

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

Injury No. 09-051279

Employee: Kimberly Warren  
Employer: Alexian Brothers Lansdowne Manor, Inc.  
Insurer: Zurich American Insurance Co.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 9, 2014. The award and decision of Administrative Law Judge Linda J. Wenman, issued April 9, 2014, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 26<sup>th</sup> day of November 2014.

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

## AWARD

Employee:	Kimberly Warren	Injury No.:	09-051279
Dependents:	N/A		Before the
Employer:	Alexian Brothers Lansdowne Manor		<b>Division of Workers'</b>
Additional Party:	Second Injury Fund (open)		<b>Compensation</b>
Insurer:	Zurich American Insurance Co.		Department of Labor and Industrial
Hearing Date:	March 13, 2014		Relations of Missouri
			Jefferson City, Missouri
		Checked by:	LJW

### 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: April 10, 2009
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
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: Due to the repetitive and forceful nature of her work, Employee developed bilateral carpal tunnel syndrome.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Bilateral wrists
14. Nature and extent of any permanent disability: 17.5% PPD referable to each hand at the 175 week level, 15% multiplicity and 2 weeks of disfigurement.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Kimberly Warren

Injury No.: 09-051279

- 17. Value necessary medical aid alleged not furnished by employer/insurer? \$18,111.77
- 18. Employee's average weekly wages: Sufficient to produce rates listed below.
- 19. Weekly compensation rate: \$286.59 / \$286.59
- 20. Method wages computation: Stipulated

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Unpaid medical expenses:	\$18,013.88
8 5/7 <sup>th</sup> weeks of temporary total disability (or temporary partial disability)	\$2,497.42
70.44 weeks of permanent partial disability from Employer	\$20,187.40
2 weeks of disfigurement from Employer	\$573.18

- 22. Second Injury Fund liability: Open

TOTAL: \$41,271.88

- 23. Future requirements awarded: N/A

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 in favor of the following attorney for necessary legal services rendered to the claimant: Sarah Hale

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

Employee:	Kimberly Warren	Injury No.: 09-051279
Dependents:	N/A	Before the
Employer:	Alexian Brothers Lansdowne Manor	<b>Division of Workers'</b>
Additional Party:	Second Injury Fund (open)	<b>Compensation</b>
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Zurich American Insurance Co.	Checked by: LJW

### **PRELIMINARIES**

A hearing for final award was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on March 13, 2014. Post-trial briefs were received from the parties on April 3, 2014. Attorney Sarah Hale represented Kimberly Warren (Claimant). Alexian Brothers Lansdowne Manor (Employer) is insured by Zurich American Insurance Company and represented by Attorney Thomas Tobin. The Second Injury Fund (SIF) did not participate in the hearing and will remain open for further proceedings.

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: occupational disease; medical causation; liability of Employer for past medical expenses; liability of Employer for past temporary total disability (TTD) benefits; and liability of Employer for permanent partial disability (PPD) benefits. Claimant offered Exhibits A-E and G-H. Exhibit F was marked, but withdrawn. Employer offered Exhibit 1-2. All offered exhibits were admitted into the record. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

### **FINDINGS OF FACT**

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be summarized.

1. At the time of hearing Claimant is 42 years old, and is 5 foot 4 inches tall and weighs approximately 325 pounds. Claimant is not currently working as she is enrolled as a full-time nursing student. Claimant worked as a certified nurse assistant (CNA) for most of her working life, and began working as a CNA for Employer during November 1997. Claimant's CNA job duties included the following: transferring patients between bed to chairs, wheelchairs, and shower chairs; performing patient showers; making and changing beds; pushing beds and wheelchairs; lifting patients in bed; lifting patients after falls; lifting patients using a Hoyer lift; feeding patients; changing patients clothes; assisting patients with personal laundry; and limited patient charting. On average, Claimant was assigned 10-13 patients under her direct care, but she was also required to assist other CNA's when they required help. Other than her breaks and

lunch, Claimant testified her motion was essentially constant during her shift. During her course of employment with Employer, Claimant worked full-time or 40 hours per week, and had no other outside employment. She had no hand intensive hobbies.

2. During April 2009, Claimant sought medical care from her personal physicians after developing pain and numbness in both hands/wrists that extended to her elbows. X-rays and lab work was negative,<sup>1</sup> and Claimant was placed on ibuprofen. Claimant returned to her physicians on June 2, 2009, after her symptoms continued. A serum rheumatoid panel and sedimentation rate was negative, Claimant was placed in occupational therapy, and a right wrist splint was provided. On June 8, 2009, Claimant's physicians noted her thyroid panel was normal. On June 10, 2009, Claimant notified Employer she believed her bilateral hand/wrist symptoms were work related, and Employer referred her to Concentra Medical for evaluation. Following his examination, the Concentra physician diagnosed bilateral arm pain, Claimant was informed her condition was not work related and was advised to seek medical care with her private physicians.

