Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 03-015324

Employee: Tanya Willis-Livers

Employer: Laclede Gas Company

Insurer: Self-Insurer

Date of Accident: January 7, 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 March 5, 2007. The award and decision of Administrative Law Judge Matthew Vacca, issued March 5, 2007, 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 20th day of July 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

_____
William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

_____
Secretary

AWARD

Employee: Tanya Willis-Livers

Injury No.: 03-015324

Dependents: N/A

Employer: Laclede Gas Company

Additional Party: N/A

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

Insurer: Self-Insured

Hearing Date: January 17, 2007 Checked by: MDV: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: January 7, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis City
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:
    Data entry caused carpal tunnel syndrome.
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: Both upper extremities
14. Nature and extent of any permanent disability: 17.5% of left and right wrist plus 15% multiplicity factor
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Tanya Willis-Livers Injury No.: 03-015324

17. Value necessary medical aid not furnished by employer/insurer? $10,867.00
18. Employee's average weekly wages: $909.56
19. Weekly compensation rate: $605.76/$340.12
20. Method wages computation: Agreed

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	$10,867.00
11.143 weeks of temporary total disability (or temporary partial disability)	$6,749.99
70.44 weeks of permanent partial disability from Employer	$23,958.05

22. Second Injury Fund liability: No

TOTAL: $41,575.04

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:

Mike Goldberg

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Tanya Willis-Livers	Injury No.:	03-015324
Dependents:	N/A	Before the	
Employer:	Laclede Gas Company	**Division of Workers' Compensation**	
Additional Party:	N/A	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri	
Insurer:	Self-Insured	Checked by:	MDV:tr

PREFACE

The issues presented for resolution by way of this hearing were accident and/or occupational disease, medical causation, temporary total disability benefits from July 7 to August 11, 2003 and again from April 12 to May 23, 2004, medical benefits in the amount of $10,867.00, and the nature and extent of permanent partial disability.

FINDINGS OF FACT

1. Claimant was hired by Laclede Gas Company in 1997 and has been performing a variety of activities for the Employer over the past ten years. Her main job is as a customer service representative although she sometimes works on the "fix-it" job. Claimant essentially performs full time data entry.

2. In this capacity, Claimant would take incoming calls, answer them and handle the inquiry from beginning to end while performing continuous typing with a keyboard, mouse and number keypad. Claimant would wear a set of headphones while she manipulated the keyboard with both hands.

3. Claimant worked in a cubicle from 8:00 a.m. to 4:45 p.m., with two fifteen minute breaks and a forty-five minute lunch. Often times Claimant would work overtime where she would work through both of her breaks and her lunch.

4. Performing her duties as a customer service representative would require Claimant to navigate between

multiple computer screens and make sure address, phone number, billing, inquiry history screens, memo input, remarks screen and the other screens were kept up to date. Each call would require a minimum of one sentence of remarks to be entered into the computer.

5. At the time of the injury all calls came into a queue. As soon as a customer service representative was available from a previous call, the next customer would drop automatically onto her line. The customer service representatives were allowed to push several buttons, for example "AUX", which would allow them to complete data inputting after the customer hung up but before taking the next call. Often times when the phone call involved billing, Claimant would have to manually find meter reading documents and adjust bills and send multiple memos in multiple screens to multiple people in multiple departments. Often times she would have to input ten lines of remarks to resolve a customer inquiry.

6. There was generally no down time between calls because hundreds of customers were waiting to be serviced and managers and supervisors were watching the customer service representatives and constantly exhorting the representatives to take calls.

7. There were no breaks except the scheduled breaks and there was often overtime which would require Claimant to work through her lunch and break and she was often asked to stay one to two hours after work and on Saturdays.

8. The work was busier in the winter. The business has picked up recently because now the representatives are servicing St. Charles and Wentzville and it is busy even in the summer months.

9. Claimant was also assigned to a special task called the "fix-it" desk. Employees there would have to pull numerous paper files and amass numerous screens to resolve issues. The fix-it desk required thoroughness because issues generally involved the resolution of disputes. Thoroughness required more documentation which required more input and more hand intensive work. Often times Claimant would have to go through hundreds of hard files, go through service orders, file special orders, lift boxes and retrieve boxes from overhead on ladders. Claimant was assigned this job because she was a model employee and she worked well with customers.

