

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

Injury No.: 04-021570

Employee: Don Northern, deceased  
Claimant: Lisa Northern  
Employers: 1) St. Luke's Medical Center  
2) SSM St. Mary's Health Center  
Insurers: 1) Self-Insured  
2) Self-Insured  
Additional Party: 1) Treasurer of Missouri as Custodian  
of Second Injury Fund

Date of Accident: N/A

Place and County of Accident: N/A

On January 6, 2006, the administrative law judge issued an award in the above-captioned workers' compensation case. On January 23, 2006, employee filed an Application for Review from the award. The award is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo.

On or about September 28, 2006, employee's counsel filed Employee's Suggestion of Death and Motion for Substitution of Parties, informing the Commission that employee died on September 20, 2006, and requesting that the Commission substitute Lisa Northern as the claimant in this matter. Employer has no objection to the proposed substitution of party. We grant the motion.

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 January 6, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued January 6, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 16<sup>th</sup> day of November 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

**DISSENTING OPINION FILED**

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John J. Hickey, Member

Attest:

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Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based upon my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed. I believe the administrative law judge erred in concluding that employee did not prove that his work for employer caused his carpal tunnel syndrome.

The administrative law judge gave undue credence to the testimony of St. Luke's witnesses regarding employee's duties. The testimony of Mark Novy is entitled to very little weight. He began working for employer five months before trial. He admitted he had no personal knowledge of employee's job duties during the period when employee began to experience symptoms (early 2003). The testimony of Carol Lamping is not worth much more. Ms. Lamping made work schedules but testified that the actual duties employee performed may have varied from the task she assigned when she made the schedule. She admitted that employee's duties in the kitchen involved work for both the cafeteria and patient services but that Ms. Lamping was only knowledgeable about patient services. St. Luke's did not offer into evidence a job description from 2002 and 2003 to establish employee's job duties. The only evidence of the actual job duties employee performed during the time he developed symptoms is employee's first-hand testimony. I find his testimony regarding his job duties at St. Luke's to be the most credible and persuasive on the topic.

The administrative law judge's conclusion that the opinion of Dr. Ollinger is more persuasive than the opinion of Dr. Levy is severely flawed. The administrative law judge displayed his lack of understanding of expert proof when he declared that employee had an, "obligation to prove her [sic] case by methods relied upon by experts in the field." His cite to *State Bd. of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146 (Mo. banc 2003) suggests that the administrative law judge finds this standard of proof in § 490.065 RSMo, the statute governing the admissibility of expert testimony. The administrative law judge has taken this evidentiary rule out of context, misstated it, and converted it into something it is not; an element of proof in employee's workers' compensation claim. The Supreme Court of Missouri views § 490.065 differently:

Section 490.065 is the standard for admitting expert testimony in civil cases. *State Bd. of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 153 (Mo. banc 2003). That section requires the court to consider whether experts in the field reasonably rely on the type of facts and data used by the expert or if the methodology is otherwise reasonably reliable. If not, the testimony is inadmissible. *Id.* at 157.

*McGuire v. Seltsam*, 138 S.W.3d 718, 720-721 (Mo. 2004).

To prove matters beyond lay understanding, a workers' compensation claimant's obligation is to elicit expert testimony regarding causation from, "a witness qualified as an expert by knowledge, skill, experience, training, or education." § 490.065 RSMo. The administrative law judge may sustain an objection to expert testimony if the witness' opinion is not based upon the type of facts and data reasonably relied upon by experts in the particular scientific, technical, or specialized field in which the witness purports to be an expert.

In the instant case, employee offered the expert testimony of Dr. Levy. Dr. Levy is an orthopedic surgeon who completed a five-year surgery fellowship as part of his education and training. He has forty (40) years experience performing surgeries. It is clear that Dr. Levy is qualified as an expert in medical matters by his knowledge, skill, experience, training and education. So what type of facts and data did he rely upon in forming his opinion? Dr. Levy testified that the job duties described to him by employee were hand-intensive, repetitive jobs involving turning, twisting, and lifting with his hands. Dr. Levy relayed that employee told Dr. Levy that his hands were constantly moving and employee's hands got no significant periods of rest. Based upon the job description provided by employee as well as the fact that employee worked more than twice as many hours at St. Luke's than he did at St. Mary's, Dr. Levy concluded that employee's repetitive duties at St. Luke's were the prevailing factor in employee's development of upper extremity problems; carpal tunnel syndrome and cubital tunnel syndrome.

Incredulously, the administrative law judge concluded that Dr. Levy is not an expert because Dr. Levy relied upon employee's job duties and constant hand movement in forming his causation opinion. The administrative law judge goes so far as to characterize Dr. Levy's reliance on employee's job duties and hand movements as

“unconventional.”

