

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

Injury No.: 02-060295

Employee: Latonya Nelson

Employer: BJC Medical Group

Insurer: Self-Insured

Date of Accident: June 5, 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. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 22, 2005. The award and decision of Administrative Law Judge Edwin J. Kohner, issued July 22, 2005, 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 21st day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Latonya Nelson

Injury No.: 02-060295

Dependents: N/A
Employer: BJC Medical Group
Additional Party: N/A
Insurer: Self-Insured
Hearing Date: June 6, 2005

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

Checked by: EJK

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: June 5, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis County, 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? 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? Self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
The employee, a billing clerk at a hospital, developed bilateral carpal tunnel syndrome.
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:
14. Nature and extent of any permanent disability: 17 ½% permanent partial disability of the left wrist
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$2,313.06

Employee: Latonya Nelson Injury No.: 02-060295

17. Value necessary medical aid not furnished by employer/insurer? \$1,523.29
18. Employee's average weekly wages: \$570.76
19. Weekly compensation rate: \$380.52/329.42
20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$ 1,523.29
4 weeks of temporary total disability (or temporary partial disability)	\$ 1,522.08

30.625 weeks of permanent partial disability from Employer \$10,088.49

1 weeks of disfigurement from Employer \$ 329.42

22. Second Injury Fund liability: No

TOTAL: \$13,463.28

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: Michael J. Sudekum, Esq.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Latonya Nelson	Injury No.:	02-060295
Dependents:	N/A	Before the	
Employer:	BJC Medical Group	Division of Workers'	
Additional Party:	N/A	Compensation	
Insurer:	Self-Insured	Department of Labor and Industrial	
Hearing Date:	June 6, 2005	Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	EJK

This Workers' Compensation case raises several issues arising out of an alleged occupational disease from the performance of the claimant's work activities for the employer. The claimant is alleging that as a result of those work activities she sustained injuries to both hands resulting in bilateral carpal tunnel syndrome. The issues for determination are: (1) occupational disease arising out of and in the course of employment; (2) medical causation; (3) temporary total disability; (4) past medical expenses; (5) permanent partial disability; and (6) extent of disfigurement. The evidence in this case compels an award for workers' compensation benefits resulting from work related injury to the claimant's left wrist.

At the hearing, the claimant testified in person and offered a First Report of Injury, medical records from BarnesCare/Dr. Feinstein, a medical report of Bruce Schlafly, M.D., medical records from Scott Air Force Base, records of the Oklahoma Workers' Compensation Court, a statement of billing charges from the Department of Air Force, and depositions of Mohammad Sirajullah, M.D., and Raymond Cohen, D.O. The defense offered a deposition of Henry Ollinger, M.D., a medical report from Richard Katz, M.D., records of the Oklahoma Workers' Compensation Court, correspondence dated August 20, 2002 from claimant's former attorney with attached nerve conduction studies and medical records of the Department of Air Force. The claimant's deposition was marked for identification purposes but not offered into evidence.

All objections not previously sustained are overruled. Jurisdiction in the forum is authorized under Sections 287.110, 287.450 and 287.460 RSMo 2000, because the occupational disease was alleged to have been contracted in Missouri.

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SUMMARY OF FACTS

This thirty-eight year old claimant is 5 feet tall, weighs 150 pounds and now provides home day care for several children including her own. Before this employment, She had worked in Oklahoma as a claims processor or collector at two companies at the same time, Blue Cross/Blue Shield of Arkansas and CIT, until she moved to the St. Louis area in July 2001. From October 15, 2001, to August 2002, she worked for this employer as a billing clerk. In August 2002, she started working for Argent Company in Belleville, Illinois, but quit after twelve weeks due to hand pain.

Prior Employment

Before moving to the St. Louis metropolitan area in July 2001, the claimant worked in Oklahoma City, Oklahoma, as a claims processor or collector at two companies at the same time, Blue Cross/Blue Shield of Arkansas and CIT. Her work for these employers involved phone work and computer work. She worked a total of fifty-five hours a week for these employers and spent about two to three hours per day at each employer working on the computer.

On September 12, 2001, the claimant went to a clinic for pain in both arms due to possible carpal tunnel. See Exhibit 3. She reported numbness in her hand and an inability to grip. See Exhibit 3. The pain started at her fingertips and radiated to her elbows. She also complained of weakness in her hands. See Exhibit 3. On September 17, 2001, the claimant underwent a sensory and motor nerve conduction test revealing moderate right median neuropathy at the wrist consistent with a diagnosis of carpal tunnel syndrome. See Exhibits 3, 4, 5.

