**BEFORE THE APPEALS BOARD**
**FOR THE**
**KANSAS DIVISION OF WORKERS COMPENSATION**

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| **KIMBERLY S. LANE**<br>Claimant | ) | |
| VS. | ) | |
| **HONEYWELL INTERNATIONAL, INC.**<br>Respondent | ) | Docket Nos. **1,028,822**<br>**& 1,028,823** |
| AND | ) | |
| **INDEMNITY INS. CO. OF N. AMERICA**<br>Insurance Carrier | ) | |

## ORDER

Both parties requested review of the February 4, 2008 Award by Administrative Law Judge Robert H. Foerschler. The Board heard oral argument on May 21, 2008. The Director of the Division of Workers Compensation appointed Jeffrey K. Cooper of Topeka, Kansas, to serve as Board Member Pro Tem in place of Julie A. N. Sample, who recused herself from determining this matter.

### APPEARANCES

Timothy M. Alvarez of Kansas City, Kansas, appeared for the claimant. Thomas D. Billam of Overland Park, Kansas, appeared for respondent and its insurance carrier.

### RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument before the Board, the parties agreed that the medical records introduced as exhibits at the March 15, 2007, preliminary hearing are part of the evidentiary record.

### ISSUES

These two separate claims were consolidated for litigation but the parties expected separate awards for each docketed claim. In Docket No. 1,028,822 it was undisputed the claimant suffered work-related burn injuries to her hands on October 20, 2004. The only disputed issue was the nature and extent of disability, if any.

In Docket No. 1,028, 823 the claimant alleged a series of work-related repetitive bilateral upper extremity injuries from October 20, 2004, through February 13, 2006, or the last day of work, whichever is later. Respondent denied claimant suffered accidental injury arising out of and in the course of her employment; denied timely notice; denied timely written claim; and, in any event denied claimant suffered any permanent impairment as a result of the alleged repetitive injuries.

The Administrative Law Judge (ALJ) did not enter separate awards for each of the docketed claims and, instead, the ALJ entered one award which listed both docket numbers. The ALJ determined claimant sustained a 10 percent functional impairment to her left forearm and noted that all of her complaints were the consequence of her burn injuries as her other upper extremity complaints started after that incident.

Respondent requests review of the nature and extent of disability with regard to claimant's hands in Docket No. 1,028,822. Respondent requests review of whether claimant suffered a work-related accident; provided timely notice; provided timely written claim; and, in the alternative, whether claimant suffered any permanent impairment in Docket No. 1,028,823. Respondent argues, in Docket No. 1,028,822, that claimant did not suffer any permanent impairment as a result of the burn injuries to her hands. Respondent further argues, in Docket No. 1,028,823, that claimant did not meet her burden of proof to establish she suffered work-related carpal tunnel; did not provide timely notice; did not provide timely written claim; and did not meet her burden of proof to establish that she suffered any permanent impairment as a result of the alleged carpal tunnel injuries. Respondent requests the Board to award claimant medical compensation for her burn injuries in Docket No. 1,028,822, and deny claimant any benefits in Docket No. 1,028,823.

Claimant requests review of the nature and extent of disability in Docket No. 1,028,822. Claimant further requests review of the nature and extent of disability in Docket No. 1,028,823 as well as the following: (1) whether claimant is entitled to temporary total disability benefits from February 14, 2006 to March 20, 2006; and, (2) whether claimant is entitled to reimbursement for $7,341.04 in medical bills. Claimant argues she suffered a 2 percent impairment to her left hand. Claimant also argues that she is entitled to a 22 percent impairment to each of her forearms in Docket No. 1,028,823 for her carpal tunnel syndromes.

The sole issue for Board determination in Docket No. 1,028,822 is the nature and extent of disability, if any. The issues for Board determination in Docket No. 1,028,823 include whether claimant met her burden of proof to establish she suffered accidental injury arising out of and in the course of her employment; whether claimant provided timely notice; whether claimant provided timely written claim; the nature and extent of disability, if any; whether claimant is entitled to temporary total disability benefits from February 14,

2006 to March 20, 2006; whether claimant is entitled to reimbursement for $7,341.04 in medical bills; and, whether claimant is entitled to unauthorized and future medical expenses.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

In January 1997 Kimberly Lane began her employment with respondent as an assembler. She later received a technical degree and was promoted to a technician. Respondent manufactures general aircraft avionics in Olathe, Kansas. Claimant's primary job duty is to test the circuit boards for high frequency radios. She hooks the circuit boards up to various machines and runs tests which determine if the circuit board is functioning properly. While the tests are being run claimant either tests other circuit boards or assembles circuit boards. When the circuit board does not pass a test the claimant then is required to identify and replace the defective component on the circuit board. Claimant testified that when work is slow she will occasionally work on the assembly line building the circuit boards.

