

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

Injury No.: 03-064038

Employee: Sylvia Llanos  
Employer: American Airlines  
Insurer: American Home Assurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 17, 2013. The award and decision of Administrative Law Judge Kathleen M. Hart, issued May 17, 2013, is attached and incorporated by this reference.

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 25<sup>th</sup> day of September 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Sylvia LLanos

Injury No.: 03-064038

Dependents: n/a

Employer: American Airlines

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

Additional Party: Second Injury Fund (SIF)

Insurer: American Home Assurance

Hearing Date: February 28, 2013

Checked by: KMH

### 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: on or about June 23, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis
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: Claimant injured her upper extremities as a result of repetitive work.
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 and left upper extremities
14. Nature and extent of any permanent disability: 17.5% each wrist
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Sylvia Llanos

Injury No.: 03-064038

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$562.00
- 19. Weekly compensation rate: \$374.67/\$340.12
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses:	\$15,055.85
11 6/7 weeks of temporary total disability	\$ 4,439.84
61.25 weeks of permanent partial disability from Employer	\$20,832.35
9.18 weeks of multiplicity	\$ 3,125.70
4 weeks of disfigurement from Employer	\$ 1,360.48

22. Second Injury Fund liability: Yes

26.17 weeks of permanent partial disability from Second Injury Fund	\$ 8,900.94
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TOTAL: \$53,715.16

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:

Clare Behrle

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

Employee: Sylvia Llanos

Injury No.: 03-064038

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: American Airlines

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

Additional Party: Second Injury Fund

Insurer: American Home Assurance

Checked by: KMH

A hearing was held on the above captioned matter February 28, 2013. Sylvia Llanos (Claimant) was represented by attorney Clare Behrle. American Airlines (Employer) was represented by attorney Ben Shelledy. The SIF was represented by Assistant Attorney General Dustin Mayer.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

Claimant alleges she was injured by occupational disease arising out of and in the course and scope of her employment on or about June 23, 2003. Employer denies liability and has paid no benefits.

### **STIPULATIONS**

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law on the date of the alleged injury.
2. Employer's liability was fully insured by American Home Assurance.
3. Employer had notice of the alleged injury and a claim for compensation was timely filed.
4. Claimant's average weekly wage was \$562.00 and her rate for TTD and PTD is \$374.67 and for PPD is \$340.12.

### **ISSUES**

The parties stipulated the issues to be resolved are as follows:

1. Arising out of and in the course of employment

2. Occupational disease
3. Medical causation
4. Liability for past medical expenses of \$15,055.85
5. Future medical care
6. Temporary total disability from December 22, 2003 through March 15, 2004.
7. Permanent disability, disfigurement and multiplicity.
8. Second Injury Fund liability

### **FINDINGS OF FACT**

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 55 year-old female who worked for Employer from 1997 through August 2003. Her first job with Employer was as a commissary employee. She filled the beverage carts, stacked drinks, cleaned the carts, brought them to the trucks, and put them in the plane.
2. Claimant injured her low back in January 1998 when she fell into a dumpster at work. She was treated at BarnesCare, and settled this case for 7.5% PPD to the low back. Claimant testified she continued to work but had constant pain and took Tylenol and Advil leading up to her 2003 injury. She wore a belt when she began working as a ramp service employee loading luggage into the plane, and she had to ask for help with lifting heavy luggage. She worked slower and had to use sick leave on occasion because of low back pain. She testified she got in trouble at work because of her need to use sick leave.
3. Claimant developed hand complaints in 1998, and attributed these complaints to her repetitive work. Employer denied liability. A Judge heard the case and issued a temporary award finding Claimant's hand condition was work related. Employer provided treatment with Dr. Ollinger, and Claimant had endoscopic bilateral carpal tunnel releases in 1999. Claimant returned to work and settled this case for 15% PPD of each wrist.
4. Claimant testified she had slight improvement in her symptoms, but she continued to have pain, numbness and tingling in both hands. She took medication and missed time from work due to her hand complaints. She had difficulty at work and at home but was able to keep working and to do things at home.
5. In 2001 Claimant changed jobs with Employer and began working as a ramp employee. She cleaned the interior of planes and flagged planes to the runway. She spent most of her time loading luggage onto the plane. Much of the luggage weighed from fifty to eighty pounds. She worked on a team where two people waited outside the plane for the luggage cart and lifted the luggage onto the belt and into the plane.

