STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.		WORKERS' COMPENSATION COURT APPELLATE DIVISION
JANET ZAGRODNY	)	
	)	
VS.	)	W.C.C. 97-03452
	)	
TECH INDUSTRIES	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter comes before the Appellate Division upon the cross appeals of the employer and the employee from the decision and decree of the trial judge in which he found that her bilateral carpal tunnel syndrome was work-related and awarded weekly benefits from April 26, 1996 and continuing. After consideration of the reasons of appeal and review of the record, we sustain the employer's appeal in part and also sustain the employee's appeal.

The employee worked for Tech Industries for nineteen (19) years. Initially, she was employed as a receptionist/switchboard operator. In 1989, about the time a new president, David Wang, assumed office, she took on additional duties as his administrative assistant. Mrs. Zagrodny testified that her job duties included answering and transferring telephone calls, greeting people entering the company, and typing, filing and scheduling for the president, Mr. Wang. She estimated that she would spend about two (2) hours a day, four (4) days a week,

doing typing for Mr. Wang. In addition, she did “overflow” typing for people in other departments which led to her spending about five (5) hours a day typing. She explained that she used a computer for word processing and also an electric typewriter to type forms and labels.

The amount of typing performed by Mrs. Zagrodny was a point of controversy during the trial as this was particularly relevant with regard to causation. David Wang testified that the employee did a minimal amount of typing for him because he did most of his own typing on his computer. He stated that he disagreed with the employee’s statement that she did four (4) to five (5) hours of typing per day and did not believe that she did that much “overflow” typing from other departments because administrative assistants were hired for the other departments by 1990. He also noted that in 1995, the company installed a new telephone system which had voice mail and direct dial features which reduced the amount of time the employee spent answering phones. Prior to the introduction of the new system, Mr. Wang described the employee as "captive" to the switchboard. (Tr. p. 149)

Four (4) other witnesses from the company testified that the employee did some limited amount of typing for other departments which varied from two (2) to three (3) letters a week to one (1) document a year. Another employee who filled in for Ms. Zagrodny when she was at lunch or on vacation stated that she answered about 100 telephone calls in an average day as the receptionist.

The employee stated that she began to develop pain in her hands in late

1995. She saw her primary care physician, Dr. Basila Ramirez, sometime in 1996 and was referred to Dr. Steven Graff, a hand specialist. When she saw Dr. Graff for the first time on April 2, 1996, her primary complaint was pain at the base of both thumbs, worse on the left. The doctor's diagnosis was bilateral thumb CMC arthritis and left carpal tunnel syndrome. The employee continued to work at Tech Industries until April 24, 1996. She indicated at that time that Dr. Ramirez took her out of work and she discussed the situation with Mr. Wang on April 23, 1996.

Dr. Graff saw the employee again on May 7, 1996 and noted that she had symptoms of right carpal tunnel syndrome as well. He indicated in his report that the bilateral carpal tunnel syndrome was likely due to her work activities, although the thumb arthritis was not related to her employment. EMG and nerve conduction studies on July 2, 1996 were indicative of bilateral carpal tunnel syndrome, worse on the right.

On August 16, 1996, the employee advised Dr. Graff that her neck pain, which she had complained of on her first visit, had increased. Treatment of her hand problems was delayed while this was investigated through diagnostic testing and consultation with other physicians. It was determined that she did have cervical spondylosis which may be contributing to some of her symptoms, but the carpal tunnel syndrome was the primary cause.

Dr. Graff performed a right carpal tunnel release on February 5, 1997, despite advising the employee that he felt there was only a fifty (50%) percent

chance it would improve her condition. His concerns focused on her very low pain tolerance and somewhat ambiguous clinical presentation. On March 24, 1997, the employee underwent the same surgery on the left side.