Employment with this employer

The claimant began working in this employer's billing department on October 15, 2001, researching on the computer and typing notes into the computer. Her job tasks also involved filing, sorting mail, and telephone work. While using the computer, she used a mouse and the keyboard. She worked forty hours a week for this employer with two fifteen minute breaks during the day and a half an hour to an hour for lunch.

Oklahoma Claim

On November 8, 2001, the claimant filed a Notice of Accidental Injury and Claim for Compensation with the Oklahoma Workers' Compensation Court alleging carpal tunnel syndrome from repetitive computer use to her right hand, wrist, and arm with a date of accident or last exposure of May 2001. See Exhibits E, 3. The named employer on the Claim for Compensation was Blue Cross/Blue Shield of Arkansas. See Exhibits E, 3. In a Motion to set the case for trial, on March 21, 2002, the claimant, through her attorney, claimed temporary total disability from May 25, 2001, to the present and continuing and was also seeking medical treatment from May 25, 2001, to the present and continuing. See Exhibits E, 3. The claimant was working at BJC full-time when the Motion was filed alleging she could not work. The claim was denied on August 16, 2002. See Exhibits E, 3.

The claimant testified that she began having left hand pain in June or July of 2002. She testified that she initially noticed symptoms in her right hand in April or May 2002. The symptoms included numbness and cramping in her right hand and she noted that her symptoms would grow more painful at the end of the day.

On January 22, 2002, Dr. Mirly examined the claimant for carpal tunnel syndrome in her right hand. She reported that this was work related and that it occurred at Blue Cross/Blue Shield of Arkansas in Oklahoma City, Oklahoma. She noted her first day off was May 2, 2001. She also marked AN/A@ under Employer. Dr. Mirly noted in his January 22, 2002, report that her symptoms onset in May 2001 and included numbness with night

pain and pain with keying, diminished grip strength, pain while driving and with activities such as writing. In a later report Dr. Mirly reported that in his opinion the type of work she relates doing for Blue Cross/Blue Shield with the use of a keyboard and handling files is the type of activity that contribute to the development of carpal tunnel syndrome.

The claimant reported the symptoms to this employer on June 5, 2002. See Exhibit A. She went to BJC Corporate Health on the same date and was diagnosed with carpal tunnel syndrome of the right wrist as well as a strain from repetitive trauma to the left wrist. Dr. Feinstein ordered nerve conduction tests revealing a moderate median neuropathy of the right wrist with findings consistent with a mild median neuropathy of the left wrist. Dr. Feinstein tried to perform an injection to the right wrist on June 13, 2002, but it was not completed.

On July 26, 2002, the claimant went to Dr. Schlafly, a hand surgeon, with a medical history that she began to experience cramping and numbness in her hands beginning around April or May 2002. Dr. Schlafly's report mentioned the nerve conduction tests done on June 11, 2002 but did not mention the prior nerve conduction tests done on September 17, 2001. Dr. Schlafly diagnosed bilateral carpal tunnel syndrome and recommended bilateral carpal tunnel releases. He opined that her work with her hands at the billing office was a substantial factor causing her bilateral carpal tunnel syndrome and the need for surgical treatment. Dr. Schlafly's report contained no history of her prior work activities.

The claimant stopped working for this employer in August 2002 stating that she could not take the pain in her hands any longer.

On March 24, 2003, the claimant went to Dr. Sirajullah, an orthopedic surgeon, who performed surgery on her left hand on April 18, 2003, and surgery on her right hand on May 19, 2003. Dr. Sirajullah released her from treatment by the end of May 2003. She has had no further medical treatment since her release from Dr. Sirajullah. In May 2003, she moved to Virginia.

On February 6, 2004, the claimant went to Dr. Katz who diagnosed bilateral carpal tunnel syndrome and noted that the claimant worked for BJC from August 2002 until Spring 2003. See Exhibit 2. The report did not address her prior employment activities. See Exhibit 2. Dr. Katz did not address medical causation but rated her carpal tunnel syndrome at seven percent permanent impairment at the level of each wrist due to painful scar sites. See Exhibit 2.

