

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

Injury No.: 02-070561

Employee: Marietta Speakes
Employer: St. Louis University Hospital
Insurer: American Home Assurance c/o SRS
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: July 2, 2002
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 (ALJ) dated December 7, 2004. The award and decision of Administrative Law Judge Karla Ogrodnik Boresi, as issued December 7, 2004, is attached and incorporated by this reference.

The Commission finds that the ALJ correctly weighed and evaluated the lay and medical testimony in reaching her conclusions as to disability and causation. *Reese v. Gary & Roger Link, Inc.*, 5 S.W.3d 522 (Mo. App. E.D. 2002); *Sullivan v. Masters Jackson Paving Co.*, 35 S.W. 3d 879 (Mo. App. S.D. 2001); *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 204 (Mo. banc 2003).

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 17th day of May 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Marietta Speakes

Injury No.: 02-070561

Dependents: N/A
Employer: St. Louis University Hospital
Additional Party: Second Injury Fund (Open)
Insurer: American Home Assurance c/o SRS

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

Checked by: KOB:tr

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: July 2, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant engaged in repetitive data entry with her left hand while working as a switchboard operator.
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: Left hand
14. Nature and extent of any permanent disability: 17 ½ % PPD of the left upper extremity at the wrist.
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee: Marietta Speaks Injury No.: 02-070561

17. Value necessary medical aid not furnished by employer/insurer? Not determined.
18. Employee's average weekly wages: \$489.70
19. Weekly compensation rate: \$326.47 / \$326.47
20. Method wages computation: By stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable:

3 weeks of temporary total disability:	\$ 979.41
30.625 weeks of permanent partial disability from Employer:	\$ 9,998.14

0 weeks of disfigurement from Employer:

0.00

22. Second Injury Fund liability: Open

TOTAL:

\$ 10,977.55

23. Future requirements awarded: None.

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Robert Keefe.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Marietta Speaks	Injury No.:	02-070561
Dependents:	N/A	Before the	
Employer:	St. Louis University Hospital	Division of Workers'	
Additional Party:	Second Injury Fund (Open)	Compensation	
Insurer:	American Home Assurance Company c/o SRS	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	KOB:tr

PRELIMINARIES

The matter of Marietta Speaks ("Claimant") proceeded to hearing to determine whether Claimant suffers from a compensable left carpal tunnel syndrome. Attorney Robert Keefe represented Claimant. Attorney Carl Kessinger represented St. Louis University Hospital ("Employer") and its insurer, American Home Assurance Company c/o SRS. The Second Injury Fund is a party, but did not participate at hearing pursuant to an agreement to leave the Second Injury Fund claim open.

The parties agreed that on or about July 2, 2002, Claimant was an employee of Employer earning an average weekly wage of \$489.70. The applicable rates of compensation are \$326.47 for both total disability benefits and permanent partial disability benefits. Venue, notice, and timeliness of the claim are not at issue. Employer has denied the claim for benefits and has not paid any benefits to date. The parties stipulated that Claimant suffers from permanent partial disability equivalent to 17 ½% of the left wrist. However, Employer asserts the claim is not compensable.

The issues to be determined are:

1. Is Claimant's carpal tunnel syndrome an occupational disease that is medically caused by her employment; and
2. Is Claimant entitled to recover three weeks of temporary total disability benefits [\[1\]](#)?

SUMMARY OF THE EVIDENCE

Claimant is a 48-year-old woman who is approximately 5 feet, 4 inches tall and weighs 263 pounds. She is a high school graduate and has taken some college level courses. She has never filed a workers' compensation claim other than for

her bilateral carpal tunnel syndrome and does not have thyroid disease, diabetes, or a recent pregnancy.

In May 1984, Claimant became a hospital switchboard operator for Employer. Claimant worked a day shift from 7:00 to 3:30 with four to seven other switchboard operators. Claimant answered and processed incoming calls, including calls for patients, doctors, and administrative staff. Claimant took anywhere from 40 to 110 calls per hour and worked eight hour shifts. For each call Claimant made six to more than ten key strokes for each call. In addition she made hand written entries into a log.

Claimant detailed description of her specific job duties was supported by the videotape Employer submitted (Exhibit 3). Using a headset, Claimant answered incoming calls seated in front of one or two computers, a switchboard and a multi-line phone. If the department or name requested by the call was unknown to her, Claimant typed the name into a computer to call up the appropriate number on screen. She then manually keyed the number into the switchboard. If Claimant beeped a doctor, she also made a log entry indicating the specifics of the call.

