

**TEMPORARY AWARD ALLOWING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge  
with Supplemental Opinion)

Injury No.: 11-002219

Employee: Jo Ann Slusarczyk  
Employer: Ameristar Casino  
Insurer: Hartford Fire Insurance Company

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

**Discussion**

Occupational disease

We affirm and adopt the administrative law judge's finding that employee presented credible testimony regarding her job duties at the hearing. We specifically find employee's testimony regarding her job duties more credible than the Functional Job Analysis submitted by employer. Given our findings, it appears that the relevant opinion from employer's treating and evaluating physician Dr. Walker is his initial determination, based on employee's description of her job duties, that employee's bilateral upper extremity complaints are work-related.

Where employer's own expert found causation based on a version of employee's work duties that we have credited, it follows that there is no relevant expert medical evidence supporting employer's position that this claim is not compensable. We adopt the administrative law judge's conclusion that employee sustained an occupational disease arising out of and in the course of her employment.

Temporary total disability

In its brief, employer argues that employee's own opinion as to whether she can work is irrelevant and should be disregarded. We disagree. To the contrary, the courts have long held that "[a] claimant is capable of forming an opinion as to whether she is able to work, and her testimony alone is sufficient evidence on which to base an award of temporary total disability." *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 249 (Mo. banc 2003). See also *Patterson v. Engineering Evaluation Inspections*, 913 S.W.2d 344, 347 (Mo. App. 1995) and *Riggs v. Daniel International*, 771 S.W.2d 850, 851-52 (Mo. App. 1989). We find credible employee's testimony that she is not capable of working given the physical condition of her bilateral upper extremities.

Employer's attempt to accommodate employee and employee's voluntary resignation are certainly relevant factors, but are not, as employer suggests, dispositive of the issue. Rather, the question turns on "whether the employee is able to compete in the

Employee: Jo Ann Slusarczyk

- 2 -

open labor market given the employee's present physical condition." *Cooper v. Medical Ctr. of Independence*, 955 S.W.2d 570, 575 (Mo. App. 1997). We agree with and adopt the administrative law judge's conclusion that employee is not able to compete in the open labor market given the present physical condition of her bilateral upper extremities. Accordingly, employer is liable for temporary total disability benefits.

**Conclusion**

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Emily S. Fowler, issued May 2, 2013, is attached and incorporated by this reference.

We approve and affirm 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.

This award is only temporary or partial. It is subject to further order, and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

Given at Jefferson City, State of Missouri, this 26<sup>th</sup> day of September 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## TEMPORARY AWARD

Employee: Jo Ann Slusarczyk Injury No. 11-002219  
Dependents: N/A  
Employer: Ameristar Casino  
Insurer: Hartford Fire Insurance Company  
Additional Party: N/A  
Hearing Date: April 19, 2013 Checked by: ESF/pd

### 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: January 14, 2011
5. State location where accident occurred or occupational disease was contracted: Kansas City, Clay 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? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee, while working in the course and scope of her employment for the Employer, was required to repeatedly use her arms and hands to open and close machines, handle paper products, move chairs and other hand intensive job duties, all cumulatively causing the injuries of which she complains.
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: bilateral upper extremities
14. Nature and extent of any permanent disability: To be determined
15. Compensation paid to date for temporary disability: \$-0-
16. Value necessary medical aid paid to date by employer/insurer? \$5,299.66
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$540.22
19. Weekly compensation rate: \$360.26/\$360.26
20. Method wages computation: By agreement

### **COMPENSATION PAYABLE**

21. Amount of compensation payable: Temporary total disability payments in the amount of \$360.26 per week commencing February 18, 2011 and continuing until Employee is released from medical care at maximum medical improvement.
22. Second Injury Fund: N/A
23. Future requirements awarded: Employer shall provide to Employee all medical care necessary to cure and relieve the effects of her injuries to her bilateral upper extremities.

The compensation awarded to the Employee shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of Jason Pottenger, Employee's attorney, for necessary legal services rendered.

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jo Ann Slusarczyk Injury No. 11-002219  
Dependents: N/A  
Employer: Ameristar Casino  
Insurer: Hartford Fire Insurance Company  
Additional Party: N/A  
Hearing Date: April 19, 2013 Checked by: ESF/pd

On April 19, 2013, the parties appeared for a hardship hearing pursuant to Section 287.510. The Employee, Jo Ann Slusarczyk, appeared in person and was represented by Mr. Jason Pottenger. The Employer and Insurer appeared through Mr. Tom Walsh.

### STIPULATIONS

The parties stipulated to the following:

- 1) that the Employer, Ameristar Casino, was an employer operating under and subject to the provisions of Missouri Workers' Compensation Law on January 14, 2011 and its liability was fully insured by Hartford Fire Insurance Company;
- 2) that Jo An Slusarczyk was its employee;
- 3) that the Employee was working subject to the law in Kansas City, Clay County, Missouri;
- 4) that Missouri has jurisdiction over these proceedings;
- 5) that Employee notified the Employer of her injuries as required by law and her claim was filed within the time allowed by law;
- 6) that Employee's average weekly wage was \$540.22, resulting in a compensation rate of \$360.26 for temporary total and permanent partial disability compensation; and
- 7) that the Employer has not paid any temporary total disability compensation but has paid \$5,299.66 for medical care costing;

### ISSUES

The issues to be resolved by this hearing are as follows:

- 1) whether the Employee sustained an occupational disease arising out of and during the course of her employment;
- 2) whether the Employee is entitled to temporary total disability benefits from February 18, 2011 to present and ongoing should the Court determine she requires additional medical care; and
- 3) whether the Employer must provide Employee with additional medical care.

## FINDINGS OF FACT AND RULINGS OF LAW

The Employee, Jo Ann Slusarczyk, testified in person and offered the following exhibits, all of which were admitted into evidence without objection:

*Claimant's Exhibit A – Deposition of Dr. Koprivica dated 9/27/12*

*Claimant's Exhibit B – Medical Records*

The Employer offered no live testimony but offered the following exhibits, all of which were admitted into evidence without objection:

*Employer/Insurer's Exhibit 1 – Deposition of Dr. Walker, dated 7/12/12*

*Employer/Insurer's Exhibit 2 – Functional Job Analysis from ARC*

Based on the above exhibits and the testimony of the Claimant, this Court makes the following findings:

Employee is a 62-year-old female who began work at Ameristar Casino on November 5, 2005. She has always held the job of slot service specialist. Her last date that she was employed was February, 18, 2011. She described her job duties as set out in Employer/Insurer's Exhibit No. 2 which is a Functional Job Analysis by Athletic & Rehabilitation Center (ARC). Pursuant to the job analysis she was required to stand and walk on a continuous basis, frequently bent forward, frequently crouched, kneeled and squatted, occasionally reached overhead, continuously reached forward, was required to use hand coordination with her preferred hand more than ten times an hour while feeding cards and money into the slots, also to hand out money more than three times an hour, to recalibrate the screens at least 10 seconds at a time. She was required to have hand dexterity with her preferred hand to turn the key when opening a machine, and usually ten machines were opened per hour, turning the key twice per machine to open and close the machine and also to recode the card slots which were quite often hard to open and shut. This was done approximately ten machines per hour. She was required to frequently push up to 10 pounds at a time. This she described as pushing in chairs. It was recommended to use her foot to push the chair in and this was done to approximate 108 chairs per hour. She testified that occasionally she had to pick up chairs and move them quite a distance. Also, quite often the chairs would not scoot forward when she had to move them in place and, therefore, she had to, as she put it, "manhandle" the chairs into place.

She was required to continuously stand and walk on carpeted floors to stock paper supplies from storage shelves. She noted that she had to open taped boxes of tickets usually using a pen to rip them open and then rip them the rest of the way with her hands. She would have to bend forward frequently to stock ticket paper from a cart and place it in pull-out shelves. She again had to use hand coordination with her preferred hand on an occasional basis to stock packets, usually six to ten boxes, two times per week. Again, she was also required to push up to 10 pounds when she would push the carts of boxes of ticket paper. She noted that it was difficult to push the carts on carpet and she would have to lift floor to waist occasionally approximately 30 pounds, generally six to ten 30-pound boxes twice a week. It is noted in Employer's exhibit 2 that, in summary, "the slot service specialist physical job demands a maximum lift of 30 pounds

from floor to waist occasionally and a maximum push of 10 pounds frequently. Stand/walk is continuous. Forward bend and forward reach is frequently. Frequent hand coordination with preferred hand. Hand dexterity with preferred hand. Crouch, squat, kneel are occasional; although, Employee noted that this was done frequently. Additional comments included that the slot service specialist is responsible for answering calls to machines and performing necessary maintenance, talking with guests, pushing in chairs, picking up trash and stocking paper supplies. The employee wears a uniform, a radio with a headset and a pouch around her waist containing keys and money. The job is indoors on carpeted floors and the employee is exposed to noise and smoke. Employee also noted on this exhibit in her handwriting that she had to make change, handle and counted money and got drinks for guests.

In her testimony, Claimant also noted that she had to open machines to recalibrate them or to stock them. Some of the machines, especially the table machines, were frequently difficult to open and close because they became stuck, generally due to spilled drinks or just a difficult machine. When she had to open these, she would insert a key, turn the key and then pull the machine open. Then when she finished servicing or supplying the machine, she had to shut it and quite often especially with the table machines, she had to set the top down and then hit it or slam it with her hands to get it to close. She described pushing chairs in as a job where she had to hold onto the back of the chairs with a grip situation where she showed her fingers placed over the top of the chair with her thumbs on the opposite side of the back of the chair and then using her foot to push the chair forward. However, she noted, as mentioned before, that many of these chairs did not slide or glide on the carpet but, instead, were stuck and therefore she had to manhandle or rock the chair back and forth to push it forward to get it back into place. She noted that she was very particular about her area and constantly maintained her area, keeping her chairs pushed in, the trash picked up and her machines properly serviced and maintained. She mentioned numerous activities with the machines themselves from recalibrating to recoding, stocking paper in the machines or stocking money in the machines. All of these job duties required her to unlock the machines, service them and to close them back up, as mentioned before. All of these activities required hand dexterity and although were not done in a constant one after the other repetitive manner, they were done constantly throughout her shift and were cumulative hand-intensive activities combined with pushing in chairs, cleaning up trash, getting drinks.

Employee stated she had a walkie-talkie type communication device that when she was called due to a complaint or problem with a machine, she would then answer back by pushing a button with her thumb to respond to the call and then she would go to where she was requested to appear to service a machine or take care of a customer. She also mentioned that at times she would do the dispatcher job, and this was generally two nights a week that she would work as a dispatcher. As a dispatcher, she had a hand-held radio that she had to push the button with her thumb to talk. In this case, she was constantly talking on this radio throughout the evening. There were over 2200 machines in the casino and there was constant input either from other personnel on the floor calling to her, or the computers in the machines themselves would notify her via computer that there was a problem with the machine and she would contact one of the floor attendants to take care of the machine.

She noted that her first onset of pain or problems with numbness to her hands or wrists started in approximately August of 2010 and continued to cause her problems. She first noticed this when she was working on the floor pushing in chairs. She tried to baby it for quite a while,

but the problems with her wrists including the pain and numbness became worse as time went on. After about five or six months, it became too painful for her to do anything. She had never had any problems with her hands prior to working for Ameristar Casino. In fact, she had never really had any major health problems prior to this. She stated she reported her problems to Ashley Bowlin (phonetic). She was sent for medical care to CompCare where she saw Dr. Hutchinson. She was diagnosed with bilateral carpal tunnel and placed on light duty. However, there was not much light duty available, so they put her in dispatch. This was in January. And although dispatch was easier, it still caused her problems with her thumbs. She was exclusively doing light duty at the time from January on. She did not ask for any other accommodations, even though her thumbs were hurting. She eventually quit working because she physically could not do the work anymore due to pain and numbness in her wrists and hands. She was sent to Dr. Walker who treated her with some injections in the left wrist, although this did not give her any relief; and at some point, he eventually told her he could not see her anymore. He had recommended carpal tunnel surgery to relieve the problems with numbness, tingling and pain in her hands. She has not worked anywhere since she has left the employer. Since she has stopped working, she has noticed that the symptoms have abated somewhat, that the thumbs are the most painful to her right now, but the tingling and the numbness have gotten somewhat better. She will find that if she does hand-intensive work such as peeling potatoes when she is cooking, it will cause problems. However, she does not do this any longer; she usually has her husband do that type of work. She believes that she could not work right now due to the problems with her hands.

On cross-examination, Claimant admitted that she was allowed to make the corrections that are noted on Employer/Insurer's Exhibit No. 2. She reviewed again the activities that she did with regard to pushing in chairs and the other jobs regarding maintaining the machines, making change, etc. She said the keys for the machines were normal house-type keys and that unlocking a machine was similar to starting a car. However, they were not straightforward; they were usually on the side of the machine. She stated that she would generally get into a machine approximately 100 times per shift either for changing bills, replacing change or replacing paper. This was done approximately 10 times an hour. She reiterated that when she was working dispatch she did not do any other work. She noted that her job duties were not like being on an assembly line where she would be constantly doing the same repetitious movement with her hands. However, even though there were different job duties, they were all very similar in that she used her hands all throughout her shift with twisting, turning, gripping, lifting-type of activities. She felt she would walk between 7 to 8 miles a night on the upstairs area. On the downstairs area, she walked approximately 5 miles a night. A lot of walking was required in this job. Occasionally, when a tabletop machine was too difficult to open by herself, she would call for assistance, but she never asked for such assistance unless she absolutely could not do it herself. She said that she generally would ask for assistance maybe three times a week. She noted that there was no headset for her as a dispatcher but she had to use the walkie-talkie. There was one employee who did have a headset, and that was specifically for that one employee. She noted that even when she was doing the dispatch job and had problems with her thumbs, she never asked for any other jobs. She could not figure out anything else that she could do. Prior to resigning, she never asked for any other job opportunities at Ameristar Casino. She has not looked for other work since she left. She stated that she does not know of any doctor who said she cannot work at all. She admitted that years ago she used to crochet but has not done it in quite some time. Since she quit, she pretty much stays at home, helps take care of her grandkids, and watches television. She notes that her outdoor activities include occasionally

going out on the boat. She does not garden. She does visit with friends but she does not travel very much.

On redirect examination, Claimant noted that when she was given the dispatcher job, she was just very frustrated because she could not do the work. Then she was even more frustrated when her medical care was cut off and she did not understand what she was supposed to do. While she was doing the dispatch work, pushing the button hurt her thumbs very badly and also continued to cause pain in both wrists. She did not know of any other work at Ameristar that did not involve using her hands. She has had some symptom relief in her wrists since leaving work.

Claimant's Exhibits A and B include the deposition of Dr. P. Brent Koprivica and the medical records and reports from Dr. Koprivica, medical records that Dr. Koprivica reviewed, as well as his reports based upon those medical records and his interview with Employee. In his report of October 18, 2011, after reviewing her medical records and conducting a physical examination, Dr. Koprivica concluded that Employee's work activities as a slot attendant at Ameristar Casino represented activities which exposed her to risk in terms of the extent of upper extremity use which is unique to her employment. She clearly made an association between the progression of impairments in both upper extremities with the specific workplace activities that she had performed. He noted that the exposures to risk during her employment are unique to her employment and that she was not exposed to the same extent of risk away from work. He further concluded that the general population is not exposed to the same extent of risk. He felt that the nature of exposure to risk was competent to result in cumulative injury and that she did not have any outside recreational activities which would place her at the same type of risk in particular. He determined that her workplace activities represented the direct, proximate and prevailing factor in her development in cumulative injury with development of chronic flexor tenosynovitis bilaterally along with bilateral carpal tunnel syndrome of significance. He did not feel that she was at maximum medical improvement. He felt that she needed further care and treatment, including repeated electrodiagnostic studies due to the duration of the time since the original studies were performed and that she was a surgical candidate. He also felt that with the subjective history of intolerance to her workplace activities and the noted occupational disease that she had developed from her workplace activities that she was temporary totally disabled based on per present complaints. He believed that her temporary total disability to have continued from the point that she resigned her employment due to her inability to perform work since that date. He felt she would be temporary totally disabled until appropriate care and treatment were provided and she reached a point of maximum medical improvement. He felt that the period of temporary total disability to be medically reasonable and a direct necessity of the cumulative injury that she sustained as a slot attendant while working for the employer.

In his deposition, Dr. Koprivica noted that there was no history of injuries or any other activities that would cause the problems that she suffered from (Depo. pg. 15). He found that she did suffer loss of hand strength bilaterally and that she suffered a positive Tinel's and Phalen's test (Depo. pg. 18). When asked about the cause of carpal tunnel syndrome, Dr. Koprivica was questioned by Employee's attorney:

**“QUESTION:** Is it a requirement to develop carpal tunnel syndrome in terms of the provocative nature of a job, that it has to be doing one thing every day all day?”

“ANSWER: Not in my opinion. What we’re looking at is activities that are going to increase carpal tunnel pressures and what you are looking for is the amount of those elevated pressures and repetitive tasks over time. If you take someone who is doing a known ergonomic risk thing with their hands, but then you switch them to a different activity that is also of ergonomic risk, the fact that they’re different doesn’t mean that you don’t – there is not a cumulative effect with developing carpal tunnel syndrome. I’ve had, back in when I was doing treatment and going in plants and talking to people about ergonomic issues, one of the common things they wanted to do was because they named a different task on the line, and it was a little bit different task that would be their job rotation to avoid developing carpal tunnel, and as I monitored their loss experience, it didn’t change.

“Well, the reason it didn’t change is because the fact that they changed the person from screwing in a screw at this station versus putting a screw in a different place at a different station, they weren’t really changing the relative risk for which the person is being experienced. What you need to do is take them away from hand use. That’s really what – the issue that you are looking at.

“So when I analyze a job position, that’s not an assembly position. Assembly positions are a lot easier. I try to look at the cumulative effect of everything they’re doing and those things that I believe are going to put risk of them developing progressive injury from hand and upper extremity use. And so in this particular case, we are talking about money handling, the pinching associated with that, the moving of the chairs. What has been marked as Exhibit 6 in this deposition, she has --- moves up to 108 chairs per hour. We’re talking about moving one to two chairs per minute that she’s – in terms of handling.

“Well, her chair moving, the forces involved that she’s describing on carpet, heavy-weighted chairs, and are doing 108 chairs a minute – I mean 108 chairs an hour it –that’s enough frequency that there is a problem. But in addition to that, she’s counting money and doing other slot activities with her hands that are required. So I interpret that, I think it’s competent to produce carpal tunnel syndrome..” (Depo. pgs. 38-40.)

Employer offered two exhibits, one of which has been discussed, the Functional Job Analysis, and also the deposition of Dr. Clinton Walker. From Dr. Walker’s medical records, he felt that after initially reviewing an EMG report that showed the findings were consistent with bilateral old cervical radiculopathies versus median and ulnar nerve involvement, he found that Employee showed no signs of cervical radiculopathy on examination. She did show clinical signs of median nerve irritation at the carpal tunnel which was likely related to her job duties at the casino. This is also noted in the CompCare medical records of February 22<sup>nd</sup> He discussed injections and carpal tunnel release surgery and she was given an injection in her left hand which would be monitored. He released her to activities which were unrestricted and she was to return in three weeks. In his medical records of March 15<sup>th</sup>, 2011 and follow-up, he found that after review of the formal job analysis which was completed by a therapist on March 4, 2011, he noted her description of her job duties at the casino were different than the therapy report. The job analysis indicated occasional lifting up to 30 pounds with frequent pushing up to 10 pounds. The pushing relates to pushing chairs at the slot machines which is further described as up to 10 pounds to push in the chairs recommending using the foot, a maximum of 108 chairs per hour.

The 30-pound lifting is described as limited to one 30-pound box per day. In his medical opinion at that point, her job duties as a slot service specialist as described in the Functional Job Analysis were unlikely to be the prevailing cause for carpal tunnel syndrome symptoms. Further, in his deposition, he reiterated that on the first evaluation, the whole description of what she did is what she provided to him. The Functional Job Analysis, in his opinion, was not as heavy or repetitive as what she had described. He felt that based upon that, her job duties were unlikely to be the prevailing factor of her carpal tunnel syndrome (Depo. pg. 15). Further, he felt that because her job duties did not involve significant heavy lifting on a repetitive basis and there was a significant amount of varied activity and that she was moving around and performing different activities at different times, he did not feel that met the criteria of being significantly repetitive activity. Based on this, Dr. Walker did not feel that Employee's job duties were the cause of her carpal tunnel syndrome.

The first issue to be determined by this Court is whether the Employee sustained an occupational disease arising out of and in the course of her employment. Employee testified to her job duties. They were set out in the Employer/Insurer's Exhibit No. 2 which she made changes to and also commented on in her deposition testimony. In her testimony which this Court finds credible, she gave clear explanations of exactly how she performed the job duties as set out in Exhibit No. 2. These job duties were constant and clearly hand-intensive; and although they may have been different general activities, they almost all required use of her hands in a gripping, turning, lifting, pulling or pushing manner. This included grabbing the backs of chairs and lifting or wrestling or manhandling them back into place; opening and closing machines by using a key and turning it, then lifting the machine up and using her hands to either recalibrate or to put paper or money in the machines and then closing them, sometimes having to physically manhandle and pound the machines closed. She was using a walkie-talkie that she had to press with her thumb throughout the evening and then as a dispatcher on a constant basis. There was no evidence as to who produced Employer exhibit 2 and therefore it is difficult to gauge the accuracy of this exhibit. The Court has no information as to whether the information is a general report of that job title or if someone followed Employee or a similar employee to accurately record what they did on a daily, hour by hour basis.

The key factor in determining whether the Employee's work activities were the prevailing factor in her injuries is which doctor this Court decides to determine is most accurate in their evaluation of both her work activities as well as the causal effect of her work activities towards her injuries. Dr. Walker is an orthopedic surgeon and clearly is experienced in the treatment of carpal tunnel type injuries. This Court feels he is familiar with such injuries. Dr. Koprivica is an occupational medical doctor who is also quite familiar with the symptoms and effects of carpal tunnel syndrome. However, he is also a specialist in occupational medicine which includes the study of a person's occupational duties and how they affect a person's body. Dr. Koprivica specializes and is board certified in occupational medicine which is the study and understanding of how workplace environments and activities cause injury and also how to prevent such workplace injuries due to the activities and job duties. Dr. Koprivica's explanation of how Employee's job duties affected her is credible. It is clear that one does not have to do the same specific exact tasks over and over and over again to cause carpal tunnel pressures to increase. The fact that Employee did this same job for a number of years and the description of her job duties is that she was required to constantly use her hands to do, although not the exact same motions, repetitive motions that caused stress on wrists, hands and arms makes it clear that her job activities, as Dr. Koprivica explained were the prevailing factor in her carpal tunnel

syndrome. Wherefore, this Court finds that Employee sustained an occupational disease arising out of and in the course of her employment due to the repetitive and cumulative nature of her job duties.

The next issue to be determined by this Court is whether the Employee was temporarily totally disabled from February 18, 2011 and ongoing through the present. Dr. Walker released Employee to full duty, and she was allegedly accommodated by her Employer by being put as a dispatcher. Unfortunately, the dispatching job also continued to cause problems with Employee's wrist to the point where she was finally unable to do her job anymore. Employee testified that she does not believe there is any job out there she could do due to the problems with her wrists, which although they have gotten somewhat better, she notes that any time she does anything that requires any hand activity, the symptoms return. Dr. Koprivica determined that Employee was temporarily totally disabled from the date she left her employment through present day and continuing. As this Court has found Dr. Koprivica's testimony to be more credible than Dr. Walker's, this Court finds that, in fact, Employee is temporarily totally disabled and has been since the date she left employment with the Employer. Wherefore, the Court orders the Employer to pay Employee temporary total disability from February 18, 2011 to present and ongoing in the amount of \$360.26 per week.

The final issue to be determined by this Court is whether the Employer should provide to Employee medical care to cure and relieve the symptoms of her workplace injury. This Court has found that Employee's job duties were the prevailing factor in the cause of Employee's injuries to her bilateral upper extremities, specifically, carpal tunnel syndrome. Dr. Koprivica believes that Employee should undergo an additional EMG testing to update her current status in order to give a base line for any further evaluation and treatment and, further, that she should undergo carpal tunnel release. Wherefore, this Court orders the Employer shall provide to Employee all medical care necessary to cure and relieve the effects of her injuries to her bilateral upper extremities.

Finally, the compensation awarded to the Employee shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of Jason Pottenger, Employee's attorney, for necessary legal services rendered.

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

Emily S. Fowler  
Administrative Law Judge  
Division of Workers' Compensation