, i.e., which medical expert is more believable, trustworthy and credible as to whether or not the employee sustained injury due to an occupational disease. The administrative law judge found the more credible testimony to be the medical opinions of Dr. Randolph, and the Commission sees no compelling reason to disagree with the finding and determination of the administrative law judge. In fact, after reviewing the entire record, the Commission emphasizes how woefully deficient the Commission finds the testimony of Dr. Lipede when compared and contrasted to the facts of the case and the medical testimony and medical opinions rendered by Dr. Randolph.

Dr. Randolph reviewed a detailed ergonomic job analysis concerning bus drivers employed by the employer; Dr. Randolph even had an opportunity to review the detailed ergonomic study with the individual who prepared it; and his opinion was unequivocal that “activities which are of sufficient force and repetition to perhaps cause the development of carpal tunnel syndrome were not present.” Dr. Randolph is unequivocal in his opinion that the work activities of the employee were not a substantial factor in the development of his medical condition. The Commission agrees, and accepts the medical opinion of Dr. Randolph as more persuasive and credible when compared and contrasted with the woefully deficient medical opinions rendered by Dr. Lipede.

Consequently, the Commission affirms the award of the administrative law judge denying compensation, as the employee did not sustain an injury due to an occupational disease arising out of and in the course of his employment.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued May 11, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 13<sup>th</sup> day of October 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

\_\_\_\_\_  
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 reversed.

The majority of the Commission concludes that the medical expert offered by employer is more credible, believable, and trustworthy than the evidence presented by employee. I disagree.

The Commission majority characterized Dr. Lipede's testimony as "woefully deficient...when compared and contrasted with the facts of the case and the medical testimony and medical opinions rendered by Dr. Randolph." I have compared and contrasted the competing medical evidence and I come to the opposite conclusion. It is employer's medical evidence that is woefully deficient.

At the outset, I note that Dr. Randolph's curriculum vitae appears nowhere in the record. Dr. Randolph did not testify. There is absolutely no evidence from which to determine if Dr. Randolph has the experience or qualifications to offer a causation opinion in this matter. On the other hand, Dr. Lipede is board-certified in forensic medicine, which he described as the medicine of determining causation of injuries. He is also a diplomat of the American Board of Disabilities and is qualified as a senior disabilities analyst through that organization.

Dr. Randolph's opinions are contained in three reports, with his ultimate causation opinion contained in a report dated April 23, 2004. Dr. Randolph bases his causation opinion upon an ergonomic and job analysis report prepared by Jan Kalz. The alleged report was not offered into evidence. Jan Kalz did not testify to describe her training or qualification to prepare the alleged report. Jan Kalz did not testify to describe her preparation of the report or describe the contents of the report. Dr. Randolph did not summarize the contents of the report. In fact, nowhere in the three reports does Dr. Randolph convey any details about the activities he assessed to conclude that the activities were not of sufficient force and repetition to cause carpal tunnel syndrome.

In summary, some woman named Jan Kalz who does something for a living prepared a report about employee's

unidentified work activities. After reading whatever the report said, Dr. Randolph, who may or may not practice in a field that provides him with experience or expertise related to the issue at hand, decided that employee does not do whatever employee does often enough and with enough force to cause carpal tunnel syndrome.

Dr. Lipede offered his opinion through his report and through his testimony. Dr. Lipede discussed employee's work duties with employee and considered the duties in forming his opinions. Dr. Lipede considered employee's complaints and history. Dr. Lipede reviewed the medical records of Dr. Hoffman, Dr. Escandon, and Christian Hospital Northeast. Dr. Lipede considered an ergonomic study of bus drivers. Dr. Lipede explained the mechanism of injury specifically as it related to the exaggerated driving moves, extremity position, and gripping force in which employee engaged during his career as a bus driver. Dr. Lipede described the micro tear and repair process and explained how the effects of the process are cumulative. He testified that it is the cumulative nature of the repetitive trauma that caused employee's symptoms to first manifest after fifteen years.

Dr. Lipede testified within a reasonable degree of medical certainty that employee's activities as a bus driver were a substantial factor in causing his carpal tunnel syndrome. Dr. Lipede offered his opinion that employee's diabetes mellitus was not a causative factor in unilateral carpal tunnel syndrome. Dr. Lipede identified the medical literature upon which he relied in reaching this conclusion, which literature stated that unilateral carpal tunnel syndrome is most likely caused by trauma. Dr. Lipede testified that employee suffered a permanent partial disability of 45% of the right upper extremity at the level of the right wrist.

