

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

Injury No.: 03-075895

Employee: Kelvin Jarman
Employer: St. Louis Bread Co./Panera Bread
Insurer: Sentry Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: July 1, 2003
Place and County of Accident: St. Louis, 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 (ALJ) 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 December 21, 2004. The award and decision of Administrative Law Judge William L. Newcomb, is attached and incorporated by this reference.

I find that the ALJ correctly weighed and evaluated the lay and medical testimony in reaching his conclusions as to disability and causation. *Reese v. Gary & Rober Link, Inc.*, 5 S.W.3d 522 (Mo. App. E.D. 2002), *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo. App. S.D. 2001), *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240 (Mo. banc 2003).

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

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

Given at Jefferson City, State of Missouri, this 4th day of May 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

SEPARATE CONCURRING OPINION FILED

Alice A. Bartlett, Member

Attest: John J. Hickey, Member

Secretary

SEPARATE CONCURRING OPINION

I concur that the award of the administrative law judge (ALJ) should be affirmed. The ALJ authored a lengthy and well-reasoned award pointing out the strengths and weaknesses of the evidence presented.

In addition to the numerous questions raised by the ALJ as to the content of the task analysis report, I would raise two points.

First, the study was done some months after employee's claimed exposure and, therefore, the relevance is in question.

Second, the study is not comprehensive.

Although the study purports to test and measure certain aspects of the job employee performed, the underlying scientific basis justifying reliance on conclusions is missing. In that respect, the methodology and orthodoxy of the study is not established. Perhaps, many of the questions could have been laid to rest by the administrator of the test, should that person have testified.

The attempt to measure the job, measure the employee, compare the two and come to a medical or legal conclusion is laudable. Certainly such a study would clear up many questions as to causation.

But, I must find that the study, as presented, has weaknesses. Not least among them is the limited scope of the study. The study addresses only a portion of the workday. As pointed out by the ALJ, a significant portion of the day remains unmeasured.

I would find a study, such as this, to be a helpful tool in allowing us to determine the impact of repetitive use of an employee's hands, against resistance, over time, if those factors were more clearly set out, identified and explained over the entire working day.

Alice A. Bartlett, Member

TEMPORARY OR PARTIAL AWARD

Employee: Kelvin Jarman

Injury No.: 03-075895

Dependents: N/A

Employer: Panera Bread Company

Additional Party: Second Injury Fund (open)

Insurer: Sentry Insurance Co.

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

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: July 1, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Mo.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of employment? Yes
9. Was claim of compensation filed within the time required by Law? Yes
10. Was employer insured by the above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
loading/unloading and driving delivery truck.
12. Did accident or occupational disease cause death? No Date of death: N/A
13. Parts of body injured by accident or occupational disease? Bilateral wrists
14. Compensation paid to date for temporary disability: N/A
15. Value of necessary medical aid paid to date by employer/insurer: None
16. Value of necessary medical aid not furnished by employer/insurer: N/A
17. Employee's average weekly wages: \$620.00
18. Weekly compensation rate: TTD/PPD \$413.32/\$347.05
19. Method of wages computation: Stipulation

COMPENSATION PAYABLE

20. Amount of compensation payable: N/A
21. Future requirements awarded: Future medical treatment and TTD pursuant to award narrative.

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

The compensation awarded to the Claimant shall not be subject to a lien in the amount of the payments hereunder as requested by the following attorney who provided the necessary legal services rendered to the Claimant: Mark S. Elhoffer

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kelvin Jarman

Injury No.: 03-075895

Dependents: N/A

Before the
DIVISION OF WORKERS'
COMPENSATION

Employer: Panera Bread Company

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund (open)

Insurer: Sentry Insurance Co.

Hearing Date: October 18, 2004

Checked by:WLN

STIPULATIONS

The parties stipulate that the claimant was an employee of the employer who was operating under the laws of Missouri Workers' Compensation statutes on July 1, 2003; the rate of compensation for temporary total disability was \$413.32 and permanent partial disability was \$347.05; and that the employer has not paid any TTD or medical expenses for this injury.

ISSUES

1. Was the Claimant exposed to an occupational disease arising out of and in the course of his employment; and
2. Was the Claimants work the medical cause of Claimant's disability; and
3. Is the employer liable for future medical treatment?