Dr. Sirajullah

Dr. Sirajullah testified initially that after five months of employment as it was described to him with repetitive motion of the wrist it was possible to develop a new symptom or get exacerbation of previously existing symptoms. However, Dr. Sirajullah also testified that he had no history of the claimant's work activities before she started working for this employer. He also noted that the findings and the history given to the physician on September 12, 2001, were clinical findings of carpal tunnel syndrome in both wrists and he acknowledged that she may have had bilateral carpal tunnel syndrome prior to working at BJC. He further stated that assuming the accuracy of the Patient Information Sheet provided to Dr. Mirly that her symptoms may have been caused by her work activities prior to BJC when she worked at Blue Cross/Blue Shield. He further acknowledged that he could not determine what portion of her symptoms could have been related to her work activities prior to BJC as opposed to her work activities at BJC. He also answered in the affirmative that he was not able to say with a reasonable degree of medical certainty that her work activities for BJC in and of themselves were a substantial factor causing her conditions and that they may have exacerbated it. Dr. Sirajullah also testified that he assumed that the claimant did not have any symptoms in her hands before working for this employer when he opined that the repetitive nature of her work for this employer caused her bilateral carpal tunnel syndrome.

Dr. Cohen

On November 4, 2004, Dr. Cohen examined the claimant and opined that her work for this employer caused the claimant's carpal tunnel syndrome and that her work there was a substantial factor in the carpal tunnel

syndrome in her wrists. He opined that the claimant suffered a 35% permanent partial disability of each wrist from her carpal tunnel syndrome. Dr. Cohen went on to testify on cross examination that the information he had concerning the claimant's job duties at BJC came solely from the claimant. He acknowledged that the only information he had with respect to any employment she had prior to working at BJC was that she had worked for Blue Cross/Blue Shield of Arkansas and did phone work there. He noted that he had no idea what type of work she may have done prior to working at Blue Cross/Blue Shield of Arkansas and he did not recall how long she worked for Blue Cross/Blue Shield of Arkansas. He also did not know how much of her job at Blue Cross/Blue Shield required her to use a keyboard or a computer.

Dr. Ollinger

On February 6, 2004, Dr. Ollinger, a plastic surgeon, reviewed the records from the State of Oklahoma Workers' Compensation Court including the records of Scott Air Force Base, the records of Belleville Orthopedic Surgeons/Dr. Mirly, the records of Dr. Sirajullah, the records of BarnesCare, the claimant's deposition and testimony and Dr. Bruce Schlafly's report. Dr. Schlafly reported that her symptoms in the right hand started in 2001 when she was at Blue Cross/Blue Shield of Arkansas. Dr. Ollinger took a medical history that the symptoms in her left hand began in August 2002. Dr. Ollinger opined that the claimant's work for this employer was not a substantial factor in the need for treatment for her carpal tunnel syndrome for two reasons. First, her bilateral carpal tunnel condition preceded her employment. Second, her work for this employer, when analyzed, did not contain forces or awkward postures, contact stresses or vibrations and that it did not present as being sufficient, rapid, repetitive activities considering duration factors to reach a threshold to be a substantial aggravation for carpal tunnel syndrome. Dr. Ollinger testified that irrespective of his causation opinion that the claimant sustained a permanent partial disability of five percent of each wrist from her bilateral carpal tunnel syndrome.

OCCUPATIONAL DISEASE

An informative legal analysis of occupational diseases pursuant to Missouri law is found in Kelley v. Banta and Stude Const. Co., Inc., 1 S.W.3d 43 (Mo. App. E.D. 1999), from which the following legal principles are cited:

In order to support a finding of occupational disease, employee must provide substantial and competent evidence that he/she has contracted an occupationally induced disease rather than an ordinary disease of life. The inquiry involves two considerations: (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort.

Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. Claimant must prove "a direct causal connection between the conditions under which the work is performed and the occupational disease." However, such conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. The opinion may be based on a doctor's written report alone. Where the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is the most credible. Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert.

In conformity with the above-cited case law, the instant case is controlled by the "last exposure rule", sometimes referred to as the "rule of convenience" which has been the law in Missouri for many years. In a workers' compensation case in Missouri, based upon occupational disease, liability accrues and attaches to the employer as of the date of the disability. The test for determining when compensation accrues, is the time when incapacity from occupational disease occurs, and not when the exposure commences or the disease begins and continues to develop. It is disability after exposure in the employer's business that creates the obligation to compensation. Because the development of occupational diseases is characteristically gradual, but variable in different diseases and with different persons, the earlier stages being frequently undetectable, the only rule which ensures the benevolent legislative objective of recovery in every meritorious case is one which fixes liability at the single and easily determinable point when there is inability to work.