The employee underwent physical therapy for both hands after the operations. The right side was greatly improved, but the left side remained rather symptomatic. On June 6, 1997, Mrs. Zagrodny reported that two (2) weeks earlier, she had assisted her mother in trying to move her father in bed while he was hospitalized and immediately felt a pulling sensation in both wrists. Since that time she experienced significant constant tingling and numbness bilaterally. Dr. Graff was unable to explain why this happened but recommended full-time splinting. The splinting made her feel significantly better although she continued to have some symptoms.

The doctor ordered another EMG and nerve conduction study which was done on April 16, 1998 and revealed some slight improvement on the right side. In light of the slight improvement on the EMG, he did not recommend further surgery. He released the employee from his care with a recommendation to try treatment at a pain clinic.

Mrs. Zagrodny returned to Dr. Graff in December 1998 complaining of bilateral severe pain in her arms and numbness in her fingers with an unbearable burning sensation. The doctor ordered a repeat EMG and nerve conduction study to determine whether surgery was an option. The study demonstrated evidence of bilateral carpal tunnel syndrome which appeared to be worse on the right. On

March 5, 1999, the doctor recommended repeat surgery, starting on the right side.

Dr. Arnold-Peter Weiss evaluated the employee on July 13, 1999 at the request of the employer. He diagnosed bilateral carpal tunnel syndrome and right thumb CMC arthritis. The doctor agreed with Dr. Graff that the arthritis was not work-related. He indicated that his opinion as to causation was dependent upon the work activities actually performed. The employee informed the doctor that she typed on the computer five (5) hours a day and used the switchboard keyboard for three (3) hours a day. Based upon this history, Dr. Weiss attributed her condition to her employment. However, counsel for the employer provided a job description which indicated that the employee was primarily a receptionist, did some limited filing and typed only a few letters and labels each week. Based upon this description, Dr. Weiss stated that there would not be a causal relationship between the bilateral carpal tunnel syndrome and work.

Dr. Weiss indicated that the employee could work as long as she wore splints at all times and did not lift over five (5) pounds. He did qualify this opinion in his deposition when he stated that he anticipated that she could only do this for a reasonable time because she would need further surgery.

Dr. Gregory Austin conducted an impartial medical examination of the employee on June 5, 2000 at the request of the court. His diagnosis was recurrent bilateral carpal tunnel syndrome which he described as a recurrence of the same problem she developed in 1996. The doctor further stated that the

employee could only work in a very limited capacity and certainly not in her former position. He testified that his opinion as to causation was based upon the history that the employee did a substantial amount of keyboard work and other work with her hands.

The employee's original petition was filed on June 4, 1997. At the pretrial conference, the petition was denied "pro forma", indicating the need for a trial. The case encountered its first delay when the employee's claim for trial was apparently misplaced within the court. Without a claim for trial on file, the case was automatically closed after five (5) business days.

When the employee's counsel inquired about a trial date several months later, he discovered what had happened and filed a motion to claim a trial out of time. The trial judge, after conducting a hearing on the motion on September 9, 1997, granted the motion. The employer appealed this ruling to the Appellate Division. The appellate panel dismissed the appeal on the grounds that the judge's order was interlocutory in nature and the appeal was therefore premature. The Supreme Court declined to review the matter. (Tr. p. 18)

The employee then filed a motion to amend the order of the Appellate Division to reflect the award of a counsel fee for the successful defense of the employer's appeal. Again, the matter was dismissed without prejudice as premature because the underlying original petition had yet to be decided.

Rhode Island General Laws § 28-35-28(b) provides that the findings of fact made by a trial judge are final unless the appellate panel finds them to be clearly

erroneous. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). Before conducting a *de novo* review of the evidence, the Appellate Panel must find that the trial judge was clearly wrong or overlooked or misconceived material evidence. Grimes Box Co. v. Miguel, 509 A.2d 1002, 1004 (R.I. 1986).

The employer has filed nine (9) reasons of appeal. The first three (3) are general recitations that the decree is against the law and the evidence. As such, they lack the specificity required for consideration by this panel. Bissonette v. Federal Dairy Co., 472 A.2d 1223 (R.I. 1984).