EXHIBITS

Claimant offered the following exhibit, which was admitted into evidence without objection other than those contained in the deposition and they were ruled upon in accordance with this award:

Exhibit A, Deposition of Dr. Bruce Schafly

Employer offered the following exhibits which were admitted into evidence without objection other than those contained in the deposition and they were ruled upon in accordance with this award:

Exhibit #1, Deposition of Dr. Ollinger

Exhibit #2, Task Analysis Report of 11/03

Exhibit #3, Medical Records of Dr. E. Rose

Exhibit #4, Medical Records of Dr. Della-Pietra

FINDINGS OF FACT

Based upon the competent and substantial evidence I find:

1. Claimant, at the time of the hearing, was 47 years old, 5'11" and weighed 270 pounds. Claimant worked for Employer a truck delivery driver for 7 years. When the Claimant began work with employer, he drove a 24 ft box truck and delivered raw dough products to the employer's stores in the St. Louis, Springfield, Illinois and Cape Girardeau areas. At that time he drove a six-speed manual transmission truck.
2. Four years ago the Claimant began driving on a local route and his job changed. His new job required only that he pick up four to five empty cabinets (from in the St. Louis area) and return them to the main plant where he unloaded the cabinets and then removed the empty dough trays. The empty cabinets with the empty trays weighed from 60 to 70 pounds and were approximately five feet tall. They are on small wheels that sometimes stick nor swivel properly. The truck he drove to pick up the empty cabinets was a ten-speed manual transmission.
3. After Claimant unloaded a truck, on occasion he would help put baking materials away. This included bags of flour and cheese. The bags might weigh as much as one hundred pounds.
4. Each day the Claimant had to arrange six delivery trucks at the loading dock and load them with cabinets containing trays of dough. These cabinets weighed from two to three hundred pounds. The Claimant had to push the loaded cabinets through some plastic curtains, up a warehouse ramp (one and a half feet high) onto the dock and then load the trucks parked at various distances up to thirty and forty feet away. The ramps into the trucks were an inch or two high. The floor of the warehouse on occasion could be slippery and the Claimant had to grasp the cabinets firmly to keep them from tipping. If a cabinet would fall the Claimant had to catch it and if he did not catch it, he had to fill it again.
5. The Claimant began having problems with his wrists three years ago. He had pain, stiffness and numbness. He went to his family doctor who referred him to a rheumatoid arthritis specialist, Dr. Rose who had Claimant undergo a nerve conduction study that revealed carpal tunnel syndrome. The Claimant ultimately saw Dr. Schlafly and Dr. Ollinger and they both recommended surgery, but disagreed as to the cause.
6. A task analysis was conducted by the Ergonomics Department at Barnes Jewish Hospital and was done through analysis of data collected through digital photography, observations, and interviews with Claimant's supervisor, Marty Rodrique and Claimant himself. An ergonomics expert observed the Claimant do his job, but that observer did not ride with the Claimant as he drove the delivery truck nor was he present for the loading of the trucks. Instead he drove his own car and took measurements of Claimant unloading truck and some pictures. The task analysis found that the claimant's primary job tasks were (1) driving a route to pick up empty cabinets from 5 Panera cafes; (2) unloading trucks of the empty cabinets and stacking trays on pallets; and (3) loading trucks with raw dough products. The amount of time and effort spent on these tasks were variable. Claimant's secondary tasks included assisting in getting and storing ingredients that he would do once or twice a week and occasionally he would run an order, pick-up at the warehouse, gather pallets or use a forklift. (Analysis 3).
7. The task analysis used two differed methods to assess the ergonomic risks for carpal tunnel, the strain index and the threshold value limit. (Analysis 3). The Strain Index is a means to assess jobs for risk of work-related