Edmond D. Light, health, safety and environment manager, testified that claimant did not have a quota or minimum number of pieces per day or per week that she was required to inspect but that it was a self-paced work environment. He further testified that the tools involved in a technician's job include oscilloscopes, connectors, banana plugs, wire clips and power tools.

On October 20, 2004, at an event sanctioned by respondent, claimant lifted a chili cooker, the water shifted and spilled over claimant's hands. She suffered second degree burns on her hands. She noted her left hand was blistered from her ring finger down across in her palm, under her thumb and then up. Her left hand was blistered in the area of her thumb. Claimant received treatment at respondent's medical facility. Both hands were treated with Silvadene and bandaged. Claimant only missed work on the remainder of the day she suffered the burn injuries and then she returned to work. Each day for two or three weeks, the bandages were changed daily, her hands were debrided of dead skin and treated with Silvadene to make sure the burns were clean and not infected. Treatment continued for several months at respondent's facility.

On November 5, 2004, claimant provided respondent with a written claim for compensation for the accident on October 20, 2004.[1]

On November 22, 2004, claimant complained of numbness and tingling involving the first and second fingers on her left hand. Dr. Berman determined she had mild neuropathy secondary to the burn. On December 22, 2004, Dr. Berman noted claimant had persistent pins and needles sensation in the first and second digits of the left hand but that the burns had healed. On February 22, 2005, Dr. Nichols recommended desensitization in physical therapy and/or medication for neuropathy. On April 21, 2005, claimant was having occasional spasms in the left hand and having nocturnal awakening complaints. She also was having problems with her right hand. On July 21, 2005, Dr. Nichols recommended electrodiagnostic testing to determine if claimant had radial neuropathy from the burn injury.

On July 27, 2005, claimant was examined and evaluated by Dr. Zhengyu Hu. An EMG study performed by Dr. Hu revealed left radial sensory neuropathy along with left carpal tunnel syndrome. Claimant received physical therapy and was then seen by Dr. Hu on August 5, 2005. Dr. Hu treated claimant with desensitization treatments on August 9, 11, 18, 19, 22, 23, 25, and September 1, 2005. On September 12, 2005, Dr. Hu performed a nerve sensory test which revealed the left radial and median nerves were normal. The test was repeated on November 15, 2005, and again resulted in normal findings. Dr. Hu opined there was no electrophysiological evidence to suggest left median or ulnar entrapment neuropathy based on the data gathered. Also, there was no evidence to suggest left brachial plexopathy or cervical radiculopathy. On December 6, 2005, Dr. Hu opined claimant's source of pain was due to possible left thumb carpometacarpal osteoarthritis. Dr. Nichols evaluated claimant on December 13, 2005, and determined claimant had reached maximum medical improvement.

Since claimant was still having problems with her hands, she sought treatment with her primary care physician. Dr. William Walters examined claimant on December 14, 2005, took x-rays to confirm whether or not she had arthritis. The doctor referred claimant to Dr. Appelbaum for another EMG. After the EMG was performed and indicated claimant had carpal tunnel in both hands she was referred to Dr. Frank P. Holladay. Dr. Holladay examined and evaluated claimant on February 6, 2006. A left carpal tunnel released was performed on claimant by Dr. Holladay on February 14, 2006, and then claimant was released without restrictions on March 10, 2006. While claimant was off work due to her surgery, she received short-term disability benefits. Claimant returned to her technician job with respondent.

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[1] R.H. Trans., Cl. Ex. 2.