3. On August 5, 2009, Claimant sought medical care with Dr. Bruce Schlafly, a board certified hand surgeon. Claimant provided Dr. Schlafly with a description of her job duties. Following his physical examination, Dr. Schlafly ordered bilateral EMG/NCV studies performed of Claimant's upper extremities. These studies were performed by Dr. Rao on August 11, 2009. Dr. Rao concluded the studies demonstrated "mildly abnormal electrophysiological study consistent with bilateral early mild carpal tunnel syndrome (CTS), left worse than right, and left early cubital tunnel syndrome." Dr. Rao also noted the study showed no evidence of polyneuropathy, myopathy, or cervical radiculopathy. Based on Claimant's history, level of symptoms, and electrical studies, Dr. Schlafly recommended Claimant undergo a right CTS release, and to re-evaluate the need for left CTS release after the right was performed. On February 16, 2010, Dr. Schlafly opined Claimant's work with Employer "for many years as a CNA at the nursing home is the prevailing factor in the cause of her bilateral carpal tunnel syndrome, and in the need for treatment, including carpal tunnel release." During deposition testimony Dr. Schlafly testified occupational CTS relates to a combination of repetition, forces on the hands, and posture of the hands and wrists. Further, Dr. Schlafly testified "the amount of repetition required to produce a carpal tunnel syndrome decreases as the amount of forces applied increase."

4. On October 19, 2010, at Employer's request, Claimant was examined by Dr. Crandall, a board certified plastic surgeon with hand certification. Dr. Crandall noted Claimant's hand complaints, and Claimant provided Dr. Crandall with a description of her job duties. Dr. Crandall's physical examination was essentially normal, and he noted negative responses to bilateral Tinel and Phalan's testing. Following his physical examination and review of Dr. Rao's EMG/NCV studies, Dr. Crandall ordered repeat NCV studies.<sup>2</sup> The repeat study was completed by Dr. Phillips who noted "this was a technically difficult study due to patient tolerance and movement. The primary focus was to evaluate for carpal tunnel and critical values were obtained." Dr. Phillips concluded the study "does not disclose evidence for carpal tunnel." After reviewing Claimant's repeat EMG/NVC studies, Dr. Crandall opined Claimant "does not have ulnar neuropathy or carpal tunnel syndrome." Dr. Crandall further opined assuming Claimant did have CTS, her work would not be the prevailing factor in causing the CTS as CNA work is "not at a

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<sup>1</sup> Claimant's serum glucose was normal, and her urinalysis was normal for glucose and ketones.

<sup>2</sup> In deposition testimony, Dr. Crandall questioned Dr. Rao's interpretation of his study.

level that can cause muscle or nerve injury.” During deposition testimony, Dr. Crandall identified Claimant’s major risk factors for CTS as her obesity and history of hypertension.<sup>3</sup>

5. On December 7, 2011, Claimant underwent a right CTS release performed by Dr. Schlafly. Following surgery Claimant reported an improvement in her symptoms. Dr. Schlafly then proceeded with a left CTS release on December 23, 2011, and again post-operatively Claimant reported improvement in her symptoms. Dr. Schlafly authorized Claimant to be off work following surgery from December 7, 2011 through February 5, 2012. Dr. Schlafly testified the medical treatment provided Claimant was reasonable and necessary to treat her bilateral CTS, and the charges for treatment were fair and reasonable. On April 29, 2013, Dr. Schlafly rated Claimant’s disability at 25% PPD referable to the right hand and 20% PPD referable to the left hand. During deposition testimony Dr. Schlafly testified some physicians consider obesity to be a risk factor for development of CTS, but other physicians don’t, and he hasn’t formed an opinion regarding the theory. Regarding Claimant’s history of hypertension, Dr. Schlafly testified it is not a risk factor in the development of CTS.<sup>4</sup>

6. As of hearing, Claimant testified her pain and numbness has improved since she underwent surgery. She continues to experience bilateral hand weakness, and difficulty opening jars and turning door handles. Due to her hand weakness, she sometimes requires help when performing CNA duties. Claimant acknowledged she developed gestational diabetes during her 5<sup>th</sup> pregnancy in 2004 and was treated with glucophage for approximately three months. Once her child was delivered her gestational diabetes resolved, and she has required no further medication since 2004.

### **RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

#### **Issues relating to occupational disease and medical causation**

Claimant bears the burden of proving the essential elements of her claim by producing evidence from which it may be reasonably found that an injury resulted from the cause for which the employer would be liable. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697 (Mo.App. 1973). Section 287.067.2 RSMo. 2005, provides an “injury by occupational disease” is compensable “only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.” Section 287.067.3 RSMo., 2005 defines prevailing factor as “the primary factor, in relation to any other factor, causing both the resulting medical condition and disability,” and states “an occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.” Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994)

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<sup>3</sup> In deposition testimony, Dr. Crandall identified Claimant’s minor risk factors as being her age and gender.