In this case, the claimant has bilateral carpal tunnel syndrome with bilateral carpal tunnel releases. The chronological events in this case are:

Ending in July 2001, the claimant worked in Oklahoma as a claims processor or collector at two companies at the same time, Blue Cross/Blue Shield of Arkansas and CIT. Her work for these employers involved phone work and computer work. She worked a total of fifty-five hours a week for these employers and spent about two to three hours per day at each employer working on the computer.

On September 12, 2001, the claimant went to a clinic for pain in both arms due to possible carpal tunnel. See Exhibit 3. She reported numbness in her hand and an inability to grip. See Exhibit 3. The pain started at her fingertips and radiated to her elbows. She also complained of weakness in her hands. See Exhibit 3. The clinical records revealed a positive Phalen's test and a positive Tinnel's test. See Exhibit E. On September 17, 2001, the claimant underwent a sensory and motor nerve conduction test revealing moderate right median neuropathy at the wrist consistent with a diagnosis of carpal tunnel syndrome. See Exhibits 3, 4, 5.

On October 15, 2001, the claimant began working in this employer's billing department, researching on the computer and typing notes into the computer. Her job tasks also involved filing, sorting mail, and telephone work. While using the computer, she used a mouse and the keyboard. She worked forty hours a week for this employer with two fifteen minute breaks during the day and a half an hour to an hour for lunch.

On November 8, 2001, the claimant filed a Notice of Accidental Injury and Claim for Compensation with the Oklahoma Workers' Compensation Court alleging carpal tunnel syndrome from repetitive computer use to her right hand, wrist, and arm with a date of accident or last exposure of May 2001. See Exhibits E, 3. The named employer on the Claim for Compensation was Blue Cross/Blue Shield of Arkansas. See Exhibits E, 3.

On January 22, 2002, Dr. Mirly examined the claimant for carpal tunnel syndrome in her right hand. She reported that this was work related and that it occurred at Blue Cross/Blue Shield of Arkansas in Oklahoma City, Oklahoma. She noted her first day off was May 2, 2001. She also marked AN/A@ under Employer. Dr. Mirly noted in his January 22, 2002, report that her symptoms onset in May 2001 and included numbness with night pain and pain with keying, diminished grip strength, pain while driving and with activities such as writing. In a later report Dr. Mirly reported that in his opinion the type of work she relates doing for Blue Cross/Blue Shield with the use of a keyboard and handling files is the type of activity that contribute to the development of carpal tunnel syndrome.

On March 21, 2002, in a motion in the case in Oklahoma, the claimant sought temporary total disability from May 25, 2001, to the present and continuing and was also seeking medical treatment from May 25, 2001, to the present and continuing. See Exhibits E, 3. The claimant was working at for this employer full-time when the motion was filed alleging she could not work.

The claimant testified at the hearing that she started having symptoms and complaints in her left hand in June or July 2002. She testified that she initially noticed symptoms in her right hand in April or May 2002. The symptoms included numbness and cramping in her right hand and she noted that her symptoms would grow more painful at the end of the day.

The claimant reported the symptoms to this employer on June 5, 2002. See Exhibit A. She went to BJC Corporate Health on the same date and was diagnosed with carpal tunnel syndrome of the right wrist as well as a strain from repetitive trauma to the left wrist. See Exhibit D. Dr. Feinstein ordered nerve conduction tests revealing a moderate median neuropathy of the right wrist with findings consistent with a mild median neuropathy of the left wrist. See Exhibit D. Dr. Feinstein tried to perform an injection to the right wrist on June 13, 2002, but it was not completed. See Exhibit D.

On June 18, 2002, the claimant filed a claim for compensation against this employer in Missouri.

On July 26, 2002, the claimant went to Dr. Schlafly, a hand surgeon, with a medical history that she began to experience cramping and numbness in her hands beginning around April or May 2002. Dr. Schlafly's report mentioned a nerve conduction tests completed on June 11, 2002, but did not mention the prior nerve conduction tests done on September 17, 2001. Dr. Schlafly diagnosed bilateral carpal tunnel syndrome and recommended bilateral carpal tunnel releases. He opined that her work with her hands at the billing office was a substantial factor causing her bilateral carpal tunnel syndrome and the need for surgical treatment. Dr. Schlafly's report contained no history of her prior work activities.

