

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 03-135852

Employee: Leetta Reddin

Employer: Bi-State Development Agency

Insurer: Self-Insured

Date of Accident: August 1, 2003

Place and County of Accident: St. Louis City, 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 November 4, 2004, as supplemented herein, and awards no compensation in the above-captioned case.

In the instant case, the employee seeks workers' compensation benefits principally for right upper extremity complaints, alleging her medical condition is attributable to an occupational disease arising out of and in the course of her employment. The applicable statutes are section 287.063 RSMo 1994 and section 287.067 RSMo 1994.

An informative legal analysis of occupational diseases pursuant to these Missouri statutes 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:

[1,2] 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. *Hayes v. Hudson Foods, Inc.*, 818 S.W. 2d 296, 299-300 (Mo. App. 1991). 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. *Polavarapu v. General Motors Corp.*, 897 S.W. 2d 63, 65 (Mo. App. E.D.1995); *Dawson v. Associated Electric*, 885 S.W. 2d 712, 716 (Mo. App. W.D. 1994); *Hayes*, 818 S.W. 2d at 300; *Sellers v. Trans World Airlines, Inc.*, 752 S.W. 2d 413, 415 (Mo. App. 1988); *Jackson v. Risby Pallet and Lumber Co.*, 736 S.W. 2d 575, 578 (Mo. App. 1987).

[3-6] Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Dawson* 885 S.W. 2d at 716; *Selby v. Trans World Airlines, Inc.*, 831 S.W. 2d 221, 223 (Mo. App. W.D.1992); *Brundige v. Boehringer Ingelheim*, 812 S.W. 2d 200, 202 (Mo. App. 1991). Claimant must prove "a direct causal connection between the conditions under which the work is performed and the occupational disease." *Webber v. Chrysler Corp.*, 826 S.W. 2d 51, 54 (Mo. App. 1992); *Sellers*, 752 S.W. 2d at 416; *Estes v. Noranda Aluminum, Inc.*, 574 S.W. 2d 34, 38 (Mo. App. 1978). 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. *Hayes*, 818 S.W. 2d at 299; *Sheehan v. Springfield Seed & Floral*, 733 S.W. 2d 795, 797-8 (Mo. App. 1987). A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. *Dawson*, 885 S.W. 2d at 716; *Sellers*, 776 S.W. 2d at 504; *Sheehan*, 733 S.W. 2d at 797. The opinion may be based on a doctor's written report alone. *Prater v. Thorngate, Ltd.*, 761 S.W. 2d 226, 230 (Mo. App. 1988). Where the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is the most credible. *Hawkins v. Emerson Electric Co.*, 676 S.W. 2d 872, 877 (Mo. App. 1984). 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. *George v. Shop 'N Save Warehouse Foods, Inc.*, 855 S.W. 2d 460, 462 (Mo. App. E.D.1993); *Webber*, 826 S.W. 2d at 54; *Hutchinson v. Tri-State Motor Transit Co.*, 721 S.W. 2d 158, 163 (Mo. App. 1986).

Also, as particularly applicable to the instant case, and as stated in *Maxon v. Leggett and Platt*, 9 S.W. 3d 725 (Mo. App. S.D. 2000), "[M]ere exposure is not enough to shift liability to a subsequent employer. Instead, the subsequent employer must expose the employee to repetitive motion capable of producing [claimant's ailment]."

In the instant claim claimant failed to establish by her testimony as well as expert testimony the probability that her claimed occupational disease was caused by conditions in her work place. The employer did not expose the employee to repetitive motion capable of producing claimant's alleged medical condition. Claimant's testimony as to her job activities was deficient in convincing both the Commission and administrative law judge that such activities were a substantial factor resulting in her complained medical condition. Her description of her job activities alone does not convince the Commission that there exists a probability that her claimed occupational disease was caused by conditions in her work place.

Furthermore, both the Commission and the administrative law judge who heard the case are of the opinion that the more credible medical expert opinion concerning this issue was the opinion rendered by Dr. Randolph. Dr. Randolph opined that "a clear causal relationship between Ms. Reddin's mild to moderate carpal tunnel syndrome and tendonitis and work activities is not established. That is, based on the information regarding the job related activities, significant exposures to activities which involve forceful or repetitive movements is not established which might lead to the development of carpal tunnel syndrome or other musculoskeletal problems with the hand."

In addition, Dr. Randolph took the opportunity to review an ergonomic job analysis concerning claimant's occupation and discussed its findings with an employer representative. Dr. Randolph's additional opinion was: "Based on my review of the information in her report, it is my opinion that sufficient repetition and force is not present in the job duties of a bus operator to explain the development of carpal tunnel syndrome. Therefore, in my opinion work activities are not a substantial factor in the development of this condition in Ms. Reddin's case."

In contrast, the opinions rendered by employee's medical expert, Dr. Schlafly, are of no credible value. In layman's terms, his medical opinion is tantamount to the following: employee's occupation was that of a bus driver; she presently has right carpal tunnel syndrome and flexor tendonitis of her right thumb; and accordingly, her work as a bus driver is the substantial factor in the cause of her condition.

His conclusory opinion, without any in-depth analysis of her occupation, work activities and the lack of any recognizable link between her resultant medical condition and some distinctive feature of her job, is not persuasive, credible or worthy of belief.

Consequently, claimant did not sustain an injury due to an occupational disease arising out of and in the course of her employment.

The award and decision of Administrative Law Judge Joseph Denigan, issued November 4, 2004, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24<sup>th</sup> day of May 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

\_\_\_\_\_  
DISSENTING OPINION FILED

Attest:

John J. Hickey, Member

---

Secretary

### DISSENTING OPINION

The employee is claiming injury to her right hand as the result of cumulative trauma sustained in her 26 years as a bus operator.

There is no question but that employee has the condition of carpal tunnel. The question before us is whether there is a causal link between employment and the condition of ill being.

The administrative law judge (ALJ) and the majority were of the opinion that employee did not establish the work relatedness of her condition. However, I find the opinion of the ALJ deeply flawed and based on other than the statutory requirements of proof.

In the recitation of pertinent facts the ALJ recites certain elements making up employee's job duties. However, he omits the most important and significant task. Employee testified that she would be required to punch stacks of six or seven transfers up to one hundred times each work shift. This was done with a punch held in her right hand. The cumulative stress is significant. Significant too, is the omission of this chore from the ALJ's list.

The ALJ cited with approval the reliance of Dr. Randolph on an ergonomic study in reaching his conclusion. (Employer did not begin to introduce this study into evidence). If Dr. Randolph's reliance on the opinion of some third party is acceptable, how much more acceptable should be the opinion of Dr. Schlafly which relies on his own professional, expert, experience over the years in treating similarly situated workers. Yet, Dr. Schlafly's opinion is discounted.

In his rulings of law, the ALJ provides us with a bold medical conclusion involving the medical condition resulting from repetitive trauma. (Emphasis added). The source of this conclusion is not indicated and is nowhere to be found in the record. Obviously, then, the ALJ is taking the opportunity of this award to share his own views and conclusions. I consider this to be improper.

The ALJ makes mention of the "three month rule." This rule has no bearing on this case and allusions to the rule have no place in this decision.

The ALJ enlightens us further with a definition of ergonomics. It is one thing to interject material which is not in the case but quite another to interject material which is incorrect.

Mr. Webster's dictionary advises that ergonomics is the "applied science of equipment design intended to reduce operator fatigue and discomfort." The ALJ, however, seems to equate exposure with ergonomics. A conclusion without foundation.

The ALJ discounts the conclusion of job relatedness advanced by Dr. Lucas because the doctor did not have an ergonomic study. I know of no requirement for such a study before a medical expert may offer an opinion. No such requirement exists.

The ALJ goes on to attack the conclusion of Dr. Lucas because the doctor did not premise the "statutory requirement of a precipitating repetitive motion." What is the basis for this conclusion? The report of Dr. Lucas was admitted into evidence without

objection. The defense did not seek to inquire as to the basis for the medical opinion. How then, can the ALJ assume with absolutely no support, that this factor was not considered by the doctor in formulating his opinion?

The ALJ advises us that "it is axiomatic" that a cause and effect relationship be identified. In my opinion, a reading of the record, without the impediment of pre-conceived notions of causation, establishes the cause and effect link. The ALJ has set his own criteria for causation. Criteria unsupported by the record. This is an improper interjection of the ALJ's own opinions into the case before him.

The ALJ advises us that repetitive or cumulative trauma can not be. Apparently, one can not endure twenty odd years of wear and tear before a problem begins. Life experiences and common sense indicate the fallacy of this assertion.

Again, where does the record support this dicta. It is axiomatic that the ALJ should decide the case before him as it is presented without providing the help or hindrance of his own views and opinions.

The ALJ would have employee's expert, Dr. Schlafly, predicate causation "to the exclusion of other possible causes." A new and groundbreaking requirement. The statute requires that the employment be a substantial cause. There is no standard as that embraced by the ALJ. Such a statement is a clear indication of the impossible, unreasonable and improper burden of proof this ALJ would have employee establish.

The ALJ interjects his opinions on the role that gynecological changes and hormones play in carpal tunnel. Again, this opinion is without foundation in the record. How does the ALJ know that Dr. Lucas did not consider these factors? Is the doctor required to provide the encyclopedic list of those elements considered?

On the last page of the award the ALJ again invites our inquiry into employee's gynecological condition. A curious fascination without expert foundation in the record.

The ALJ advises us that "cervical disc pathologies include dermatones reaching the hands." Is this somehow relevant to this case?

I would reverse the award of the ALJ. The standard of proof employed by this ALJ is unique to him and at odds with the statutory requirement.

---

John J. Hickey, Member

## AWARD

Employee:	Leetta Reddin	Injury No.: 03-135852
Dependents:	N/A	Before the <b>Division of Workers'</b>
Employer:	Bi-State Development Agency	<b>Compensation</b> Department of Labor and Industrial
Additional Party: N/A	Relations of Missouri	Jefferson City, Missouri
Insurer:	Self-Insured	
Hearing Date:	July 22, 2004	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? N/A
7. Did employer receive proper notice? N/A
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
- 11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
- 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: 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: Leetta Reddin Injury No.: 03-135852

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

**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:	Leetta Reddin	Injury No.: 03-135852
Dependents:	N/A	Before the <b>Division of Workers'</b>
Employer:	Bi-State Development Agency	<b>Compensation</b> Department of Labor and Industrial
Additional Party:	N/A	Relations of Missouri Jefferson City, Missouri
Insurer:	Self-Insured	Checked by: JED

This case involves a disputed repetitive motion claim alleged by Claimant with the filing date of January 28, 2004 and an exposure date of August 2003. Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund ("SIF") is not 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

1. The average weekly wage was stipulated at \$754.80 resulting in applicable TTD/PPD rates of \$503.20/\$347.05. Employer paid no benefits to date. Employer does not dispute the existence of [carpal tunnel syndrome] but disputes repetitive trauma as the cause.
2. Claimant began work for employer in January 1978 as a driver and had been driving buses ever since, for 26 years, through August 2003.
3. She drives eight hours a day. Her hand tasks/uses include the steering, operating the fare box and pressing a keypad to indicate fares.
4. Claimant stated that she had numbness for several years, but the first time she saw a doctor was in June 2002.
5. In November 2003, she was sent to Dr. Randolph on whose report Employer based its denial of benefits. Claimant reported prior right shoulder injury and stated in court that her pain now goes into her right shoulder.
6. On cross-examination, she admitted that although her claim was for both hands, her current demand refers to the right hand only. The Claim for Compensation alleges a left carpal tunnel condition, none of the medical records from either side support that allegation.
7. She stated that she worked until 11/4/03 but has not worked since and that she has not attempted to work anywhere for the last eight months. She did not state that she whether she was retired or looking for other work.

8. Dr. Lucas, an osteopath, first saw her on 6/23/03. She complained of her neck, shoulder, both arms and both hands. He admitted problems diagnosing her with these multiple complaints. "She appeared to have osteoarthritis and I attributed her arm and hand pain to that." (p.1). On 10/1/03 she had the same variety of complaints that prevented him from defining the condition. Her Tinel's sign was negative. On 10/23/03 she complained mainly of her right hand and thumb, mostly at night and in the early morning. Her Tinel's sign was then positive and he ordered the electrodiagnostic study by Dr. Alvarez.

9. The report of Dr. Alvarez on behalf of the employee also does not deal with causation but is an objective electrodiagnostic study of the upper extremities. She concluded that there was "evidence consistent with a moderately severe right focal median neuropathy at the wrist (carpal tunnel syndrome)." There was no ulnar neuropathy at the wrist or elbow on the right and no mention of a problem on the left.

10. Dr. Randolph, an expert in Physical Medicine and Electrodiagnostics, wrote two reports on behalf of Bi-State, the first being on 12/9/03 following her report of the condition in November 2003 and the allegation that it was work-related. He reviewed the electrodiagnostic study of Dr. Alvarez and diagnosed "mild to moderate right carpal tunnel syndrome." He said the left side was normal. He noted tenderness along the flexor tendon of the right thumb but found no active triggering. Phalen's was positive but Tinel's and Finkelstein's were negative.

11. Dr. Randolph's conclusion was that there was right carpal tunnel syndrome and a right thumb tendonitis but a clear causal relationship could not be established. Based on her job description to him he did not know if causation was possible and suggested an ergonomic assessment.

12. On 5/12/04 Dr. Randolph provided a supplemental report following his review of an ergonomic job analysis for a bus operator at Bi-State. Based on that it was his opinion that "sufficient repetition and force is not present in the job duties of a Bus Operator to explain the development of carpal tunnel syndrome. Therefore, in my opinion [Dr. Randolph's], work activities are not a substantial factor in the development of this condition in Ms. Reddin's case."

13. Dr. Schlafly, a hand surgeon, wrote a report of 6/7/04 on the employee's behalf. On examination, the Tinel's and Phalen's tests were negative. He also detected no triggering in the right thumb. Nevertheless he also recommended a right hand surgery and trigger finger release. Based on her history as a driver and his personal knowledge of other bus drivers who he diagnosed as having carpal tunnel syndrome from driving, he stated "her work as a bus driver at Metro [Bi-State] is the substantial factor in the cause of the right carpal tunnel syndrome and right trigger thumb condition." He also disabled her from operating a steering wheel.

## RULINGS OF LAW

### Occupational Disease: Exposure and Medical Causation

The Missouri WC law permits recovery for hand symptoms that result from the workplace under the category of occupational disease if the symptoms are the result of "repetitive motion." Section 287.067.7 RSMo (2000). The medical condition resulting from repetitive trauma is called tenosynovitis, not carpal tunnel syndrome, per se.<sup>[1]</sup> Thus, the legislature limits employer liability for hand symptoms to those cases in which the symptoms result only from "repetitive motion." Id. In the same subsection, the legislature imposes the "three month" rule to insulate successive employers from repetitive motion exposures sustained at prior employers.<sup>[2]</sup> This exposure to repetitive motion must be proven like any other element of Claimant's case.

The science of work place exposure is called ergonomics.<sup>[3]</sup> Ordinary diseases of life, not traceable to the workplace, are not compensable under the WC law. Section 287.067.1 RSMo (2000). Thus, in order to recover for repetitive motion, Claimant must prove an exposure (to repetitive motion) in the work place that caused her hand symptoms. Pain and inability to work is not an evidentiary proof of medical causation. Aggravation of symptoms is not proof that the alleged repetitive activity is a substantial cause. Common sense dictates that many types of activity imposed on sore tissue will aggravate symptoms but this does not also mean that the imposed activity is the *cause* of the pathology.

Claimant's testimony was credible but not probative of medical causation. Medical causation, which is not within the common knowledge or experience of lay understanding, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. McGrath v. Satellite Sprinkler's Sys., 877 S.W.2d 704, 708 (Mo. App. 1994). Here, Claimant's exposure to driving a bus is undisputed. The exposure, as a full-time driver, was essentially unchanged since 1978. However, despite constant exposure to the alleged repetitive motion, Claimant's first symptoms manifest after more than twenty years on the job. Although Claimant presented two experts on causation, Claimant's position is untenable for several reasons.

First, Dr. Lucas made a statement of causation without explaining why he came to his conclusion, or to the exclusion of other causes. Dr. Lucas had no ergonomic study before, or after, he made his assertion of work relatedness. Claimant's complaints, at first, were diffuse and she did not relate this to her work. The subsequent changes in complaints and diagnosis of work related disease are curious in the record.

Second, Dr. Lucas' statement is conjecture without first premising the statutory requirement of a precipitating "repetitive motion." More weight might be given his opinion if hand surgery was his specialty and he explained that he properly assumed the correct ergonomics. More importantly, and despite this huge gap in analysis, is the omission of why, after 25 years, Claimant now has symptoms. It is axiomatic that a cause and effect relationship be identified. This cannot be done after twenty-odd years of exposure with no symptoms. The onset of symptoms is too remote from the commencement of exposure to the alleged repetitive motion in 1978. Claimant does not even posit that she had longstanding symptoms for 25 years but only now reported them. [4]

Third, the causation opinion of Dr. Lucas was not stated to be a *substantial* factor and is indistinguishable from mere symptoms accompanying, or co-existing, with the employment. Placement off work for eight months, even for consecutive surgeries (i.e. two recovery periods) cannot be justified in any event as Division statistics on compensable cases will quickly reveal. Dr. Lucas 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).

Fourth, Dr. Schlafly sought to predicate causation without an ergonomic foundation which existed to the exclusion of other possible causes. It is reasonable to expect experts to be fully informed before rendering an opinion. Plaster v. Dayco, 760 S.W.2d 911, 913 (Mo.App. 1988). Bersett v. National Super Markets, Inc., 808 S.W.2d 34, 36 (Mo.App. 1991). Here, Dr. Schlafly asserted that since he diagnosed this previously in Employer's other drivers. However, Dr. Schlafly's conclusions as though his opinion in other cases obviate the requirement of proof in this one. He also did not cite scientific evidence, medical studies or ergonomics justifying his position. Rather, he speciously declared his foreknowledge as though his qualification as a hand surgeon permitted his lapse in failing to properly predicate causation.

The assertion has little utility since he did not consider the ergonomic study or explain how the work causes the condition. It is no defense that the report was not prepared at the time of his report. 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. Thus, he must supplement his report just as he must if other relevant facts change or manifest. This omission is a disservice to Claimant.

Fifth, it is noted Dr. Schlafly finds no triggering of the thumb clinically, does not diagnose a trigger finger, but recommends surgery for a trigger finger. Similarly, he made no positive findings on the left, reports the electrodiagnostic studies on the left as normal, but suggests Claimant be treated for left carpal tunnel syndrome once the surgery on the right has taken place. His examination of Claimant showed negative signs bilaterally for the hallmark Tinel's and Phalen's tests. These findings are difficult to reconcile with these diagnoses and treatment recommendations. Dr. Schlafly failed to mention neck and shoulder complaints in his written summary of Dr. Lucas' records (cervical disc pathology can manifest hand symptoms). [5]

None of Claimant's proffered experts identified an ergonomic model, formal or otherwise, upon which they relied in asserting a theory of work related medical pathology. McGrath, supra. A job title 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).

In addition, none of the experts discussed risk or treatment of menopausal or gynecological conditions resulting in hormonal imbalance. No expert discussed arthritis. Two experts gave no causation opinion but merely testified to the *existence* of a medical condition. Co-existence of a medical condition with one's employment is not a proof of medical causation. Any weakness in the underpinnings of an expert opinion goes to the weight and value thereof. Hall v. Brady Investments, Inc., 684 S.W.2d 379 (Mo.App. 1984).

In contrast, Dr. Randolph, considered, in his first report, a possible work-related condition but needed more information. He subsequently reviewed an ergonomic job analysis and concluded that work was not a substantial factor in causation. Dr. Randolph's opinion adheres to established norms of expert proof. The opinion evidence together with the illogic that Claimant endured the same exposure for over twenty years and suddenly manifests a work related repetitive trauma compels a finding that her condition is not work related.<sup>[6]</sup>

### Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have failed to sustain her burden of proof. Claim denied. The other issues are moot.

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

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

A true copy: Attest:

\_\_\_\_\_  
Gary J. Estenson  
*Acting Director*  
*Division of Workers' Compensation*

<sup>[1]</sup> While treatment involves examination of the carpal ligament and the structures bound within it, classic carpal tunnel *syndrome* is a compression or entrapment that presents idiopathically or, irrespective of "repetitive motion," in conjunction with chemical imbalances. For example, it is medically correct to say, as many hand surgeons have testified, that an employee with work related bilateral surgical releases (of the carpal ligament) does not technically have "carpal tunnel syndrome."

<sup>[2]</sup> The subsection anomalously presumes consecutive employments without instance of unemployment gaps.

<sup>[3]</sup> The ergonomics of a repetitive motion in the work place is defined in terms of position, duration or force and repetitions.

<sup>[4]</sup> Dr. Lucas was curiously silent on Claimant's general and gynecological health. Diabetes, thyroid, rheumatoid arthritis and hormonal imbalance are known causes of CTS symptoms. Obesity and smoking are also thought to be precipitants.

<sup>[5]</sup> It is well established that cervical disc pathologies include dermatomes reaching the hands.

<sup>[6]</sup> No expert identified such latency as recognized in repetitive trauma medicine. Also, such latency is contrary to the legislative history underlying the promulgation of the *90 day* ("three month") *rule* found in subsection 7 (cited above).