The employer's fourth reason of appeal contends that the trial judge lacked the authority to allow the employee to claim a trial out of time. Section 28-30-12 of the Rhode Island General Laws provides as follows:

> "The workers' compensation court shall prescribe forms, make suitable orders, and adopt rules of procedure to secure a speedy, efficient, informal, and inexpensive disposition of its proceedings under chapters 29--38 of this title; and in making those orders, the court is not bound by the general laws relating to practice. In the absence of those orders, special orders are made in each case."

This statute confers broad authority on the court to make orders in specific cases so long as that authority is not exercised in a manner which would enlarge or decrease the jurisdiction of the court. Clearly, the order of the trial justice in this matter was procedural and did not expand or diminish the jurisdiction of the court.

In Sullivan v. Empire Equip. Eng'g Co., 492 A.2d 1212 (R.I. 1985), the Rhode Island Supreme Court held that a trial judge's order to extend the period

for filing a claim of appeal nunc pro tunc was impliedly authorized by Rule 4.2 of the Workers' Compensation Court Rules of Practice as promulgated pursuant to R.I.G.L. § 28-30-12. In that case, counsel had delivered a motion for extension of time to the clerk, but it was somehow misplaced. The court found that the trial judge properly exercised his discretion in this situation in issuing a nunc pro tunc order to extend the deadline.

The instant case presents a similar fact pattern, although it involves a claim for trial from the pretrial conference, rather than a claim of appeal after trial. Counsel for the employee represented that he left the claim for trial form on the clerk's desk, but it was never processed. Although better practice would have been to hand it directly to the clerk, the court itself is not entirely without fault in this situation. Our Supreme Court has repeatedly stated that the provisions of the Workers' Compensation Act must be liberally construed to give effect to the benevolent purposes behind its enactment. Fontaine v. Caldarone, 122 R.I. 768, 771, 412 A.2d 243, 245 (1980). Bearing in mind this clearly enunciated policy and the broad authority granted by R.I.G.L. § 28-30-12, we must conclude that the trial judge had authority to consider the motion to file a claim for trial out of time and properly exercised his discretion in granting the motion.

The employer contends in its fifth and sixth reasons that the trial judge erred in finding that the employee was totally disabled when there was no competent medical evidence to support total disability and that the trial judge applied the incorrect standard to determine total disability. We agree that the

medical evidence does not support a finding of total disability as of July 2, 1996 (the date of the first EMG study documenting evidence of carpal tunnel syndrome), but there is sufficient evidence in the record to find that the employee was totally disabled from June 18, 1996 to May 8, 1997, partially disabled from May 9, 1997 to December 17, 1998 and totally disabled thereafter.

Although the employee was initially treated by Dr. Graff for both CMC joint arthritis and carpal tunnel syndrome, he testified that as of June 18, 1996, the carpal tunnel syndrome alone would have rendered the employee totally disabled. (Ee's Exh. #2, pp. 16- 17) He reiterated this opinion as of September 27, 1996, despite the fact that the employee had other medical conditions which were symptomatic at that time. Ms. Zagrodny then underwent the surgeries on her hands and showed some improvement such that the doctor agreed that she was partially disabled as of May 9, 1997. (Ee's Exh. #3, p. 30) Unfortunately, the employee's condition worsened thereafter to the point that Dr. Graff again found that she was incapable of any type of work as of December 18, 1998. (Ee's Exh. #3, p. 29) He has maintained that opinion as to disability since that date.

The opinion of Dr. Weiss that the employee was partially disabled was so restrictive that it was the equivalent of a statement of total disability. With regard to her ability to perform her regular job duties, he stated:

> "I believe there's a two part answer to that question, that for a reasonable, relatively short period of time with restrictions, I believe that job would not be injurious to her health, but that would assume further treatment of the patient. I do not believe that job could be undertaken for a prolonged period of time, even with

> restrictions, maintaining a safe medical window for her current condition." (Er's Exh. #12, p. 23)

The doctor conditions his opinion on the employee receiving further treatment, which presumably would need to result in some improvement in her condition. He then further qualifies his opinion by stating that the employee could only safely do this job with restrictions (which he does not specify) for a short period of time. When a physician places so many restrictions on the employee's ability to perform lighter work, he effectively nullifies his opinion that the employee can return to the labor market. Soprano Constr. Co. v. Maia, 431 A.2d 1223, 1226 (R.I. 1981).

Dr. Austin's opinion was similarly qualified. In his report he indicated that the employee would be very limited in her work and could not do any administrative assistant duties. Although he testified that Ms. Zagrodny was partially disabled when he saw her on June 5, 2000, he described her ability to work as follows:

> "She would have to be able to take appropriate breaks for symptoms, use her hands in limited squeezing, gripping, lifting type of scenarios, but would be able to use them to some degree." (Er's Exh. #13, p. 13)

Realistically, the restrictions placed on the employee's activities would make it virtually impossible to be employed in the competitive job market. A finding of total incapacity does not equate to a state of total helplessness. It means an inability to obtain and maintain regular employment in the competitive labor market. Our review of the medical evidence regarding the degree of

incapacity leads to the conclusion that the employee was totally disabled from June 18, 1996 to May 8, 1997, partially disabled from May 9, 1997 to December 17, 1998 and totally disabled thereafter. We therefore sustain the employer's appeal in part on this point, and will enter a new decree consistent with this determination.

The employer's seventh reason of appeal contends that the trial judge failed to adequately consider the testimony of Dr. Gregory Austin, the impartial medical examiner, with regard to the extent of the employee's disability. The trial judge specifically stated early in his decision that the deposition testimony of Dr. Austin had been presented to the court and that the doctor agreed with Dr. Graff and Dr. Weiss that the employee did have carpal tunnel syndrome which, based upon the history provided by the employee, was at least initially caused by her work activities. (Tr. dec. pp. 2-3) We have discussed above the medical opinions regarding the degree of disability and have altered the findings of the trial judge with regard to that issue. In that context, the opinions of Dr. Austin have been fully analyzed and we refer back to that discussion in response to the employer's contention.

The employer also argues that the trial judge erred in failing to apportion compensation benefits based upon other factors outside of the work activities which contributed to the cause of the employee's condition.

Dr. Austin referred to general anatomical differences in people which cause one person to develop carpal tunnel syndrome while another person performing

the same activities will not develop the condition. There are also more specific factors such as diabetes and pregnancy, but the doctor noted that none of these were involved in Ms. Zagrodny's case to his knowledge. The other physicians also acknowledged that other factors can contribute to the development of carpal tunnel syndrome, but they had been ruled out in this case. The trial judge noted in his decision that he was mindful that other risk factors can be involved in carpal tunnel cases, but there was, "a dearth of evidence of other probable causes of the petitioner's carpal tunnel syndrome." (Tr. dec. p. 3). We agree with the trial judge that there was no evidence which would support an apportionment of benefits in this case.

In its final reason of appeal, the employer asserts that the trial court erred in failing to "properly assess the credibility of Petitioner's testimony regarding her work history and her employment duties at Tech Industries." As noted earlier, the amount of typing done by the employee became a major issue in this case. All of the physicians indicated that her carpal tunnel syndrome was caused by her work activities, assuming that her work involved about five (5) hours of typing a day.

The trial judge explored this issue at length in his decision. He summarized the testimony of the various lay witnesses who testified as to their knowledge of the job duties of the employee and the typing she did. The trial judge considered all of this evidence and arrived at his conclusion:

> "The in-depth reviews of the credible recollections of each of the witnesses spanning several years establish

> that they were formed from different perspectives. The petitioner operated a manual switchboard for a substantial time and in varying amounts of time did perform all of the other office functions."
>
> "The Court is satisfied that the petitioner has preponderated in establishing that the foundation of the opinions of the medical experts with relation to the cause of the development of bilateral carpal tunnel damage is reasonably accurate, especially when considering the length of time involved in the petitioner's overall work activity. The Court notes that the number of personnel assigned to prepare documents and correspondences suggest a substantial amount of clerical work." (Tr. dec. p. 6) (emphasis added).