musculoskeletal disorders. Strain index stated that scores greater than 5 are associated with jobs causing distal upper extremity disorders. Strain index scores less than or equal to 3 are probably safe. (Analysis 3). The threshold limit value considers average hand activity levels and peak hand force and represents conditions to which it is believed nearly all workers may be repeatedly exposed to without adverse health effects. The hand activity level is based upon frequency of hand exertions and the distribution of work and recovery periods. (Analysis 6). The report stated that Claimant's duties of picking up empty cabinets from the cafes resulted in a strain index of 1.69. The intensity of that task was considered light and the task occurred for 2-4 hours per day. Claimant's wrist posture during this task was near neutral. (Analysis 5). The report also found that the Normalized Peak Force was 1.0 (barely noticeable or relaxed effort) and that the hand activity level was a 6 (stead motion/exertion; infrequent pauses). These scores indicate that this task of picking up cabinets is likely safe for the majority of workers. (Analysis 6). Claimant's task of unloading the truck produced a strain index of 3.00 with the intensity of the task being light and the duration of this happening during a given day as 1-2 hours. (Analysis 7). This task also produced a normalized peak force of 1.0 and a hand activity level of 6.0 making this task likely to be safe for the majority of workers exposed according to the threshold limit value. (Analysis 8). Claimant also loaded trucks with raw product as an activity of his work. This task produced a strain index of .75, normalized peak force of 1.0 and a hand activity level of 6. (Analysis 9-10). The threshold value indicated that this task is also likely to be safe for the majority of workers exposed. (Analysis 10). Overall, the strain index for Claimant's job tasks ranged from .75-3.00, which indicated that the claimant's job tasks are probably safe or prove a very low risk for work-related musculoskeletal disorders in the distal upper extremity. Additionally, the threshold value limit for these three tasks indicate that this job is likely to be safe for the majority of workers exposed. (Analysis 3).

8. On 12/26/02, Claimant saw Dr. Pietra and stated that he had been out of Celebrex for one month and had started to notice "joint pains." Claimant told Dr. Pietra that he has had joint pains since his teenage years because he had Polio as a child. Claimant indicated that the joints that bothered him the most were his elbows, hand/fingers, and his hip after prolonged sitting. (Exhibit #4, pg 5). On 1/10/03, Claimant presented to Dr. Pietra with hip and leg pain and occasional hand pain. The doctor continued him on Celebrex. (Exhibit #4, pg 7). Claimant again presented to Dr. Pietra with worsening chronic pain. The Claimant noted that his hands had been bothering him and were more swollen. Claimant was also having pain in his knees and hips. He told Dr. Pietra that the Celebrex was not helping "like it used to." Dr. Pietra recommended that Claimant try a trial of Voltaren. (Exhibit #4, pg 13). The doctor also referred Claimant to a rheumatologist, Dr. Rose, because of his positive RA, negative ANA, and his sed. rate. (Exhibit #4, pg 16). On 10/28/03, Claimant saw Dr. Pietra for his high blood pressure and for a change in his blood pressure medication. Claimant has had elevated blood pressure for the past 10-15 years according to the history given to Dr. Pietra. (Exhibit #4, pg 23).
9. On 7/3/03, Dr. Rose saw the claimant. At that time he weighed 289. Dr. Rose noted a history of Claimant having complaints of hand pain for years. The pain had increased over the last few weeks. Dr. Rose noted that the hand stiffness on Claimant involved the entire hand but mainly the MCP and PIP joints. Claimant also complained of pain in his elbows, left buttock, both knees, and hip. In Claimant's history, it states that the Claimant's hand was numb during the night and when working above his head. (Exhibit #3, pg 3). Dr. Rose noted that claimant's older brother had "bad" rheumatoid arthritis and that Claimant's son has Raynaud's and fibromyalgia. Claimant's physical exam showed that Claimant had a positive Tinel's sign on the right and a negative sign on the left. Dr. Rose's impression was that Claimant had arthralgias involving the hands and a laboratory weak positive RA. Dr. Rose recommended having a nerve conduction study done. (Exhibit #3, pg 4). On 7/11/03, an X-ray was done of both hands. It was unremarkable. (Exhibit #3, pg 12). On 7/24/03, after the nerve conduction study, Dr. Rose diagnosed Claimant as having carpal tunnel syndrome. (Exhibit #3, pg 5) .
10. Dr. Ollinger reviewed the records of Dr. Pietra, Dr. Rose, and Dr. Schlafly. (Ollinger Deposition Exhibit #3). Dr. Ollinger also reviewed records from SSM, Memorial Hospital, a task analysis for Claimant evaluating his duties as a transport driver taken by Pat Venditti on 11/03, and a telephone interview of Claimant taken by Leona Sexton on 8/4/03. (Ollinger Deposition Exhibit #2). Dr. Ollinger evaluated claimant on 11/25/03. Claimant told Dr. Ollinger that he was a delivery driver for his first two years at Panera Bread Company that the last four years he was categorized as a cabinet retriever. (Deposition 9). Claimant stated that his symptoms in his hands began in late 2001 or early 2002 characterized by bilateral hand stiffness with some aching, numbness, and tingling that progressed in June 2003. (Deposition 11). Dr. Ollinger indicated that he was unable to make a distinction in claimant's allegations of stiffness between carpal tunnel and rheumatoid arthritis. (Deposition 12).
11. Dr. Ollinger noted that Claimant was 5' 11" and weighed 280 pounds which is the equivalent of a body mass index of 39 which is morbidly obese. (Deposition 13). Dr. Ollinger also noted that claimant did not have calluses on his hands. Dr. Ollinger stated this indicated a lack of activity of his hands. (Deposition 14) and as far as he knew the Claimant