10. Claimant testified that ninety-five percent of her time was spent actually touching the keyboard.

11. The Missouri Public Service Commission had gotten complaints about customers waiting so long, it required Employer to hire more customer service reps and expand hours from 7:00 a.m. to 7:00 p.m. including Saturdays to give better customer service. Thus, the work load became extremely heavy.

12. Claimant's wrist problems began in 2002 when work started to pick up. The more work Claimant did the worse her symptoms became. It got so bad that she was waking up at night and went to Dr. Michael Railey, her primary care physician. She told him she had severe pain, numbness, and loss of strength. He took a history of her job duties and ordered nerve conduction studies and diagnosed work related carpal tunnel syndrome. He gave her a prescription for ergonomic supplies to adjust her workstation at work, to give her wrist pads and a proper chair. She gave that prescription to John Lair, her supervisor in customer service, but never got any of the ergonomic items.

13. Claimant testified there were no ergonomic guards or wrist cushions and in 2002, when her problems began with her wrists, she actually gave her supervisor prescription orders twice from her physician regarding ergonomic equipment but the orders were ignored.

14. When Dr. Railey told Claimant she sustained a work related injury she immediately reported the injury and filled out the proper paperwork and gave it to John Lair, the supervisor of her department. Marsha Shepley, in the workers' compensation department, sent Claimant to Dr. Ollinger.

15. Dr. Ollinger did a brief several minute exam and determined that Claimant indeed had carpal tunnel syndrome based on her previous nerve conduction study. He looked at her hands, did not take a work history from Claimant, obtained a work description from the Employer and determined that she had carpal tunnel syndrome due to obesity.

16. Marsha Shepley informed Claimant that Dr. Ollinger said the incident was not work related and told Claimant to buy her own mouse pad, ergonomic chair and wrist pad.

17. Claimant went to get her own medical treatment with Dr. Gary Farley who she picked from the phone book because he was close to her home. He took a history of Claimant's job duties and obtained a complete medical history. Claimant told Dr. Farley she spent ninety-five percent of her day at the keyboard. He measured her strength with gauges and did a nerve conduction study and eventually performed surgery on her right and left wrists.

18. Dr. Farley eventually released Claimant to light duty with one hour on the phone and one hour off. She gave these restrictions to the company which they did honor. Claimant eventually returned to work full duty although she did change the way that she performed her tasks. She asked that she no longer be required to do the "fix-it" job because she could not handle the files, pull the boxes and perform the paperwork due to the weak condition of her hands following the surgery.

19. Claimant says that some days are worse than others. Her strength is gone. She uses wrist splints at work. She has pain, discomfort and throbbing in the midsection of her hand to her wrist. Dr. Farley says she will probably get carpal tunnel syndrome again due to the repetitive nature of her work. She admits that the numbness went away but she can't open jars, carry groceries or braid hair any longer.

20. So many employees in the customer service department were complaining about their hands and wrists hurting that Laclede Gas got an ergonomic study and eventually provided the employees with a foam wrist board to rest the wrist against as well as a stool for the feet to put them at a proper ergonomic angle and a chair which adjusted to the proper ergonomic height. The wrist pads deteriorated and broke and now Claimant has nothing to rest her wrists on. The Employer says it is not in the budget to get new ones.

21. Claimant testified that no one from Laclede Gas ever talked to her specifically about her job duties with relationship to this claim. Dr. Ollinger did not ask about her job duties either.

22. Jeff Weiss, Claimant's supervisor and the assistant manager of customer relations, corroborated Claimant's testimony. He confirmed that it is very rare when data entry is not required of a customer service representative. They are not inputting data every second but it is rare when data entry is not required. Mr. Weiss testified extensively regarding some data sheets that pertain particularly to Claimant. Those data sheets confirm that Claimant handled quite a few calls and spent quite a bit of time working at the keyboard. Mr. Weiss testified that Claimant was a good employee and that she generally performed her job well. It was a high volume job.

23. Mr. Weiss also testified that no one from Laclede asked him for details and keystroke estimates for Claimant and that he could not provide that information. Mr. Weiss confirmed that many other customer service representatives have been complaining about pain in their hands and wrists so Laclede did an ergonomic review and provided wrist guards and mouse pads and other ergonomic items. Mr. Weiss was a credible respectful witness who testified in a straightforward manner.

