

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

Injury No.: 02-058377

Employee: Kay Koeller  
Employer: Western Union Financial Services  
Insurer: Pacific Employers Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

Date of Accident: May 29, 2002

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. We have heard the oral arguments of the parties. We have reviewed the evidence and considered the whole record and we find 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, except as modified herein. Pursuant to section 286.090 RSMo, we issue this final award and decision modifying the June 30, 2005, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

The administrative law judge concluded that employee suffered injury to her left upper extremity due to repetitive trauma. The administrative law judge awarded permanent partial disability of 25% at the level of the left elbow. While Dr. Volarich concluded that employee suffered a 35% permanent partial disability of the elbow, Dr. Ollinger concluded that employee only suffered a 2% permanent partial disability of the elbow.

"It is within the province of the Commission to determine what weight it will accord expert testimony on medical causation." *Landers v. Chrysler Corporation*, 963 S.W.2d 275, 282 (Mo. App. 1998). "The Commission is not bound by the experts' exact percentages of disability and is free to find a disability rating higher or lower than that expressed in medical testimony." *Hawthorne v. Lester E. Cox Medical Centers*, 165 S.W.3d 587, 594 (Mo. App. 2005) citing *Sullivan v. Masters Jackson Paving Company*, 35 S.W.3d 879, 885 (Mo. App. 2001). In accordance with our authority under the aforementioned cases, we have determined that employee has suffered permanent partial disability of 15% at the level of the left elbow. Indeed, employee's use of her left elbow is limited and she has ongoing complaints with extended use thereof. However, we believe that employee's return to full duty at her same job supports the reduction of the percentage of permanent partial disability suffered by employee at the level of her left elbow.

The award and decision of Administrative Law Judge Matthew D. Vacca, issued June 30, 2005, is attached and incorporated by this reference except to the extent modified herein.

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.

Given at Jefferson City, State of Missouri, this 27<sup>th</sup> day of April 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

DISSENTING OPINION FILED

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

DISSENTING OPINION

I must respectfully dissent from the majority's decision to modify the award and decision of the administrative law judge. I have reviewed and considered all of the competent and substantial evidence on the whole record. The award of the administrative law judge is well written, well reasoned, and well supported. As such, I believe the award and decision of the administrative law judge should be affirmed.

Because the majority of the Commission has decided to modify the award and decision of the administrative law judge, I must respectfully dissent.

\_\_\_\_\_  
John J. Hickey, Member

AWARD

Employee: Kay Koeller

Injury No.: 02-058377

Dependents: N/A

Before the  
Division of Workers'  
Compensation

Employer: Western Union Financial Services

Department of Labor and Industrial

Additional Party:

Second Injury Fund (Open) Relations of Missouri  
Jefferson City, Missouri

Insurer: Pacific Employers Insurance Company

Hearing Date: June 14, 2005

Checked by: MDV: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: May 29, 2002
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? 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 occurred or occupational disease contracted:  
Upper extremity injury due to repetitive trauma.
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: Left elbow
14. Nature and extent of any permanent disability: 25% of left elbow
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Kay Koeller

Injury No.: 02-058377

17. Value necessary medical aid not furnished by employer/insurer? Unknown amount provided by group carrier
18. Employee's average weekly wages: \$632.00
19. Weekly compensation rate: \$420.80/\$329.42
20. Method wages computation: Agreed

#### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses indemnity:	*	
3 4/7 weeks of temporary total disability (or temporary partial disability)		\$1,502.86
52.5 weeks of permanent partial disability from Employer	\$17,294.55	
5 weeks of disfigurement from Employer	\$1,647.10	

22. Second Injury Fund liability: Open

TOTAL: \$20,444.51\*

23. Future requirements awarded: None

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 be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Jagadeesh Mandava

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kay Koeller

Injury No.: 02-058377

Dependents: N/A

Before the  
Division of Workers'

Employer: Western Union Financial Services

Compensation

Department of Labor and Industrial

Additional Party: Second Injury Fund (Open)

Relations of Missouri

Jefferson City, Missouri

Insurer: Pacific Employers Insurance Company

Checked by: MDV:tr

### PREFACE

These two claims were tried together pursuant to 8 C.S.R. 20-3.050(1), (2) and (3). One transcript will be generated. The evidence has been admitted under both claim numbers and two separate awards will issue. The Second Injury Fund is an additional party to each claim, however, the Second Injury Fund portion of the claim was left open pending resolution of the compensability of the primary injury.

