IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 24

WCC No. 9311-6938

LARRY D. CHANEY

Petitioner

vs.

U.S. FIDELITY & GUARANTY

Respondent/Insurer for

OWENS-HURST LUMBER COMPANY

Employer

STATE COMPENSATION INSURANCE FUND

Intervenor.

Reversed in *Chaney v. U.S. Fidelity & Guaranty,* 276 Mont. 513 (1996) (No. 95-239)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Claimant, who suffers from carpal tunnel syndrome, alleges that his condition results from a November 3, 1983, injury with an employer insured by U.S. Fidelty & Guaranty. State Fund makes the same contention, seeking indemnification from the first insurer.

Held: Claimant's injury during November, 1983, is not the proximate cause of his current carpal tunnel syndrome. He is not entitled to benefits from U.S. Fidelity & Guranty. **Note: this decision was reversed in *Chaney v. U.S. Fidelity & Guaranty*, 276 Mont. 513 (1996), with Supreme Court finding liability to flow from this insurer's failure to accept or deny the claim within thirty days.**

The trial in this matter was held on June 28 and 29, 1994, in Great Falls, Montana. Petitioner, Larry D. Chaney (claimant), was present and represented by Mr. Randall O. Skorheim and Mr. Robert C. Melcher. Respondent, U.S. Fidelity & Guaranty (USF&G), was represented by Mr. Michael S. Lattier. Intervenor, State Compensation Insurance Fund (State Fund), was represented by Mr. Charles G. Adams. Claimant testified on his own behalf. Dr. Patrick E. Galvas and Scott Hall also testified. The depositions of the claimant, Dr. Stuart Reynolds, Dr. Patrick R. Cahill, Dr. John V. Stephens, Dr. Patrick E. Galvas and Mary Chaney were submitted for the Court's consideration. Exhibits 1 through 11 were admitted into evidence without objection. Exhibit 12 was offered by USF&G and objected to by claimant. The Court reserved its ruling on Exhibit 12. After considering the arguments made by both sides, Exhibit 12 is denied.

State Fund's motion to add issue: Prior to the commencement of the trial in this matter, the State Fund moved to add the issue of whether the State Fund is liable for the claimant's carpal tunnel syndrome. Based on the representation of claimant's counsel that the claim against the State Fund is being pursued under the Occupational Disease Act (ODA), the Court denied the motion. The Department of Labor and Industry, not the Court, has original jurisdiction over liability disputes under the ODA.

Issues: Claimant suffers from carpal tunnel syndrome (CTS). He alleges that his CTS is attributable to a November 3, 1983 injury he suffered while working on the green chain at Owens-Hurst Lumber Company (Owens-Hurst). He seeks a determination that USF&G, which insured Owens-Hurst at the time of the accident, is liable for temporary total, permanent total, permanent partial, rehabilitation and medical benefits, as well as attorney fees, and a penalty. The State Fund has intervened to seek indemnification for compensation and medical benefits it has paid claimant since 1993. Those benefits have been paid under a reservation of rights. As already noted in the second paragraph, the State Fund's liability, if any, is not at issue in this case.

Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses appearing at trial, the exhibits, the depositions, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

1. At the time of trial claimant was thirty-two years old. He has completed high school.

Claimant's Credibility

2. The following findings must be prefaced by the Court's determination concerning claimant's credibility. Claimant was not a credible witness. The contradictions in claimant's testimony in deposition and at trial were numerous and blatant. Ultimately, it

was impossible for the Court to ascertain an accurate history of claimant's finger, hand, wrist and arm complaints.

Claimant's Early Work History

3. In 1979, while attending high school, claimant joined the National Guard (Guard). (Tr. at 109.) In 1981, at age 19, claimant dropped out of high school and attended advanced training in the Guard. (*Id.*) Claimant continued to serve in the Guard until 1985. (*Id.*) While in the Guard he worked as a mechanic.

4. In June of 1981, the claimant began working for Crystal Lake Resort in Fortine, Montana, where he washed, fueled and maintained golf carts and worked in the kitchen. (Tr. at 109-110; L. Chaney Dep. at 16-19.)

5. Claimant then worked for a short period of time driving a truck for Orin Stright. (Tr. at 188-189.)

6. On or about October 15, 1983, claimant went to work for Owens-Hurst, which is a wood products mill. (Tr. at 110; L. Chaney Dep. at 19-20.) Claimant worked the green chain, pulling green, wet lumber from a conveyer belt and stacking it. (Tr. at 110-111.)

1983 Industrial Accident

7. Claimant testified at trial that he was injured on November 3, 1983, when he fell from a pile of railroad ties while working the green chain. (Tr. at 112-113.) He testified that he fell approximately four (4) feet, breaking his fall with his forearms and wrists, ultimately landing between the green chain and the wood, and scraping his legs and back. (Tr. at 115-116.) He further testified that as soon as his shift ended he reported the fall to his supervisor and told a "gal" in the office that he was experiencing numbness in his fingertips. (Tr. at 113.)