24. Dr. Farley testified on behalf of the Claimant. He was the physician who actually performed the carpal tunnel surgeries. Dr. Farley believes that the carpal tunnel syndrome that Claimant contracted was definitely work related. (Exhibit 3, pg. 10-11).

25. Dr. Farley is an orthopedic surgeon. He took a patient history of Claimant's work as a customer service representative working at a computer and typing. (Exhibit 3, pg. 14-15). Dr. Farley has treated other patients who do repetitive data entry and other Laclede Gas customer service reps who have contracted work related carpal tunnel syndrome. (Exhibit 3, pg. 15). Dr. Farley testified that the mechanism of injury is the flexion and extension of the wrists with repetitive motion and this irritates the tissue around the nerve. (Exhibit 3, pg. 17). He also testified that rest periods are really not an important aspect of carpal tunnel syndrome because CTS is a cumulative process that takes place over many years. Rest is largely irrelevant because, for example, people rest at night, they also rest at work and yet they still get carpal tunnel syndrome. (Exhibit 3, pg. 12).

26. Dr. Schlafly is a board certified hand and orthopedic surgeon who also testified on behalf of the Claimant. Dr. Schlafly testified that the carpal tunnel syndrome was work related and that it was caused as a result of back and forth motion of the flexor tendons in the carpal tunnel adjacent to the median nerve. This causes swelling, fibrosis or edema inside the carpal tunnel and around the flexor tendons. (Exhibit D, pg. 13). Dr. Schlafly testified that there were no other medical causes of Claimant's carpal tunnel syndrome. (Exhibit D, pg. 22). Dr. Schlafly testified that contrary to Dr. Ollinger's opinion, obesity does not cause carpal tunnel syndrome. (Exhibit D, pg. 25). Dr. Schlafly testified that Claimant sustained a 30% permanent partial disability of her right wrist and 25% of the left wrist plus multiplicity due to the fact that both hands are injured in the occupational disease.

27. Dr. Ollinger, a plastic surgeon, testified that Claimant was morbidly obese and that she therefore experienced fluid retention in her carpal tunnels causing compression. (Exhibit 1, pg. 13-14). Dr. Ollinger testified that Claimant did not use pneumatic tools, pliers, wire strippers or welders, but merely a keyboard. According to Dr. Ollinger, keyboarding does not cause carpal tunnel syndrome. This testimony is internally inconsistent because on pages 12 to 13 of his deposition he identifies transcriptionists as occupations where he would expect carpal tunnel syndrome as a result of repetitive keystroking. Dr. Ollinger also testified that even if all the individuals doing customer service representative work at Laclede Gas developed carpal tunnel syndrome, none of them, based on the job descriptions he reviewed, would develop carpal tunnel syndrome as a result of

their job. (Pages 28-29). He felt that a keying job is simply not a risk factor for carpal tunnel development in any case (page 29).

RULINGS OF LAW

1. Claimant contracted an occupational disease on or about January 7, 2003 while working as a customer service representative for Laclede Gas Company.

2. As a result of the contraction of that occupational disease, Claimant has incurred $10,867.00 in medical benefits which were reasonable and necessary to cure and relieve her of the effects of that work related injury.

3. As a result of the contraction of that occupational disease, Claimant was temporarily and totally disabled from July 7 to August 22, 2003 and again from April 12 to May 23, 2004.

4. The occupational disease that Claimant sustained on or about January 7, 2003 is medically and causally related to her work at Laclede Gas and all of the upper extremity complaints and the necessity for surgery and for the periods of temporary total disability are caused thereby.

5. Claimant has a sustained a 17.5% permanent partial disability of the left wrist and a 17.5% permanent partial disability of the right wrist plus a multiplicity factor of .15 as a result of the work related occupational disease.