<sup>4</sup> In regard to Claimant’s age and gender as a risk factor, Dr. Schlafly testified women between the ages of 40-60 years old are more likely to develop CTS than males. When Claimant developed CTS symptoms and presented for treatment she was 38 years old.

(overruled on other grounds). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds).

Two hand surgeons provided expert testimony in this case. Dr. Crandall opined Claimant never had bilateral CTS, and if she had CTS her work duties as a CNA would not cause the CTS. Dr. Crandall indentified Claimant's prevailing risk factors as being her obesity and hypertension. Dr. Schlafly diagnosed Claimant with bilateral CTS and provided surgical releases that relieved Claimant of the pain and numbness she was experiencing. Dr. Schlafly identified Claimant's work as her prevailing risk factor. Dr. Schlafly opined obesity is not a settled risk factor among physicians, and hypertension is not a major risk factor in the development of CTS. Claimant provided both physicians with a detailed description of her CNA duties, and that description was the job description used by both physicians. I find Claimant's description of her work duties credible. Claimant testified in a straight forward and credible manner at hearing making a competent credible witness.

The trier of fact determines whether medical evidence is accepted or rejected, and the trier may disbelieve uncontradicted or unimpeached testimony. *Alexander v. D.L. Sitton Motor Lines*, 851 S.W. 2d 525, 527 (MO banc 1993). Based on the foregoing discussion, I find the opinion of Dr. Schlafly to be credible and persuasive, and accept his opinion that Claimant's development of bilateral CTS was caused by her work duties. I further find Claimant met her burden to establish her job duties produced an occupational disease, which arose out of and in the course and scope of her employment.

### **Issues related to past medical expenses**

Section 287.140.1 RSMo., provides that an employer shall provide such medical, surgical, chiropractic, ambulance and hospital treatment as may be necessary to cure and relieve the effects of the work injury. Additionally, §287.140.3 RSMo., provides that all medical fees and charges under this section shall be fair and reasonable. A sufficient factual basis exists to award payment of medical expenses when medical bills and supporting medical records are introduced into evidence supported by testimony that the expenses were incurred in connection with treatment of a compensable injury. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo.banc 1989).

Claimant seeks reimbursement in the amount of \$18,111.77 in medical charges incurred after she notified Employer she believed her injury to be work related. Following review of the certified medical records and billing charges the actual supported total is \$18,013.88.<sup>5</sup> Itemized listings of the charges were issued by the medical providers. The presented bills were supported by the appropriate medical records and Claimant's testimony. Employer did not challenge the reasonableness of the medical bills. Claimant's injury is compensable, her medical care flowed from her injury, and she has met her burden of evidence. Accordingly, I find Employer liable for \$18,013.88 in medical expenses accrued by Claimant in an attempt to cure and relieve the effects of her work related injury.

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<sup>5</sup> The charges considered are as follows: \$3,990.00 – Dr. Schlafly's charges, \$707.83 in occupational therapy charges, \$6,112.95 for the right CTS release, and \$7,203.10 for the left CTS release = \$18,013.88.

**Issues related to past TTD benefits**

TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991) (overruled in part). Employer has paid no TTD benefits to date. Claimant seeks TTD benefits covering a period from December 7, 2011 through February 5, 2012, the period Dr. Schlafly took her off work post-operatively. I find Employer liable for 8 5/7<sup>th</sup> weeks of past TTD benefits or \$2,497.42.<sup>6</sup>

**Issues relating to permanent partial disability & disfigurement**

A permanent partial disability award is intended to cover claimant’s permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991) (overruled in part). Section 287.190.4 RSMo., allows additional compensation, not to exceed forty weeks, to be awarded for disfigurement when an injury produces scarring to the head, neck and arms.

Only Dr. Schlafly provided disability ratings. Despite the improvement in her symptoms, Claimant continues to experience complaints commonly expressed following CTS surgery. With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983) (overruled in part). Based on the evidence presented, I find the following disability to Claimant’s upper extremities: 17.5% PPD referable to each wrist, a 15% multiplicity factor, and a total of 2 weeks disfigurement for the surgical scarring, for a total of \$20,760.58.

**CONCLUSION**

In summary, Claimant sustained an occupational disease to her body that arose out of and in the course and scope of her employment with Employer. Claimant is awarded past medical expenses, past TTD benefits, and PPD benefits from Employer not inconsistent with this award. Claimant’s attorney is entitled to a 25% lien.

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

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

LINDA J. WENMAN  
*Administrative Law Judge*  
*Division of Workers' Compensation*

<sup>6</sup> At the start of hearing Claimant indicated she was seeking 8 4/7<sup>th</sup> weeks of TTD, the calculation is corrected based on the dates present in the evidentiary record.