### ISSUES PRESENTED

In Injury Number 02-086791, the issues presented for resolution are: occupational disease; medical benefits; temporary total disability from April 12, 2002 to May 20, 2002; and, the nature and extent of any permanent partial disability to include disfigurement.

In Injury Number 02-058377, the issues presented for resolution are: occupational disease; medical benefits; temporary total disability from April 21, 2003 to May 15, 2003; and, the nature and extent of any permanent partial disability to include disfigurement.

The earlier claim is referred to in the transcript as claim number 1 with an injury date of 4-3-02 carrying an Injury Number of 02-086791. The next claim will be referred to as claim number 2 with an injury date of 5-29-02 and Injury Number 02-058377.

In the second claim there is no specific dollar amount alleged for medical benefits but Claimant requests indemnification against the group health insurer should they seek reimbursement or subrogation. The first claim is for a right ulnar tunnel syndrome and the second claim is for a left ulnar tunnel syndrome.

#### FINDINGS OF FACT

1. The Claimant was born October 10, 1960. She is 6' tall, weighs 175 pounds. She has a twelfth grade education and works at Western Union. She has worked there for 23 years, 40-44 hours a week on the day shift. Sometimes she works Saturday's as overtime, but she always works Monday through Friday.
2. Claimant originally began working as a customer service representative at Western Union and then more recently as a customer service representative at the Help Desk. She began this Help Desk work in February of 2005. Her good attendance and work ethic got her the job on the help desk.
3. The Claimant performs off-line work or paperwork setting up money transfers, refunds and a few telegrams. She is continually typing.
4. Now Western Union mostly handles money transfers whereas when she began working there 23 years ago she spent most of the time typing telegrams, press trains, oversees money transfers or night letters. The Claimant spends 100% of her time performing customer service which involves keyboarding. She handles roughly 100 phone calls a day and each phone call takes from 30 seconds to 2 minutes. Now she performs mostly money transfers.
5. The business is slow from January to April and very busy from August to January.
6. A manager, using what's known as a "soft phone", directs calls and determines how many calls that a particular customer service representative will handle. The number of calls is monitored by time to complete and with regard to performance with the customers.
7. The Claimant used to be able to type 90 words per minute but is now only able to type 40 words per minute. She now has an ergonomically correct keyboard whereas for most of her career she used an older phase 4 keyboard and monitor that sat 3 inches off the desk and was not adjustable. The chairs had no armrests and were not able to be adjusted. In approximately 1991, a consulting company, Crawford & Company addressed some employee ergonomic concerns and recommendations were made but not implemented.
8. In 1990, Claimant noticed that she was becoming weak and had pain in her fingertips, which would go numb. She was referred to Dr. Coin for treatment and underwent bilateral carpal tunnel surgery. She made a claim for Workers' Compensation benefits and settled her claim for those injuries.
9. In the mid-1990s she started developing some elbow pain and was sent to Dr. Crandall who told her the pain was not work related and suggested therapy. He thought it was related to sleeping. The Claimant's joint in the elbows hurt. She described it as the funny bone, that it was weak and there was pain all through the elbow joint.
10. In 2002, she began getting more severe pain in what she terms her right funny bone/elbow and was unable to use her computer mouse or type. She had to hang her arms at her side after each telephone call at work.
11. The Claimant sought treatment with Dr. Tucker and he performed some tests and determined that she needed immediate surgery lest further damage be incurred.