- One person on the team worked inside the plane to stack and arrange the luggage. When she worked in the belly of the plane, she was on her knees lifting and pushing the luggage into place. Claimant had to get help from a co-worker for the heavier pieces of luggage. Most planes had 80-120 pieces of luggage, and took about forty-five minutes to load. The team also loaded wheelchairs, packages, and bags of mail. Claimant typically worked four planes per shift. This was a physically demanding job, it was hand intensive, and it required heavy lifting. This was harder than her job in the commissary.
6. In July 2001, Claimant injured her neck and shoulder when she was moving a heavy piece of baggage. She developed arm pain and swelling, and Employer authorized treatment. She treated with multiple doctors, and had physical therapy and a cervical MRI. She was diagnosed with a C5-6 herniation and a small protrusion at C4-5. She settled this case with Employer for 15.18% of the cervical spine. Claimant testified she continued to have pain leading up to her primary injury. She took over the counter medication and some prescription pain medication for her neck and shoulder prior to the primary injury. Her pain caused her difficulty at work, and she had to ask for assistance with lifting. She lost time from work because of her pain. She got in trouble at work for using sick time. She worked slower due to her pain, and continues to have neck pain radiating into her left arm as a result of this injury.
  7. Claimant testified the hand complaints she had since her 1998 injury got worse in 2001. She had an increase in pain, numbness and tingling in her hands. She associated her increase in hand complaints to her job as a ramp service employee.
  8. In June 2003, as Claimant was lifting a heavy piece of luggage, it fell and hit her chest. Claimant reported the injury, and Employer sent her to BarnesCare. Claimant testified she also told the doctor and her supervisor that she had pain and swelling in her hands from lifting luggage. Claimant testified her chest symptoms improved, but her hands continued to bother her. BarnesCare recommended a hand surgery consultation, and Employer sent Claimant to Dr. Ollinger.
  9. Dr. Ollinger examined her and did not recommend treatment. He noted his physical examination showed no active physical pathology. He opined the history and exam did not “yield a diagnosis and do not produce validation for energy to form objective testing or any specific treatment.” He recommended Claimant see her personal physician if her symptoms continued.
  10. Claimant saw her primary care physician, Dr. Alvarez, in early July 2003. He referred her to Dr. Jafri for nerve conduction studies. These showed right median neuropathy, and Dr. Jafri referred Claimant to Dr. Glogovac for treatment. Dr. Glogovac opined Claimant either had recurrent carpal tunnel syndrome or incomplete releases. He performed an open right carpal tunnel decompression in December 2003 and left decompression in January 2004. Dr. Glogovac noted he found a flattened nerve with significant pressure at the time of his surgeries. Claimant testified her symptoms returned within a few months of these surgeries.