I find the medical opinion of Dr. Lipede more credible than the opinion of Dr. Randolph. The medical evidence establishes that the repetitive trauma inflicted upon employee's upper extremity by his working conditions caused employee's condition of carpal tunnel syndrome. Dr. Lipede's detailed testimony convinces me that the performance of the usual and customary duties of employee's work led to a change in pathology. Employee's injury arose out of and in the course of his employment and is clearly work related. *Smith v. Climate Engineering*, 939 S.W.2d 429, 435, overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 227 (Mo. banc 2003).

I would reverse the award of the administrative law judge denying compensation. I would award compensation including past medical expenses, future medical care, temporary total disability and permanent partial disability benefits from employer to employee. I would also award additional permanent partial disability from the Second Injury Fund to employee based upon Dr. Lipede's credible opinion that employee's preexisting disabilities combine with the disability from the primary injury to produce a greater disability than the simple sum of the disabilities.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

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John J. Hickey, Member

## AWARD

Employee:	Casey Hudson	Injury No.:	03-116924
Dependents:	N/A	Before the	
Employer:	Bi-State Development	<b>Division of Workers'</b>	
		<b>Compensation</b>	
Additional Party:	Second Injury Fund	Department of Labor and Industrial	
		Relations of Missouri	
Insurer:	Self-Insured	Jefferson City, Missouri	
Hearing Date:	April 14, 2005	Checked by:	CTL:tr

**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: October 30, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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: N/A
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
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-

Employee: Casey Hudson

Injury No.:

03-116924

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$1,000.00
19. Weekly compensation rate: \$662.55/\$347.05
20. Method wages computation: By agreement

**COMPENSATION PAYABLE**

21. Amount of compensation payable: -0-
22. Second Injury Fund liability: No
- TOTAL: -0-
23. Future requirements awarded: N/A

Said payments to begin N/A 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:

N/A

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

Employee: Casey Hudson Injury No.: 03-116924  
Dependents: N/A Before the  
Employer: Bi-State Development **Division of Workers'**  
**Compensation**  
Department of Labor and Industrial  
Additional Party: Second Injury Fund Relations of Missouri  
Jefferson City, Missouri  
Insurer: Self-Insured Checked by: CTL:tr

### **PREFACE**

A hearing was held in the above-mentioned matter on April 14, 2005. The Claimant, Casey Hudson, was represented by Attorney William Sorrell. Employer/Insurer was represented by Attorney John Johnson and the Second Injury Fund was represented by Assistant Attorney General Dana Ellison.

### **ISSUES**

1. Whether Claimant's carpal tunnel syndrome was work related;
2. Nature and extent of liability, if any, of the Second Injury Fund.

### **EXHIBITS**

The following exhibits were offered the by the Claimant and introduced into evidence with objection:

Exhibit A. Uncertified Records from Dr. Cynthia Byler.  
Exhibit B. Uncertified Records from Dr. Juan C. Escandon.  
Exhibit C. Certified Records from Christian Hospital.  
Exhibit D. Certified Records from Dr. William Hoffman.  
Exhibit E. Deposition Testimony from Dr. A.G. Lipede.

The following exhibits were offered by the Employer/Insurer:

Exhibit 1. Certified Records from Dr. Randolph.  
Exhibit 2. Certified Records from the Iowa Board of Medical Examiners regarding Dr. Lipede.

### **RULING ON CLAIMANT'S OBJECTION**

Claimant objected to the Employer/Insurer's Exhibit 2, the Certified Records from the Iowa Board of Medical Examiners regarding Dr. Lipede, and Claimant's objection is sustained.

**FINDINGS OF FACT**

Based upon the competent and substantial evidence, I find:

1. The Claimant was a bus driver for some eighteen years prior to the hearing and developed carpal tunnel syndrome in the right wrist on or about October 30, 2003. Claimant testified that he had had numbness and tingling in his right wrist and arm and on occasion he, while driving the bus, felt it was necessary for him to stop driving and was taken to a hospital for treatment.
2. Dr. Byler treated the Claimant and had the Claimant seen by Dr. Escandon for a nerve conduction study.
3. Claimant was seen by Dr. William Hoffman at Christian Hospital who performed right carpal tunnel release. Claimant testified further that he still has some symptoms of tingling and numbness in his right hand.
4. Dr. Randolph's records indicate that the Claimant's work activity were not of sufficient force and repetition to cause carpal tunnel syndrome in Claimant's hand.
5. Claimant had a prior medical history of hypertension and diabetes prior to his problems in his right arm, wrist and hand.

**RULINGS OF LAW**

1. Claimant failed to prove that the right carpal tunnel syndrome was substantially caused by his work as a bus driver
2. The Second Injury Fund liability is moot.

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

Made by: \_\_\_\_\_

Cornelius T. Lane  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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