

An Oral Presentation on Carpal Tunnel: A State Survey

Presented by:

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Are you lonely ???

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MEETINGS

THE PRACTICAL ALTERNATIVE TO WORK.

Cumulative Trauma and Carpal Tunnel





■ I. Cumulative Trauma: Generally

Virtually all jurisdictions recognize some form of cumulative trauma in which some injuries are compensable even if they are not the result of a traumatic accident, but instead are gradually developed. Louisiana is a notable exception; lawmakers amended their Workers' Compensation Code to specifically exclude repeated trauma from the definition of accident. Most states, like Alabama, justify the recognition of cumulative trauma by explaining that each exposure to a sound, movement or fume constitutes a "mini-trauma" and that each instance is an "accident" subject to the act. Thus, the subsequent injury is compensable. Virtually all states who recognize gradual injuries (i.e. injuries in which "neither the cause nor result is at all sudden") have found this to be the most persuasive argument for compensability.



■ I. Cumulative Trauma: Generally

A few states have explained that cumulative injuries are compensable because the feeling of the pain of the injury constitutes the accident for the purposes of the Act. These states include New Mexico, Florida, and Arizona. The third approach to finding compensability is to find that a traumatic event or sudden accident is not a vital component of compensable injuries. These states include Maine, Maryland, Pennsylvania, Oklahoma, Utah and the District of Columbia. These states have, at some point, ignored the "accidental" language of their Code.¹ Maine has gone so far as to remove the term "by accident" from their definition of injury.²

¹ Larson's Workers' Compensation Law § 50.04 (all information from Section I, unless otherwise noted is a summary of this section).

² Ross v. Oxford Paper Co., 363 A.2d 712, 713 (Me. 1976).



■ II. Carpal Tunnel as a Compensable Injury

While all states have recognized carpal tunnel syndrome (“CTS”) as a compensable injury or disease under their respective Acts, not all characterize them as cumulative trauma. Of course, a single traumatic event can cause carpal tunnel syndrome. If that is the case, then the CTS will be compensated as an accident. See Alabama, Colorado, Nebraska, New Hampshire and Ohio. The New Hampshire Supreme Court probably put it this approach most succinctly when it stated, “The cause of the injury—not the symptoms—determines which way it is classified.”¹

– **1 In re CNA Ins. Co., 807 A.2d 1127, 1230 (N.H. 2002).**

Far less common are states that refuse to recognize CTS as an accidental injury at all. In these jurisdictions, CTS is most likely to be characterized as an occupational disease, with the slight variation on the standard requirements of occupational diseases: that CTS is due to the nature of the employment and that the manifestation of the disease is consistent with exposure to that employment. These jurisdictions include Maryland, Missouri, Montana, New Jersey, Oregon, Rhode Island, Texas and Virginia (both under “ordinary diseases of life” subset).



■ III. Burden of Proof; Medical Causation

Almost all jurisdictions have a preponderance standard for proving carpal tunnel syndrome. They use many different terms, such as "more likely than not," but the crux is that the claimant must prove that the injury is more likely related to the work. This segues nicely into a brief discussion of medical causation. In most districts the claimant must show medical causation by proving that the employment is causally related to the injury. While hardly any jurisdictions (save Idaho, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, Oklahoma, probably South Dakota, Wisconsin, and Federal) *requires* medical testimony to establish this causal relationship, in almost every district, the absence of medical testimony is not looked upon favorably. This is especially true if the determination of causality is technical or difficult. Some jurisdictions hold that while medical testimony is not required, there is a presumption of compensability if medical testimony is presented.



■ III. Burden of Proof; Medical Causation

There are numerous exceptions to the preponderance standard. Alabama and Virginia, for example, require clear and convincing evidence in the case of carpal tunnel syndrome. Many other jurisdictions require that expert testimony require a degree of certainty—beyond a mere probability that the employment caused the injury. This seems to raise the standard beyond a preponderance. Some jurisdictions have a burden shifting system in which the claimant only has to make a prima facie case to be rebutted by the employer.

Overall, all states have compensated employees for CTS under some part of their act. Expert medical testimony is expected in these cases if not required. The burden tends to be a bit higher, but this may just be due to the more technical nature of CTS as opposed to other work-related injuries.



ALABAMA

State	Carpal Tunnel characterized as:	Burden of Proof	Type of Proof
AL	Accident/cumulative trauma or accident (if not caused by repetitive act)	C & C Preponderance	Expert testimony: A trial court may find medical causation without the benefit of testimony from medical experts. Additionally, lay testimony may combine with medical testimony to provide proof of causation because it is in the overall substance and effect of the whole of the evidence, when viewed in the full context of all lay and expert evidence, and not in the witness's use of magical words or phrases, that the test finds its application. <i>Ex parte McInish</i> , 2008 Ala. LEXIS 192, *30 (Ala. Sept. 5, 2008).