On May 3, 2006, claimant filed an E-1 Application for Hearing with the Division of Workers Compensation. Claimant alleged repetitive bilateral upper extremity injuries with dates of accident from October 20, 2004 through February 13, 2006, or last day of work, whichever is later. Claimant had also signed a Written Claim for Compensation which was sent by certified mail and received by respondent on May 5, 2006.[2]

Dr. P. Brent Koprivica saw claimant at the request of claimant's attorney on October 11, 2006. Dr. Koprivica performed an examination of claimant and diagnosed claimant with second degree burns to both hands as a result of her accidental injury on October 20, 2004. She also has residual loss of sensation in the dorsal left hand and sensitivity on the dorsal left hand. The doctor opined claimant had reached maximum medical improvement with regard to the burns. Dr. Koprivica did not find a causal relationship between claimant's burns and the development of carpal tunnel syndrome. The doctor opined that claimant's repetitive work tasks as an electronic technician resulted in her moderate severity bilateral carpal tunnel syndrome. Dr. Koprivica determined claimant was not at maximum medical improvement with regard to her bilateral carpal tunnel syndrome and recommended that claimant be referred to Dr. Holladay for repeat electrodiagnostic studies and possible surgery. The doctor further opined claimant was temporarily and totally disabled from February 14, 2006, through March 20, 2006.

Dr. Koprivica also prepared a second letter dated October 11, 2006, to provide ratings for claimant's injuries in the event that additional treatment was not provided for claimant's bilateral carpal tunnel syndrome. Based upon the AMA *Guides*[3], the doctor concluded claimant had a 2 percent functional impairment to the left hand due to radial sensory loss as well as a 22 percent functional impairment to each forearm due to moderate carpal tunnel syndrome.

On January 23, 2007, Dr. Anne Rosenthal, board certified in orthopedics and hand surgery, examined and evaluated claimant at the request of respondent's attorney. The doctor opined claimant did not have the right pattern of numbness and that her examination was not consistent with carpal tunnel. She performed a compression test on claimant which was negative in both hands. Dr. Rosenthal testified that claimant's complaints of tingling and numbness to the back of the hand and thumb are related to different nerves and not to the median nerve which goes through the carpal tunnel. The doctor further opined claimant did not have carpal tunnel syndrome because her surgery did not improve the numbness and tingling.

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[2] R.H. Trans., Cl. Ex. 3.

[3] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Dr. Rosenthal opined that the last EMG study only revealed mild bilateral carpal tunnel syndrome but she expressed the opinion that finding does not establish a diagnosis of carpal tunnel as the physical examination findings and clinical symptoms are necessary to confirm the diagnosis. And Dr. Rosenthal noted that her clinical examination of claimant did not reveal any evidence that claimant had carpal tunnel syndrome.

Dr. Rosenthal concluded claimant did not suffer any permanent impairment to either hand due to the burns or from carpal tunnel syndrome. And the doctor reiterated that claimant did not have any permanent impairment for carpal tunnel syndrome because the claimant did not have bilateral carpal tunnel syndrome.

**Docket No. 1,028,822**

The sole issue in Docket No. 1,028,822 is the nature and extent of functional disability, if any, that claimant suffered as a result of her accidental burn injuries to her hands. The claimant suffered second degree burns to both of her hands.

Dr. Koprivica performed an examination of claimant on October 11, 2006 and diagnosed claimant with second degree burns to both hands as a result of her accidental injury on October 20, 2004. The doctor noted claimant also had residual loss of sensation in the dorsal left hand and sensitivity on the dorsal left hand. Based upon the AMA *Guides*[4], the doctor concluded claimant had a 2 percent functional impairment to the left hand due to radial sensory loss, which the doctor noted was the nerve that was abnormal on Dr. Hu's original electrodiagnostic study and which on clinical exam the claimant continued to have complaints. Conversely, Dr. Rosenthal noted that on January 23, 2007, upon examination claimant did not have any scaring from the burns to her hands and no evidence of radial sensory nerve irritation. Consequently , Dr. Rosenthal opined claimant did not suffer any permanent impairment to either hand due to the burns she suffered on October 20, 2004.

Claimant currently complains of numbness and tingling in her left thumb, ring, pinky and index fingers. She also has numbness and tingling in her right hand in the wrist area. Claimant testified the surgery on her left eliminated the knuckle pain in her index and middle fingers as well as the tingling in her whole hand. She opined that the pain in her left hand was more tolerable since the surgery.