12. The Claimant did not tell anyone at work that the condition was work related prior to the surgery with Dr. Tucker.
13. It was only after Claimant underwent right ulnar nerve surgery with Dr. Tucker that Dr. Tucker first told Claimant that the right elbow condition was work related. Claimant returned to work in April of 2002 and told her supervisor then that the condition was work related according to Dr. Tucker.
14. Two weeks after she returned to work, the left elbow became problematic. She told Employer and was sent to Dr. Ollinger. Dr. Ollinger didn't think that she had a work-related problem.
15. The Claimant was sent again to Dr. Crandall regarding her left elbow and requested treatment from Employer which was denied.
16. United Healthcare, the group carrier, paid for the medical treatment, anesthesia and Claimant used sick pay to replace her wages.
17. Claimant returned to Dr. Tucker who performed surgery on April 21, 2003.
18. Claimant experienced immediate relief although the joints are weak and the more she uses them the more pain she experiences.
19. It's difficult for her to lift her arms above her head. She drops things and when she sleeps on either extremity she has pain.
20. The Claimant has had no other upper extremity complaints other than the carpal tunnel syndrome mentioned previously and she fractured her right wrist and ring finger when she was 15 years old and those injuries were treated by way of casting.
21. In the past Claimant has worked at Lindenwood College as an administrative assistant for four professors and an admission's officer. There she would coordinate research papers and handle files.
22. The Claimant likes to garden, she has a dog, she collects miniature horses and likes to ride horses.
23. The Claimant doesn't carry glass objects any more because she finds that she's constantly dropping glassware.
24. The Claimant finds it difficult to blow dry or curl her hair or tote luggage.
25. The Claimant is on Premarin hormone therapy.
26. In the past she suffered from TMJ syndrome and has had her gallbladder removed.
27. Claimant has had a hysterectomy.
28. Claimant has experienced sinus headaches in the past for which she takes over-the-counter remedies.
29. Dr. Crandall evaluated Claimant in 1995 and 2002 and found that her elbow complaints were not work related. Dr. Ollinger said it might be related to sleeping with her elbows flexed. Dr. Crandall does not believe ulnar tunnel syndrome is caused by, aggravated by or changed by work.
30. Dr. Maylack believes the elbow problems are related to work.
31. Dr. Tate examined Claimant and found ulnar neuropathies at the elbow and advised Claimant to wear her elbow pads at work. This recommendation would seem to contradict Dr. Crandall's opinion

that holding elbows static while typing could cause ulnar neuropathy.

32. Dr. Volarich believes the Claimant's work caused her elbow problems. He directly contradicts Dr. Crandall by opining that "it is well documented that patients who must hold their elbows in prolonged flexed positions (as a person would do when typing) and also patients that have direct pressure on their elbow (for example, arm rests on chair) are at risk for developing cubital tunnel syndrome".
33. Claimant has had to get rid of her horse because she is unable to throw bales of hay to feed the horse because of her hands and elbows.
34. Claimant was an extremely credible witness testifying in a direct and straightforward manner of fact maintaining eye contact with attorneys asking questions and displaying respect for all persons in the hearing room and for the process itself.

#### RULINGS OF LAW

1. On or about 4-3-02, Claimant sustained an occupational disease in her right elbow, which arose out and in the course of her employment.
2. It was not until Dr. Tucker performed the first surgery that Claimant was aware that it was a work related injury.
3. Claimant had been told by Dr. Crandall that she did not have a work related disease, therefore, the first time that she could give notice to her Employer was after the surgery with Dr. Tucker.
4. Claimant is entitled to temporary total disability benefits from April 12, 2002, to May 20, 2002.
5. Claimant is entitled to medical benefits for the right surgery with Dr. Tucker in the amount of \$2,754.96.
6. Claimant is entitled to 30% permanent partial disability measured at the level of the right elbow and 5 weeks disfigurement.
7. Claimant sustained an occupational disease in her left elbow, which arose on 5-29-02.
8. As a result of that occupational disease she is entitled to temporary total disability benefits from April 21, 2003, to May 15, 2003.
9. Claimant was required to receive reasonable and necessary medical treatment to cure and relieve her of that occupational disease and is entitled to indemnity from the Workers' Comp insurer for any medical benefits claimed to be reimbursable by United Healthcare for Dr. Tucker's surgery and related costs.
10. Claimant sustained a 25% permanent partial disability measured at the level of the left elbow and 5 weeks of disfigurement.

#### DISCUSSION

Employer defends the claim for medical benefits regarding the left elbow on the grounds that Claimant did not advise or request treatment before undergoing surgery with Dr. Tucker. The problem with the argument is that Claimant had no advance knowledge the condition was related to work. Dr. Crandall was unable to determine the elbow problems were work related. He told Claimant they were not. If a hand specialist cannot make that link, it puts an impossible burden on Claimant to require her to make a medical determination regarding work relatedness when she reasonably relies on Employer's physician to the contrary.

Furthermore, once Employer was advised that the Claimant needed medical treatment it still refused

treatment with regards to the left elbow surgery. I am certain Employer would not have provided treatment for the initial surgery had it been demanded. It was demanded before the second surgery and refused.

Claimant performs almost 100% keyboarding or typing in her job and has done so for 23 years. I don't think Employer's expert's determination that her symptoms are more likely related to sleeping with her elbows flexed rather than extensive keyboarding is realistic. I find it persuasive that Claimant would have to dangle her arms at work at her sides following phone calls and associated keyboarding.

The experts disagree on whether this disease can be caused as Claimant alleges. Dr. Volarich, Dr. Maylack, and the treating surgeon, Dr. Tucker, believe it can. Drs. Crandall and Ollinger say it cannot and Dr. Crandall says there are no studies indicating that it can. I believe there are studies going both ways and that there is no definitive consensus in the medical community as to causation or a work link. I must look at the facts of each case individually. I am advised by the opinions of all experts. In taking into account their opinions, the result of the surgery, the conditions observed by the surgeon actually doing the surgery, Claimant's testimony and the repetitive nature of the job, I think the greater weight of the evidence tilts in Claimant's favor.

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

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

Matthew D. Vacca  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 02-086791

Employee: Kay Koeller

Employer: Western Union Financial Services

Insurer: Pacific Employers Insurance Company

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

Date of Accident: April 3, 2002

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. We have heard the oral arguments of the parties. We have reviewed the evidence and considered the whole record and we find 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, except as modified herein. Pursuant to section 286.090 RSMo, we issue this final award and decision modifying the June 30, 2005, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

The administrative law judge concluded that employee suffered injury to her right upper extremity due to repetitive trauma. The administrative law judge awarded permanent partial disability of 30% at the level of the right elbow. While Dr. Volarich concluded that employee suffered a 35% permanent partial disability of the elbow, Dr. Ollinger concluded that employee only suffered a 2% permanent partial disability of the elbow.

"It is within the province of the Commission to determine what weight it will accord expert testimony on medical causation." *Landers v. Chrysler Corporation*, 963 S.W.2d 275, 282 (Mo. App. 1998). "The Commission is not bound by the experts' exact percentages of disability and is free to find a disability rating higher or lower than that expressed in medical testimony." *Hawthorne v. Lester E. Cox Medical Centers*, 165 S.W.3d 587, 594 (Mo. App. 2005) citing *Sullivan v. Masters Jackson Paving Company*, 35 S.W.3d 879, 885 (Mo. App. 2001). In accordance with our authority under the aforementioned cases, we have determined that employee has suffered permanent partial disability of 20% at the level of the right elbow. Indeed, employee's use of her right elbow is limited and she has ongoing complaints with extended use thereof. However, we believe that employee's return to full duty at her same job supports the reduction of the percentage of permanent partial disability suffered by employee at the level of her right elbow.

The award and decision of Administrative Law Judge Matthew D. Vacca, issued June 30, 2005, is attached and incorporated by this reference except to the extent modified herein.

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.