11. Given Claimant's ongoing symptoms, Dr. Glogovac opined Claimant might have compression at the pronator teres level bilaterally. Claimant saw Dr. Black to determine whether she had pronator teres syndrome and needed additional treatment. In January 2005 Dr. Black found Claimant had positive Tinel's over both carpal tunnels and ulnar nerves. He sent Claimant for additional studies, which showed right carpal tunnel syndrome. Dr. Black's associate, Dr. Gelberman, reviewed the studies and opined a pronator release would not relieve her symptoms, and Claimant should continue nonoperative treatment.
12. Employer laid Claimant off work in the summer of 2003. She has not looked for other work because she still has pain, numbness and tingling in her hands that goes up into her arms. Claimant takes over the counter Tylenol daily and wears wrist splints to relieve her pain. Any activity increases her pain and causes her hands to swell. Since June 2003, her husband does most of the housework. She has increased difficulty driving and doing activities that require fine manipulation of her fingers. She had no hand complaints before 1998. She wears a brace, takes medications, and restricts her activities in an effort to improve her hand symptoms. Claimant testified her hand symptoms are worse now than after her surgeries in 1999.
13. Employer's expert, Dr. Ollinger, testified Claimant's symptoms resolved following her surgeries in 1999. By 2003, he noted no physical pathology during her physical examination. He opined his examination and Claimant's history were not diagnostic of recurrent carpal tunnel syndrome. He disagreed with Dr. Glogovac's diagnosis of recurrent carpal tunnel syndrome because there were no preoperative nerve conduction studies done in order to diagnose recurrent carpal tunnel syndrome. However, these studies were done before Dr. Glogovac operated. Dr. Ollinger testified it is possible to develop recurrent carpal tunnel syndrome, but it is very, very unusual.
14. Claimant provided expert medical opinions from Dr. Schlafly and Dr. Cohen. Dr. Schlafly examined Claimant in September 2008 and opined Claimant's ramp service job involved heavy and repetitive use of her hands. He noted Claimant had no muscle atrophy in her hands and had good range of motion in her hands and elbows. He opined Claimant's repetitive work for Employer leading up to 2003 is the substantial and prevailing factor in causing recurrent bilateral carpal tunnel syndrome and the need for repeat releases. He testified recurrence of carpal tunnel syndrome is possible, especially after an initial endoscopic release. He opined the course of treatment directed by Dr. Glogovac was reasonable and necessary and causally related to her work injury. He did not think Claimant had pronator syndrome and did not recommend additional treatment. He recommended work restrictions of no repetitive lifting greater than ten pounds with each hand alone or twenty pounds using both hands.
15. Dr. Cohen examined Claimant on numerous occasions. He opined Claimant's work was the substantial factor in causing recurrent carpal tunnel syndrome. He opined Claimant's course of treatment and surgery were medically necessary and reasonable. He did not recommend additional treatment and recommended Claimant be restricted

from any work involving lifting over five pounds. She should not perform repetitive gripping or grasping, and should not perform any work involving vibration, forceful use of her hands, or working in sustained or awkward positions. He opined Claimant's prior injuries were a hindrance or obstacle to employment and the combination of her primary and prior injuries combined to create a greater overall disability. He found Claimant is permanently and totally disabled as a result of her injuries combined with multiple subsequent medical conditions.

16. Claimant is credible.

### **RULINGS OF LAW**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

- 1. Claimant sustained an injury by occupational disease that arose out of and in the course of her employment on or about June 23, 2003. Her injury is medically and causally related to her employment.**

Sections 287.067 and 287.020 (RSMo 2000) provide an occupational disease is compensable if it is work related, the injury is incidental to the work, and the work is a substantial factor in causing the resulting medical condition or disability.

Claimant credibly testified she had slight improvement following her 1999 carpal tunnel releases. Dr. Ollinger noted her symptoms resolved, and he released her to return to her regular duties. Claimant testified her symptoms worsened in 2001, after she began working as a ramp service employee.

Claimant credibly testified her work as a ramp service employee involved repetitive heavy lifting. She loaded and stacked heavy pieces of luggage the bulk of her work day. She handled hundreds of pieces of luggage per shift. Dr. Schlafly and Dr. Cohen reviewed the medical records, opined the 2003 and 2004 surgeries confirmed median nerve compression, and credibly testified Claimant's work was the substantial factor in the development of her recurrent carpal tunnel syndrome.

Dr. Ollinger did not provide an opinion as to whether this work could have caused Claimant's recurrent carpal tunnel syndrome. He did not believe she had recurrent carpal tunnel syndrome. However, he testified when he treated Claimant's original carpal tunnel syndrome in 1999, she was working the ramp service job. At that point, he opined her work caused her carpal tunnel syndrome.

I find Claimant has established her work was repetitive and strenuous and caused an occupational disease in her bilateral upper extremities on or about June 23, 2003. Claimant's recurrent carpal tunnel syndrome is medically and causally related to her work for Employer.

**2. Employer is liable for past medical expenses of \$15,055.85.**

Section 287.140 (RSMo 2000) provides Employer shall provide such medical treatment as may reasonably be required to cure and relieve from the effects of the injury.

Employer denied liability, and Claimant sought treatment through her personal physician. The parties stipulated to the total amount of medical bills in controversy. Claimant testified these bills relate to treatment of her recurrent carpal tunnel syndrome. Dr. Schlafly and Dr. Cohen testified the treatment was reasonable and necessary to cure and relieve the effects of Claimant's recurrent carpal tunnel syndrome. This condition is an occupational disease that was medically and causally related to Claimant's work. Accordingly, Employer is liable for past medical expenses in the stipulated amount of \$15,055.85.