The trial judge basically stated that the testimony of all of the witnesses, including the employee, taken together, established that the employee had performed a sufficient amount of repetitive activity with her hands for a sufficient period of time to meet the criteria set out by the doctors. Based upon the record before us, we cannot say the trial judge was clearly wrong in his reasoning and conclusions.

The employee filed three (3) reasons of appeal, all of which have merit. The employee's second reason of appeal alleges the trial judge erred as a matter of law by not awarding prejudgment interest as required by R. I. G. L. §§ 9-21-10 and 28-35-12(c). The Rhode Island Supreme Court made clear in Donnelly v. Town of Lincoln, 730 A.2d 5 (R.I. 1999), that the award of interest is mandatory and automatic. Section 28-35-12(c) provides that interest may be reduced or eliminated only when the proceedings have been unduly delayed by the employee or her attorney. We find no evidence in the record that Ms. Zagrodny or her

attorney unduly delayed the conduct of the trial. Consequently, we find it was legal error on the part of the trial judge not to include the award of interest in the decree. We will, in the new decree, order the payment of interest at the rate of twelve (12%) percent on the amount of weekly benefits owed to the employee from December 4, 1997 (six months after the filing of the petition) to the date the retroactive payment is made by the insurer.

The employee's third reason of appeal alleges the trial judge was wrong to order reimbursement to employee's counsel of only Four Hundred and 00/100 ($400.00) Dollars for the expert witness fee of Dr. Graff for one deposition, when there were four (4) depositions of Dr. Graff, three (3) of which were paid for by the employee. Dr. Graff was first deposed on December 17, 1998; however, cross-examination was cut short by counsel for the employer who had another appointment. The deposition was continued and completed on February 11, 1999. As the trial was continuing, counsel for the employee submitted an updated report of Dr. Graff by affidavit and the employer's attorney requested cross-examination. A third deposition of Dr. Graff was scheduled for January 13, 2000, but the employer's attorney failed to appear. The deposition was done on January 20, 2000 and the employer paid the doctor's expert witness fee for that day.

Rhode Island General Law § 28-35-32 provides for the award of expert witness fees to an employee who successfully prosecutes a petition before the court. It is clear that the trial judge erred by ordering reimbursement of Dr.

Graff's fee for only one deposition. We will, therefore, correct the decree and order reimbursement of One Thousand Two Hundred and 00/100 ($1,200.00) Dollars for the expert witness fees of Dr. Graff for a total of three (3) depositions.

The employee's final reason of appeal concerns the amount of the counsel fee awarded by the trial judge. The employee contends that the trial judge did not utilize the criteria established in Annunziata v. ITT Royal Elec. Co., 479 A.2d 743 (R.I. 1984) and provided no analysis or explanation as to how he arrived at the figure of Five Thousand and 00/100 ($5,000.00) Dollars. Counsel is correct that there is nothing in the decision indicating how the trial judge arrived at the amount for the counsel fee. Normally, we would remand the matter to the trial judge for explanation and/or reconsideration of the fee, however, the trial judge in this matter retired shortly after rendering this decision. Therefore, the appellate panel will undertake a review of the file and record in order to determine a reasonable and appropriate counsel fee.

In Annunziata, the Rhode Island Supreme Court first noted that the same elements considered in setting a counsel fee in a civil proceeding applied to the fee-setting process in a workers' compensation matter.

> "...These elements to be considered include the amount in issue, the questions of law involved (whether they are unique or novel), the hours worked and the diligence displayed, the result obtained, and the experience, standing, and ability of the attorney who rendered the services." Id. at 744.