K.S.A. 44-510d(a)(23) provides:

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[4] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

> Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.[5] It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony with the testimony of the claimant and others in making a determination on the issue of disability. The trier of fact must make the ultimate decision as to the nature and extent of injury and is not bound by the medical evidence presented.[6]

The claimant received treatment for radial sensory loss in her left hand and continues to complain of numbness and tingling in the area of her burn injury. Dr. Koprivica assigned a 2 percent functional impairment to claimant's left hand for this condition. Although Dr. Rosenthal concluded claimant did not suffer any impairment as a result of her burn injuries, nonetheless, Dr. Rosenthal repeatedly noted that claimant's complaints of numbness in her hand was not in the proper nerve distribution for carpal tunnel but was consistent with sensory nerve irritation in the area where claimant had been burned. Based upon claimant's consistent ongoing complaints the Board finds Dr. Koprivica's opinion more persuasive and finds claimant suffers a 2 percent permanent partial functional impairment to her left hand due to the burn injuries suffered on October 20, 2004.

Claimant is entitled to future medical treatment upon proper application.

**Docket No. 1,028,823**

Respondent initially argues that claimant did not provide timely notice or timely written claim for her alleged carpal tunnel injuries. In this case, the claimant's onset of symptoms occurred after she had burned her hands on October 20, 2004. Claimant believed that her symptoms in her hands were caused by that incident. Claimant, as is the case with many unsophisticated workers, was unaware that she was suffering a series of injuries each and every day she continued working. And as Dr. Hu was initially treating her symptoms as a neuropathy secondary to the burn, claimant remained unaware that work could be causing her symptoms in her hands even after she was released from treatment for her burns to her hands. And she ultimately had a carpal tunnel release performed on the left. It was not until after she was returned to work after that surgery that she finally filed a claim for repetitive

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[5] *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

[6] *Graff v. Trans World Airlines,* 267 Kan. 854, 983 P.2d 258 (1999).

injuries to her bilateral upper extremities. The determination whether timely notice and timely written claim was provided respondent is dependent upon the date of accident for the alleged repetitive traumas.

K.S.A. 44-508(d) was amended by the Kansas legislature effective July 1, 2005. The definition of accident has been modified, with the date of accident in microtrauma cases being now defined by statute rather than by case law. The new date of accident determination is as follows:

> 'Accident' means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment. **In cases where the accident occurs as a result of a series of events, repetitive use, cumulative traumas or microtraumas, the date of accident shall be the date the authorized physician takes the employee off work due to the condition or restricts the employee from performing the work which is the cause of the condition. In the event the worker is not taken off work or restricted as above described, then the date of injury shall be the earliest of the following dates: (1) The date upon which the employee gives written notice to the employer of the injury; or (2) the date the condition is diagnosed as work related, provided such fact is communicated in writing to the injured worker. In cases where none of the above criteria are met, then the date of accident shall be determined by the administrative law judge based on all the evidence and circumstances; and in no event shall the date of accident be the date of, or the day before the regular hearing.** Nothing in this subsection shall be construed to preclude a worker's right to make a claim for aggravation of injuries under the workers compensation act.[7] (Emphasis added.)

K.S.A. 2006 Supp. 44-508(d) offers a series of possible "accident dates" for a repetitive trauma injury dependent upon a case-by-case determination of which of the alternative factual situations established by statute have occurred.

In the instant case, claimant was never restricted nor taken off work by an authorized physician.[8] In fact, even after her carpal tunnel release surgery she was released to return

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[7] K.S.A. 2006 Supp. 44-508(d).

[8] The claimant's surgery was performed by her personal physician and he was not an authorized physician.

to work with no restrictions. Absent those facts, the next possible accident date is the earliest of either the date of claimant's receipt in writing of notification that her condition was diagnosed as work related or the date she gave written notice of the injury to the employer. There is no indication in the record that claimant received written notification that her condition was diagnosed as work related before she filed her written claim which was received by the respondent on May 5, 2006. Accordingly, that written claim received by the respondent constitutes the date of accident in this case. Consequently, under the plain language of the statute, claimant's date of accident is May 5, 2006, and notice was timely for the series of microtraumas occurring through that date.

Respondent next argues that claimant failed to meet her burden of proof that she suffered accidental injury arising out of and in the course of her employment. Respondent further argues that her job was not the cause of her alleged repetitive traumas as it was not performed in a repetitive fashion. And more significantly, Dr. Rosenthal concluded that claimant did not have bilateral carpal tunnel syndrome and therefore could not have any permanent functional impairment for a non-existent condition.

