

TEMPORARY OR PARTIAL AWARD  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 03-142281

Employee: Alicia Jennings  
Employer: Bank of America  
Insurer: American Home Assurance Company  
Date of Accident: December 20, 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, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated November 30, 2005.

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.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued November 30, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25<sup>th</sup> day of April 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

DISSENTING OPINION FILED

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
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 Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed.

The administrative law judge concluded that employee's job duties were a substantial contributing factor in her development of carpal tunnel syndrome. I believe this conclusion is against the weight of the credible evidence.

The record reveals the medical opinions of three physicians regarding the medical cause of employee's bilateral carpal tunnel syndrome. The physicians' opinions are summarized below.

Dr. Feinstein, treating orthopedic surgeon, believes that employee's obesity, diabetes, and job duties are contributing factors in her development of carpal tunnel syndrome but he believes her job duties may be more an aggravating factor than a direct cause.

Dr. Peeples, neurologist, believes that the substantial contributing factors in employee's development of carpal tunnel syndrome are her 15-year history of insulin-dependent diabetes and her obesity. Dr. Peeples believes employee would have likely developed carpal tunnel syndrome whether she worked or not. He believes employee's administrative and secretarial duties involving typing are minor contributing factors and are not proximate or substantial causes for the development of carpal tunnel syndrome.

Dr. Nester, family physician, believes that notwithstanding employee's diabetes, the significant contributing factor to triggering and exacerbating employee's carpal tunnel syndrome is her work. Dr. Nester's opinion is founded upon his belief that employee had no history of diabetic neuropathy.

Employee testified that in the year prior to the hearing she was experiencing numbness in both feet. This is indicative of diabetic neuropathy for which work is not a factor. I believe Dr. Nester's opinion that employee's duties were a significant contributing factor to the triggering of her carpal tunnel syndrome is based upon a faulty foundation, i.e., employee does not suffer from diabetic neuropathy.

I find more persuasive the opinion of Dr. Peeples that employee's administrative and secretarial duties are minor contributing factors in her development of carpal tunnel syndrome. Dr. Peeples opinion is supported by the opinion of Dr. Feinstein. "[W]ork must be a 'substantial' factor, not merely a 'triggering or precipitating' factor in causing the resulting medical condition or disability." *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852, 853 (Mo. 1999), Section 287.020 RSMo (2000).

Based upon the foregoing, I believe the more credible, competent, and substantial evidence supports a conclusion that employee's work duties were not a substantial factor in her development of carpal tunnel syndrome. Rather, employee's carpal tunnel syndrome was directly caused by her obesity and diabetes.

I would reverse the award of the administrative law judge and issue a final award denying compensation. For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

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Alice A. Bartlett, Member

# TEMPORARY OR PARTIAL AWARD

Employee: Alicia Jennings

Injury No.: 03-142281

Dependents: N/A

Before the  
**Division of Workers'**

Employer: Bank of America

**Compensation**

Additional Party:N/A

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

Insurer: American Home Assurance Co.

Hearing Date: September 14, 2005

Checked by: MDL:tr

## 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: December 20, 2003
5. State location where accident occurred or occupational disease contracted: St. Louis, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted:  
Employee used both of her hands in a repetitive fashion.
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: -0-
15. Value necessary medical aid paid to date by employer/insurer? Unknown
16. Value necessary medical aid not furnished by employer/insurer? N/A

Employee: Alicia Jennings

Injury No.:

03-142281

17. Employee's average weekly wages: \$435.30

18. Weekly compensation rate: \$290.25/\$290.25

19. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

20. Amount of compensation payable: -0-

21. Second Injury Fund liability: N/A

TOTAL: -0-

22. Future requirements awarded: Medical treatment and associated benefits as per Award

Each of said payments to begin N/A and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

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

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A which is awarded above as costs of recovery 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: Alicia Jennings

Injury No.: 03-142281

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Bank of America

Department of Labor and Industrial  
Relations of

Additional Party: N/A

Missouri

Jefferson City, Missouri

Insurer: American Home Assurance Co.

Checked by: MDL:tr

## PRELIMINARIES

A hearing was held on September 14, 2005, at the Division of Workers' Compensation in the City of St. Louis. Alicia Jennings ("Claimant") was represented by Ms. Susan Brown. Bank of America ("Employer") and its Insurer, American Home Assurance Company, were represented by Ms. Katherine Salmon. Ms. Brown requested a fee of 25% of any future temporary total disability benefits awarded by Court.

The parties stipulated that on December 20, 2003, Claimant was an employee of Employer; venue is proper in the City of St. Louis, and the claim was timely filed. The parties further stipulated that Claimant's average weekly wage is \$435.30, resulting in a rate of \$290.25 for temporary total disability benefits and permanent partial disability benefits. Although Employer has paid some medical benefits, it has paid no temporary total disability benefits.

The issues for resolution by hearing are whether Claimant sustained an occupational disease arising out of and in the course of her employment; medical causation; liability of Employer for future medical care; and liability of Employer for temporary total disability benefits.

## FINDINGS OF FACT

Claimant is a 52-year-old woman who was employed by Employer in St. Louis, Missouri. She began working for Employer in May 1997 and ended her employment on July 31, 2004.

Claimant's job title was Support Specialist. As a Support Specialist, her duties included reviewing closing packages, and performing data entry. Claimant testified that a closing package is a large packet of real estate documents held together by a large metal clip. Claimant and another co-worker received approximately 180 to 300 closing packages a day, although there were days when Claimant was the only specialist in the office. Claimant testified that she opened the clip to review the documents and then re-clipped the package closed. Claimant used the computer to type the account number, date, and time that each package was received and reviewed. Claimant explained that all the closing packages were required to be finished by noon each day.

Claimant also was required to review the mail that came into the office and make entries regarding the mail into a log by hand, onto a log sheet, and into the computer. Claimant made these entries all day long and spent the majority of her day typing.

Claimant testified that around December 2003, she began to notice that she was having problems in her thumbs, and continued to work despite her difficulties, but noticed that the pain worsened and began to travel into both hands and wrists. Claimant asked her supervisor to send her to a doctor, and she was referred to Barnes Care for evaluation.

Claimant testified that she was given a wrist sleeve, an x-ray, and exercises at Barnes Care and continued to work without restrictions for Employer. Claimant was authorized to see Dr. Feinstein, who confirmed that Claimant suffered from carpal tunnel syndrome and recommended surgery. Claimant was also evaluated by Dr. Peoples and Dr. Nester, both of whom recommended surgery for her injuries. To date, surgery has not been performed. Claimant also testified that she has been an insulin-dependent diabetic for 15 to 20 years. Claimant testified that she never suffered any prior injury to her hands or wrists, and had no problems with her hands or wrists prior to her employment with Employer.

Claimant has pain and numbness in her hands daily, and drops things. Claimant testified she had to cut her shoulder-length into a very short style because it is hard for her to maintain her grip and she kept burning herself on her curling iron. Claimant testified that it is difficult for her to dress herself, cook, drive, turn doorknobs, clap her hands at church, and read in the manner she did prior to her injuries. Claimant was not working as of the date of the hearing.

Dr. Feinstein examined Claimant on June 8, 2004. Dr. Feinstein diagnosed bilateral carpal tunnel syndrome and recommended surgery. In a letter dated June 23, 2004, Dr. Feinstein addressed the issue of causation. Dr.

Feinstein expressed the opinion that Claimant's obesity and her diabetes were contributing factors to her carpal tunnel syndrome. Dr. Feinstein also stated that Claimant works eight hours a day, five days a week keying all day except for lunch breaks. He suspected that her work duties also contributed to her development of carpal tunnel symptoms. He stated, "Her job duties may be more of an aggravating factor than a direct cause of her symptoms."

Dr. Peeples also evaluated Claimant. Dr. Peeples also agreed that Claimant has bilateral carpal tunnel syndrome. Dr. Peeples expressed the opinion that Claimant's substantial contributory factor in her carpal tunnel syndrome is a 15-year history of insulin-dependent diabetes and obesity. Dr. Peeples stated that Claimant in all likelihood would have carpal tunnel syndrome at this time whether she worked or not. He felt her secretarial and administrative activities involving typing were a minor contributing factor and would not be the proximate or substantial cause for the development of carpal tunnel syndrome. He reiterated that the major and substantial cause for her disorder is due to her underlying insulin-dependent diabetes and obesity.

Dr. Steve Nester, a family physician, testified on behalf of Claimant. Dr. Nester examined Claimant on October 19, 2004. Dr. Nester diagnosed bilateral carpal tunnel syndrome and recommended surgery. Dr. Nester concluded that Claimant's work has been a significant contributing factor to triggering and exacerbating her carpal tunnel symptoms. Dr. Nester felt that within a reasonable degree of medical certainty her injuries suffered resulted in the carpal tunnel syndrome from which she was treated. Dr. Nester rated Claimant's disability at 35% of each hand.

## RULINGS OF LAW

Based upon my observations of Claimant at hearing, my review of the medical evidence, and the application of Missouri law, I find:

Claimant has met her burden of proving that she sustained an occupational disease arising out of and in the course of her employment.

In order to support a claim of occupational disease, the employee must prove that he or she has contracted an occupational disease that was caused by workplace conditions. *Kelley v. Banta Estude Construction Co., Inc.*, 1 S.W.3d 43, 48 (Mo.App. 1999). However, such workplace conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 299 (Mo.App. 1991); *Sheehan v. Springfield Seed and Floral*, 733 S.W.2d 795, 797-798 (Mo.App. 1987).

I find that Claimant's work was a substantial factor in the cause of her resulting medical condition. A causative factor may be substantial even if it is not the primary or most significant factor. *Cahall v. Cahall*, 963 S.W.2d 368, 372 (Mo.App. 1998) (overruled on other grounds). Further, there is no minimum percentage set out in the workers' compensation law defining substantial factor. *Id.* Whether employment is a substantial factor in causing the injury is a question of fact. *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo.App. 1999) (overruled on other grounds).

Claimant testified that she began feeling pain, numbness, and tingling in her hands and wrists in December of 2003. She had not experienced these problems before December 2003 and had no prior injuries to her hands or wrists. Dr. Nester evaluated Claimant in October 2004. Dr. Nester testified that Claimant's employment was a significant and substantial factor in causing Claimant's carpal tunnel injury. Dr. Nester also recommended surgery for Claimant's carpal tunnel syndrome.

Contrary to Dr. Nester's findings, however, Claimant was also evaluated by Dr. Feinstein and Dr. Peeples. Dr. Feinstein submitted a letter to the Insurer indicating that her employment at Bank of America contributed to the development of her carpal tunnel syndrome but may be more of an aggravating factor rather than a direct cause. Dr. Peeples indicated in his report that Claimant's weight and diabetes caused the carpal tunnel syndrome.

I find the evidence of Dr. Nester to be more persuasive than that of Drs. Feinstein and Peeples. Claimant spent the majority of her time with Employer performing data entry and continually squeezing clips from closing packages. Dr. Nester testified that such activity which repeatedly flexes the fingers and wrists is a common cause of carpal tunnel syndrome. Dr. Nester testified that Claimant's activities at work, including squeezing and keyboard work, were the

cause of Claimant's carpal tunnel syndrome. In addition, Dr. Feinstein noted that he suspects that Claimant's work duties also contributed to her injuries, although he felt it was more of an aggravating factor rather than a direct cause. In light of the above, Claimant's employment is a substantial factor in the development of bilateral carpal tunnel syndrome and she is awarded future medical benefits and treatment.

Employer shall provide Claimant with such medical, surgical, and/or other treatment as may be reasonably be necessary to cure and relieve her from the effects of her injury. In addition, Employer shall provide temporary total disability benefits to Claimant in the event she is unable to work following carpal tunnel surgery.

The issue of attorney's fees is deferred.

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

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

Margaret D. Landolt  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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