Given at Jefferson City, State of Missouri, this 27<sup>th</sup> day of April 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

DISSENTING OPINION FILED

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

DISSENTING OPINION

I must respectfully dissent from the majority's decision to modify the award and decision of the administrative law judge. I have reviewed and considered all of the competent and substantial evidence on the whole record. The

award of the administrative law judge is well written, well reasoned, and well supported. As such, I believe the award and decision of the administrative law judge should be affirmed.

Because the majority of the Commission has decided to modify the award and decision of the administrative law judge, I must respectfully dissent.

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John J. Hickey, Member

## AWARD

Employee: Kay Koeller

Injury No.: 02-086791

Dependents: N/A

Employer: Western Union Financial Services

Before the  
Division of Workers'  
Compensation  
Department of Labor and Industrial  
Second Injury Fund (Open) Relations of Missouri  
Jefferson City, Missouri

Additional Party:

Insurer: Pacific Employers Insurance Company

Hearing Date: June 14, 2005

Checked by: MDV:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
3. 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
6. Date of accident or onset of occupational disease: April 3, 2002
7. 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? Yes
10. 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:  
Upper extremity injury due to repetitive trauma.
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: Right elbow
15. Nature and extent of any permanent disability: 30% of right elbow

15. Compensation paid to-date for temporary disability: -0-

16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Kay Koeller

Injury No.: 02-086791

17. Value necessary medical aid not furnished by employer/insurer? \$2,754.96

19. Employee's average weekly wages: \$632.80

19. Weekly compensation rate: \$420.80/\$329.42

20. Method wages computation: Agreed

#### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$2,754.96

5 4/7 weeks of temporary total disability (or temporary partial disability)

63 weeks of permanent partial disability from Employer

5 weeks of disfigurement from Employer

22. Second Injury Fund liability: Open

#### TOTAL:

23. Future requirements awarded: None

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 be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Jagadeesh Mandava

# FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kay Koeller Injury No.: 02-086791  
Dependents: N/A  
Employer: Western Union Financial Services  
Additional Party: Second Injury Fund (Open)  
Insurer: Pacific Employers Insurance Company

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

Checked by: MDV:trV

## PREFACE

These two claims were tried together pursuant to 8 C.S.R. 20-3.050(1), (2) and (3). One transcript will be generated. The evidence has been admitted under both claim numbers and two separate awards will issue. The Second Injury Fund is an additional party to each claim, however, the Second Injury Fund portion of the claim was left open pending resolution of the compensability of the primary injury.

## ISSUES PRESENTED

In Injury Number 02-086791, the issues presented for resolution are: occupational disease; medical benefits; temporary total disability from April 12, 2002 to May 20, 2002; and, the nature and extent of any permanent partial disability to include disfigurement.

In Injury Number 02-058377, the issues presented for resolution are: occupational disease; medical benefits; temporary total disability from April 21, 2003 to May 15, 2003; and, the nature and extent of any permanent partial disability to include disfigurement.

The earlier claim is referred to in the transcript as claim number 1 with an injury date of 4-3-02 carrying an Injury Number of 02-086791. The next claim will be referred to as claim number 2 with an injury date of 5-29-02 and Injury Number 02-058377.

In the second claim there is no specific dollar amount alleged for medical benefits but Claimant requests indemnification against the group health insurer should they seek reimbursement or subrogation. The first claim is for a right ulnar tunnel syndrome and the second claim is for a left ulnar tunnel syndrome.

## FINDINGS OF FACT

35. The Claimant was born October 10, 1960. She is 6' tall, weighs 175 pounds. She has a twelfth grade education and works at Western Union. She has worked there for 23 years, 40-44 hours a week on the day shift. Sometimes she works Saturday's as overtime, but she always works Monday through Friday.
36. Claimant originally began working as a customer service representative at Western Union and then more recently as a customer service representative at the Help Desk. She began this Help Desk work in February of 2005. Her good attendance and work ethic got her the job on the help desk.
37. The Claimant performs off-line work or paperwork setting up money transfers, refunds and a few telegrams. She is continually typing.
38. Now Western Union mostly handles money transfers whereas when she began working there 23 years ago she spent most of the time typing telegrams, press trains, oversees money transfers or

night letters. The Claimant spends 100% of her time performing customer service which involves keyboarding. She handles roughly 100 phone calls a day and each phone call takes from 30 seconds to 2 minutes. Now she performs mostly money transfers.