In the present case, the amount in issue was significant in that the employee had been out of work since June 1996 and had undergone two (2)

surgeries. The employee is currently totally disabled and the prognosis is not good for any improvement in her condition. The case began as a fairly straightforward petition for benefits involving the usual issues of causation and disability. However, the exact nature of the employee's job duties became a point of controversy which ended up requiring lengthy testimony from five (5) witnesses from the company. In addition, the employer defended the petition in part on the grounds that if the employee was successful, any benefits should be reduced proportionately because other activities and/or the employee's genetic makeup contributed to the development of the condition and the disability.

Counsel for the employee submitted a fee affidavit to the court on November 9, 2000. He then submitted an amended affidavit on December 5, 2000 with his trial memorandum. The last affidavit indicates that counsel spent a little over 143 hours on the case from October 1996 to November 29, 2000. This case had a rather protracted and convoluted course. The claim for trial was misplaced and counsel filed a motion to file a claim for trial out of time. The decision on this motion was then appealed to the Appellate Division. In addition, the employer filed a writ of certiorari and motion to stay the trial at the Rhode Island Supreme Court.

There were three (3) days of testimony in court spread out over more than a year. On three (3) other dates, various motions were entertained by the court. Counsel for the employee appeared on four (4) occasions to depose Dr. Graff in addition to appearing at the depositions of Dr. Weiss and Dr. Austin. It is clear

from our review of the file, trial transcript and docket that a great deal of time was spent on this case and a significant portion of it was the result of actions by counsel for the employer.

The employee basically obtained everything she was requesting. There was no setoff or apportionment of benefits and she was awarded compensation from the time she left work until further order of the court or agreement of the parties. Counsel for the employee is an experienced litigator in the workers' compensation field and diligently represented his client in this matter. He was successful in defending against a variety of legal challenges presented in the various motions filed by opposing counsel and during the trial.

Considering and weighing all of these factors, we conclude that a fee in the amount of Fifteen Thousand and 00/100 ($15,000.00) Dollars is fair and reasonable. This fee includes the services rendered by counsel when he was previously before the Appellate Division on the employer's appeal from the trial judge's decision on the motion to file a claim for trial out of time. In the present appeal, the employee successfully defended against the employer's appeal in part and was entirely successful on her own appeal. For services rendered with regard to the present appeals, we award an additional One Thousand Five Hundred and 00/100 ($1,500.00) Dollars.

In accordance with our decision, a new decree shall enter containing the following findings and orders:

1. That the petitioner developed bilateral carpal tunnel syndrome arising out of and in the course of her employment, connected therewith and referable thereto, of which the employer had notice.

2. That a nexus was also established between the recurrent carpal tunnel syndrome and the petitioner's employment.

3. That as a result thereof, the petitioner became totally disabled from June 18, 1996 to May 8, 1997, partially disabled from May 9, 1997 to December 17, 1998 and totally disabled from December 18, 1998 and continuing.

4. That the petitioner's average weekly wage is Five Hundred Thirty Dollars and 85/100 ($530.85).

5. That the petitioner's spouse was dependent.

6. That surgical releases were necessary to cure, rehabilitate or relieve the employee from the effects of the bilateral carpal tunnel syndrome.

It is, therefore, ordered:

1. That the respondent shall pay to the petitioner weekly benefits for total incapacity from June 18, 1996 to May 8, 1997, for partial incapacity from May 9, 1997 to December 17, 1998 and for total incapacity from December 18, 1998 and continuing until further order of this court or agreement of the parties.

2. That the employer shall pay all reasonable charges for medical services rendered to the employee in order to cure, rehabilitate or relieve the employee from the effects of the bilateral carpal tunnel syndrome.

3. That it shall be the duty of the petitioner to furnish to the respondent and/or its insurance carrier evidence of the amount of any wages earned from any employer other than the respondent in order that the proper amount of compensation due to the employee may be computed.

4. That the respondent shall reimburse employee's counsel the sum of One Thousand Two Hundred and 00/100 ($1,200.00) Dollars for the expert witness fees paid to Dr. Stephen Graff.