The administrative law judge’s criticism of Dr. Levy is unfounded, especially in light of his acceptance as credible the opinion of Dr. Ollinger. Below I quote how Dr. Ollinger described his analysis. The factors considered by Dr. Ollinger sound very similar to the factors considered in Dr. Levy’s “unconventional” approach:

[W]hat I did is take the information that we’ve already talked about which is his employment at St. Luke’s primarily, and the job duties that he had, which we’ve discussed because I read them to you in my report. I tried to make a medical judgment to a reasonable degree of medical certainty if that work exposure would be at the level of being a substantial factor of proximal cause of cubital trauma injuries and, in this case, bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

And what I looked at or at least tried to imagine in my head was the – the denominators of force, repetitions, awkward postures, contact stresses and what we call duration factors, which means how long does someone do one activity, are there rest cycles involved and how long do they do it throughout the day.

(Tr. 142-143) (Emphasis added).

Dr. Ollinger identified only one carpal tunnel syndrome risk factor for employee; morbid obesity. Dr. Ollinger explained that morbidly obese individuals are at greater risk for developing carpal tunnel syndrome. Dr. Ollinger did not say that employee’s obesity *caused* his carpal tunnel syndrome. In fact, Dr. Ollinger never identified any activities that could have caused employee’s development of carpal tunnel syndrome, yet, surprisingly, Dr. Ollinger was able to rule out as a carpal tunnel syndrome cause employee’s only hand-intensive activity – his dietary aide work. Dr. Ollinger identified no risk factors at all for cubital tunnel syndrome for employee. Yet, again, he was able to rule out employee’s intensive upper extremity work as a causative factor.

Although Dr. Ollinger testified that he reviewed a written job description of employee’s job at St. Luke’s and based his opinion on the written job description, the job description was not offered into evidence. The administrative law judge relied heavily upon the fact that Dr. Ollinger had a written job description in making his credibility determination. Notwithstanding his claim that he was in possession of a job description, Dr. Ollinger’s testimony reveals that his opinion was based upon his mistaken belief that employee’s duties were essentially like those found on a “cafeteria serving line” or “cafeteria line.” “What I did appreciate is what the job duties require an ordinary person to – how to serve food onto a plate doesn’t require awkward positions.” Dr. Ollinger asked employee few questions about his job duties. Rather, Dr. Ollinger’s opinion is admittedly based somewhat upon facts and data he acquired a few years ago getting food in the St. Luke’s cafeteria. I cannot accept that observations made in a cafeteria line are the type of facts and data upon which experts in the fields of medicine or ergonomics reasonably rely in forming causation opinions or that this methodology is otherwise reasonably reliable. I simply do not find credible Dr. Ollinger’s opinion.

The administrative law judge determined, without the benefit of any evidence, that an ergonomic study is the only data upon which an expert can reasonably rely when forming a causation opinion in a repetitive trauma case. My research reveals no such requirement in the law. Notwithstanding his own conclusion that an ergonomics study is necessary for a valid expert opinion on causation, the administrative law judge finds Dr. Ollinger’s opinion probative without such a study by positing, “that hand surgeons have more experience from prior experience with ergonomic studies to more effectively evaluate a case where only general job descriptions and lay descriptions have been provided.” Not only has the administrative law judge made up a legal standard of proof, he has also made up an exception to that standard based upon a postulate wholly unsupported by the record. The administrative law judge’s determination that Dr. Ollinger is more credible is explicitly founded upon an assumption that Dr. Ollinger has a lot of experience with ergonomics studies. There is no evidence in the record to prove the assumption. I do not believe this unfounded credibility determination should stand.

I believe employee has met his burden of proving a compensable claim. Employee’s burden, as established by Missouri courts and quite different from the burden imposed by Administrative Law Judge Joseph Denigan, is summarized below:

[Employee's] burden was not to establish the elements of his case on the basis of absolute certainty, but rather, he only needed to show the elements of his claim by reasonable probability. *Id.* "Probable means founded on reason and experience which inclines the mind to believe but leaves room for doubt." *Id.* (quoting *Fischer v. Archdiocese of St. Louis-Cardinal Ritter Inst.*, 793 S.W.2d 195, 198-99 (Mo. App. E.D. 1990)).

*Thorsen v. Sachs Elec. Co.*, 52 S.W.3d 611, 620 (Mo. App. 2001).

