

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

Injury No.: 03-029486

Employee: Joanne Wiggins  
Employer: Western Union Financial Services  
Insurer: Pacific Employers Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)  
Date of Accident: Alleged January 13, 2003  
Place and County of Accident: Alleged St. Charles, 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 June 9, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued June 9, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 16<sup>th</sup> day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

Attest: \_\_\_\_\_  
John J. Hickey, Member

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Joanne Wiggins

Injury No.: 03-029486

Dependents: N/A  
Employer: Western Union Financial Services  
Additional Party: Second Injury Fund (Open)  
Insurer: Pacific Employers Insurance Company  
Hearing Date: March 8, 2005

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

Checked by: MDL: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: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Joanne Wiggins Injury No.: 03-029486

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$670.80
19. Weekly compensation rate: \$447.22/\$340.12
20. Method wages computation: By agreement

### COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

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:	Joanne Wiggins	Injury No.: 03-029486
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	Western Union Financial Services	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund (Open)	Jefferson City, Missouri
Insurer:	Pacific Employers Insurance Company	Checked by: MDL:tr

### **PRELIMINARIES**

A hearing was held on March 8, 2004 at the Division of Workers' Compensation in the city of St. Louis. Joanne Wiggins ("Claimant") was represented by Mr. Joseph Dolgin. Western Union Financial Services ("Employer") and its Insurer, Pacific Employers Insurance Company, were represented by Mr. John Kafoury. Although the Second Injury Fund is a party to the case, pursuant to the agreement of the parties the claim against the Second Injury Fund shall remain open. Mr. Dolgin requested a fee of 25% of Claimant's award.

The parties stipulated that on or about January 13, 2003, Claimant was an employee of Employer; venue was proper in the City of St. Louis; and the claim was timely filed. The parties further stipulated that Claimant was earning an average weekly wage of \$670.80 resulting in applicable rates of compensation of \$447.20 for temporary total disability benefits and \$340.12 for permanent partial disability benefits. Employer has paid no temporary total disability benefits nor medical benefits. The parties stipulated that if the matter is found compensable, Claimant is entitled to 8 and 4/7 weeks of temporary total disability from January 13, 2003 through March 13, 2003.

The issues for determination in this hearing are whether Claimant sustained an occupational disease arising out of and in the course of her employment, and if so, what is the nature and extent of permanent partial disability sustained by Claimant?

## FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant is a 52-year-old woman who has worked for employer for 32 years. When Claimant first began working for Employer, she worked in the teletype department typing into a teletype machine. Claimant also worked in the sales department as a sales clerk, the money transfer department, and the encoding department keying in checks. Claimant worked forty hours a week plus overtime.

Her current job title is senior account associate. Claimant described the job as similar to a Western Union customer service representative agent. During the course of her career Claimant used a typewriter, computer, and calculator. Claimant also described her duties as taking phone calls and answering questions for Western Union agents. Claimant testified that beginning in 1995, she began to have numbness and pain in her hands when she was required to do a copious amount of filing. Claimant testified that she was inundated with files, and the filing hurt her hands and back. As time went on, according to Claimant, the files became thicker and thicker, and it became difficult to get any more paper in the files.

Claimant testified that she never filed a written accident report with Employer. Although she frequently told her supervisors that her hands and back were bothering her because of the filing, she was told the work had to be done. She was never offered medical treatment for her hands, but she never specifically asked them to provide treatment either. Claimant testified that she never formally reported to her supervisors or Employer that she believed her hands were bothering her because of her work duties.

Claimant testified that in 1998 she went on her own to her personal physician, Dr. Pisoni, who referred her to Dr. Lamb, who ultimately referred her to Dr. Glogovac, a hand specialist and plastic surgeon. Claimant testified that before her surgery she did not tell Employer that she thought her conditions were work-related. Claimant testified also that she did not tell her treating physicians, including Dr. Pisoni, Dr. Lamb and Dr. Glogovac, that her bilateral hand condition was work-related.

Nerve conduction studies of March 18, 2002 confirmed that Claimant had bilateral carpal tunnel syndrome. Dr. Glogovac recommended surgery to both hands, which was performed on January 13, 2003 and February 3, 2003.

Claimant testified that she never asked Employer to pay for her medical care nor did she attempt to submit her medical care through her Employer's workers' compensation program.

Claimant testified that her treating physicians, including Dr. Glogovac, filled out forms for Employer indicating that her hand condition was not work-related. According to Claimant, Dr. Glogovac did not ask Claimant about her work history. Claimant first realized her condition might be compensable after her surgery, after talking to other people.

Claimant testified that after her surgeries were performed she returned to work full duty in March 2003 with no restrictions. She has continued to work as a senior associate since returning to work, and had no additional treatment or lost time. Claimant testified that she is able to perform day-to-day activities and her job duties, and occasionally goes to the gym or works in her garden. Claimant also testified that when she drives her hands hurt, she has trouble opening jars, and her hands tire more easily.

Dr. Berkin testified on behalf of Claimant. He opined that Claimant's bilateral condition was causally related to her job duties. Dr. Berkin testified that he did not have a job description, an ergonomic analysis, or a keystroke analysis for his review prior to rendering his opinions. Dr. Berkin's opinion was based upon the history provided to

him by Claimant and his own assumptions about her job duties. Dr. Berkin testified Claimant had no known risk factors for development of carpal tunnel syndrome.

Employer performed an ergonomic study with the assistance of an industrial engineer, Jennifer Christy. Jennifer Christy performed a keystroke analysis on various levels of jobs at Western Union that require a volume of keystroke work. The studies included the customer service representative and customer service supervisor jobs. Ms. Christy performed the actual jobs and documented the keystroke and ergonomic aspects of the job. Ms. Christy determined within a reasonable degree of professional certainty that the job was safe, based upon the keystroke analysis. Ms. Christy testified that the keystroke analyses were all below accepted industrial engineering standards including the Kilbom standard, the American National Standards Institute standard, and the Threshold Limit Value standard for hand activity level.

This information was provided to Dr. Evan Crandall at the time of an independent medical exam. Dr. Crandall opined that Claimant's bilateral hand condition was not work-related. Dr. Crandall also testified that Claimant's filing was not a risk factor. Dr. Crandall agreed with the ergonomic evaluation that Claimant's job duties place Claimant in an extremely low category in terms of any sort of safety concerns.

### RULINGS OF LAW

Based upon my comprehensive review of the evidence, including my observation of Claimant at hearing, the review of the medical evidence and the expert testimony, and the application of Missouri law, I find:

The weight of expert evidence in this case indicates that Claimant's condition is not medically causally related to her job duties. Dr. Crandall opined that Claimant's condition was not work-related. Dr. Crandall's opinion was corroborated by an ergonomic analysis of the customer service representative job as performed by Jennifer Christy, industrial engineer, who concluded that Claimant's work environment was safe, and within accepted parameters of safety as designated by various standards accepted by the industrial engineering community.

Dr. Berkin's opinion lacks foundation. Dr. Berkin did not have a written job description, an ergonomic analysis, a keystroke analysis, or any other materials other than Claimant's history to document the relationship between her condition and her work duties. Dr. Berkin is not a hand surgeon. More weight must be given to the opinions of Dr. Crandall and Ms. Christy.

The weight of the expert evidence leads me to conclude that Claimant did not sustain an occupational disease that arose out of and in the course of her employment. Accordingly, all benefits are denied.

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

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

Margaret D. Landolt  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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