Conversely, Dr. Koprivica offered the opinion that claimant not only suffered bilateral carpal tunnel syndrome but that the condition was caused by her work for respondent. And the EMG study performed by Dr. Appelbaum confirmed claimant suffered moderate bilateral carpal tunnel syndrome. A fact which Dr. Rosenthal did not dispute although she thought the study only showed mild bilateral carpal tunnel syndrome.

Claimant testified that 90 percent of her day is using her hands to screw, unscrew, flip, dial, pull, push, twist, turn, wiggle, lift and write. The tools involved are screwdrivers, switches, screws, pliers, grips, dials, connectors, gauges and probes. Claimant testified that she has ongoing symptoms with her right hand worse than the left. She complains of numbness and tingling with loss of grip strength on the right. She further stated that the symptoms in her right hand are worsening and she relates that to her problems at work.[9]

The Board finds, in this case, Dr. Koprivica's opinion more closely conforms with the majority of the medical evidence as well as claimant's ongoing complaints and is more persuasive. Consequently, the Board concludes that claimant has met her burden of proof to establish that she suffers from bilateral carpal tunnel syndrome which was caused by her work activities for respondent.

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[9] R.H. Trans. at 38-40.

In *Casco*[10], the Kansas Supreme Court considered whether an individual who sustained bilateral, parallel, non-simultaneous injuries to his shoulders was entitled to compensation based upon two separate scheduled injuries, under K.S.A. 44-510d, or as a unscheduled whole body injury, under K.S.A. 44-510e(a). After examining the applicable statutes and the relevant case law, the *Casco* Court departed from the well-recognized and long-established case law going back over 75 years. In doing so, it provided certain rules. They are as follows:

> Scheduled injuries are the general rule and nonscheduled injuries are the exception. K.S.A. 44-510d calculates the award based on a schedule of disabilities. If an injury is on the schedule, the amount of compensation is to be in accordance with K.S.A. 44-510d.
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> When the workers compensation claimant has a loss of both eyes, both hands, both arms, both feet, or both legs or any combination thereof, the calculation of the claimant's compensation begins with a determination of whether the claimant has suffered a permanent total disability. K.S.A. 44-510c(a)(2) establishes a rebuttable presumption in favor of permanent total disability when the claimant experiences a loss of both eyes, both hands, both arms, both feet, or both legs or any combination thereof. If the presumption is not rebutted, the claimant's compensation must be calculated as a permanent total disability in accordance with K.S.A. 44-510c.
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> When the workers compensation claimant has a loss of both eyes, both hands, both arms, both feet, both legs, or any combination thereof and the presumption of permanent total disability is rebutted with evidence that the claimant is capable of engaging in some type of substantial and gainful employment, the claimant's award must be calculated as a permanent partial disability in accordance with the K.S.A. 44-510d.
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> K.S.A. 44-510e permanent partial general disability is the exception to utilizing 44-510d in calculating a claimant's award. K.S.A. 44-510e applies only when the claimant's injury is not included on the schedule of injuries.[11]

In any combination scheduled injuries are now the rule, while nonscheduled injuries are the exception.[12] There is a rebuttable presumption that the claimant is permanently and

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[10] *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494 (2007).

[11] *Id.*, Syl. ¶'s 7-10.

[12] *Id.*, Syl. ¶ 7; *Pruter v. Larned State Hospital*, 271 Kan. 865, 26 P.3d 666 (2001).

totally disabled. That presumption can be rebutted by evidence that the claimant is capable of engaging in some type of substantial gainful employment.[13]

In this case claimant returned to work for respondent and was employed at the time of the regular hearing. Consequently, claimant's recovery is limited and she is not entitled to permanent total disability benefits under K.S.A. 44-510c(a)(2).

K.S.A. 44-510d(a)(23) provides:

> Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.[14] It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony with the testimony of the claimant and others in making a determination on the issue of disability. The trier of fact must make the ultimate decision as to the nature and extent of injury and is not bound by the medical evidence presented.[15]

Based upon the AMA *Guides*, Dr. Koprivica opined claimant suffered a 22 percent functional impairment to each forearm due to moderate carpal tunnel syndrome. Here, claimant sustained simultaneous bilateral and parallel injuries to her upper extremities. Both of those extremities are listed in K.S.A. 44-510d. And there is no evidence that as a result of her upper extremity injuries she is permanently and totally disabled. Thus, under the *Casco* analysis, claimant is entitled to recovery based upon *two separate scheduled injuries*. Accordingly, the ALJ's Award is hereby modified to reflect two separate scheduled injuries at the level of the forearms for a 22 percent permanent partial functional impairment to each forearm.