An employee seeking workers' compensation benefits for an occupational disease must present "substantial and competent evidence that he [or] she has contracted an occupationally induced disease rather than an ordinary disease of life." Notably, carpal tunnel syndrome is a known occupational disease. The employee must also establish, usually through medical testimony, the probability that the occupational disease was caused by workplace conditions.

*Smith v. Tiger Coaches, Inc.*, 73 S.W.3d 756 (Mo. App. 2002) (citations omitted).

A claimant's medical expert must establish the probability that the disease was caused by conditions in the work place. *Welker v. MFA Central Co-operative*, 380 S.W.2d 481, 486 (Mo. App. 1964).... The mere "possibility" that other factors caused or contributed to cause the illness will not necessarily defeat a claim based on occupational disease.

*Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795, 797-798 (Mo. App. 1987).

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.

*Kelley v. Banta & Stude Constr. Co.*, 1 S.W.3d 43, 48 (Mo. App. 1999) (citations omitted).

Regardless the discrepancies in the evidence regarding how long employee performed food preparation versus tray line activities versus sandwich preparation, there is no dispute that all of employee's job duties at both employments involved the constant use of his upper extremities. Five days a week employee worked days at St. Luke's and five days a week employee worked nights at St. Mary's. Considering how much employee worked, it is not surprising that the experts did not identify any non-work activities as the cause of his carpal tunnel syndrome. Undoubtedly, employee had little time for personal hobbies.

Employee testified that after approximately six months of performing his dietary aid duties, he began to experience numbness, tingling, pain, and swelling in his hands. Employee reported his pain to his supervisor at St. Luke's and to St. Luke's employee health service. Employee was assessed and diagnosed as suffering from bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Employee underwent carpal tunnel releases bilaterally. Employee's treating surgeon, Dr. Martin, believed that employee's work activities caused his bilateral carpal tunnel syndrome. Employee presented a qualifying expert, Dr. Levy, who believed the hand and arm intensive activities of employee's dietary aid duties at St. Luke's were the prevailing factor in the development of employee's upper extremity neuropathies. Dr. Levy's testimony is credible and persuasive. The timing of employee's development of symptoms coincides with his assumption of hand and arm intensive duties with St.

Luke's. The medical records support employee's description of the onset of his symptoms. No non-work factors were identified as suspected causes of his neuropathies with the exception of an increased risk of carpal tunnel syndrome due to obesity.

Based upon the foregoing, I find that employee has established by a reasonable probability that his job duties as a dietary aid at St. Luke's were a substantial factor in his development of bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

This administrative law judge has repeatedly decided carpal tunnel syndrome cases by supplementing the evidence with his own medical assumptions and by imposing new burdens of proof upon claimants. The judge usurps the role of the medical experts by substituting his opinions for those of the medical experts. Such usurpation is contrary to the dictates of the Missouri Supreme Court and should not be condoned.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

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John J. Hickey, Member

## AWARD

Employee:	Don Northern	Injury No.: 04-021570
Dependents:	N/A	Before the
Employer:	St. Luke's Medical Center	<b>Division of Workers'</b>
Additional Party:	SSM/St. Mary's Health Center Second Injury Fund	<b>Compensation</b>
Insurer:	Self-Insured	Department of Labor and Industrial Relations of Missouri
Hearing Date:	October 7, 2005	Jefferson City, Missouri
		Checked by: JED:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? No
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
10. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
- 11.
12. Did accident or occupational disease cause death? N/A Date of death? N/A

- 13. Part(s) of body injured by accident or occupational disease: N/A
- 14. Nature and extent of any permanent disability: N/A
- 15. Compensation paid to-date for temporary disability: N/A
- 16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Don Northern Injury No.: 04-021570

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$202.25
- 19. Weekly compensation rate: \$134.83
- 20. Method wages computation: Stipulation.

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: None
- 22. Second Injury Fund liability: No
- TOTAL: -0-
- 23. Future requirements awarded: N/A

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

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

Employee: Don Northern Injury No.: 04-021570  
Dependents: N/A Before the  
Employer: St. Luke's Medical Center **Division of Workers'**  
Additional Party: SSM/St. Mary's Health Center **Compensation**  
Second Injury Fund Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Insurer: Self-Insured c/o Sedgwick CMS Checked by: JED

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***This case involves a disputed repetitive motion claim alleged by Claimant with the filing date of March 22, 2004 and an exposure date of October 2003. Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund is a party to this claim. All parties are represented by counsel.***

### ***Issues for Trial***

1. Incidence of occupational disease (exposure and medical causation);
2. Unpaid medical expenses;
3. Unpaid temporary total disability benefits.