In the late 1990s, the layout of Claimant's workstation was different than the layout depicted in the video, which reflected the current layout. Prior to a change in equipment, Claimant's workspace was a cubicle with an L-shaped layout, with computers located to her center and left.

In 1998, Claimant began to develop problems with her right hand and began authorized treatment with Dr. Strege, who determined the right hand symptoms were related to work. In May 2000, Claimant's right hand symptoms got so bad that she was kept awake at night, and the pain, tingling and numbness limited her activities. Injections, a splint, and medication were tried but did not benefit Claimant. On August 28, 2000, Claimant underwent surgery to correct what Dr. Strege diagnosed as carpal tunnel syndrome. At various times during this treatment for the right hand, Claimant immobilized her right hand in one way or another.

With the development of symptoms in her right hand, Claimant began to favor her right hand and use her left hand more. Claimant altered her workstation by moving the multi-line phone from her right side to her left side so she could operate it with what was then her "good" hand. Although Claimant continued to do computer entry bilaterally, she eventually used her left hand for all other job tasks with the exception of writing in the log, because she is right handed.

In August 2000, Claimant complained to the doctor about her left hand for the first time, but the symptoms were mild and intermittent. Claimant followed with Dr. Strege for one year after her right hand surgery and received several types of treatment post-operatively. During her recovery, Claimant still favored her right hand and was using her left hand disproportionately. The problems with her left hand got progressively worse and in April 2002, Claimant received an injection in her left hand from Dr. Strege. In May 2002, Claimant went to see Dr. Volarich for her right hand and told him about her left hand. When Claimant told Employer about her left hand she was sent to see Dr. Rottman who determined Claimant's left hand was not work related. In September 2002, Claimant settled her right-handed carpal tunnel case against Employer for 20% of the right wrist. Claimant continued to treat on her own with Dr. Strege, and under went left carpal tunnel surgery on April 21, 2003. She was off work for three weeks.

In September and October 2001, Claimant went to see Dr. Cantrell for the right-handed carpal tunnel syndrome as directed by Employer, but never returned for any further evaluation. Dr. Cantrell, whose report is in evidence, assumed that nearly all Claimant's duties were performed with the right hand. Claimant testified this was a misconception. Claimant also went to see Dr. Howard at the request of Employer. Dr. Howard testified that no amount of keyboarding could cause carpal tunnel syndrome.

Claimant testified that she broke her left wrist twice as a child but had no ongoing problems or subsequent injuries to her left wrist. She is currently back at work full time with no problems. She does have a hobby of tole painting but only engages in that one to two hours per week. Claimant's right hand improved, but it was at least one year before she regained full use of her right hand after surgery, sometime in late 2001. Claimant's left hand also improved after surgery. She does not require a splint and takes no medication.

Employer presented the testimony of **Ernest Orlando Berringer**, Claimant's supervisor. He has been a communications manager for Employer since August 2002. He testified he was familiar with the job duties and workstation of Claimant, both before and after the equipment and location change that occurred in June 2003. According to Mr. Berringer, the old station was smaller and had different equipment. He said that the duties were comparable both before and after the equipment change. He has been trained on the board but has not done the job extensively. Claimant testified that the supervisor was incorrect as to the number of computers in the workstation and his description of the workstation before and after the change.

Employer also submitted a video showing Claimant and a few coworkers performing their jobs at the newer workstations. The activity depicted in the video is consistent with Claimant's testimony. Although none of the switchboard operators engaged in constant repetitive key stroking as one might expect with a typist, the ladies' hands are in constant movement. They move from one keyboard entry point to the next and only stop pressing buttons to pick up a pen to write in the log. There appear to be no pauses or breaks between calls.

Claimant offered the treatment records and deposition testimony of **Dr. William Strege**, who was the Employer-authorized treating physician for Claimant's right hand from 1998, and her personal physician specifically for the left hand beginning in April 2002. His records indicate that while Claimant had "only minimal symptoms which are intermittent in nature in the left hand" in 2000, two years later, she was "seen for a new problem involving numbness in her left hand" which Dr. Strege diagnosed as "a new onset of left carpal tunnel syndrome." After attempting conservative treatments, he performed a left carpal tunnel release on April 21, 2003, returned Claimant to full duty on May 12, 2003, and discharged her from care in early June. Based on information regarding Claimant and her job that was consistent with the evidence at hearing, Dr. Strege concluded that Claimant's work activities for Employer were a substantial cause of her left carpal tunnel syndrome. Dr. Strege acknowledged that with many maladies in the hand, causation is usually multi-factorial, but he consistently testified within reasonable medical probability that work was a substantial factor.

Employer also offered the deposition of **Dr. Russel Cantrell**, a physician specializing in physical medicine, rehabilitation and electrodiagnostic medicine. Claimant first saw Dr. Cantrell in 2001 for evaluation and treatment of her post-surgical right upper extremity complaints. The history he recorded was that Claimant did all activities with her right hand. Following laboratory tests and an electrodiagnostic study, Dr. Cantrell confirmed within a reasonable degree of medical certainty that Claimant's diagnosis of right carpal tunnel syndrome is substantially caused by her job duties. He did not examine Claimant's left hand at that time because she did not have complaints.

Two and one-half years later, without benefit of an examination, Dr. Cantrell issued his written opinion, based on his review of additional medical records and Claimant's self-reported history in 2001, that Claimant's left carpal tunnel syndrome is not substantially caused by her work. He wrote, "[t]he onset of left sided carpal tunnel syndrome *in the absence of any repetitive use of her left upper extremity* would, in fact, further suggest an underlying medical etiology as a risk factor for the development of this carpal tunnel syndrome."

Employer offered the deposition of **Dr. Richard F. Howard**, an orthopedic surgeon who testified that a two pronged test must be met in order to find a causal connection between an activity and carpal tunnel syndrome: 1) the activity must be repetitive; and 2) the activity must involve some degree of heavy grasping. Typing alone, according to Dr. Howard, is never sufficient to cause carpal tunnel.

FINDINGS OF FACT

Based on the substantial and competent evidence, including Claimant's credible testimony, the medical records, and the expert medical opinions, as well as my personable observations at hearing, and the applicable law of the State of Missouri, I find as follows:

Claimant's job as a switchboard operator is a hand intensive job, requiring the constant motion of her hands. While there is little forceful gripping or lifting of weights, Claimant has to make near constant entries on a keyboard, which she can do bilaterally, and/or phone keypad, which involves one hand or the other. She frequently picks up a pen and writes with her right, dominant hand only. Beginning in the spring of 2000, Claimant had treatment for the right hand, including bracing that rendered her right hand less functional, and surgery. As a result of symptoms in and treatment for the right hand, over the next two years, Claimant used her left hand repetitively to perform more of her job duties. Although she had minimal left hand symptoms when she underwent carpal tunnel surgery on the right, by 2002 the condition of her left hand had become significantly disabling, and surgery was necessary. In her 2000 workers' compensation case, Claimant only alleged an injury to the right upper extremity, and the settlement with Employer was based only on the right hand. The office visits, injections, splinting and surgery were all reasonably necessary to treat Claimant's medical condition of the left hand. Claimant's work is a substantial factor in the development of her left carpal tunnel syndrome.

RULINGS OF LAW

I find that Claimant has met her burden of establishing that her left carpal tunnel syndrome an occupational disease that is medically caused by her employment. Under Missouri law, it is well-settled that the claimant bears the burden of proving all the essential elements of a workers' compensation claim, including the causal connection between the accident and the injury. *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo.App. W.D.2002). A claimant must establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *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). 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).

I find the testimony of Dr. Strege to be more compelling, credible, and consistent with the facts than the opinions of Dr. Cantrell and Dr Howard. As her treating doctor for many years, Dr. Strege has personal knowledge of Claimant's case. So, unlike Employer's experts, Dr. Strege has a solid factual foundation, and knew that Claimant used her left hand to a much greater degree than the other experts assumed. His willingness to acknowledge that the cause of carpal tunnel is often multi-factorial while supporting his conclusion that work is a substantial factor makes his opinion more believable than the rigid judgment of Dr. Howard, who asserted typing can never cause carpal tunnel syndrome.

The testimony of Dr. Strege and Claimant, as well as the substantial and competent evidence, support a finding that

Claimant's left carpal tunnel syndrome is an occupational disease that is medically caused by her employment. Having found Claimant met her burden with respect to causation, I also find that Employer is liable to Claimant for temporary total disability benefits and permanent partial disability benefits, as stipulated by the parties at the commencement of the hearing.

CONCLUSION

Claimant has a compensable occupational disease of the left hand. Employer shall pay three weeks of temporary total disability benefits and 30.625 weeks of permanent partial disability benefits. This award is subject to a lien of 25% in favor of Robert Keefe for legal services rendered.

Date: _____

Made by: _____

Karla Ogrodnik Boresi
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Gary Estenson
Acting Director
Division of Workers' Compensation

[\[1\]](#) The parties stipulated 3 weeks of TTD would be due if the causation issue is found in Claimant's favor.