DISCUSSION

This case is extremely similar to Townser v. First Data Corp., Cause No. E.D. 87619, _____ S.W.3d _____ (Mo.App. E.D. Jan. 16, 2007). There, claimant was a customer service representative for employer typing "comments" into computer accounts. There, the Court of Appeals reversed the Labor Commission because it required an ergonomic study be performed. The Court noted that the ergonomic study had little relevance to the case there because it didn't take into account overtime. (Page 6). In the instant case, the purported ergonomic studies also didn't take into account overtime. Dr. Ollinger did not take into account overtime. In Townser, the ergonomic study was not completed until well after the physician issued his report on causation. The Court found the physician's opinion could not rationally be based on the ergonomic study on the record. (Page 6). The case is the same here. The ergonomic studies offered at hearing were performed after Dr. Ollinger's report. Thus, under the same reasoning, Dr. Ollinger's report cannot rationally be based on the ergonomic reports.

Here, as in Townser, it appears that the employee's carpal tunnel syndrome had its origin in a risk connected with the employment and flowed from her employment as a rational consequence. Townser, page 7. Both are data input personnel performing strikingly similar job tasks. Dr .Ollinger's opinion that keyboarding never causes CTS does not comport with Townser's legal conclusion that employees employed in this occupation are exposed to the hazards of carpal tunnel syndrome. He testified that a keying job is simply not a risk factor for carpal tunnel development in any case. (Exhibit 1, pg. 29). [1] That statement is simply not credible.

The science underlying Dr. Ollinger's opinion is flawed. The ergonomic studies in this case are hearsay. Nevertheless, they would be admissible if they were the type of hearsay routinely relied upon by experts in the relevant scientific field being utilized. State ex rel Mo Highway Comm' v. Sisk, 954 S.W.2d 503, 508 (Mo.App. 1997). But nowhere in his deposition did Dr. Ollinger testify that either of the two ergonomic studies purportedly performed by the Employer were the type of hearsay evidence upon which experts rely in the field of carpal tunnel treatment when forming their opinions. In fact, to the direct opposite, Dr. Farley testified that in diagnosing carpal tunnel syndrome physicians don't usually comment on whether work related activity causes the syndrome. (Exhibit 3, pg. 10-11). Physicians rely on history, clinical evidence of carpal tunnel syndrome and electrical tests. They don't find keystrokes, job analysis or rest periods relevant to determining the condition of carpal tunnel. (Exhibit 3, pg. 11-12). Experts in carpal tunnel syndrome and the diagnosis and treatment therein don't utilize ergonomic studies or keystrokes to determine whether or not a Claimant suffers from carpal tunnel syndrome. Dr. Ollinger did not take a history. Thus, Dr. Ollinger's opinion is based on what employer told him about data entry in general while Drs. Farley and Schlafly had particular knowledge of the Claimant's job. Doctors generally take a history from patients, not from patient's employers.

The testimony from Claimant and Mr. Weiss regarding wrist complaints from other customer service representatives is relevant on two issues, causation and bias. Generally evidence of other accidents or similar circumstances may be relevant to prove what caused a particular injury. Peters v. General Motors, 200 S.W.3d 1 (Mo.App. W.D. 2006). (Page 9).

The evidence of other injuries as testified to by Claimant and her supervisor is probative of causation. A party may introduce evidence to rebut that of his adversary with any competent evidence to explain, repel, counteract or disprove the adversary's proof. Govreau v. Nu-Way Concrete Forms, Inc., 73 S.W.3d 737, 743 (Mo.App. E.D. 2002). The evidence of

similar hand problems with other customer service representative is probative that claimant suffered the hand problems from the same source, the work.

Dr. Ollinger testified that if all of the customer service representatives all developed carpal tunnel syndrome he still wouldn't be persuaded that the cause was as a result of the data entry at work. It would be hard for a reasonable expert to deny causation under these circumstances and I believe Dr. Ollinger's statements demonstrate bias on his part.

Thus, I reject Dr. Ollinger's testimony as based on facts not in evidence, bias and upon scientific theories not proven in the record.

In terms of causation, I am also impressed by the Claimant's testimony that the more she worked and the more calls she handled, the worse her symptoms became.

Date: _____ Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

_____

Patricia "Pat" Secrest
Director
Division of Workers' Compensation

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[1] I note that Dr. Ollinger's opinion regarding repetitive use of the hands as not being causative of CTS has been found in the past to be outside the mainstream of modern medical expert consensus in the case of Simokatis v. Wal-Mart, #01-131934, (LIRC 6-5-03).