Claimant requested payment of the medical expenses incurred for the surgery on her left upper extremity. The Workers Compensation Act compels a respondent to provide medical treatment that is reasonably intended to cure and relieve an injured employee of the

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[13] *Casco*, 283 Kan. 508 Syl. ¶ 9.

[14] *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

[15] *Graff v. Trans World Airlines,* 267 Kan. 854, 983 P.2d 258 (1999).

effects of a compensable injury.[16] With that obligation comes the right to designate the authorized treating physician. Only when a respondent fails and/or refuses to provide medical treatment is a claimant permitted to select a physician to direct his or her care.[17]

Claimant had been released from treatment by respondent's authorized physician. But she still experienced symptoms in her hands and she sought additional treatment with her personal physician. Claimant never requested an appointment to return for additional treatment. Claimant never requested a preliminary hearing to obtain additional treatment. Moreover, claimant did not have a sudden change in her condition such that emergency surgery was required.

Claimant went ahead with the surgical procedure as recommended by Dr. Holliday who was not authorized by either respondent or the ALJ. Consequently, the Board concludes that the treatment provided by Drs. Edwards, Applebaum and Holiday as well as the hospital expenses for the carpal tunnel release surgery and post-surgery treatment provided by Dr. Holliday was unauthorized medical treatment under the Workers Compensation Act. The Board finds respondent and its insurance carrier did not refuse or neglect to provide claimant with medical treatment. Accordingly, respondent is not responsible for payment of the medical expenses listed in the regular hearing transcript as claimant's exhibit 1. But claimant is entitled to unauthorized medical compensation up to the statutory maximum upon presentation of itemized billings.

The Board further notes that Dr. Rosenthal, opined that Dr. Holliday's surgery was not necessary. On the other hand, Dr. Koprivica did not concur with that opinion. Claimant's decision to have the surgery was otherwise reasonable. The surgery was performed in an attempt to cure the effects of claimant's work-related injury. Thus, whether the surgery was authorized or unauthorized is not controlling and does not disqualify claimant's entitlement to disability benefits.

Claimant is entitled to temporary total disability compensation for the time period from February 14, 2006 through March 10, 2006, while she was off work following the carpal tunnel release surgery on her left upper extremity. This period of disability will be deducted in the calculation of claimant's award for a 22 percent functional impairment to her left upper extremity.

Claimant is entitled to future medical treatment upon proper application.

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[16] K.S.A. 44-510h.

[17] K.S.A. 44-510j(h).

## AWARD IN DOCKET NO. 1,028,822

**WHEREFORE**, it is the decision of the Board that the Award of Administrative Law Judge Robert H. Foerschler dated February 4, 2008, is modified to reflect claimant suffered a 2 percent permanent partial functional impairment to her hand.

The claimant is entitled to 3 weeks of permanent partial disability compensation, at the rate of $449 per week, in the amount of $1,347 for a 2 percent loss of use of the hand, making a total award of $1,347, which is ordered paid in one lump sum less amounts previously paid.

## AWARD IN DOCKET NO. 1,028,823

**WHEREFORE**, it is the decision of the Board that the Award of Administrative Law Judge Robert H. Foerschler dated February 4, 2008, is modified to reflect claimant suffered a 22 percent permanent partial functional impairment to her left forearm and a 22 percent permanent partial functional impairment to her right forearm.

### Left Forearm

The claimant is entitled to 3.57 weeks of temporary total disability compensation at the rate of $467 per week in the amount of $1,667.19 followed by 43.21 weeks of permanent partial disability compensation, at the rate of $467 per week, in the amount of $20,179.07 for a 22 percent loss of use of the left forearm, making a total award of $21,846.26, which is ordered paid in one lump sum less amounts previously paid.

### Right Forearm

The claimant is entitled to 44 weeks of permanent partial disability compensation, at the rate of $467 per week, in the amount of $20,548 for a 22 percent loss of use of the right forearm, making a total award of $20,548, which is ordered paid in one lump sum less amounts previously paid.

**IT IS SO ORDERED.**

Dated this _____ day of June 2008.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Timothy M. Alvarez, Attorney for Claimant
Thomas D. Billam, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge