

CTS CLAIMS CAN BE WON AT HARDSHIP HEARINGS

Pauline A. Brady v. Bi-State Development Agency

By Jay Lory; Partner, Evans & Dixon

Recently, I had a hardship trial for medical treatment. The issue was whether the claimant's bilateral carpal tunnel syndrome was work related or not. The claimant had worked at Bi-State Development Agency for about eight years. She started out as a bus driver, but then became a train operator for about a year in 2006-2007. She returned to bus driving after that. The evidence showed that she also missed extended periods of time from work due to personal reasons.

At trial it was shown that as a train operator, she did not use her upper extremities much. The claimant did testify to her job duties as a bus driver and that there were defects with the buses she drove. On behalf of the employer, a mechanic for Bi-State testified that the buses were regularly checked and maintained, and that some of the problems she had testified to could not have possibly existed.

The claimant used Dr. Bruce Schlafly as the expert. Based on the claimant's description of the job, Dr. Schlafly testified that the work was the prevailing factor in causing bilateral carpal tunnel syndrome. He recommended surgery to correct the problem. On cross-examination, he admitted that he has never been on a bus, that he was not sure about her time as a train operator or the time she was off work for personal reasons. He did agree that gender can be a risk factor for carpal tunnel syndrome, but had no opinion as to body mass index (BMI).

Dr. Evan Crandall testified on behalf of the employer/insurer. Dr. Crandall did diagnose the claimant with bilateral carpal tunnel syndrome and felt that she did need surgery. He did not feel that the claimant's job duties as a bus driver were sufficient to have been the prevailing factor in causing her condition. He based this on the fact that he has ridden on a Bi-State bus for the purpose of determining gripping and hand movements of the bus drivers. He did not believe that there was enough gripping or bending of the wrists to have caused her carpal tunnel syndrome. He believed she had other risk factors, such as gender and BMI.

After hearing and reviewing all the evidence, the judge found that Dr. Crandall's personal experience and ergonomic study of bus drivers made him the best expert to determine if the work was hand intensive enough to cause carpal tunnel syndrome. He found for the employer/insurer, and no benefits were awarded.

Of course, each case, as well as each claimant, is different and will have different facts. However, we strongly believe that using the most experienced experts adds the best foundation to any case and gives the employer/insurer the best opportunity to prevail.