**3. Claimant is entitled to TTD for 11 6/7 weeks, totaling \$4,439.84.**

TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. Claimant's first surgery with Dr. Glogovac was December 23, 2004. She continued to treat with Dr. Glogovac for a second surgery and physical therapy, which concluded March 15, 2004. While Dr. Glogovac's records are difficult to read, I find it reasonable to conclude Claimant could return to work once her physical therapy concluded.

Employer is ordered to provide TTD benefits of \$374.67 per week for this 11 6/7 week time frame, or \$4,439.84.

**4. Claimant is not entitled to future medical care.**

Claimant requested additional medical treatment and testified she continues to take Tylenol and wear wrist splints. Claimant is not obligated to show what specific medical treatment would be necessary in order to receive an award of future medical care, but she must show by reasonable probability that she needs additional medical treatment as a result of the work injury. Dr. Schlafly opined there was no additional treatment necessary, other than oral medications. Dr. Cohen examined Claimant most recently, and he did not recommend additional treatment. Claimant saw a number of doctors following Dr. Glogovac's treatment, and none of

these doctors recommended additional treatment. I find Claimant has not shown by reasonable probability that she is in need of additional treatment resulting from her work injury.

**5. Claimant sustained 17.5% PPD to each wrist, a 15% load factor, 4 weeks of disfigurement, and she is entitled to \$25,318.53 in compensation.**

A PPD award is intended to cover Claimant's permanent limitations due to a work related injury and any restrictions her limitations may impose on employment opportunities. A determination of the specific amount of percentage of disability is within the special province of the Administrative Law Judge.

Claimant credibly testified to her ongoing complaints in each hand. Based on Claimant's testimony and the opinions of the medical experts, I find Claimant sustained an additional 17.5% PPD to each wrist as a result of the primary injury. This totals 61.25 weeks. I find Claimant is entitled to a load factor of 15%, or an additional 9.19 weeks. In addition, Claimant has disfigurement as a result of the surgeries, and I find she is entitled to 4 weeks for disfigurement. This totals 74.44 weeks, or \$25,318.53.

**6. Claimant is entitled to 26.17 weeks in SIF benefits, or \$8,900.94.**

Claimant has not worked since mid 2003. Her medical expert opined she is totally disabled, but her total disability is related in part to medical conditions that arose after the primary injury. I find Claimant established a right to recover PPD benefits from the SIF. Claimant's prior carpal tunnel and cervical spine injuries were compromised with Employer and assigned a permanent partial disability percentage of 15% of each wrist and 15.18% of the cervical spine. This totals 113.22 weeks of disability. Based on the medical evidence and Claimant's testimony, I find these percentages accurately reflect Claimant's disability prior to her 2003 work injury.

Shortly after Claimant settled her neck injury with Employer, Claimant and the SIF reached a settlement regarding SIF liability for the neck injury in combination with the prior carpal tunnel case. The SIF agreed Claimant sustained 15.18% PPD to the neck with prior 15% PPD to each wrist. I find each of these injuries were a hindrance or obstacle to Claimant's employment or re-employment.

Claimant's 2003 injury resulted in an additional 17.5% to each wrist, or 61.25 weeks.

Each of these injuries meet the statutory thresholds as set forth in §287.220(1) RSMO (2000). This section of the law also provides for compensation from the SIF when a claimant's preexisting disabilities combine with his work injury to create a greater overall disability. From all the evidence presented, I find the injuries combine and this combination is best represented by

applying a 15% load factor. The sum of Claimant's disabilities is 174.47 weeks. Applying a 15% load factor yields 26.17 weeks. At Claimant's compensation rate, she is entitled to, and the SIF is hereby ordered to pay, \$8,900.94 in compensation.

Claimant had a prior low back injury that resulted in 7.5% PPD to the lumbar spine. There is no medical evidence that this condition worsened and increased this disability sufficiently to reach the statutory minimum thresholds necessary to impose SIF liability. Therefore, the SIF is not liable for benefits regarding this injury.

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

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

KATHLEEN M. HART  
*Administrative Law Judge*  
*Division of Workers' Compensation*