

# BELOW THE RED LINE

HEYL ROYSTER

WORKERS' COMPENSATION NEWSLETTER

*A Newsletter for Employers and Claims Professionals*

*February 2011*



## A WORD FROM THE PRACTICE GROUP CHAIR

With all the snow shoveling that we have had to endure this winter, we thought an article on repetitive use of the hands and arms may be in order. This month our featured author is Jim Manning, one of our workers' compensation partners in our Peoria office. Jim has spent his entire legal career with our firm and many of you have been able to work with him over the years. Jim's article highlights a repetitive trauma claim that he successfully handled for an employer. One valuable lesson learned is that those claims can still be successfully defended at arbitration. As always, it requires teamwork that includes the employer, the claims representative, and the defense attorney.

There is no specific news to report on the legislative front here in Illinois. Many proposed bills making changes to the Workers' Compensation Act have been introduced but there is no clarity on what will be passed at this stage. We will continue to be your source for any changes, and if changes do occur, we will provide you with our evaluation of the impact of those changes on existing and future workers' compensation claims.

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## THIS MONTH'S AUTHOR:



**Jim Manning** devotes a significant portion of his practice to the defense of employers, insurers and self-insureds in Illinois workers' compensation cases. He has tried numerous workers' compensation cases throughout central Illinois and handles appeals before the Illinois Workers' Compensation Commission.

## COMMISSION NEWS

Governor Quinn appointed Thomas J. Tyrrell as Commissioner, effective February 14, 2011. Tyrrell has worked in private practice for the past 25 years. He will serve as the labor representative on Panel A, along with Commissioners Daniel Donohoo (public representative) and Kevin Lamborn (employer representative).

Currently, the terms of Commissioners Basurto, Lamborn, Mason, Lindsay, and DeMunno have all expired. Whether they will be reappointed by the governor, or whether someone new will take their positions in yet unknown. At present, we anticipate an announcement regarding the Commissioners' appointment status in April.

Also, on February 15, Arbitrators John Dibble and Jennifer Teague were placed on administrative leave. Their respective calls will be covered by other arbitrators as needed.

## NOT ALL CARPAL TUNNEL CLAIMS ARE RELATED TO REPETITIVE TRAUMA

Carpal tunnel injuries have comprised a significant percentage of workers' compensation claims since the seminal decision of *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 505 N.E.2d 1026 (1987), which held that an injury sustained as a result of work-related repetitive trauma is compensable under the Act even without a finding that the injury occurred as a result of a specific incident traceable to a definite time, place, and cause. Prior to *Belwood*, an injury was deemed "accidental" if it was "traceable to a definite time, place, and cause." Even though a claim is for repetitive trauma, the employee must still prove that the employment caused the complained of condition.

A case recently tried by our firm ended with the arbitrator ruling that a bank teller's carpal tunnel syndrome on

her left hand was *not* compensable because she failed to demonstrate a sufficient connection between her carpal tunnel condition and the work she performed for the bank. The claimant testified that she had been employed with the bank for several years. She worked primarily as a customer service representative and was a backup teller twelve weeks out of the year. According to the evidence, the responsibilities of a customer service representative required considerable typing and data entry on her computer. She also processed mail and assisted bank customers with their accounts and providing access to safe deposit boxes. Her work also allegedly required counting money in the vault in addition to her bank teller duties. During the twelve weeks as a backup teller, the majority of her time involved use of her hands to process transactions, use the computer, and to count money.

In the face of the recent Commission decision in *Williams v. U.S. Bank*, 10 IWCC 0166, 2010 WL 2344115 (May 12, 2010) which came down just prior to our arbitration hearing, a favorable finding on the issue of causation appeared bleak.

In *Williams*, the Commission upheld an award for a bank teller who developed bilateral carpal tunnel syndrome as a result of repetitive use of her hands. Williams, a forty-year-old right-hand-dominant bank teller, testified that she worked for the bank as a transaction processor. Her job duties included folding bank statements, stuffing envelopes, data entry, lifting trays of checks and filing. After performing this work for two years, she was promoted to a teller. Her work as a teller required a considerable amount of time counting money. For each transaction at the teller line involving a cash deposit or withdrawal, she was required to count money three times. She was also required to count the money in her drawer at the beginning and the end of the day. She also occasionally performed typing activities, mostly to look up customer information in the bank's database. When there were no customers in the teller line, she might do clerical or filing work. The claimant in *Williams* estimated that she used her hands during seventy percent of her workday. Her treating surgeon testified that the cumulative effects of the claimant's job duties as a transaction processor and a bank teller contributed to the development of her bilateral carpal tunnel syndrome and need for surgery. Based upon this testimony, the Commission affirmed a finding of compensability.

In our case tried, the claimant testified to many of the same job duties as the claimant in the *Williams* case – i.e. counting money twice for every transactions, counting money at the beginning and end of every shift to reconcile

her drawer, occasionally performing typing activities, and helping customers look up account information on her computer. However, the treating surgeon's testimony set the parameters for how the Arbitrator viewed the job tasks in relation to the medical causation issue. The treating surgeon was asked specific questions on cross-examination about the different aspects of the claimant's job duties and which tasks could potentially cause or aggravate her carpal tunnel condition. He testified that of all the aforementioned job duties performed by the claimant, only two of those activities could potentially be contributing factors to aggravate her carpal tunnel syndrome. He further testified that if the claimant counted money for a continuous period of two hours regularly during the course of an eight hour day, and this two hour period of counting money was not broken up by the other activities, then the thirty degrees of motion involved with flexion and extension of the wrist could potentially aggravate her underlying carpal tunnel condition. Secondly, he testified that if the claimant performed work requiring her to type on a computer keyboard continuously for four hours or more, that was also potentially a type of repetitive trauma that could cause or aggravate a carpal tunnel condition.

However, the treating surgeon testified very clearly that either of these two activities (counting money or typing) would have to be performed over a continuous period of two hours (as to counting money) or four hours (as to keyboard activity) over the course of an eight hour day and regularly throughout the work week and over a consistent period of time in order for those activities to be contributing factors. The other aspects of the claimant's work for the bank (handling safe deposit boxes, processing mail, filing, handling checks and deposit/withdrawal slips) did not provide the type of stress to the wrist that could cause or aggravate a carpal tunnel condition.

The claimant in our case failed to submit any evidence as to the specific amount of time she spent continuously counting money while performing the duties as a bank teller or in any other capacity as a customer service representative for the bank. Instead, she merely testified that she used her hands throughout the day to perform her work. Similar testimony was all that was needed in the *Williams* case, where the Commission found that Ms. Williams used her hands during seventy percent of her workday and it therefore constituted repetitive use. However, we all use our hands in every aspect of our workday whether on the computer, answering the phone, handling files, and processing mail. Indeed, using your hands all day does not necessarily con-

stitute compensable repetitive trauma. The determining factor is how your hands are being used and whether there is sufficient flexion/extension of the wrist, forcible gripping, or strained use of the hands and wrists.

Specific inquiry on cross-examination into the actual tasks performed by the claimant is what persuaded the arbitrator to find in favor of the bank and to deny compensability. On cross-examination, the claimant had testified that she only worked as a backup teller during the twelve weeks when the other tellers would alternate their vacation time. As a result, the claimant would have only filled in for two or three hours per day during three or four of the twelve weeks. Even while performing the work as a bank teller, the amount of time actually spent counting money was demonstrated to be very minimal. If the claimant was with a customer for five minutes (which she testified was average), she would actually only spend a very small fraction of that time actually counting out money – only a few seconds depending on how many dollar bills were being counted. This assumes that counting money was even required in a particular transaction. For example, a customer depositing a check into an account would not be a cash transaction and would not therefore involve counting money. This was demonstrated in our case through testimony of the bank's branch manager.

This case was tried on a Section 19(b) petition seeking prospective medical for carpal tunnel surgery to the left hand. At trial, the claimant demonstrated the counting of money with her right hand because she is right-hand dominant. Although the claimant used her left hand to hold the currency, the flexion and extension of the wrist while counting money was only performed by the right hand. Therefore, the arbitrator was able to discount any evidence or testimony submitted by the claimant as it pertained to the counting of money. The arbitrator did not feel that the other tasks of handling deposit slips or checks, processing mail, or lifting and carrying safe deposit boxes caused or aggravated the carpal tunnel condition of her left hand.

As it pertained to the data entry and use of a computer keyboard, the claimant admitted on cross-examination that most of her work at the customer service desk required the use of a computer to merely look up customer account information. Moreover, most of that work was performed with the right hand and with use of a mouse and the keypad on her computer to look up customer accounts. Any typing with the left hand was proven to be minimal at best. The evidence showed that the claimant did not spend more than ten to twenty percent of her day on the computer (48 to 96

minutes a day) and most of the time was spent using the mouse with her right hand to look up account information.

The evidence at trial demonstrated that the claimant performed a variety of tasks in her position as a customer service associate and that any time on the computer was broken up throughout the day by other customer service tasks such as client interaction, and assisting customers and accessing safe deposit boxes. The variety of her activities served to minimize the repetitive nature of her job. The arbitrator agreed that it was insufficient for the claimant to rest her claim on a mere assertion that she uses her hand throughout the day in a multitude of work tasks, particularly where the treating surgeon provided specific medical testimony and had set the applicable parameters on the issue of causation.

As this summary shows, a repetitive trauma claim can be won. However, success often results from a detailed review of the claimant's actual job duties, including introducing evidence of the nature of the work performed and the frequency of the work.

If you have any questions concerning this case or the handling of a repetitive trauma case, please feel free to contact one of our workers' compensation attorneys.

Heyl, Royster, Voelker & Allen  
presents our

## 26th Annual Claims Handling Seminar

*Concurrent Sessions:*  
**Workers' Compensation**  
or  
**Casualty & Property**

*Thursday, May 19, 2011*  
*1:00 p.m. – 4:30 p.m.*  
*Doubletree Hotel*  
*Bloomington, Illinois*

An agenda will be available soon

*Invitations will be mailed at a later date*

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