did not wear gloves nor wrist splints to reduce calluses on his hands but noted that it was possible. (Deposition 42). While Dr. Ollinger testified that claimant did not have positive Tinel's and the Phalen's produced no response, Dr. Ollinger indicated that this in itself was not a significant finding since those tests can vary from time to time. (Deposition 14-15). Claimant had weak responses to cervical brachial dysfunctions, which Dr. Ollinger considered non-specific and negative. Finkelstein's was negative and motion of all the joints was within normal limits. (Deposition 15). However, Dr. Ollinger still testified that Claimant had bilateral carpal tunnel syndrome because the Claimant's nerve conduction studies were abnormal, right side greater than the left. (Deposition 16). If claimant's bilateral carpal tunnel were found to be causally related, then Dr. Ollinger would recommend nerve conduction studies and treatment which would likely be operative. (Deposition 17).

12. In Dr. Ollinger's opinion, Claimant's job duties at Panera Bread Company were not the proximate cause or a substantial factor for his bilateral carpal tunnel syndromes. Dr. Ollinger testified that claimant's morbidly obese status was a risk factor in the development of carpal tunnel. (Deposition 18). Dr. Ollinger explained that morbid obesity fits into the category of fluid imbalance and fluid retention. People who are obese or morbidly obese have a three to four times greater risk of developing carpal tunnel compared to non-obese people. (Deposition 19).
13. Dr. Ollinger testified that he looks at factors of forces, repetitions, postures, considered vibrations and duration factors with respect to whether Claimant's job duties were the cause of his carpal tunnel. (Deposition 20, 22). Dr. Ollinger took into consideration along with claimant's history, the job task analysis that was performed on 11/03. (Deposition 22). *Dr. Ollinger testified that he relied on the job task analysis in reaching his opinions as to medical causation of Claimant's carpal tunnel syndrome with respect to the job duties performed by Kelvin Jarman.* (my emphasis). (Deposition 8)
14. Dr. Schlafly evaluated Claimant on 1/14/03. At the time of Dr. Schlafly's examination, claimant weighed 305lbs (Deposition 7). Dr. Schlafly noted that Claimant informed him that in 2003, the claimant first became aware of numbness in his hands. (Deposition 11). Claimant also gave a history to Dr. Schlafly of experiencing pain in his hands for a couple of years, starting around January 2002. (Deposition 12). Dr. Schlafly testified that it was his understanding that Claimant had held the same job at Panera during his years of employment as a truck driver and doing delivery work. (Deposition 15). Dr. Schlafly was not aware that the claimant's job duties changed over the 6 years that Claimant had worked at Panera. (Deposition 16). On cross, Dr. Schlafly testified that it was his understanding that part of Claimant's job was to push heavy cabinets with wheels which weighed up to three hundred pounds when full. Dr. Schlafly also took into consideration the vibration of the truck steering wheel. (Deposition 35).
15. Dr Schlafly relied on claimant's description of his work activities and not the job task analysis in reaching his conclusion that claimant's work was a substantial factor in Claimant's development of carpal tunnel syndrome. (Deposition 31). Dr. Schlafly testified that he used no quantitative threshold to determine what would be significant enough for carpal tunnel. Instead, he used qualitative judgment. Dr. Schlafly used no objective criteria that he applied to determine such things as how many key strokes, how many lifts, or how many activities per second would fall into the category of repetitive enough for carpal tunnel or not repetitive enough to cause carpal tunnel. (Deposition 18).
16. Dr. Schlafly testified on cross-examination that Claimant, due to his weight, fell into a morbidly obese category. When asked whether morbid obesity alone was a risk factor for the development of carpal tunnel, Dr. Schlafly replied that this was a theory to which some subscribe. (Deposition 29). When asked whether he would subscribe to that theory, he stated he didn't know if the theory was correct or not. (Deposition 30). Dr. Schlafly was also asked to comment on whether weight gain played a role in the development of carpal tunnel. Dr. Schlafly responded that it could but he was unaware of it. (Deposition 34). Additionally, Dr. Schlafly did not consider rheumatoid arthritis as a potential cause of Claimant's carpal tunnel since Dr. Schlafly did not know whether or not it was diagnosed by Dr. Rose. (Deposition 30). Nor did Dr. Schlafly consider non-occupational activities as a cause of Claimant's carpal tunnel syndrome since he did see anything in his medical records that looked remarkable in that regard. (Deposition 31)
17. On cross-examination, Dr Schlafly was asked about the development of carpal tunnel syndrome in pregnant women. Dr. Schlafly opined that it probably related to fluid retention and swelling around the wrists. (Deposition 33). When asked as to whether or not someone could develop carpal tunnel syndrome if there was medications such as high blood pressure pills that make people retain fluid, Dr. Schlafly stated that he was unaware of such a thing. (Deposition 34). He stated that blood pressure medication has the opposite effect of retaining fluids; instead it is a diuretic that decreases fluid retention.

RULINGS OF LAW

Based upon the above findings of fact, I find:

OCCUPATIONAL DISEASE/MEDICAL CAUSATION/FUTURE MEDICAL

Claimant testified that when he began working for employer he was a truck driver and delivery person. After a few years, he continued as a truck driver, but instead of delivery he retrieved empty cabinets and then loaded trucks for the next shift.

The employer/insurer had a “job task analysis” performed on Claimant’s job. It concluded that Claimant’s pushing cabinets when he loaded and unloaded trucks, and driving his route was a low risk job for exposing him to work-related musculoskeletal disorders. The “strain index” for these tasks indicated that Claimant’s job tasks are “probably safe” or prove a very “low risk” for work-related musculoskeletal disorders. In addition, the “threshold limit value” shown on claimant’s job task analysis indicated that Claimant’s job is likely to be safe for the majority of workers’ exposed. (Analysis 3).

Several issues exist regarding the “job task analysis.”

First, the person who prepared the “job task analysis” did not testify and thus many of its terms such as “strain index”, “threshold limit value (TLV)”, “action limit”, “localized mechanical compression”, “significant force postures”, “normalized peak force” and “hand activity level (HAL)” must be determined only by the document presented without any further explanation. Some of these terms such as “localized mechanical compression” and “significant force postures” have no definition within the document.

Second, the person who prepared the “job task analysis” he did not ride with the Claimant to determine the use of his hands while driving his delivery/pick up box truck – both in terms of steering and shifting the ten speed truck nor did he remain and watch the Claimant load the six trucks for delivery later in the day. As to the latter he took pictures that he used to extrapolate from to determine Claimant’s workload.

Third, certain findings in the “job task analysis” appear to be subjective observations such “intensity of effort” and “significant force postures”.

Fourth, for the “strain index” for the various categories of the Claimant’s work a caveat was added that stated in bold type, “**The Strain Index does not consider stresses related to localized mechanical compression. This risk factor should be considered separately.**” No evidence was presented as to the meaning of this caveat and how it affects the overall finding of the “job task analysis.”

Fifth, the job task analysis footnotes a 1995 American Industrial Hygiene Association Journal article by J. Steven Moore and Arun Garg as when the “strain index” was proposed as a means to assess jobs for risk of work-related musculoskeletal disorders. However this article was not attached to the job task analysis. There is no evidence as to how this index was created in it is unknown as to what group of workers were used as a standard, how they were examined, what their rates of carpal tunnel syndrome were, and how their work behavior was measured and evaluated.

Sixth, has the “strain index” that J. Steven Moore and Arun Garg developed in 1995 undergone any changes or refinements and has it ever been recognized judicially.

The employer’s attempt to scientifically determine if the Claimant was exposed to the occupational disease of carpal tunnel syndrome raised, although a laudatory effort to look at an issue unbiased, has, at this point in time raised many issues and questions that need to be answered before use of a “job task analysis” becomes fully competent evidence.

Since Dr. Ollinger testified that he relied on the job task analysis in reaching his opinions as to medical causation of Claimant’s carpal tunnel syndrome with respect to the job duties performed by Kelvin Jarman. (Deposition 8), his testimony can be questioned as is the job task analysis above. When he stated Claimant’s job duties at Panera Bread Company were not the proximate cause or a substantial factor for his bilateral carpal tunnel syndrome. (Ollinger deposition 18). Dr. Ollinger was mainly taking into consideration the job task analysis that was performed on 11/03. After determining work was not a cause Dr. Ollinger found that claimant’s morbid obesity caused Claimant’s development of bilateral carpal tunnel. (Ollinger

deposition 18).

Dr. Schlafly, on the other hand, took into account Claimant's description of his work and not the job task analysis when reaching his conclusion that Claimant's work was a substantial factor in Claimant's development of carpal tunnel syndrome (Schlafly deposition 15, 31). Dr. Schlafly also testified that he used no quantitative threshold to determine what job duties would be significant enough to cause carpal tunnel. (Deposition 18). Dr. Schlafly's opinion used a qualitative judgment that Claimant's carpal tunnel was a result of his occupation. When Dr. Schlafly was asked whether claimant's morbid obesity alone was a risk factor for the development of carpal tunnel, Dr. Schlafly stated this was a theory and didn't know if the theory was correct or not. (Deposition 30). Dr. Ollinger explained that morbid obesity fits into the category of fluid imbalance and fluid retention. People that are morbidly obese, according to Dr. Ollinger, have a 3-4 greater risk of developing carpal tunnel compared to non-obese people. (Deposition 9). However, the Claimant takes high blood pressure medication that has the opposite effect on retaining fluids. As Dr. Schlafly testified those medications are diuretics to prevent fluid retention.

Dr. Schlafly was asked about the psychological reason for the development of carpal tunnel syndrome in pregnant women in which he opined that it was probably related to the fluid retention and swelling around the wrist. (Schlafly Deposition 33). Dr. Schlafly indicated that fluid retention and swelling could be the reason that pregnant women have carpal tunnel. Therefore, if morbidly obese people have fluid retention, it reasonably follows that they may have carpal tunnel syndrome more easily. Again, however, the Claimant takes high blood pressure medication that has the opposite effect on retaining fluids. As Dr. Schlafly testified those medications are diuretics to prevent fluid retention.

I find Dr. Schlafly's opinion more credible. He did not rely upon an ergonomics study that raised more questions than it answered. Dr. Schlafly put emphasis on the quality of the Claimant's job and the Claimant's description of it. The job task analysis relied upon observations and value judgments from the person who did the job task analysis. There was no explanation as to how he made those judgments. Further, by the facts, this person did not observe the Claimant doing certain aspects of his job – such as driving a truck or loading six trucks with cabinets full of uncooked bread dough. Because of these oversights and the other questions as raised above regarding the job task analysis, I find Dr. Schlafly's opinion more credible.

I find Claimant's work was a substantial factor in the development of Claimant's carpal tunnel syndrome, a recognized occupational disease. The employer is liable for the necessary medical care to cure and relieve Claimant of this condition, including surgery and physical therapy, if recommended. Although temporary total disability was not made an issue, it reasonably follows that if such carpal tunnel syndrome treatment prevents Claimant from being able to temporarily compete in the open labor market, i.e. he is unable to work, the employer would be liable for that benefit.

Date: _____ Made by: _____

William L. Newcomb
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Gary Estenson
Director
Division of Workers' Compensation