FLORIDA

State	Carpal Tunnel characterized as:	Burden of Proof	Type of Proof
FL	<p>Accident/Cumulative Trauma, <i>Tokyo House, Inc. V. Hsin Chu</i>, 597 So. 2d 348 (Fla. Ct. App. 1992). Carpal tunnel included: <i>Festa v. Teleflex, Inc.</i>, 382 So. 2d 122 (Fla. Ct. App. 1980).</p>	<p>However, the burden for exposure theory is less than that of occupational disease since no proof of unusual exposure is necessary. <i>Miami v. Tomberlin</i>, 492 So. 2d 433 (Fla. Ct. App. 1986).</p>	<p>Expert testimony: 3 prong test: 1) Prolonged exposure, 2) the cumulative effect of which is injury or aggravation of a pre-existing condition and 3) that he has been subjected to a hazard greater than that to which the general public is exposed. <i>Festa</i>, 382 So. 2d at 124. [this is "exposure theory is like occupational disease except no proof of peculiar exposure is necessary"] If it is within the realm of medical possibility that the injury was sustained on a definite date during the employment, this is enough to sustain a finding of an unexpected or sudden injury. <i>Armstrong v. Munchies Caterers, Inc.</i>, 377 So. 2d 748, 749.</p>



MISSISSIPPI

State	Carpal Tunnel characterized as:	Burden of Proof	Type of Proof
MS	<p>Accident/cumulative trauma "Progressive injury" <i>Segar v. Garan, Inc.</i>, 388 So. 2d 164, 165 (Miss. 1980).</p>	<p>Probable as opposed to possible (see next column)</p>	<p>Expert testimony: The compensation process is not a game of 'say the magic word,' in which the rights of injured workers should stand or fall on whether a witness happens to choose a form of words prescribed by court or legislature. What counts is the real substance of what the witness intended to convey. Such expert testimony of the doctor, plus the corroborating evidence, constitutes substantial evidence to support the Commission's finding. <i>Segar</i> at 165. In all but the simple and routine cases it is necessary to establish medical causation by expert testimony. A claim of disability must be supported by medical findings. Medical evidence must prove not only the existence of a disability but also its causal connection to employment. <i>Shipp v. Thomas and Betts and Ace Ins. Co.</i>, 2009 Miss. App. LEXIS 43, *12 (Miss. App. Jan. 27, 2009)(internal citations omitted).</p>



CALIFORNIA

State	Carpal Tunnel characterized as:	Burden of Proof	Type of Proof
CA	Accident/Cumulative Trauma <i>Beckstead v. Workers' Comp. App. Bd.</i> , 60 Cal. App. 4 th 787 (1997).	Reason-able probability <i>Nash v. Workers' Comp. Appeals Bd.</i> , 24 Cal. App. 4 th 1793, 1811 (Cal. App. 1994)	Expert testimony: If the employer has actual knowledge that the claimant is suffering from a cumulative trauma caused by repetitive writing and typing, then the Board <i>must</i> apply the cumulative injury theory to the claim. <i>Beckstead v. Workers' Comp. App. Bd.</i> , 60 Cal. App. 4 th 787 (1997). Labor Code § 5500.5 limits cumulative trauma to employers in the past 5 years of employment. Within those 5 years, employers are liable for the whole injury.



LOUISIANA

State	Carpal Tunnel characterized as:	Burden of Proof	Type of Proof
LA	<p>Previously, Louisiana would have compensated CTS as an accident/cumulative trauma:, <i>McCoy v. Kroger Co.</i>, 431 So. 2d 824 (La. Ct. App. 1983)(cumulative trauma can result from congenital abnormality coupled with normal work duties–injury compensable as cumulative trauma when walking and standing combined with claimant’s preexisting foot problem to produce injury.)</p> <p>However: In 1989, LA amended its statute to define “accident” to EXCLUDE repeated trauma–there must be an actual event directly producing something more than a gradual deterioration.</p>	<p>Preponderance/ more likely than not: <i>Duckworth v. Winn Dixie Louisiana, Inc.</i>, 490 So. 2d 408, 412 (La. App. 1986).</p> <p>Presumption of work related– next column</p>	<p>Expert testimony: Although the claimant couldn’t pinpoint the exact injury date, medical testimony said that she suffered micro-trauma in the performance of her duties. It was clear that the duties caused the accident, so the injury was compensable. <i>Robin v. Schwegmann Giant Supermarkets, Inc.</i> 646 So. 2d 1030 (La. Ct. App. 1994).</p> <p>The claimant’s testimony coupled with the testimony of an expert that the work activities may have caused the injury are sufficient to support an award. <i>Lacava v. Albano Cleaners</i>, 653 So. 2d 834 (La. Ct. App. 1994).</p> <p>There is a there is a presumption that the injury is work related if the claimant was in good health before the accident, but began to display signs and symptoms of injuries after the accident along with sufficient medical evidence to show the causal connection or nature of the accident <i>or</i> of that combines with other facts that cause one to naturally infer a causal connection through human experience. <i>Duckworth</i> at 412.</p>



NEW YORK

State	Carpal Tunnel characterized as:	Burden of Proof	Type of Proof
NY	Accident/Cumulative Trauma, <i>Nielson v. Michael Stern & Co.</i> , 233 N.Y.S.2d 472 (1953). Carpal included: <i>In re Rogers</i> , 2008 N.Y. Slip. Op. 5835 (June 26, 2008)		Expert testimony: A claimant need not have experienced a sudden collapse in order to substantiate an accidental injury. The accidental character of the injury can be sufficiently established by medical evidence demonstrating that the repetitive acts required by the claim's employment caused a debilitating injury. <i>Farcasin v PDG Inc.</i> , 286 A.D.2d 840, 841 (2001).



Q&A:

DUE TO THE LATENESS OF THE HOUR
THERE WILL BE TIME FOR QUESTIONS,
BUT NOT FOR ANSWERS. . .

-THANK YOU-