### **FACTS OF CASE**

### ***Lay Testimony***

#### Claimant

1. Claimant underwent right and left surgical releases in April and July 2004, respectively. He missed four months of work.
2. Claimant worked forty hours per week at St. Luke's Hospital and eighteen hours per week at St. Mary's. His job *title* was "dietary worker and food prep" at St. Luke's, and "dietary aid" at SSM.
3. Duties at SSM included setting up trays, assembling food on trays, and delivering trays. The kitchen served from 250 to 350 patients. Tray assembly was two hours and clean-up was another two hours.
4. Duties at St. Luke's included the above, plus actual preparation of food.
5. Claimant stated that he had to prepare food every day and that this included "coring" six cases of tomatoes per day, and cutting 100 pounds of potatoes a day. Claimant said that this work took two hours per day, after which he worked on the sandwich line, and then performed other tasks.
6. Claimant believed bilateral hand pain resulted from preparing tomatoes and potatoes. Subsequently, he sought treatment at Employee Health and was diagnosed with carpal tunnel syndrome.
7. At trial, Claimant stated that his hands were no longer bothering him, but that he did have some problems with his

elbows. Claimant is now returned to work full-time for one year.

8. On cross-examination, Claimant denied being a “floater” employee. He denied that his duties could change from day to day. He stated that the food prep job (including potatoes and tomatoes) took 4 hours a day, every day.

## Carol Lamping

9. The supervisor of the dietary department at St. Luke’s had comprehensive responsibility for supervision and development of the food service and employment policies. She exhibited and explained detailed scheduling formats that serve planning and evaluation: jobs in dietary, duties after the meal tray line was done, template for daily work assignments, and the weekly dietary rotation. (Exhibit 2.)

10. The supervisor clarified Claimant’s position was that of a “floater,” and he replaced people who were taking days off, or who were on vacation or sick leave. She testified that Claimant’s duties varied day to day. Claimant did not always work the food preparation stations.

11. Exhibit 3, contained the schedule for dietary employees, for approximately two years preceding Claimant’s reported onset of symptoms. She prepared the schedule by hand, and if there were changes or corrections, she made the changes.

12. There exist fourteen possible jobs at the beginning of a shift, and seven possible assignments after the beginning jobs were completed. Ms. Lamping stated that the jobs at the beginning of the shift (page 1 of Exhibit 2) had letter codes, and that the jobs which followed had number codes (page 2 of Exhibit 2). Ms. Lamping testified that the secondary jobs (after completion of the patients’ tray line) were changed from day to day for all employees. The schedule showed that the Claimant worked at between 1 (for example, the week beginning 12-28-03) and 5 (for example, the week beginning 1-4-04) different job descriptions per 5-day week. More often than not, Mr. Northern would do either two or three jobs in a week. (Exhibit 3.)

13. If there were unscheduled absences, the department would try to call in off-duty employees. Unscheduled or emergency absences were noted on the schedule, with special codes. The schedule showed that Claimant and either one or two additional employees would have floater, or rotating job assignments from day to day.

14. Ms. Lamping stated that the Claimant could not have prepared potatoes on a daily basis, as he had testified, because that item was on the menu only three times a week (Monday dinner, Thursday lunch, and Saturday dinner). The patients would get menu choices, and not every patient would order potatoes. Tomatoes were prepared on an as-needed basis, not at a daily predictable volume. The daily volume would depend on the menu for the day.

15. The food preparation duties were done at the opposite end of the shift than the one to which the Claimant testified, and they took a maximum of 2 hours. Preparing potatoes might take 30 minutes.

## Mark Novy

16. The production supervisor at St. Luke’s observed Claimant on a daily basis. He confirmed the rotation of duties in the department, and the Claimant’s status as a “floater.” He stated that of the fourteen possible jobs in the initial listing, Claimant was qualified for nine of them.

17. He disputed Claimant’s testimony on potato volume. He explained potatoes were prepared on those three days on which potatoes were on the menu. He stated tomatoes were usually prepared every day, the volume depended on the menu, and volume was not a regularly high daily volume.

18. On rebuttal, Claimant disputed the schedules to the extent they reflected any job other than food preparation. Specifically, he disputed daily events of at least six weeks in 2003, and testified that individual entries on those schedule pages were in error.

## **Opinion Evidence**

Claimant offered the deposition of Dr. Levy. He examined Claimant in 2002. Dr. Levy relied on Claimant's description of his duties to form his understanding of Claimant's ergonomic exposure (pp. 6-14). Dr. Levy testified that the jobs would have been factors in the development of carpal tunnel syndrome because both jobs required the hands to be "constantly moving." After a listing of some production assignments, the following opinions were elicited:

Q: Did you think, then, that the continued, the length, amount of time that he would be working these jobs would contribute, as well as the actual activities themselves (*sic*)?