8. On November 11, 1983, claimant filed a workers' compensation claim for the injury he claimed occurred on November 3, 1983 while working for Owens-Hurst. (Uncontested Fact 1; see Ex. 3 at 15.)

9. At the time of the alleged fall, Owens-Hurst was insured by USF&G. USF&G has no record of any acceptance or denial of the claim in this case. Its file folder for claims made by employees of Owens-Hurst does record a claim made by Mr. Chaney for a November 3, 1983 accident. (Ex. 10.) USF&G paid no benefits (Ex. 10) with regard to the claim but it is possible that Owens-Hurst paid directly for a subsequent medical examination by Dr. Schroeder. Lacking any evidence that the claim was timely denied, the Court finds that the claim was accepted by USF&G.

10. Claimant's trial testimony concerning his 1983 industrial accident was inconsistent with what he reported at the time of the injury and with other parts of his trial and deposition testimony.

a. The Employer's First Report, which was signed by claimant, describes the accident as follows:

> Arms and Hands started to go to sleep and get num [sic] while working and after work. Stacking 2x6s and Tye's [sic].

(Ex. 3 at 15.) No fall is mentioned.

b. Claimant did not mention the fall to any doctor until he saw Dr. Galvas in February of 1994. He claims that he told Dr. Schroeder about the fall but Dr. Schroeder's Attending Physician's First Report made no mention of a fall. (Ex. 3 at 14.) Instead, where asked to "[s]tate in the patient's own words, how accident occurred," Dr. Schroeder responded, "Gradual onset of pain in shoulder and arms." (*Id.*) Following the question, "Is present condition due to work related accident?" Dr. Schroeder wrote in "(conditions)". (*Id.*)

c. At his deposition the claimant testified that he did *not* report his injury to his supervisor. (L. Chaney Dep. at 80; Tr. at 162.) His deposition testimony was:

> Q. So you never reported that injury to your supervisor?
> A. No. I didn't feel it was an injury at that time.
> Q. So you didn't feel that getting scraped up was enough to complain about?
> A. Right.

At trial claimant testified that his recollection was refreshed by new documentation and he could now remember reporting the fall to his supervisor. (Tr. at 162-164.) The document jogging his memory was the USF&G file folder for Owens-Hurst. (Ex. 10.) The back of the file folder contains three columns to record the names of claimants, the dates of their injuries and the amounts paid on account of the injuries. The specific entry purportedly jogging claimant's memory was line 16 of the third column, which reads:

Claimant	**Date Injured**	**Amount Paid**
Larry Dean Chaney	11-3-83	-------

However, the quoted entry does not appear to have been made *on* November 3, 1983. Rather, it appears to have been made no earlier than November 10, 1983. That is because the three injuries immediately preceding the quoted one were for injury dates of 11-3-83, 11-9-83, and 11-10-83. Moreover, the file folder entry does not mention any fall or any report to a supervisor. The Court is left wondering how the entry could have jogged claimant's memory.

d. During his deposition claimant also testified that he did not have numbness in his fingers or hands until several days *after* the fall:

> Q. Okay. Dr. Galvas said that, in his report, "Patient states that his complaints with his hands began in 1982 when he was working in a sawmill, fell and caught himself on both hands. He experienced pain in his hands right afterwards. Patient states he was working outside in about 40 degrees below zero level weather."
>
> Did you tell Dr. Galvas that?
>
> A. Yes.
>
> Q. Is that when your problems with your hands started?
>
> A. Well, I fell and I didn't have no real problems right then, but it was like a week or so afterwards my fingers started going numb.
>
> . . . .
>
> Q. When did your hands start going numb?
>
> A. During the snowstorm.
>
> Q. I mean in relation to your fall.
>
> A. It was after the fall.
>
> Q. The next day?
>
> A. No. It was -- It could have been three days. It could have been seven days. I just remember that my hands started going numb, my fingertips. . . .

(L. Chaney Dep. at 74 and 82.) And, on cross-examination at trial, claimant testified:

> Q So based on your testimony, your deposition, it was about a week or two after the fall your hands started bothering you, correct?
>
> A Could be. I'm not sure.

(Tr. at 166.)

e. Claimant testified that he is unsure whether his alleged fall caused his current symptoms or whether they were caused by his repetitive work on the green chain.

11. Based on my assessment of claimant's credibility, the Employer's First Report, and Dr. Schroeder's report, I find that claimant did not fall as he now claims. More probably he experienced a gradual onset of numbness in his hands, arms and shoulders due to the repetitive nature of his work on the green chain.

Post-Injury Employment

12. Claimant's employment at Owens-Hurst terminated in December 1983.

13. In 1984 claimant was unemployed for a period of time. (Tr. at 190.) The employment history he gave for the rest of 1984 and 1985 is confusing and contradictory. The history appears at pages 121-126 and 190-193 of the transcript. As best as I can glean, in 1984 the claimant worked for a tree farm, picked cherries and did other spot jobs. (Tr. at 121-22, 190.) At the tree farm he raked and hoed and webbed trees. Either in 1984 or 1985 he went to work for Superior Lumber and continued working there for approximately one year. His duties were to "tally up units of wood, count the pieces and length, put them on a piece of paper, figure out the board feet on the calculator and wrap them and package them." (Tr. at 123.) After working for Superior Lumber, he worked for Max Johnson, a labor contractor. (Tr. at 124.) Johnson found work for claimant at a variety of mills on a spot basis. (Tr. at 125.) When asked by the Court how long he worked for Mr. Johnson, claimant replied: "I worked all summer for him. In reality, I don't think I worked more than approximately 30 days." (Tr. at 126.) The Court then asked claimant if he was referring to the summer of 1986 and claimant replied, "'85 and '86." (*Id.*) During cross-examination claimant said that he worked for Max Johnson "on and off" for "probably a year, maybe." (Tr. at 192.)

14. In January of 1986, claimant returned to high school. (Tr. at 193.) He attended high school until May 29, 1986 and graduated. (*Id.*)

15. On September 20, 1986, claimant moved to Washington and insulated houses for approximately two months. (Tr. at 127-128, 194.)

16. Claimant next worked for Swenson Brothers Pizza Factory. (Tr. at 128-129, 194.) He stayed for approximately four months, terminating his employment in February 1987. (*Id.*) His duties were to open one-gallon cans of tomato sauce and cans of oil and spices. He used an industrial can opener. He then dumped the contents of the cans into a large kettle. The ingredients were mixed by the electric mixer, after which the claimant poured the contents of the kettle into cans. (*Id.*) He did not have to lift the kettle. (*Id.*)

17. From March to Labor Day of 1987, claimant worked for a convenience store called Express Lane. (Tr. at 130, 195.) He operated the cash register, swept and mopped floors, and stocked coolers and grocery shelves. (*Id.*)

18. From September to December of 1987, claimant worked at Marvin Manufacturing making wood furniture. (Tr. at 131, 196.) He used a band saw and an air stapler. (*Id.*)

19. From December of 1987 to June of 1988, claimant worked for a Firestone store in Washington State, changing tires, rebuilding brakes, doing tune-ups and doing exhaust work. (Tr. at 133, 197-200.) According to claimant he quit that job on account of a back injury:

> Q What is the reason you quit there?
> A Because I injured my back and fell so far behind on my rent I was going to be evicted, and I didn't have no choice but to take my family back to Montana, and then I went back out and finished up the last two weeks and then went back to Montana myself.

(Tr. at 199.)

20. From July to August of 1988, claimant worked as a mechanic for Schneider Chevrolet. (Tr. 136-137, 200.) His duties were detailing new cars, changing oil, and doing tune-ups. (*Id.*)

21. Claimant was unemployed from August to November of 1988. (Tr. at 202.)

22. From November of 1988 until June of 1990, claimant worked for Pelletier Oil Company, which was also known as Jim's Service. (Tr. at 138-139, 202-203.) He changed tires, oil and filters, did tuneups, replaced shocks and did exhaust work. (Tr. at 138.)

23. From the fall of 1990 through the spring of 1992, claimant attended Northern Montana College in Havre, studying diesel mechanics. Claimant testified at trial that he quit school after the 1992 spring quarter because of problems with his fingers and hands (Tr. at 211), but in his deposition he testified that he quit for financial reasons. (L. Chaney Dep. at 56.)

24. During either the summer of 1991 or 1992, more probably 1992, the claimant held a job peeling bark from yew trees. (Tr. at 147-148.)

25. On August 17, 1992, claimant began work at Olson Ford in Harlem, Montana. (Tr. at 149.) His duties were to change oil and perform brake, motor and transmission work.

(*Id.*) He quit working on November 17, 1992 to have carpel tunnel surgery on his right wrist. (Tr. at 150.) The surgery was performed on November 18, 1992. Claimant has not worked since. (Tr. at 154.)

26. Claimant's work history is summarized by the following chart:

DATE	EMPLOYER	JOB
1/81	National Guard	training
6/81-1985	National Guard	mechanic
6/81-early fall/81	Crystal Lake Resort	golf cart maintenance
early fall/81-10/83	Orin Stright	drove truck
10/83-12/83	Owens-Hurst	green chain
1984	Spot jobs	
1984-85	Superior Lumber	count & package boards
summer/85-?	Max Johnson	mill worker
1/86-5/29/86	Completed high school	
summer 1986?	Max Johnson	mill worker
9/86-11/86	Unknown	house insulator
11/86-3/87	Swenson Brothers	pizza maker
3/87-9/87	Express Lane	store clerk
9/87-12/87	Marvin Manufacturing	made furniture
12/87-6/88	Firestone	mechanic
7/88-8/88	Schneider Chevrolet	mechanic
8/88-11/88	Unemployed	
11/88-6/90	Pelletier Oil Company	mechanic
fall '90-spring '92	College	
summer 1992	Proctor & Gamble	peeled yew bark
8/17/92-10/13/92	Olson Ford	mechanic

State Fund Payments

27. Olson Ford was insured by the State Fund during claimant's employment.

28. Since his November 18, 1992 surgery, the State Fund has paid claimant temporary total and medical benefits. All benefits have been paid under a full reservation of rights and defenses as to both claimant and USF&G. (Agreed Fact 9.)

Other injuries

29. While in the Guard, claimant suffered a severe strain of one of his wrists. (L. Chaney Dep. at 115-116.) No medical records or further information was provided to the Court about this injury.

30. While working for Marvin Manufacturing in 1987, claimant cut a tendon of his left hand while using a band saw. (L. Chaney Dep. at 105-108.) Dr. Nolan's office note of March 1, 1989 indicates that this injury occurred in *1989*. (Ex. 1 at 54.)

31. In June 1988, claimant suffered a back injury while working for the Firestone store. The injury is more fully described in Finding of Fact No. 19.

32. While working for Pelletier Oil (November 1988 to June 1990), claimant suffered a strain of his arm and neck while opening the hood of a truck. (L. Chaney Dep. at 109.) He also suffered a separate injury to his foot. (L. Chaney Dep. at 108.)

Medical Treatment

33. Claimant's treatment in 1983 consisted of two visits to Dr. Forrest F. Schroeder, one on November 8, 1983 and the second on November 16, 1988. (Ex. 3 at 14.) Dr. Schroeder's diagnosis of claimant's complaints was "Myalgia & tendon/ligaments strains secondary to archaic working conditions and long shifts." (*Id.*) In his report to the insurer, Dr. Schroeder indicated that claimant's condition would *not* result in permanent disability. (*Id.*) He prescribed only an analgesic as treatment for the condition. (*Id.*)

34. Following the 1983 visits to Dr. Schroeder, claimant did not consult a physician with regard to arm, hand or finger numbness until 1989. (Tr. at 215.)

35. On March 1, 1989, claimant saw Dr. Ron Miller, a family physician. (Tr. at 135.) At that time he was complaining of low-back pain and "paresthesia" of his thigh, left hand and forearm and right finger. (Ex. 1 at 54.) (A paresthesia is "an abnormal sensation, as burning, prickling, formication, etc." Dorland's Illustrated Medical Dictionary (27th Ed. 1988).) Dr. Miller's office note describes claimant's arm and hand complaints more specifically as:

> **For the past mo,** pt reports that his (L) hand and ½ way up forearm will "fall asleep" and get a tingling sensation in it. This sensation comes on when pt twists his hand in a certain way or grips a steering wheel to [sic] long.
> **For the past mo**, pt reports that his (R) hand will sporadically get a similar tingling sensation in it. This feeling disappears if

> pt simply repeatedly flexes and extends fingers (works in (R) and (L)).

(*Id.,* emphasis added.)

36. Dr. Miller referred claimant to Dr. John V. Stephens of Kalispell. Dr. Stephens specializes in physical and rehabilitation medicine and conducts EMG-nerve conduction studies. (Ex. 1 at 51.)

37. On March 9, 1989, Dr. Stephens did nerve conduction tests on claimant's hands and arms. (Tr. at 136; Ex. 1 at 51.) Dr. Stephens interpreted his tests as indicating bilateral carpel tunnel syndrome (CTS) "mild on the left and of moderate severity on the right." (Ex. 1 at 51.) This was the first time claimant was diagnosed as suffering from CTS. Dr. Stephen's fee for services was paid under the back injury claim against Firestone. (Tr. at 136.)

38. On numerous occasions after moving to Havre in the fall of 1990, claimant sought medical care at the Havre Clinic. Clinic records reflect twenty-seven visits and consultations between November 19, 1990 and September 13, 1991. (Ex. 1 at 41-44.) All were related to his low-back complaints or upper respiratory symptoms. The office notes do not reflect complaints relating to his hands, arms or fingers. (*Id.*)

39. On September 17, 1991, claimant reported hand numbness to Dr. Nolan, one of the Clinic physicians. (Ex. 1 at 44; Tr. at 143.) Dr. Nolan's office note reads:

> He's in today, he has continued hand numbness which wakes him from sleep at night now. He states today that over in western Montana he did have nerve conduction studies that showed compression of nerves consistent with carpal tunnel syndrome. Today he has bilaterally positive Tinel's sign. No evidence of any atrophy to the thenar or hypothenar eminences. I requested that we get medical records so we can get copies of his EMG studies. I have asked him to schedule a consultation visit with a surgeon, Dr. Reynolds, to discuss definitive treatment. We did discuss the possibility of use of cortisone injections to by time but I think he's smartest seeing a surgeon.

40. Dr. S. A. Reynolds, a general surgeon, examined claimant on September 30, 1991. (Reynolds Dep. at 6; Ex. 1 at 29.) Dr. Reynolds referred claimant to Dr. Patrick Cahill for nerve conduction studies. (Ex. 1 at 29 and 39.)

41. Dr. Cahill performed his study on October 1, 1991. (Cahill Dep. at 16.) His impression was that claimant had mild bilateral median neuropathy (i.e., CTS) without denervation or permanent nerve damage. (*Id.* at 25-26; 46; Ex. 1 at 40.) His own results were very comparable to the results obtained by Dr. Stephens in 1989. (*Id.* at 46.) In an October 1, 1991 letter to Dr. Reynolds, he characterized claimant's CTS as "mild." (Ex. 1 at 40.)

42. Following Dr. Chaney's examination on October 29, 1991, Dr. Reynolds discussed claimant's symptoms with him again. At that time claimant indicated "[h]e really only has occasional symptoms of numbness which go away with shaking his hands. He does not have nocturnal pain or numbness." (Ex. 1 at 29; 37.) He returned claimant's care to Dr. Nolan. (Ex. 1 at 37.)

43. Over the next year, claimant continued to be treated at the Havre Clinic for various physical ailments, including gout, high cholesterol, allergies, and low-back pain. (Ex. 1 at 48.) An office note of November 18, 1991, states that claimant reported that anti-inflammatory medication prescribed by Dr. Reynolds was helping. (Ex. 1 at 47.) A January 6, 1992 note indicates that his carpel tunnel syndrome "hasn't bothered him at all lately." (*Id.*) Otherwise, carpel tunnel symptoms are not mentioned in the Clinic's notes until September 15, 1992, *after* claimant had spent a summer peeling yew bark and had been employed as a mechanic for the previous forty (40) days. (Ex. 1 at 48.)

44. On September 15, 1992, claimant was examined at the Havre Clinic. (Ex. 1 at 48.) His specific complaints at that time related to his low-back condition and his CTS. (*Id.*) He reported he had "been working as a mechanic at the Ford garage in Harlem for about 40 days" and was having back problems. (*Id.*) He further reported, "Doing fine work with his fingers is very difficult at this time." (*Id.*)

45. Claimant returned to Dr. Reynolds on October 26, 1992. (Ex. 1 at 29-30.) Dr. Reynolds asked Dr. Cahill to repeat nerve conduction studies. (*Id.*) Those studies were performed on November 3, 1992 (*Id.* at 34-35) and Dr. Cahill reported that the "study clearly shows evidence of a bilateral median neuropathy that is now moderately severe and electrophysiologically significantly worse, then then [sic] the October 1, 1991 study, even though there is still no evidence of active denervation." (*Id.* at 36.) Dr. Cahill suggested surgery. (*Id.*)

46. On November 18, 1992, Dr. Reynolds performed a carpal tunnel release on claimant's right wrist. (Tr. at 150; Ex. 1 at 31.) He performed similar surgery on claimant's left wrist on December 30, 1992. (Stipulated Fact No. 4; Ex. 1 at 27.)

47. Following his surgeries, claimant's nerve conduction studies markedly improved. Dr. Cahill, who performed the post-surgical studies wrote that "this study shows clear, unequivocal improvement." (Ex. 1 at 13.)

48. While claimant's post-surgical recovery appeared uneventful from a medical standpoint, on February 9, 1993, he complained to Dr. Reynolds of weakness in his hands and an inability to lift anything. (Ex. 1 at 26.) By that time claimant had enlisted the services of an attorney "with regard to taking his claim against the workman's comp back to 1983." (*Id.*) Dr. Reynolds informed claimant that "he would certainly be well enough to go back to work and to function normally at this stage of the game." (*Id.*)

49. On February 9, 1993, and in subsequent examinations, Dr. Reynolds could find no objective reasons for claimant's complaints. Dr. Reynolds further told claimant that he could not "assess his [claimant's] subjective complaints." (*Id.*) Ultimately, unable to explain claimant's subjective complaints, Dr. Reynolds suggested that claimant be referred to a physiatrist.

50. In his office note for April 6, 1993, Dr. Reynolds characterized claimant as "subjectively disabled." (Ex. 1 at 11.) In his deposition he explained his comment:

> Q. Towards the bottom of your office note for April 6, '93, you state that you told Larry that "since he continues to be subjectively disabled..." Could you explain what you meant by that term, "subjectively disabled"?
> A. I don't have any objective signs regarding his muscle, tendon, or nerve function in his hand or arm.
> Q. So you weren't able to determine objectively any reason for his complaints?
> A. No.

(Reynolds Dep. at 35.)

51. Claimant was unhappy with Dr. Reynolds and quit seeing him. (Tr. at 199-200.)

52. The State Fund referred claimant to Dr. Patrick E. Galvas, who specializes in physical medicine and rehabilitation. Dr. Galvas first examined claimant on February 18, 1994 (Tr. at 21) and has continued to treat him since that time. His examinations disclosed some loss of pin-prick sensation of the hands and loss of grip strength. The tests used in making those determinations, however, were subjective in that they depended on claimant's voluntary responses. (Tr. at 79.) Claimant also reported loss of sensation regarding temperature. (Tr. at 22.)

53. Claimant had not returned to work at the time of trial.

Causation

54. The medical opinions concerning the relatedness of claimant's CTS to his 1983 industrial accident were conflicting.

55. Dr. Reynolds is a board certified general surgeon whose specialty includes the diagnosis and surgical treatment of CTS. (Reynolds Dep. at 4-6.)

a. He testified that CTS can be caused by "an acute, significant, definable injury such as a broken wrist or crush injury or a penetrating injury to the area in question," repetitive activity, or arthritis. (*Id.* at 24.) The doctor ruled out arthritis as a cause in claimant's case (*Id.* at 18), and also opined that unless claimant broke his wrists or required immediate emergent care, a fall was unlikely to have been the sole cause of his CTS. (*Id.* at 10.) (As previously found by the Court, the fall which claimant now asserts occurred at Owens-Hurst did not in fact occur, thus eliminating acute trauma as a causative factor.) Summarizing the nature of the condition, Dr. Reynolds said that lacking some acute injury, CTS "**is basically a disease of repetitive activity and is a chronically developing disease**." (*Id.* at 24; emphasis added.)

b. He testified that Dr. Schroeder's description of claimant's condition in 1983 "could be construed to be early carpal tunnel." (Reynolds Dep. at 15.) Elaborating, Dr. Reynolds said:

> I can't guarantee to you that Dr. Schroeder was familiar with the name "carpal tunnel syndrome." If you're not dealing with a problem surgically, it's just the same as having some type of a tendonitis in the area. His description does not include information that is classical for carpal tunnel syndrome, but the description could be a pathologic process that would be the same.

(*Id.*) "Tendinitis" is a medical term used to describe "inflammation of tendons and of tendon-muscle attachments." Dorland's Illustrated Medical Dictionary (27th Ed.)

c. However, Dr. Reynolds further testified that assuming claimant developed CTS while working for Owens-Hurst, if he stopped the activity causing his symptoms and "all of the symptoms went away, he no longer, by definition, had carpal tunnel syndrome anymore." (Reynolds Dep. at 20.) He went on to say that under such

circumstances the CTS was not necessarily a permanent condition. (*Id.*) He also testified that the severity of CTS is typically proportionate to the amount of wrist and hand activity:

> If you would persistently do an activity that creates the symptoms of carpal tunnel syndrome for two years in a row, you would tend to create more damage to the nerve, compared to a situation where you did it for a month and quit for three and did it for a month and quit for three; **it's just a matter of exposure over a period of time.**

(*Id.* at 26, emphasis added.)

d. Dr. Reynolds was unable to relate claimant's condition at the time of his surgery to claimant's work at Owens-Hurst. (Reynolds Dep. at 20-21.) He testified that it was medically improbable that the condition diagnosed by Dr. Schroeder in 1983 was the same as when Dr. Reynolds treated claimant:

The following exchange occurred at his deposition:

> Q Okay. Taking that [Dr. Schroeder's diagnosis of tendinitis is consistent with CTS] in conjunction with an assumption that Mr. Chaney's problems with his wrists never completely resolved, is it more probable than not that his 1991 and 1992 conditions, as diagnosed by you, originated in 1983? [Objection omitted.]
> A It's possible that the diagnosis made by Dr. Schroeder and the description is the same as what I saw when I saw him.
> Q Is it probable, more probable than not?
> A It's probably not. In my mind it would not be probable that they're both totally related and there was unchanged disease process between '83 and '91.

(*Id.* at 39-40.)

e. Finally, with respect to the change in claimant's condition from mild to moderate between October 1, 1991 and November 3, 1991 (see Findings of Fact Nos. 41 and 45), Dr. Reynolds testified:

> Q Do you have an opinion as to what would have caused his condition to change from mild to moderate or severe over the year?

> A Well, I would suspect that peeling bark off of yew trees for a summer is fairly stressful to the hands and wrist; and working as a mechanic, lifting weight, heavy weights, pulling on wrenches, using screwdrivers, is going to cause the recurrence of the tendonitis.

(*Id.* at 29.)

56. Dr. Cahill is a neurologist whose specialty also includes diagnosis and non-surgical treatment of CTS. (Cahill Dep. at 8.) He testified that the length of time CTS has been present can only be determined by history. He further testified that it is very common for CTS to "go away for periods of time and then come back" and that by history claimant has had CTS "intermittently since the early 1980s." (*Id.* at 31.) He agreed that where CTS is caused by a particular activity and that activity ceases, CTS may go away for years until the activity is resumed, and that in such a case he would relate the recent problems to the most recent activity. (*Id.* at 312.) Finally, he testified that the degree of worsening that claimant experienced between 1991 and 1992 is typically due to aggravating activities during the period of worsening. (*Id.* at 36, 51.) In his words:

> When you see that degree of change, it does not usually fit with someone who says, Doc, I wore my splints; I stopped doing all hobbies that would overwork my hands; at work they have moved me to some position where I am not doing repetitive work, and have that degree of change from '91 to '92. That would be distinctly unusual and not very likely at all.
>
> So it still would indicate -- I mean, if I were a betting man, I would say during that year, that intervening 13 months between my first two studies, there continued to be some factor, whether it is occupational related, some factor that has aggravated that condition to the point where it caused that degree of change.

(*Id.* at 50-51.)

57. Dr. Stephens, who tested claimant in 1989, was unable to provide any opinions concerning the cause of claimant's CTS or its duration. (Stephens Dep. at 22.) He did not recall any history that may have been given to him and his only knowledge concerning claimant's case was of the test results. (*Id.* at 10.)

58. Dr. Galvas specializes in physical and rehabilitation medicine and testified at trial.

a. As to the causation or relatedness question, he initially testified to the following points:

1. In the early stages of CTS, symptoms come and go. (Tr. at 44.) Provocative activities -- i.e., hand and wrist use which involves hyper-flexion and extension of the wrist -- may exacerbate symptoms.

2. Dr. Schroeder's description of claimant's condition in 1983 was consistent with CTS. (Tr. at 43.)

3. Claimant's fall while working at Owens-Hurst "appears to be the start of his complaints consistent with carpal tunnel syndrome", which is the same condition which eventually resulted in his 1992 surgeries. (Tr. at 49.)

4. If claimant's onset of symptoms in 1983 was due to the repetitive handwork of his job on the green chain, he would still conclude that claimant experienced an onset of CTS at that time and that it resulted in his 1992 surgeries.

b. On cross-examination, Dr. Galvas testified that claimant told him that "he constantly had problems with tingling, numbness in his hands, fingers, from the time he fell up until the present time" and that based on that statement he concluded that his problems from then until now were caused by the fall in 1982. (*Id.* at 54.)

c. Dr. Galvas further conceded that if claimant experienced symptom free periods after 1983 it "could" indicate that claimant's 1983 symptoms were temporary and that he suffered no permanent damage. He indicated that whether CTS is a permanent or temporary condition depends on whether anatomical change has occurred. (Tr. at 59-60.) If the CTS was simply due to an inflammation of a tendon and the inflammation resolved, then there was no permanent effect. (*Id.*)

d. In claimant's case, Dr. Galvas agreed that there was no objective evidence, such as an MRI, which would show that claimant's condition in 1983 was permanent. (*Id.*) His opinion that it was permanent was based on history provided by the claimant. (Tr. at 60.)

e. Dr. Galvas testified that the fact that an individual experiences asymptomatic periods does not necessarily prove there is no permanent anatomical change. (Tr. at 59.) This testimony was not totally consistent with his deposition testimony, during which he said that if the individual was symptom free for a period time and later experienced renewed symptoms following a new event or provocative activity, such as typing for a few months, then he would relate the CTS to the new event or

activity.[1] (Tr. at 70-71.) However, Dr. Galvas explained that he was thinking in terms of "provocative measures" during the asymptomatic period. (*Id.* at 72.) In other words, if the individual was asymptomatic during a period of time he or she is performing repetitive, provocative activities involving hyperflexion or extension of the wrist, then he would conclude that prior CTS symptoms did not involve any permanent injury. (*Id.* at 72.) He explained:

> If a patient tells you that their symptoms disappear, I guess one should explore, to say, "Have you changed your work in any way? Are you not doing particular movements?" If they say, "I am still doing them, but it is gone," then one could say they are doing provocative measures. No longer have these symptoms; it must have resolved. If they say, "Yes, I am not doing it," then the case would be, well, they aren't exacerbating their symptoms. Indeed, the condition could still be persisting, but you aren't picking it up because they aren't doing the provocative measures.

f. Dr. Galvas testified that doing a lot of writing would be a provocative activity. (Tr. at 66.) He also agreed that a job as a mechanic, doing brakes and tune-ups,

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[1]His deposition testimony was as follows:

> Q Your original testimony, when I asked you the question earlier, Page 31 of your deposition: "Would any subsequent numbness or tingling he may have relate to that original injury, then? . . . Your answer was: "The only way one can ascertain if a person's complaints are consistent from the time of the injury, they say, 'Ever since that period of time I have had complaints of achiness, numbness,' that leads me back to that injury. If they tell you, you know, 'I had that for a while and then it went away,' and they were symptom-free for a period of time, and they changed occupations or had another event, then you would say that probably relates, then, to another fall. Or if they can say, 'This didn't happen until I started moving my wrist a bunch, working on this keyboard for a bunch of months, having problems again,' I would probably relate it, then, to that particular repetitive motion, or another single event, based on the patient's complaints and history."

(Tr. at 70-71.)

would involve provocative activities, although work involving the use of pneumatic tools would not. (Tr. at 69, 84.)

g. Finally, Dr. Galvas agreed that if CTS is not due to a single, acute trauma, it typically develops slowly over a period of time. (Tr. at 75.)

59. After considering all of the medical opinions in this case, and claimant's medical history, I am not persuaded that claimant's symptoms in 1983 represented a permanent injury or condition leading to his subsequent CTS condition and CTS surgery. Since claimant did not see a physician with regard to hand or wrist complaints from 1983 until 1989, it is impossible to precisely determine when he reached maximum healing. However, he continued to work during that six year period. In 1989 when his CTS was first diagnosed, it was diagnosed only as "mild." Dr. Galvas and Dr. Cahill based their opinions on the medical history claimant provided to them. That history was unreliable. As already found, claimant did not suffer a fall in 1983 as he claims. The history of symptoms claimant provided during his deposition and at trial was confusing and often conflicting. He was not a credible witness. For the period of 1984 until 1989, I am unable to determine on a more probable than not basis what symptoms he experienced and when. I am not persuaded that claimant experienced continuous symptoms. I am not persuaded that after 1983 he did not experience asymptomatic periods while engaging in provocative activities. On the other hand, I am persuaded that since 1983 claimant has engaged in many provocative activities, including jobs as a mechanic, peeling yew bark and extensive writing during his student days, and that those activities cumulatively caused his CTS, as diagnosed in 1989, and a substantial worsening of that condition between October 1991 and November 1992.

CONCLUSIONS OF LAW

1. Claimant alleges that he was injured in November of 1983. Therefore, the 1983 version of the Workers' Compensation Act governs his entitlement to benefits. ***Buckman v. Montana Deaconess Hospital****, 224 Mont. 318, 730 P.2d 380 (1986).*

2. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation. ***Ricks v. Teslow Consolidated****, 162 Mont. 469, 483-484, 512 P.2d 1304 (1973);* ***Dumont v. Wicken Bros. Construction Co.,*** *183 Mont. 190, 598 P.2d 1099 (1979).* Claimant must prove that his 1983 injury is the cause of his disabling condition. ***Eastman v. Transport Ins. Co.,*** *255 Mont. 262, 266, 843 P.2d 300 (1992).*

The Court finds that claimant did not meet his burden of proof. The physician treating claimant in 1983 did not diagnose claimant's condition in 1983 as CTS. While claimant's 1983 symptoms were consistent with a CTS diagnosis, which involves compression of the median nerve within the carpal tunnel of the wrist, CTS is not necessarily a permanent condition and may vary in degree. As Dr. Galvas testified,

compression of the median nerve may occur with tendinitis and may wholly resolve when the inflammation of the tendon subsides. Claimant must, therefore, establish on a more probable than not basis that his 1983 injury resulted in permanent damage involving the carpal tunnel. He failed to do so.

Initially, he failed to persuade the Court that he suffered any acute injury due to a fall. As a matter of fact, I have found that the fall did not occur. While Dr. Galvas adhered to his opinion irrespective of whether claimant's 1983 symptoms arose from a fall or from repetitive wrist movement while working the green chain, his opinion was not premised on any objective evidence but rather on the medical history related by the claimant. The credibility of that history carries over "into the credibility of the doctors' diagnoses based on the claimant's statements." ***McIntyre v. Glen Lake Irrigation Dist.,*** *249 Mont. 63, 69, 813 P.2d 451 (1991).* In other words, the doctors' opinions are only as good as the history provided to them, when based on history. I found claimant entirely incredible. Based on inconsistencies of his testimony and my observation of him at trial, I am unable to determine what symptoms he had and when he had them. I do not believe that he had consistent symptoms since 1983. He sought out medical care at that time, but then went six years without again seeing a physician with regard to numbness in his hands and wrists. His accounts of his symptoms over those years were contradictory. During those years he engaged in provocative activities at various times. His CTS worsened remarkably during a time when he was doing a lot of writing while in school and stripping bark from yew trees, two activities that are likely to lead to or exacerbate CTS. It appears likely that claimant's CTS developed over a period of several years.

3. The Intervenor, State Fund, is not entitled to indemnification from USF&G for the benefits it paid to claimant.

4. Since USF&G has prevailed in this action, the claimant is not entitled to attorney fees, costs or a penalty .

JUDGMENT

1. Claimant 's injury in November of 1983, is not the proximate cause of claimant's current CTS condition and recent need for surgery. He is not entitled to benefits from USF&G.

2. The State Fund is not entitled to indemnification from USF&G for benefits paid to claimant.

3. Claimant is not entitled to a penalty.

4. Claimant is not entitled to attorney's fees or costs.

5. The JUDGMENT herein is certified as final for purposes of appeal pursuant to ARM 24.5.348.

6. Any party to this dispute may have twenty (20) days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

Dated in Helena, Montana, this 6th day of April, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Randall O. Skorheim
Mr. Robert C. Melcher
Mr. Charles G. Adams