39. The business is slow from January to April and very busy from August to January.
40. A manager, using what's known as a "soft phone", directs calls and determines how many calls that a particular customer service representative will handle. The number of calls is monitored by time to complete and with regard to performance with the customers.
41. The Claimant used to be able to type 90 words per minute but is now only able to type 40 words per minute. She now has an ergonomically correct keyboard whereas for most of her career she used an older phase 4 keyboard and monitor that sat 3 inches off the desk and was not adjustable. The chairs had no armrests and were not able to be adjusted. In approximately 1991, a consulting company, Crawford & Company addressed some employee ergonomic concerns and recommendations were made but not implemented.
42. In 1990, Claimant noticed that she was becoming weak and had pain in her fingertips, which would go numb. She was referred to Dr. Coin for treatment and underwent bilateral carpal tunnel surgery. She made a claim for Workers' Compensation benefits and settled her claim for those injuries.
43. In the mid-1990s she started developing some elbow pain and was sent to Dr. Crandall who told her the pain was not work related and suggested therapy. He thought it was related to sleeping. The Claimant's joint in the elbows hurt. She described it as the funny bone, that it was weak and there was pain all through the elbow joint.
44. In 2002, she began getting more severe pain in what she terms her right funny bone/elbow and was unable to use her computer mouse or type. She had to hang her arms at her side after each telephone call at work.
45. The Claimant sought treatment with Dr. Tucker and he performed some tests and determined that she needed immediate surgery lest further damage be incurred.
46. The Claimant did not tell anyone at work that the condition was work related prior to the surgery with Dr. Tucker.
47. It was only after Claimant underwent right ulnar nerve surgery with Dr. Tucker that Dr. Tucker first told Claimant that the right elbow condition was work related. Claimant returned to work in April of 2002 and told her supervisor then that the condition was work related according to Dr. Tucker.
48. Two weeks after she returned to work, the left elbow became problematic. She told Employer and was sent to Dr. Ollinger. Dr. Ollinger didn't think that she had a work-related problem.
49. The Claimant was sent again to Dr. Crandall regarding her left elbow and requested treatment from Employer which was denied.
50. United Healthcare, the group carrier, paid for the medical treatment, anesthesia and Claimant used sick pay to replace her wages.
51. Claimant returned to Dr. Tucker who performed surgery on April 21, 2003.
52. Claimant experienced immediate relief although the joints are weak and the more she uses them the more pain she experiences.
53. It's difficult for her to lift her arms above her head. She drops things and when she sleeps on either extremity she has pain.

54. The Claimant has had no other upper extremity complaints other than the carpal tunnel syndrome mentioned previously and she fractured her right wrist and ring finger when she was 15 years old and those injuries were treated by way of casting.
55. In the past Claimant has worked at Lindenwood College as an administrative assistant for four professors and an admission's officer. There she would coordinate research papers and handle files.
56. The Claimant likes to garden, she has a dog, she collects miniature horses and likes to ride horses.
57. The Claimant doesn't carry glass objects any more because she finds that she's constantly dropping glassware.
58. The Claimant finds it difficult to blow dry or curl her hair or tote luggage.
59. The Claimant is on Premarin hormone therapy.
60. In the past she suffered from TMJ syndrome and has had her gallbladder removed.
61. Claimant has had a hysterectomy.
62. Claimant has experienced sinus headaches in the past for which she takes over-the-counter remedies.
63. Dr. Crandall evaluated Claimant in 1995 and 2002 and found that her elbow complaints were not work related. Dr. Ollinger said it might be related to sleeping with her elbows flexed. Dr. Crandall does not believe ulnar tunnel syndrome is caused by, aggravated by or changed by work.
64. Dr. Maylack believes the elbow problems are related to work.
65. Dr. Tate examined Claimant and found ulnar neuropathies at the elbow and advised Claimant to wear her elbow pads at work. This recommendation would seem to contradict Dr. Crandall's opinion that holding elbows static while typing could cause ulnar neuropathy.
66. Dr. Volarich believes the Claimant's work caused her elbow problems. He directly contradicts Dr. Crandall by opining that "it is well documented that patients who must hold their elbows in prolonged flexed opinions (as a person would do when typing) and also patients that have direct pressure on their elbow (for example, arm rests on chair) are at risk for developing cubital tunnel syndrome".
67. Claimant has had to get rid of her horse because she is unable to throw bales of hay to feed the horse because of her hands and elbows.
68. Claimant was an extremely credible witness testifying in a direct and straightforward matter of fact manner maintaining eye contact with attorneys asking questions and displaying respect for all persons in the hearing room and for the process itself.

#### RULINGS OF LAW

11. On or about 4-3-02, Claimant sustained an occupational disease in her right elbow, which arose out and in the course of her employment.
12. It was not until Dr. Tucker performed the first surgery that Claimant was aware that it was a work related injury.
13. Claimant had been told by Dr. Crandall that she did not have a work related disease, therefore, the first time that she could give notice to her Employer was after the surgery with Dr. Tucker.

14. Claimant is entitled to temporary total disability benefits from April 12, 2002, to May 20, 2002.
15. Claimant is entitled to medical benefits for the right surgery with Dr. Tucker in the amount of \$2,754.96.
16. Claimant is entitled to 30% permanent partial disability measured at the level of the right elbow and 5 weeks disfigurement.
17. Claimant sustained an occupational disease in her left elbow, which arose on 5-29-02.
18. As a result of that occupational disease she is entitled to temporary total disability benefits from April 21, 2003, to May 15, 2003.
19. Claimant was required to receive reasonable and necessary medical treatment to cure and relieve her of that occupational disease and is entitled to indemnity from the Workers' Comp insurer for any medical benefits claimed to be reimbursable by United Healthcare for Dr. Tucker's surgery and related costs.
20. Claimant sustained a 25% permanent partial disability measured at the level of the left elbow and 5 weeks of disfigurement.

#### DISCUSSION

Employer defends the claim for medical benefits regarding the left elbow on the grounds that Claimant did not advise or request treatment before undergoing surgery with Dr. Tucker. The problem with the argument is that Claimant had no advance knowledge the condition was related to work. Dr. Crandall was unable to determine the elbow problems were work related. He told Claimant they were not. If a hand specialist cannot make that link, it puts an impossible burden on Claimant to require her to make a medical determination regarding work relatedness when she reasonably relies on Employer's physician to the contrary.

Furthermore, once Employer was advised that the Claimant needed medical treatment it still refused treatment with regards to the left elbow surgery. I am certain Employer would not have provided treatment for the initial surgery had it been demanded. It was demanded before the second surgery and refused.

Claimant performs almost 100% keyboarding or typing in her job and has done so for 23 years. I don't think Employer's expert's determination that her symptoms are more likely related to sleeping with her elbows flexed rather than extensive keyboarding is realistic. I find it persuasive that Claimant would have to dangle her arms at work at her sides following phone calls and associated keyboarding.

The experts disagree on whether this disease can be caused as Claimant alleges. Dr. Volarich, Dr. Maylack, and the treating surgeon, Dr. Tucker, believe it can. Drs. Crandall and Ollinger say it cannot and Dr. Crandall says there are no studies indicating that it can. I believe there are studies going both ways and that there is no definitive consensus in the medical community as to causation or a work link. I must look at the facts of each case individually. I am advised by the opinions of all experts. In taking into account their opinions, the result of the surgery, the conditions observed by the surgeon actually doing the surgery, Claimant's testimony and the repetitive nature of the job, I think the greater weight of the evidence tilts in Claimant's favor.

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

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

Matthew D. Vacca

*Administrative Law Judge  
Division of Workers' Compensation*

A true copy: Attest:

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