A: Exactly.

Q: So, the repetitive nature of the work he was doing was a contributing factor, then?

A: Yes. I felt, actually, that was all the prevailing factor (*sic*).

Elsewhere he said that the work at St. Luke's was a more substantial factor than the work at SSM, because the Claimant worked twice as long per week at St. Luke's. Dr. Levy acknowledged Claimant's obesity at 307 pounds but stated the work at St. Luke's underlay Claimant's symptoms and diagnosis. He did admit on cross-examination that the employee had not disclosed his job at St. Mary's, and that the bulk of the information about the St. Mary's job had been furnished to him on the date he testified, and after he prepared his report.

Employer, St. Luke's, offered the deposition of Dr. Ollinger. On physical examination he noted Claimant was forty-one years old, right handed, a non-smoker and morbidly obese. He stated that the obesity was a specific risk factor for carpal tunnel syndrome. He stated that morbid obesity presents a risk of three or four times greater incidence. He noted no risk factors in Claimant's job for cubital tunnel syndrome; he stated he was familiar with ulnar nerve irritation at the elbow among obese persons during sleep posture (p. 14). He testified that neither the duties of the job at St. Luke's nor the duties of the job at SSM would be a substantial factor in the development of the Claimant's carpal tunnel syndrome.

Dr. Ollinger did not order a job study at St. Luke's but he had a job description and he was familiar with hospital food service jobs. The job tasks he understood Claimant performed did not have the *combined* factors of force, duration of force, angle, and duration of exposure, and repetition, or contact stresses to make the job a causative factor (p. 16).

## **RULINGS OF LAW**

A job title or list of duties is not a substitute for an ergonomic description. A medical expert's opinion must be supported by facts and reasons proven by competent evidence that will give the opinion sufficient probative force to be substantial evidence. Silman v. Wm. Montgomery & Assoc., 891 S.W.2d 173, 176 (Mo.App. 1995), *citing Pippin v. St. Joe Mineral Corp.*, 799 S.W.2d 898, 904 (Mo.App. 1990).

Dr. Levy's testimony was unconventional and less persuasive than Dr. Ollinger's. Dr. Levy is not a hand surgeon and Claimant's election to treat with him does not mitigate her obligation to prove her case by methods relied upon by experts in the field. State board of Registration for the Healing Arts v. McDonagh, 123 S.W.3d 146 (Mo.banc 2003). His reliance on both, "duties" rather than ergonomic measures and his focus on the unconventional characterization of "constantly moving" reveal Dr. Levy's lack of expertise in the science of ergonomics. An expert must identify that which is relied on by those in the respective area of science. McDonagh, *supra*.

An ergonomic study seems to be that which must be relied on in order to form a probative opinion. This explains his conclusory opinions that were given pursuant to a number of poorly articulated causation questions. Further, in the absence of an ergonomic predicate, Dr. Levy volunteered the simplistic observations that Claimant's work at St. Mary's was less substantial in causing symptoms because Claimant work twice as many hours at St. Luke's.

In contrast, Dr. Ollinger, a hand surgeon, explained his opinion on the basis of the absence of critical ergonomic stressors and the independent pathology of chronic morbid obesity as a recognized cause of carpal

tunnel syndrome. Dr. Ollinger's testimony is unrebutted in the record. More accurately, Dr. Levy's testimony was not sufficiently probative to shift the burden to Employers. It may be posited that hand surgeons have more experience from prior experience with ergonomic studies to more effectively evaluate a case where only general job descriptions and lay descriptions have been provided.

It is not incumbent upon Employers to procure an ergonomics study and assume Claimant's burden of proof. In the absence of a formal study, any expert must detail his own measurements and integrate his analysis with the perceived ergonomic exposure. Thereafter, each expert's assumptions on ergonomic exposure may be compared to the balance of the evidentiary record in order that a conclusion on probative value may be made.

Separately, and despite posting, Claimant did not mention erroneous or misleading schedules on direct examination that would corroborate an argument that schedules lacked variation. Rather, his scheduling disputations on re-direct examination were uncorroborated, by document or other witnesses, and his testimony in this regard contrasts the balance of the record in much the same manner as his version of work tasks contrasts with the documentary evidence and testimony of two supervisors.

Claimant's work cannot fairly be stated to be a *substantial* factor in causation and is indistinguishable from mere symptoms accompanying, or co-existing, with the employment.

#### Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have failed to sustain his burden of proof that his medical condition was work related. Thus, no basis exists to impose liability against either named employer. Claim denied. The SIF claim and the other issues are moot.

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

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

Joseph E. Denigan  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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