5. That the respondent shall take credit for any payments made pursuant to the decree entered on February 12, 2001.

6. That the respondent shall pay to the employee interest at the rate of twelve percent (12%) on any retroactive weekly benefits due to the employee from December 4, 1997 to the date the payment is made.

7. That the respondent shall pay a counsel fee in the sum of Fifteen Thousand and 00/100 ($15,000.00) Dollars to Michael DeLuca, Esq., for services rendered in the prosecution of this petition through the trial stage, plus filing fees and transcript costs.

8. That the respondent shall pay a counsel fee in the sum of One Thousand Five Hundred and 00/100 ($1,500.00) Dollars to Michael DeLuca, Esq., for services rendered before the Appellate Division.

We have prepared and submit herewith a new decree in accordance with our decision. The parties may appear on at 10:00 AM to show cause, if any they have, why said decree shall not be entered.

Healy and Salem, JJ. concur.

ENTER:

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Healy, J.

_____
Olsson, J.

_____
Salem J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT APPELLATE DIVISION

JANET ZAGRODNY)
)
VS.) W.C.C. 97-03452
)
TECH INDUSTRIES)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeals of the petitioner and respondent from a decree entered on February 12, 2001.

Upon consideration thereof, the appeal of the petitioner is sustained and the appeal of the respondent is sustained in part and denied in part, and in accordance with the decision of the Appellate Division, the following findings of fact are made:

1. That the petitioner developed bilateral carpal tunnel syndrome arising out of and in the course of her employment, connected therewith and referable thereto, of which the employer had notice.

2. That a nexus was also established between the recurrent carpal tunnel syndrome and the petitioner's employment.

3. That as a result thereof, the petitioner became totally disabled from June 18, 1996 to May 8, 1997, partially disabled from May 9, 1997 to December 17, 1998 and totally disabled from December 18, 1998 and continuing.

4. That the petitioner's average weekly wage is Five Hundred Thirty Dollars and 85/100 ($530.85).

5. That the petitioner's spouse was dependent.

6. That surgical releases were necessary to cure, rehabilitate or relieve the employee from the effects of the bilateral carpal tunnel syndrome.

It is, therefore, ordered:

1. That the respondent shall pay to the petitioner weekly benefits for total incapacity from June 18, 1996 to May 8, 1997, for partial incapacity from May 9, 1997 to December 17, 1998 and for total incapacity from December 18, 1998 and continuing until further order of this court or agreement of the parties.

2. That the employer shall pay all reasonable charges for medical services rendered to the employee in order to cure, rehabilitate or relieve the employee from the effects of the bilateral carpal tunnel syndrome.

3. That it shall be the duty of the petitioner to furnish to the respondent and/or its insurance carrier evidence of the amount of any wages earned from any employer other than the respondent in order that the proper amount of compensation due to the employee may be computed.

4. That the respondent shall reimburse employee's counsel the sum of One Thousand Two Hundred and 00/100 ($1,200.00) Dollars for the expert witness fees paid to Dr. Stephen Graff.

5. That the respondent shall take credit for any payments made pursuant to the decree entered on February 12, 2001.

6. That the respondent shall pay to the employee interest at the rate of twelve percent (12%) on any retroactive weekly benefits due to the employee from December 4, 1997 to the date the payment is made.

7. That the respondent shall pay a counsel fee in the sum of Fifteen Thousand and 00/100 ($15,000.00) Dollars to Michael DeLuca, Esq., for services rendered in the prosecution of this petition through the trial stage, plus filing fees and transcript costs.

8. That the respondent shall pay a counsel fee in the sum of One Thousand Five Hundred and 00/100 ($1,500.00) Dollars to Michael DeLuca, Esq., for services rendered before the Appellate Division.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Healy, J.

_____
Olsson, J.

_____
Salem, J.

I hereby certify that copies were mailed to Michael DeLuca, Esq., and Thomas M. Bruzzese, Esq., on _____