

Carpal Tunnel Syndrome — On-the-Job Injury or Occupational Disease?

by Roger A. Schwartz

Several years ago a very popular advertising campaign featured a crystal goblet shattered by the scat singing of the late Ella Fitzgerald, and the question: “Is it live or is it Memorex?” Within the workers’ compensation community an equally popular discussion features the condition known as carpal tunnel syndrome, and the question: “Is it an on-the-job injury or is it an occupational disease?”

A.R.S. §23-1021.A provides compensation to workers who are “injured... by accident arising out of and in the course of... employment.” If carpal tunnel syndrome is not an injury by accident, but, rather, an occupational disease, the claimant seeking compensation is subject to a considerably stricter standard of proof. As noted by the leading authority on Arizona’s Workers’ Compensation Law: “Perhaps the most striking distinction between traditional injuries by accident and occupational diseases is found in A.R.S. §23-901.01, which provides that an occupational disease arises out of employment only if... six requirements [of proof] are met.”¹ The “striking distinction” in requirements of proof, *i.e.*, the number of legal hoops through which the injured claimant must jump, is, to use a well-turned legal double-negative, “not insubstantial.”²

In a November 30, 1995, memorandum decision, *Snell & Wilmer v. Industrial Commission*,³ the Court of Appeals, Division One, answered, yet refused to resolve definitively, the question of whether carpal tunnel syndrome is an injury by accident or an occupational disease. While the Court chose not to issue a published opinion, the Court’s holding did receive publication in a slightly different medium when a local business newspaper, with a wide circulation to all businesses, including law offices, reported that holding under the headline, “Court Rejects Stringent Standards for Claims of Carpal Tunnel Injuries.”⁴

In its memorandum decision in *Snell & Wilmer*, the Court of Appeals noted, “relying primarily on Decisions from other states, the Employer argues that the claimant’s carpal tunnel syndrome is an occupational disease and that the ALJ erred by failing to apply the Occupational Disease Statutes. The question is settled in Arizona.”⁵ After discussion of the pertinent Arizona case law *vis-à-vis* the facts of the case, the Court of Appeals reached the following conclusion:

The record supports the ALJ’s refusal to apply the Occupational Disease Statutes in this case. With regard to whether the claimant’s carpal tunnel syndrome is an occupational disease both medical experts agreed that other factors could have caused her medical condition. Because carpal tunnel syndrome is not necessarily characteristic of, or peculiar to, word processing, the condition does not fall necessarily within the statutory definition of occupational disease. We therefore reject the Employer’s position that, as a matter of law, carpal tunnel syndrome is always an occupational disease. Accordingly, the claimant’s carpal tunnel syndrome is otherwise compensable and the more strict burden of proving compensability does not apply.⁶

As noted, the Court of Appeals specifically agreed with the Administrative Law Judge’s finding that the claimant’s medical condition was not an occupational disease. The ALJ’s relevant finding appeared to be grounded not only in the specific medical evidence of the case, but in common sense, as well:

Defendants allege that the applicant’s condition should be treated as a disease rather than an injury. Since carpal tunnel syndrome, tendinitis, tenosynovitis, and other like medical diagnoses can be caused by things other than the type of work the applicant was doing, it is found that the condition is not an occupational disease. To find the applicant’s condition to be an occupational disease would of necessity require us to find in all cases that an applicant with carpal tunnel syndrome has a work-related occupational disease and that is contrary to medical opinion.⁷

The problem with the Court of Appeals’ November 30, 1995, memorandum decision was that, while the Court declared that “[t]he question is settled in Arizona,” its memorandum decision cited three cases, *none* of which involved carpal tunnel syndrome: *Phoenix Pest Control v. Industrial Commission*⁸ was a chemical exposure case; so, too, was *McCreary v. Industrial Commission*,⁹ and *Montgomery v. Industrial Commission*¹⁰ involved the contraction of Lyme disease. The argument that carpal tunnel syndrome is an occupational disease under A.R.S. §23-901.01 continues to be made, on a regular basis, by certain workers’ compensation defense practitioners in this state, including those representing law firms such as Snell & Wilmer. It would appear that, until either the Court of Appeals or the Supreme Court publishes an opinion and creates Arizona authority directly on point, such arguments will continue to be made, despite the Court of Appeals’ rejection of Snell & Wilmer’s proposition that, “as a matter of law, carpal tunnel syndrome is *always* an occupational disease.”¹¹

The undercurrent of employers’ arguments in these cases is that the Legislature’s passage of A.R.S. §23-

901.01 represented a retreat from the principle that Arizona's Workers' Compensation law is, as a whole, remedial in character, and is to be construed liberally.¹² However, that undercurrent appears to have been undercut by 1994 language from the Supreme Court of Arizona indicating that recent amendments to the Occupational Disease Statute will not be construed by the Court to represent such a retreat:

In *Ford v. Industrial Commission*, we outlined the historical difference in treatment between compensation for industrial injuries and occupational diseases. 145 Ariz. 509, 512-14, 703 P.2d 453, 456-58 (1985); *See also* [Arizona Workers' Compensation] Handbook... § 5.3 at 5-2 to 5-5. We concluded that while some distinct provisions for occupational diseases remain, the modern approach is to treat diseases and injuries the same. *See Ford, supra*; *see also* A.R.S. § 23-901(12)(c)(expanding the general definition of "personal injury by accident" to include occupational diseases)....

Our reading furthers one of the primary purposes of Arizona's overall scheme: to compensate employees for lost earning capacity from employment-related disabilities. *Maness v. Industrial Commission*, 102 Ariz. 557, 559, 434 P.2d 643, 645 (1967). This purpose applies equally to loss of earning capacity from occupational disease and industrial injury. *See, e.g., Ford*, 145 Ariz. at 517, 703 P.2d at 461 (Occupational Diseases); *Magma Copper Company v. Industrial Commission*, 62 Ariz. 9, 13, 152 P.2d 618, 619 (1944)(same); *Altamarano v. Industrial Commission*, 22 Ariz. App. 379, 380, 527 P.2d 1096, 1097 (1974)(industrial injuries).

...Statutory causation requirements are stricter for occupational diseases than they are for industrial injuries "to insure that the disability causing the disease is one related to employment and not one which is part of the ordinary hazards of life to which the general public is exposed." *Ford*, 145 Ariz. at 518, 703 P.2d at 462; *See generally* 1D Arthur Larson, *The Law of Workman's Compensation*, §41.64 at 7-612 to 7-635 (1993). Even under the more rigid requirements, however, the occupational disease need not be the *sole* cause of the disability so long as it is a contributing cause. *Ford*, 145 at 518, 703 P.2d at 462...¹³

After issuing its November 30, 1995, memorandum decision, the Court of Appeals, Division One, denied both a motion for reconsideration and a request for publication pursuant to Rule 28. Snell & Wilmer filed a petition for review¹⁴ with the Supreme Court of Arizona, and that petition was denied on September 19, 1996. Of course, the denial of a petition for review by the Supreme Court of Arizona is much like the denial of a petition for writ of certiorari by the Supreme Court of the United States. Thus, while, in the words of at least one lay observer, the Snell & Wilmer decision "could make it easier for clerical workers and others to collect workers' compensation benefits for injuries stemming from repetitive motion,"¹⁵ the Arizona workers' compensation equivalent of the question, "Is it live or is it Memorex?" remains unanswered—at least in the sense that such answer is to be found nowhere in the *Arizona Reports* or *Pacific Reporter*. But then, again, considering the language of the Supreme Court in *Fry's Food Stores*, perhaps that answer is no more important to the carpal tunnel syndrome claimant than the answer to the question, "Is it live or is it Memorex?" is to the crystal goblet.

Roger A. Schwartz is a member of the law firm of Taylor & Associates, PLLC, and a former Administrative Law Judge with the Industrial Commission of Arizona.

ENDNOTES:

1. Davis, Arizona Workers' Compensation Handbook, § 5.3, p. 5-4.
2. A.R.S. §23.901.01 requires proof of *all* of the following in order to render the "occupational disease" claim compensable:
 1. There is a direct causal connection between the conditions under which the work is performed and the occupational disease.
 2. The disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.
 3. The disease can be fairly traced to the employment as the proximate cause.
 4. The disease does not come from a hazard to which workmen would have been equally exposed outside of the employment.
 5. The disease is incidental to the character of the business and not independent of the relation of the employer and employee.
 6. The disease after its contraction appears to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence, although it need not have been foreseen or expected.
3. 1 CA IC 94-0134 (App., Nov. 30, 1995).
4. *Arizona Business Gazette*, Dec. 14, 1995, p. 12.
5. *Snell & Wilmer v. Industrial Commission*, slip op. at 4-5.
6. *Id.* at 7-8.
7. *McConaughay v. Snell & Wilmer, et al.*, April 22, 1994, Decision Upon Hearing and Findings and Award for Compensable Claim, Finding Number Fourteen.
8. 134 Ariz. 215, 655 P.2d 39 (App. 1982).
9. 172 Ariz. 137, 835 P.2d 469 (App. 1992).
10. 173 Ariz. 106, 840 P.2d 289 (App. 1992).
11. *Snell & Wilmer v. Industrial Commission*, slip op. at 7-8.
12. *See e.g., Flamingo Motor Inn v. Industrial Commission*, 133 Ariz. 200, 650 P.2d 502 (App. 1982).
13. *Fry's Food Stores of Arizona v. Industrial Commission*, 177 Ariz. 264, 267-268, 866 P.2d 1350, 1353-54 (1994).
14. Supreme Court No. CV-96-0192-PR.
15. *Arizona Business Gazette*, Dec. 14, 1995, p. 12.