The Oklahoma claim was denied on August 16, 2002. See Exhibits E, 3.

The claimant stopped working for this employer in August 2002 stating that she could not take the pain in her hands any longer.

On March 24, 2003, the claimant went to Dr. Sirajullah, an orthopedic surgeon, who performed surgery on her left hand on April 18, 2003, and surgery on her right hand on May 19, 2003. Dr. Sirajullah released her from treatment by the end of May 2003. She has had no further medical treatment since her release from Dr. Sirajullah. In May 2003, she moved to Virginia.

On February 6, 2004, the claimant went to Dr. Katz who diagnosed bilateral carpal tunnel syndrome and noted that the claimant worked for BJC from August 2002 until Spring 2003. See Exhibit 2. The report did not address her prior employment activities. See Exhibit 2. Dr. Katz did not address medical causation but rated her carpal tunnel syndrome at seven percent permanent impairment at the level of each wrist due to painful scar sites. See Exhibit 2.

On February 6, 2004, Dr. Ollinger opined that the claimant's work for this employer was not a substantial factor in the need for treatment for her carpal tunnel syndrome for two reasons. First, her bilateral carpal tunnel condition preceded her employment. Second, her work for this employer, when analyzed, did not contain forces or awkward postures, contact stresses or vibrations and that it did not present as being sufficient, rapid, repetitive activities considering duration factors to reach a threshold to be a substantial aggravation for carpal tunnel syndrome.

On November 4, 2004, Dr. Cohen examined the claimant and opined that her work for this employer caused the claimant's carpal tunnel syndrome and that her work there was a substantial factor in the carpal tunnel syndrome in her wrists. He acknowledged that the only information he had with respect to any employment she had prior to working at BJC was that she had worked for Blue Cross/Blue Shield of Arkansas and did phone work there. He noted that he had no idea what type of work she may have done prior to working at Blue Cross/Blue Shield of Arkansas and he did not recall how long she worked for Blue Cross/Blue Shield of Arkansas. He also did not know how much of her job at Blue Cross/Blue Shield required her to use a keyboard or a computer.

This case has a variety of forensic medical opinions:

Dr. Sirajullah, the operating orthopedic surgeon, gave contradictory testimony that supports virtually any finding. Dr. Katz examined the claimant but offered no forensic medical opinion on causation. Dr. Schlafly opined that the claimant's work for this employer was a substantial factor causing her bilateral carpal tunnel syndrome and the need for surgical treatment. However, Dr. Schlafly's report contained no history of her prior work activities. Dr. Cohen opined that her work for this employer caused the claimant's carpal tunnel syndrome and that her work there was a substantial factor in the carpal tunnel syndrome in her wrists. However, the only information he had with respect to any employment she had prior to working at BJC was that she had worked for Blue Cross/Blue Shield of Arkansas and did phone work there. He did not recall how long she worked for Blue Cross/Blue Shield of Arkansas or how much of her job at Blue Cross/Blue Shield required her to use a keyboard or a computer. Finally, Dr. Ollinger opined that the claimant's work for this employer was not a substantial factor in the need for treatment for her carpal tunnel syndrome for two reasons. First, her bilateral carpal tunnel condition preceded her employment and the origin was idiopathic. Second, he testified that her work for this employer, when analyzed, did not contain forces or awkward postures, contact stresses or vibrations and that it did not present as being sufficient, rapid, repetitive activities considering duration factors to reach a threshold to be a substantial aggravation for carpal tunnel syndrome. On the other hand, he also testified that he was not aware of the specific key count or the specific key count of the job duty, although he offered to evaluate that information if it became "forthcoming." See Dr. Ollinger deposition, page 20.

Dr. Schlafly and Dr. Cohen opined that the claimant's work for this employer was a significant factor causing the claimant's carpal tunnel syndrome. Dr. Schlafly took a medical history that the claimant's "job requires a lot of repetitive work with her hand, typing at the computer as well as doing some writing and phone calls." See Exhibit C. Dr. Cohen testified that the claimant "input information into eight hours a day five days a week." See Dr. Cohen deposition, page 32.

Our courts have found that carpal tunnel syndrome is a recognized occupational disease. The substance of the forensic medical opinion is that if the claimant's work involved a substantial amount of key boarding, the exposure is sufficient exposure. Clearly, the claimant did not "input information into eight hours a day five days a week." However, if the claimant was proficient and efficient, the claimant's job may have required "a lot of repetitive work with her hand, typing at the computer as well as doing some writing and phone calls."

The only evidence regarding the claimant's duties at work is from the claimant's own testimony. She testified that her work was primarily typing. The defense offered no contrary evidence. Although the claimant's testimony was subject to impeachment on various other points, such as when her wrist symptoms began, the claimant's testimony is the only evidence on the point. Assuming the credibility of the claimant's testimony on this point, the expert testimony would suggest that the claimant's exposure to key boarding at work was sufficient to expose her to the risk of carpal tunnel syndrome.

The other defense raised by the employer is that the claimant's condition is a preexisting condition based on Dr. Ollinger's testimony. His point is well taken with respect to the right wrist. On September 12, 2001, the claimant went to a clinic for pain in both arms due to possible carpal tunnel. See Exhibit 3. She reported numbness in her hand and an inability to grip. See Exhibit 3. The pain started at her fingertips and radiated to her elbows. She also complained of weakness in her hands. See Exhibit 3. The clinical records revealed a positive Phalen's test and a positive Tinnel's test. See Exhibit E. On September 17, 2001, the claimant underwent a sensory and motor nerve conduction test revealing moderate right median neuropathy at the wrist consistent with a diagnosis of carpal tunnel syndrome. See Exhibits 3, 4, 5. The claimant did not begin working for this employer until October 15, 2001. In November 2001, the claimant alleged that her carpal tunnel syndrome in her right wrist resulted from her work for her prior employer. See Exhibits E, 3. By June 2002, the claimant had worked for this employer for eight months, but the diagnosis was identical, "moderate median neuropathy, most likely localizable to the right wrist." See Exhibit D. The conclusion is that the claimant's carpal tunnel syndrome in her right wrist was preexisting condition resulting from conditions other than her work for this employer.

However, the left wrist had a different timeline. Although she complained of left wrist pain in September 2001, the treating physician found no reason to perform a nerve conduction test and made no diagnosis pertaining to the left wrist. See Exhibit 3. Her claim for compensation filed in Oklahoma against Blue Cross Blue Shield of Arkansas in November 2001 did not allege a left wrist injury. See Exhibits E, 3. In June 2002, a treating physician diagnosed a strain from repetitive trauma to the left wrist. See Exhibit D. Dr. Feinstein ordered nerve conduction tests revealing a mild median neuropathy of the left wrist. See Exhibit D. On June 18, 2002, the claimant filed her first claim for compensation alleging injury to her left wrist. On July 26, 2002, the claimant went to Dr. Schlafly, who diagnosed bilateral carpal tunnel syndrome and recommended bilateral carpal tunnel releases. She ceased working for this employer in August 2002.

Based on the evidence, this employer appears to have exposed the claimant's left wrist to carpal tunnel syndrome and the work appears to have caused carpal tunnel syndrome in the claimant's left wrist. The claimant's work for this employer appears to be a substantial factor causing her condition based on the forensic evidence. This employer was the last employer before the claimant's disability manifest. The claimant prevails in proving that her left wrist carpal tunnel syndrome is compensable. However, the right wrist claim is denied, because the condition preexisted her employment and her work does not appear to have caused or been a significant factor causing her carpal tunnel syndrome in her right wrist. It is somewhat accusing one of murder for shooting a corpse.

LIABILITY FOR PAST MEDICAL EXPENSES

The statutory duty for the employer is to provide such medical, surgical, chiropractic, and hospital treatment ... as may be reasonably required after the injury. Section 287.140.1, RSMo 1994.

The intent of the statute is obvious. An employer is charged with the duty of providing the injured

employee with medical care, but the employer is given control over the selection of a medical provider. It is only when the employer fails to do so that the employee is free to pick his own provider and assess those against his employer. However, the employer is held liable for medical treatment procured by the employee only when the employer has notice that the employee needs treatment, or a demand is made on the employer to furnish medical treatment, and the employer refuses or fails to provide the needed treatment. Blackwell v. Puritan-Bennett Corp., 901 S.W.2d 81, 85 (Mo.App. E.D. 1995).

The method of proving medical bills was set forth in Martin v. Mid-America Farmland, Inc., 769 S.W.2d 105 (Mo. banc 1989). In that case, the Missouri Supreme Court ordered that unpaid medical bills incurred by the claimant be paid by the employer where the claimant testified that her visits to the hospital and various doctors were the product of her fall and that the bills she received were the result of those visits.

We believe that when such testimony accompanies the bills, which the employee identifies as being related to and are the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records and evidence, a sufficient, factual basis exists for the Commission to award compensation. The employer, may, of course, challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question. Id. at 111, 112.

The claimant offered medical bills from the medical provider in the amount of \$1,523.29 together with the medical records and deposition of the medical provider. See Exhibits B, F, 5. Dr. Cohen testified that the charges were reasonable and necessary to treat the condition. See Dr. Cohen deposition, pages 14-16. The defense offered no evidence to the contrary. No basis exists to divide the services for each hand.

TEMPORARY DISABILITY

When an employee is injured in an accident arising out of and in the course of his employment and is unable to work as a result of his or her injury, Section 287.170, RSMo 2000, sets forth the TTD benefits an employer must provide to the injured employee. Section 287.020.7, RSMo 2000, defines the term "total disability" as used in workers' compensation matters as meaning the "inability to return to any employment and not merely mean[ing the] inability to return to the employment in which the employee was engaged at the time of the accident." The test for entitlement to TTD "is not whether an employee is able to do some work, but whether the employee is able to compete in the open labor market under his physical condition." Thorsen v. Sachs Electric Co., 52 S.W.3d 611, 621 (Mo.App. W.D. 2001). Thus, TTD benefits are intended to cover the employee's healing period from a work-related accident until he or she can find employment or his condition has reached a level of maximum medical improvement. Id. Once further medical progress is no longer expected, a temporary award is no longer warranted. Id. The claimant bears the burden of proving his entitlement to TTD benefits by a reasonable probability. Id.

Temporary total disability awards are designed to cover the employee's healing period, and they are owed until the claimant can find employment or the condition has reached the point of maximum medical progress. When further medical progress is not expected, a temporary award is not warranted. Any further benefits should be based on the employee's stabilized condition upon a finding of permanent partial or total disability. Shaw v. Scott, 49 S.W.3d 720, 728 (Mo.App. W.D. 2001).

On April 18, 2003, Dr. Sirajullah performed surgery on her left hand and testified that he would have had her off work for a month after the surgery. See Dr. Sirajullah deposition, page 11. He later performed surgery on the claimant's right hand that was not related to her work. The claimant is awarded four weeks of total temporary total disability benefits.

PERMANENT DISABILITY

Workers' compensation awards for permanent partial disability are authorized pursuant to section 287.190. "The reason for [an] award of permanent partial disability benefits is to compensate an injured party for lost earnings." Rana v. Landstar TLC, 46 S.W.3d 614, 626 (Mo. App. W.D. 2001). The amount of compensation to be awarded for a PPD is determined pursuant to the "SCHEDULE OF LOSSES" found in section 287.190.1. "Permanent partial disability" is defined in section 287.190.6 as being permanent in nature and partial in degree. Further, "[a]n actual loss of earnings is not an essential element of a claim for permanent partial disability." Id. A permanent partial disability can be awarded notwithstanding the fact the claimant returns to work, if the claimant's injury impairs his efficiency in the ordinary pursuits of life. Id. "[T]he Labor and Industrial Relations Commission

has discretion as to the amount of the award and how it is to be calculated." *Id.* "It is the duty of the Commission to weigh that evidence as well as all the other testimony and reach its own conclusion as to the percentage of the disability suffered." *Id.* In a workers' compensation case in which an employee is seeking benefits for PPD, the employee has the burden of not only proving a work-related injury, but that the injury resulted in the disability claimed. *Id.*

Dr. Cohen rated the claimant's permanent partial disability at thirty-five percent of each wrist with a "load factor" of fifteen percent. See Dr. Cohen deposition, page 13. Dr. Katz rated the claimant's permanent partial disability at seven percent of each wrist. Dr. Ollinger rated the claimant's permanent partial disability at five percent of each wrist. Based on the evidence as a whole, the claimant suffered a seventeen and one half percent permanent partial disability of each wrist and the overall disability exceeds the sum of the separate disabilities by ten percent. The claimant is awarded a seventeen and one half percent permanent partial disability to her left wrist and is also awarded an additional week of permanent partial disability benefits for disfigurement.

Date: _____

Made by: _____

EDWIN J. KOHNER
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation