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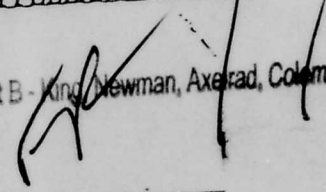
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APPELLATE DIVISION
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TAMI ROSALES, :

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v. :

STATE OF NEW JERSEY, :
DEPARTMENT OF THE JUDICIARY, :

Respondent-Appellant, :

v. :

THE SECOND INJURY FUND, :

Respondent-Respondent. :

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BRIEF AND APPENDIX OF RESPONDENT-APPELLANT,
STATE OF NEW JERSEY, DEPARTMENT OF THE JUDICIARY

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PRELIMINARY STATEMENT

It is the position of the State of New Jersey that any award of workers' compensation must be reduced by an award of an ordinary disability pension based upon the same disability. It has been the longstanding public policy in New Jersey that dual recoveries for the same injury must be prohibited. This policy has consistently been repeated in our legislative enactments and judicial decisions. N.J.S.A. 34:15-43 and N.J.S.A. 34:15-29 both prohibit a dual recovery of workers' compensation and disability pension benefits and require the court to reduce any compensation award to achieve the legislative intent that double recoveries should be prevented.

The outdated idea that the double recovery bar in N.J.S.A. 34:15-43 did not apply to all disability pensions was discredited by Conklin v. City of East Orange, 73 N.J. 198 (1977). In specifically overruling the trial judge's ruling that the statute only applied to an accidental disability pension, the Court held that it "applies whether the retirement is for accidental disability or as here, ordinary disability. The statutory purpose is to allow the employee the more advantageous of the respective benefits, but to require the offset heretofore mentioned in order to avoid double recovery for the same disability." Id. at 205.

Likewise, the Supreme Court in Bunk v. Port Authority, 144 N.J. 176 (1996) held "an underlying theme of the Workers' Compensation law is that there should not be duplicate payments for the same disability. Granted there is no provision in the PA pension requiring or allowing setoff, the question is one of the legislative intent." Id. at N.J. 189. The court in referring to the 1995 amendment of N.J.S.A. 34:15-43, which is central to the dispute in the present case, stated "we agree that the recent amendments reaffirm the legislative intent to integrate workers' compensation and retirement disability benefits ... the practical method of integration of benefits is to reduce dollar for dollar the New Jersey workers' compensation award", from the ordinary disability benefits. Id. at 193.

There is no statutory or judicial support for an argument that a double recovery should be allowed solely in cases involving ordinary disability pensions. If that was allowed, the petitioner would initially receive over 120%* of her salary from a combination of her pension, social security disability and her total disability award in workers' compensation. Cost of living increases in the

* Due to recent amendments of the pension statute increasing benefits, this would now be 123.6% for individuals who presently retire with an ordinary disability pension and also obtain workers' compensation total disability and social security benefits.

pension and social security would continue to increase that percentage in the future. No other combination of disability benefits will exceed 70% to 80% of salary.

It furthermore is the position of the State of New Jersey that the opinion of the Judge of Compensation concerning the nature of any new occupational exposure as well as his finding of total disability is not supported by sufficient credible evidence in the record. While a Judge's findings are generally entitled to deference they must still be supported by articulated reasons grounded in evidence. The Judge's findings concerning the occupational exposure after 1998 are not supported by the testimony or facts in the record. Likewise, the Judge's decision concerning permanent disability must be based upon objective medical evidence in the record. Here, the opinion of the petitioner's medical expert is based solely upon the subjective complaints of the petitioner. The doctor's medical examination fails to show any objective evidence of a change in the petitioner's condition since her last award in 1998. Therefore, this expert's opinion of total disability, an opinion he held for years prior to the petitioner actually stopping work, is merely a "net opinion" which cannot support an award of compensation.

The Judge of Compensation clearly abused his discretion when he ordered that the payment of counsel fees and costs be delayed until after the petitioner was approved for social security disability. This maneuver resulted in the State losing its entitlement to a social security offset of the workers' compensation award for 19 1/7 weeks. It is improper to enhance the petitioner's award in this manner at the State's expense. Counsel fees and costs in workers' compensation cases are always paid from the initially accrued compensation benefits. These benefits accrue from the start of the permanent disability period. If that had been done correctly in this case, rather than the six months delay ordered by the Judge, the State would receive its entire credit against the social security award. This is a savings of \$4,508.14 being the difference between the \$93.69 per week offset rate and the full total disability rate of \$329.19 per week for the 19 1/7 weeks ordered by the Judge.

For these reasons, and the ones that follow, the Judge of Compensation's decision should be resolved.

PROCEDURAL HISTORY

The petitioner, Tami Rosales, began her employment as a clerk typist with the County of Ocean in 1989. The petitioner's original claim petition, 91-15164, was filed in 1991 against the County of Ocean and it alleged a bilateral carpal tunnel syndrome. This claim resulted in a Judgment against the County for 25% of partial total on July 24, 1995 (Aa4). The State of New Jersey took over the operation of the County courts in 1995. The petitioner thereby became a State employee but her job duties remained unchanged.

The petitioner filed claim petition 95-034926 (Aa1) on September 20, 1995 which alleged occupational injuries to both hands, arms and neck while employed by the State of New Jersey. The State filed an Answer denying the claim on April 25, 1996 (Aa2). The claim resulted in a Judgment increasing the petitioner's disability to 45% of partial total of April 15, 1998 (Aa6). This award was for bilateral carpal tunnel, right trigger finger release and right ulnar nerve release.

The petitioner filed an Application for Review or Modification of the formal award under claim petition 95-034926(Aa8) on March 3, 1999. The State filed an Answer to this

application and noted that the prior award was still being paid (Aa9). The petitioner also filed claim petition 99-007099 that alleged a continued occupational exposure to her hands, arms, shoulders and neck (Aa10). The State filed an Answer denying this new occupational exposure (Aa11).

The petitioner filed her application for an ordinary disability pension on October 5, 1999 despite the fact that she was still working (Aa184). She also filed a Notice of Motion and Verified Petition to Join the Second Injury Fund on October 13, 1999, which claimed she was totally disabled (Aa13). The petitioner continued working into November 1999 (2T12-8 to 15).^{*} There was a Pre-Trial Memorandum prepared on May 30, 2000 (Aa27).

The matter was tried over several days before the Honorable Lawrence Moncher as a bifurcated Second Injury Fund Trial. Judge Moncher entered an interim order for benefits on January 2, 2002 (Aa48). The Judge determined that the petitioner was totally disabled due to her occupational activities through 1999 in combination with her prior disabilities. Therefore, the

* Since there are several transcripts they will be cited as follows: Rosales on December 15, 2000 (1T); Rosales on February 27, 2001 (2T); Rosales on March 20, 2001 (3T); Dr. Riss on July 16, 2001 (4T); Dr. Riss on August 6, 2001 (5T); Dr. McClure on September 17, 2001 (6T) and Oral Argument on July 9, 2002 (7T).

Judge ordered that the matter be set down for a hearing to determine the percentage of the Second Injury Fund's responsibilities (Aa47).

The Second Injury Fund agreed to the award for total disability and did not require a second hearing. The State of New Jersey sought to have its responsibility reduced pursuant to N.J.S.A. 34:15-29 and N.J.S.A. 34:15-43 because the petitioner was also receiving an ordinary disability pension from her employer for the same injuries. This issue was briefed and argued on July 9, 2002 (7T). The Judge of Compensation denied the motion for an offset and made his final findings in a decision on September 23, 2002 (Aa52). A judgment was entered on claim petition 99-007099 (Aa80) on November 4, 2002 and a dismissal (Aa87) was entered on claim petition 95-34926 since the Judge held that the entire increase in disability was due to the occupational exposure following the last award. The State of New Jersey filed a Notice of Appeal from this decision on December 19, 2002 (Aa89).

STATEMENT OF FACTS

Employment and Litigation History

The petitioner, Tami Rosales, a divorced mother of one child, was born on November 25, 1963 (Aa1). She obtained an associates degree in college and took additional hours toward her final degree (1T9-4 to 12). Her only prior employment was as a lab tech for less than a year (1T9-5 to 1T9-6).

The petitioner was hired by the County of Ocean as a clerk typist in 1989 (1T10-1 to 4). She filed her first occupational claim alleging that her work on computers caused her to develop bilateral carpel tunnel syndrome in 1991 (Aa18).

The petitioner had her first surgery for a carpel tunnel release and a decompression of the right ulnar nerve on April 5, 1991 (Aa127). The petitioner's medical expert, Dr. Martin Riss, in 1991, found that after the first surgery she had a disability of 40% of the right hand and 20% of the left hand (Aa105).

The petitioner submitted to a second right carpel tunnel release and an ulnar never release on July 21, 1993 (Aa146). Dr. Riss, following these surgeries, examined the petitioner in 1994 (Aa108) and was of the opinion the disability had increased to 65% of the right hand and 45% of the left hand (Aa110). The petitioner's complaints at that time were pain and numbness in both

hands, her fingers were stiff and she could not open her right hand all the way (Aa109). Her wrist movement was restricted and her grasp was weak (Aa109). She would limit her writing and limited her activities (Aa109). Inclement weather aggravated her hand pain (Aa109). This claim resulted in an award of 25% of partial total for bilateral carpal tunnel syndrome in 1995 (Aa4) against the County of Ocean.

The petitioner remained in her same position in the courts; however, on January 1, 1995 she became a State judicial employee when the County courts were taken over by the State of New Jersey due to a change in the State Constitution. The petitioner filed a new claim petition against the State of New Jersey in September 1995, two months after she had received the award against the County of Ocean. This claim alleged that her continued occupational exposure with the State had made her hands and arms develop increased disability.

The petitioner had her next surgery on October 18, 1995 (Aa157). The surgeon performed a release of the right median nerve and a right trigger thumb release (Aa159). She returned to her employment in a light duty status (Aa111). Dr. Riss examined the petitioner on April 16, 1996 (Aa111). Dr. Riss was of the opinion that the petitioner was totally disabled despite the fact that she

was engaged in full time employment (Aa115). The petitioner had similar complaints to those given at the prior examinations. She added that she had lost her grip strength, dropped things and used a brace on her right wrist (Aa112). She said her hand turns blue and cold. She was unable to do heavy work, could not use a computer and her everyday activities were limited (Aa112). Her sleep, art work and sports activities were limited (Aa112).

The petitioner underwent another surgery on August 14, 1996 for an ulnar nerve transposition (Aa167). The petitioner was examined once again by Dr. Riss on January 16, 1998 (Aa116). Dr. Riss was of the opinion that the new surgeries resulted in a disability of 45% of the right arm and 35% of the right hand (Aa120). This was actually an improvement from his prior estimate of 65% of the right hand in his 1994 examination (Aa110). The doctor once again ignored the fact that the petitioner was still working full time and declared her totally disabled (Aa110). Her physical complaints were essentially the same as in the prior examination (Aa117). The petitioner was examined by the State's medical expert, A. Gregory McClure on October 9, 1996 (Aa204). The doctor received basically the same complaints as Dr. Riss. Dr. McClure stated in a supplemental report (Aa212) that he was of the opinion the surgeries in 1995 and 1996 caused a disability of 7

1/2% of the right arm (Aa212). It was based upon these reports that the Judgment for 45% of partial total was entered on April 15, 1998 for bilateral hand disability and right ulnar nerve disability (Aa6).

The petitioner reopened this 45% award in less than a year and sought an increase in disability (Aa8). She also filed a new claim petition stating her duties over the prior year had worsened her condition (Aa10).

The petitioner said that, after the 1998, award her job was changed to a receptionist for the Superior Court because this was light duty (2T17-12 to 15). She now worked the front counter and a three line switchboard (2T14-3 to 23). She took care of customers and used the computer (2T14-3 to 23). She was no longer required to pull files because it caused pain and co-workers would help with her duties (2T20-2 to 11). She used a headset for her telephone which was given to her so she no longer had to hold the telephone (3T12-1 to 16) and this helped. She took more frequent breaks after she was relieved of her filing duties in 1998 (3T10-19 to 3T11-3). She was also relieved of the duty to open any mail during her last two years of employment (3T16-11 to 20). Her job now was mainly to photocopy, answer and transfer telephone calls and talk to the customers (3T13-1 to 3T144-24).

Following the 1998 hearing, the petitioner has had no additional surgery. A nerve conduction study performed on March 2, 1999 was positive for a left ulnar neuropathy at the elbow (Aa173). A nerve conduction study on April 6, 1999 found a mild worsening of the right carpal tunnel syndrome and an improvement in the right ulnar neuropathy compared to a 1995 study (Aa176). The petitioner's treating doctor said he had nothing more to offer her except another surgery to the left elbow (2T26-8 to 15). The petitioner chose not to have any further surgery (2T37-2 to 13). She testified that all her complaints had worsened (2T32-21 to 25). In October 1999, the petitioner filed for total disability from the Second Injury Fund even though she was still working (Aa13). The petitioner said she continued to work because she needed to support herself and child (2T34-1 to 9). She continued to work until November 1999 when she reached ten years of employment and had the minimum time needed to qualify for a disability pension (3T27-16 to 3T28-9). She actually filed the application for the ordinary disability retirement on October 5, 1999 (Aa185) before she had even stopped working. The petitioner worked exactly the ten years needed to qualify for the pension (3T27-16 to 3T28-9) and stopped work just short of her 36th birthday. The petitioner also filed for social security disability which was denied at first and an appeal

was pending when she testified on December 5, 2000 (1T7-22 to 25). She was granted social security disability in July 2001 (Aa280) and it was made retroactive to May 1, 2000. Her ordinary disability pension was made effective December 1, 1999 (Aa280).

The petitioner testified that since she stopped work in 1999 she does nothing all day (3T24-18 to 21). She has not attempted any rehabilitation to be retrained for new employment (3T25-1 to 3). She has not attempted to find any new employment (3T31-15 to 3T32-25). However, she does her own housework, shopping and laundry (3T31-15 to 3T32-25). She has chosen not to have any further surgery because she felt she always got worse after surgery and "I didn't want to go through it anymore" (2T37-2 to 13). She is not under any active curative medical treatment and takes occasional medication for inflammation (2T26-1 to 7).

Dr. Riss examined the petitioner for a final time on January 10, 2000 (4T13-1 to 17). The doctor found impairment of mobility (4T33-10 to 16) and loss of grip strength (4T34-1 to 9). Once again he was of the opinion the petitioner was totally disabled (4T41-1 to 16). Dr. Riss said that despite feeling the petitioner was 100% disabled since 1996, he felt the petitioner's condition was worse in 2000 (5T24-5 to 10). The doctor was asked to explain the basis for his estimates of disability and the

apportionment for each body part. He was unable to explain his opinion other than to say that the petitioner was totally disabled (5T20-1 to 16). The doctor did admit that the loss of function of the left hand was the same as 1998 except for minor changes in supination and flexion (5T29-7 to 19). The loss of function in the right hand was the same as 1998 except for minor changes in extension and supination (5T30-3 to 10). The loss of function of the right and left arms were the same as 1998 except for a minor change on supination (5T31-1 to 11).

Dr. McClure examined the petitioner on September 28, 1999 (6T13 to 6T14-5). He found a full range of motion of both arms (6T26-8 to 12). The doctor said he had no objective findings to support the subjective complaints of the petitioner who he felt was a symptom magnifier (6T28-10 to 16). He found no evidence of atrophy which means she uses both her hands (6T33-1 to 4). He found an excellent range of motion of the fingers (3T30-16 to 3T31-7). Dr. McClure was of the opinion that there was no change in the disability to the right arm, right hand and left hand (6T42-6 to 13). He did find a disability of 5% of the left arm due to the nerve conduction studies (6T40 to 6T42-5). Dr. McClure was of the opinion the petitioner could work with modification of her

activities (6T44-19 to 6T45-3). She required a light duty position (6T47-1 to 23).

Judge's Interim Findings

Judge Moncher entered an interim opinion on January 2, 2002 (Aa28). The Judge found that between the last award on April 14, 1998 until the end of her employment on November 4, 1999 she performed the same duties as in the past (Aa39). He found there was no lessening of the frequency or the intensity of the work (Aa39). He found the petitioner 100% disabled (Aa44). The Judge felt she would have "retired" even sooner but wanted to work just long enough to qualify for a disability pension (Aa42). He found she retired because she now has sufficient income from social security disability and her ordinary disability pension (Aa42). The Judge found that Dr. Riss had a significant increase over his prior examination (Aa43). The Judge said he gave little weight to Dr. McClure's opinion (Aa44).

The Judge ordered that the State begin making payments of total disability from January 1, 2002 pending a hearing with the Second Injury Fund (Aa46). He ordered that the payments be reduced because of the petitioner's receipt of social security disability to \$93.69 per week (Aa46). The Second Injury Fund chose not to

require a second trial and agreed to the entry of a Judgment based upon the interim order.

Dual Recovery Offset Issue

The remaining issue was the State's motion to prevent the petitioner from collecting both her full workers' compensation award and her full ordinary disability pension which she obtained for the same injury. This dual recovery would allow the petitioner to collect well in excess of 100% of her prior wage.

The State's Answer (Aa11) reflects that when the petitioner left her employment she was earning a wage of \$470.27* per week which would give rise to a temporary disability and total disability rate of \$329.18 per week (1T6- 2 to 8). She had an initial ordinary disability benefit of \$734.61 per month or \$169.52 per week plus yearly cost of living increases and reimbursement for Medicare Part B benefits (Aa50). Her disability pension also entitled her to enrollment in the "State paid State Health Benefits Program", which would have otherwise required 25 years of service

* The wage of \$470.27 appears to reflect a recent salary increase shortly before she left her employment. That is because the Social Security Administration calculated her full "average current earnings" (ACE) at \$423.46 per week which is consistent with the Division of Pension's calculation of \$423.81 per week wage since her ordinary disability pension of 40% of her earnings is paid at a rate of \$169.52 per week.

and age 55 for qualification (Aa50). She has been approved to obtain social security disability at an initial rate of \$1,062.00 per month or \$245.08 per week (Aa280) and she will also receive cost of living increases in future years.

There are two potential offsets that apply to this claim. There is no dispute that pursuant to N.J.S.A. 34:15-95.5 that the petitioner can not receive more than 80% of her "average current earnings" (ACE) from a combination of her social security benefits and her workers' compensation award. Her 80% ACE was calculated by the Social Security Administration to be \$1,468.00 per month or \$338.77 per week (Aa46). That means that after the social security award began on May 1, 2000, the workers' compensation rate would be reduced to \$93.69 per week (Aa46) so that her combined tax free awards would not exceed 80% of her prior salary.

The other offset concerns the receipt of both workers' compensation and a disability pension for the same injury. The petitioner's weekly ordinary disability benefit, less an earned annuity which is not offset, would result in a weekly workers' compensation rate of \$177.98 per week. In this claim, the social security offset is even greater than the potential pension offset. Therefore, the pension offset will only apply during the time before the effective date of the social security award and after

the social security offset ends when the petitioner turns 62 years old. The Judge of Compensation was provided with briefs and heard oral argument on this issue (7T1-1 to 7T75-17).

The Judge's Final Legal and Factual Ruling

The State had based its motion for a pension offset on N.J.S.A. 34:15-29, N.J.S.A. 34:15-43 and the Supreme Court's decision in Bunk v. The Port Authority of New York and New Jersey, supra. The Judge issued a written decision (Aa52). The Judge felt that the State was trying to entirely cancel its obligation to pay workers' compensation benefits (Aa52).*

The Judge agreed that there had always been a legislative policy against double recoveries (Aa59). However, he decided that the Legislature had mistakenly amended N.J.S.A. 34:15-43 in 1997 to bar the receipt of both workers' compensation and a disability pension for the same disability (Aa67). The Judge ruled that even though N.J.S.A. 34:15-43 was amended three additional times with

* The Judge of Compensation was under the mistaken impression that the State sought to take its pension offset after its obligation had already been reduced by Social Security benefits. This has never been the State's position. The State seeks the pension offset prior to any Social Security offset or during times when there are no Social Security benefits being paid. In the alternative, the petitioner could elect to collect either her pension or her workers' compensation so that there is no double recovery.

the offset language left intact, it did not mean the Legislature had intentionally amended the statute (Aa67). He ruled that he believed the Legislature intentionally wanted to allow double recoveries solely in ordinary disability cases (Aa68; 71). Therefore, the Judge said he was not bound by the clear wording of the statute (Aa68).

The Judge ruled that he did not have the jurisdiction or statutory authority to consider the offset issue despite N.J.S.A. 34:15-29, which grants the authority (Aa74). The Judge held that N.J.S.A. 34:15-29 only gave him jurisdiction to offset workers' compensation awards against private disability pensions (Aa69). He decided this statute did not apply to public disability pensions (Aa70).

The Judge correctly held that he must follow the rulings of our Supreme Court (Aa72). However, he chose not to follow the ruling in Bunk v. The Port Authority of New York and New Jersey, supra. (Aa72). The Judge held that this case only barred a double recovery when the ordinary disability pension was from New York and the compensation award was from New Jersey (Aa71). The Judge ruled that Bunk did not apply to a New Jersey ordinary disability pension even though the Supreme Court said New York pensions should be treated in the same manner as New Jersey pensions (Aa71).

Therefore, the Judge denied the State's motion and ruled that the petitioner could receive 80% of her prior salary from workers' compensation and social security benefits as well as 43.6% of her salary from her ordinary disability pension (Aa78) for a total of 123.6% of her prior average current earnings.

The Judge entered a final award in which he determined the petitioner's disability had increased by 55% during the last 18 months of her occupational exposure (Aa79). He found she was totally disabled (Aa79). The Judge ruled that the total disability should begin on December 1, 1999 and that she should receive her full weekly rate of \$329.19 per week without any deduction for attorney fees or costs until April 30, 2000 (Aa79). The Judge ordered that the attorney fees and costs should not be paid until May 1, 2000, which was after the effective date of the Social Security award (Aa79). This would result in the State losing its Social Security offset and being required to continue to pay the full workers' compensation rate for another 19 1/7 weeks (Aa82). Thereafter, the State would be allowed to reduce its payments to \$93.69 due to the receipt of the Social Security benefits (Aa82). These payments continue until the Second Injury Fund's obligation begins on August 30, 2004 (Aa82).

The State of New Jersey has filed a Notice of Appeal because the Judge's decision on the pension offset is contrary to the long standing public policy in New Jersey against double recoveries. The State has also appealed from the finding of total disability. The final issue on appeal is that the Judge abused his discretion by delaying the payment of attorney fees so as to maximize the petitioner's award at the expense of the State of New Jersey.

STATUTORY HISTORY

There has been a longstanding public policy in New Jersey to prohibit the dual recovery of both pension benefits and workers' compensation benefits for the same injury. N.J.S.A. 34:15-43 was first amended in 1931 to prohibit the receipt of workers' compensation benefits when one was awarded a disability pension. The statute was amended in 1948 to add the sentence which required an employer to continue to provide medical care for a work related injury even if one was receiving a disability pension. Therefore, from 1948 to 1996, N.J.S.A. 34:15-43 read in pertinent part

No former employee who has been retired on pension by reason of injury or disability shall be entitled under this section to compensation for such injury or disability; provided, however, that such employee, despite retirement, shall, nevertheless, be entitled to the medical, surgical and other treatment and hospital services as set forth in R.S. 34:15-15.

The various public employee retirement systems all contained very similar language concerning how they are affected by a workers' compensation award for the same injury. For example, the Police and Fire Pension system, N.J.S.A. 43:16A-15.2, prior to 1971 stated,

No application for retirement benefits may be approved by the board of trustees while the member applying for such benefits, is in receipt of periodic benefits under the workers' compensation law.

This created a dilemma for public employees who could retire immediately but could collect no workers' compensation benefits. In the alternative, a worker could collect workers' compensation benefits immediately but would be prevented from collecting a disability pension. Unfortunately, the employee often could not know in advance which award would be greater but would still be limited to the option chosen initially.

There were failed attempts by the Legislature to change N.J.S.A. 34:15-43 to allow the recovery of both the full workers' compensation award and the disability pension. Senate Bill 391 in 1969, as well as Senate Bill 441 in 1971, were vetoed by the Governor. However, the various pension systems did change their statutes in 1971 to provide for an actuarial offset of both accidental and ordinary disability pensions when one received workers' compensation benefits for the same injury as the pension.

The Supreme Court in Conklin v. City of East Orange, supra, settled the effect that the 1971 pension amendments had on N.J.S.A. 34:15-43. That statute still barred recovery of workers'

compensation benefits while one was in receipt of a disability pension. The Court ruled it did not matter which benefit was awarded first as long as there was an offset. It held "the statutory purpose is to allow the employee the more advantageous of the respective benefits, but to require the offset heretofore mentioned in order to avoid double recovery for the same disability." Id. at 205. The Court noted that the decision was at odds with N.J.S.A. 34:15-43. However, the Court found the failure to amend N.J.S.A. 34:15-43 "was inadvertent" and that the ruling would modify section 43 to meet the Legislature's implied intent to avoid dual recoveries.

Shortly thereafter in 1977, the Legislature amended N.J.S.A. 34:15-29 to state

"The right of compensation granted by this chapter may be set off against disability pension benefits or payments but shall not be set off against employees' retirement pension benefits or payments."

It is important to note that the original bill and sponsor's statement (Aa272) sought to bar a set off against both service and disability pensions. However, the final bill was amended (Aa274) to allow offsets against disability pensions. The Supreme Court in Young v. Western Electric Co., 96 N.J. 220 (1984),

said the amendment implicitly recognized the Division of Workers' Compensation's jurisdiction to offset benefits from a disability pension and it showed "an underlying theme of the workers' compensation law is that there should not be duplicative payments for the same disability." Id. at 231.

The pension rules were changed in the various public pension systems in 1994 to change offsets of accidental disability pensions from an actuarial offset to a dollar for dollar basis when there is a workers' compensation award. However, the Division of Pensions no longer sought to take an offset of ordinary disability pensions (Aa277).

N.J.S.A. 34:15-43 was amended in 1995 and removed the language which barred any recovery of workers' compensation if one was already receiving a disability pension. The legislative statement (Aa221, 223, 227) to the bill said the amendment was "for consistency with court decisions and the pension systems offset provisions, the amendments delete from the workers' compensation law a sentence which prohibits altogether the receipt of workers' compensation benefits by a retireant receiving a disability retirement allowance." The statute was amended a few weeks later to add the second paragraph which granted workers' compensation

coverage to emergency management personnel but also provided that any benefits would be offset by any collateral benefits (Aa229).

The Supreme Court in Bunk v. The Port Authority, supra, said it considered the "amendments primarily to be a clarification of existing law, not a change in settled law." Id. at N.J. 194. This amendment was "not intended to rescind the longstanding equitable bar against double recovery." Id. at N.J. 193. The Court held that the dominant policy and central theme of recent Legislatures is that there should not be a double recovery from two sources for the same injury. The Court said "these amendments appear to be recognition of the gradual developments in case law that permitted employees to select the more advantageous of the benefits." Additionally, the Senate Committee Statement (Aa224), the Assembly Labor, Business and Industry Committee Statement (Aa222) and the Fiscal Statement (Aa225) that accompanied the 1995 amendments to N.J.S.A. 34:15-43, all stated there would be no significant financial impact on State funds. This would be an impossible result unless double recoveries were prohibited.

N.J.S.A. 34:15-43 was next amended in 1997. This bill added additional types of volunteers to the second paragraph. The bill also returned to the statute the exact same pension bar language which was deleted in 1995 (Aa249, 265). It is possible

that this may have been done inadvertently since the pension bar language was not underlined in the proposed bill (Aa249)*; however, it was part of the final bill which was passed and signed into law by the Governor. The statute was amended two more times in 1999 and the reinstated pension language and the offset language in paragraph two have remained unchanged (Aa255). The sponsor's statement to Assembly Bill 2302 (Aa253), which became one of the 1999 amendments, said the purpose of the amendment was to give the volunteers and other emergency management individuals mentioned in paragraph two of N.J.S.A. 34:15-43 the "same salary, pension rights and other benefits as if the injury or death had occurred in the jurisdiction where that person is normally employed." Clearly, paragraph two of N.J.S.A. 34:15-43 still stated the volunteer's benefits "shall not be paid to any claimant who has another single source of injury or death benefits." This other source does not exclude disability pension benefits. If these volunteers can have an award offset, and they have the same "pension rights" as others,

* This almost happened in 1995 when Senate Bill 383 (Aa229) inadvertently included the language concerning pensions which had been deleted a few weeks before. This was identified by the Attorney General's Office and corrected. See "Historical and Statutory Notes" to N.J.S.A. 34:15-43 and the correspondence to the Legislative counsel from the Attorney General's Office (Aa241 to 246).

it is evidence that the offset or double recovery prohibition applies to all employees.

ARGUMENT

POINT I

THE AWARD OF PERMANENT DISABILITY
MUST BE OFFSET BY THE DISABILITY
PORTION OF THE ORDINARY DISABILITY
PENSION IN ORDER TO SATISFY THE
LONGSTANDING AND STRONG PUBLIC
POLICY WHICH PROHIBITS DUAL
RECOVERIES FOR THE SAME INJURY.

While the statutory history is by itself very clear, the judicial interpretation of the interplay between the pension and workers' compensation statutes leaves no doubt that double recoveries must be prohibited. The Court in Flynn v. Union City, 32 N.J. Super. 518 (1954) held that the ban against double recovery in N.J.S.A. 34:15-43 was constitutional and that no statute in New Jersey allowed double recoveries.

One of the basic concepts in our workers' compensation statute can be found in N.J.S.A. 34:15-40, which bars double recoveries from workers' compensation and third party recoveries. It does not matter if that recovery is as a result of medical or legal malpractice or if the source of the recovery is from private insurance such as uninsured or under insured motorist protection. Frazier v. New Jersey Manufacturers Insurance Company, 276 N.J. Super. 84 (App. Div. 1994), aff'd 142 N.J. 590 (1995). Even

Millison v. E. I. duPont de Nemores and Co., 101 N.J. 161 (1985), which allowed liability claims against employers due to their intentional misconduct called for offsets when the liability and workers' compensation awards overlap. Likewise, our courts have always integrated workers' compensation benefits with other benefit programs, such as social security disability, so that claimants are fairly compensated after offsets. Fiore v. Trident Construction Co., 251 N.J. Super. 101 (App. Div. 1991). Offsets are similarly integrated to avoid double recoveries in other types of cases such as the Tort Claims Act or the Law Against Discrimination statute. Clearly, the dominate policy in New Jersey has always prohibited dual recoveries for the same injury regardless of the source of the various benefits.

The court in In Re Smith, 57 N.J. 368 (1971), which approved the bar of workers' compensation when one is receiving a pension, held that there is a implied legislative mandate against double recovery. The court said,

But no matter how sympathetically the employee's interest are viewed, the judiciary cannot ignore the legislative intention which clearly emerges from the total statutory treatment of the subject. Such intention must be given sensible application in order to accomplish

the indicated purpose and to avoid a
bizarre result. [Id. at 380].

The courts next reviewed the interplay between N.J.S.A. 34:15-43
and the pension statutes after the pension statutes were amended to
allow an actuarial offset of the pension from a workers'
compensation award. The court in Leoni v. Township of Hamilton,
134 N.J. Super. 231 (App. Div. 1975) noted that N.J.S.A. 34:15-43
was not amended at the same time but said the pension amendment
must be read "In paie materia" with the workers' compensation act
to allow the offset. The court said,

The construction which we have given
to the statutes comports with the
laudatory purpose of the Workmen's
Compensation Act and the pension
disability provisions and at the
same time precludes the double
recovery of benefits referred to in
Smith, supra and Russo, supra.
Indeed, in our view, it accords with
the underlying philosophy of Smith.
[Id. at 237].

Any remaining issues concerning the interplay between
workers' compensation and the pension statutes as they were then
written was resolved by Conklin v. City of East Orange, supra. The
court noted that the fact that N.J.S.A. 34:15-43 was not amended
was "inadvertent" and the statute would be modified to be

consistent with the Legislature's intent to prevent double recoveries. The Court in its ruling said it

applies whether the retirement is for accidental disability or, as here, ordinary disability ... The statutory purpose is to allow the employee the more advantageous of the respective benefits, but to require the offset heretofore mentioned in order to avoid double recovery for the same disability. [Id. at 205]

It was shortly after the Conklin decision that N.J.S.A. 34:15-29 was amended to specifically grant workers' compensation judges the power to offset a workers' compensation award by a disability pension. The Court in Young v. Western Electric, supra, said the significance of the amendment was that it implicitly recognized the Division's jurisdiction to make offsets of disability pension benefits against compensation awards for partial permanent and total permanent disability and a policy supporting integration of compensation awards and pension plans. Addressing an argument that N.J.S.A. 34:15-29 only applied to accidental disability plans or that only the pension could be reduced the Court stated,

The amendment may be read literally to provide only that disability pension benefits can be reduced, but not the compensation award. Such a

reading is counterproductive to the workers' compensation scheme; it would encourage employers to delay payment of disability pension benefits until the compensation awards had been determined. It is doubtful that the Legislature had any such intent. Rather an underlying theme of the workers' compensation law is that there should not be duplicative payments for the same disability ... The sense of the act is that compensation awards, as well as disability pensions may be reduced depending on the timing and amount of the respective payments. Our interpretation accords with the settled statutory interpretive guide that the letter should give "way to the obvious reason and spirit of the expression." [Id. at 230 to 231].

The case of Wright v. The Port Authority of New York and New Jersey, 263 N.J. Super. 6 (App. Div. 1993) is very similar to the present case in that it involved the Second Injury Fund and a claimant who was receiving a public accidental disability pension which did not provide for any offset due to a New Jersey workers' compensation award. The Second Injury Fund's Deputy* moved for an

* Oddly, in his decision (Aa52-Aa53) to the present case, Judge Moncher, who at the time was the Fund Deputy who moved for the offset in the Wright trial, stated that the State had not sought such an offset since 1971. While this issue was never discussed in the trial below, it can be represented to this Court that Judge Moncher's statement is mistaken and that this offset has been an issue in the past.

offset of the workers' compensation award based upon N.J.S.A. 34:15-29 and N.J.S.A. 34:15-43. Id. at 9. The motion was denied and the Fund appealed. The Appellate Division relied upon Conklin, supra and N.J.S.A. 34:15-43 when it held that the employer could offset the workers' compensation award by the disability pension. It pointed out that to do otherwise the claimant would receive almost two times his salary from a combination of social security disability, pension benefits and workers' compensation. The Court held,

In the case before us, the Port Authority is a single employer, one governmental body, and petitioner in our view should not be entitled to both a disability pension and workers' compensation benefits from the same governmental employer, no matter how the benefits are funded or derived. [Id. at 23].

We find the legislative intent clear from an overall consideration of the relevant statutes. The issue is intention and we find the intention against dual recovery clear. The answer resides in the common sense of the situation. [Id. at 25].

The most significant case which is directly on point with the present case is Bunk v. Port Authority of New York and New Jersey, supra. This case not only involved a public ordinary disability pension which did not provide for an offset of a

workers' compensation award for the same injury, but it also was decided after N.J.S.A. 34:15-43 was amended in 1995 and the court specifically addressed this amendment's impact upon offsets. The Court examined the recent amendment and said it "interprets the amendments primarily to be a clarification of existing law, not change in settled law." Id. at 194. The Court found the amendments were "not intended to rescind the longstanding equitable bar against double recovery." Id. at 193.

The Court in Bunk actually said

Whatever doubt that we may have had about the proper integration of the two forms of benefits has been further clarified by the recent amendments to section 43. [Id. at 192].

The Court held,

the recent amendments reaffirm the Legislatures's intention to integrate workers' compensation and retirement disability benefits ... the practical method of integration of benefits is to reduce dollar for dollar the New Jersey workers' compensation award for PA employees by the amount of the New York disability retirement allowance for the same injury. [Id. at 193].

Significantly, the Court stated that the offset would apply even though "granted, there is no provision in the PA pension requiring

or allowing setoff. The question is one of legislative intent." Id. at 189. This is identical to the present case and it was reaffirmed as recently as the case of James v. PERS, 164 N.J. 396 (2000), which in citing Bunk, supra as controlling said,

Work disabled employees are to be able to achieve the most advantageous combination of workers' compensation and pension benefits without offending our strong public policy against the award of double benefits for the same disability. [Id. at 410 to 411].

The trial judge in the present case would ask the court to carve out a narrow exception to the longstanding public policy against a dual recovery for the same injury. This is despite the fact that there is nothing in any statute, legislative history or the case law which states the Legislature has suddenly abandoned its ban on double recoveries. If there is no offset, the petitioner can receive between workers' compensation and social security disability benefits a total of 120% of her full salary. With cost of living increases and recent changes in the pension law that benefit presently actually exceeds 120% of salary.

What is the argument that this class of employee has earned or deserves significantly more than other employees? An accidental disability pension, which is significantly harder to

qualify for than an ordinary disability pension, previously was limited to 66 2/3%* of salary even if there is a workers' compensation award. Why should the larger, more difficult pension to obtain, result in significantly less benefits since it is undisputed that this pension is reduced by any workers' compensation award? Why are private disability pensions offset by a workers' compensation award but under the Judge's decision, public ordinary disability pensions funded by taxpayer's money are not offset by a workers' compensation award? Why are public service volunteers, such as emergency management personnel, fire fighters, auxiliary police and search and rescue workers subject to a reduction of their workers' compensation from any "single source of injury or death benefits," but the same does not apply to an ordinary disability pension given to other public employees? Why are workers' compensation awards offset by social security disability or third party recoverys in order to avoid a double recovery but for some reason, the double recovery bar does not apply to ordinary disability pensions?

Wright, supra reduced the compensation award due to an accidental disability pension which did not provide for workers'

* Due to recent changes in the pension rules, retirees now receive 72.7% of salary for an accidental disability pension.

compensation offsets in order to prevent a double recovery. This was done by the Supreme Court despite no specific statute concerning this offset because the Supreme Court felt the bar against double recovery was so strong. Likewise, the Supreme Court in Bunk, supra offset a workers' compensation award by an ordinary disability pension despite the fact that the New York pension, just like our present New Jersey pension law, did not provide for an offset of the pension. To do otherwise would result in a windfall to the petitioner that far exceeds her salary. Additionally, the Court made it clear that its interpretation of the 1995 amendment to N.J.S.A. 34:15-43 was "not intended to rescind the longstanding equitable bar against double recovery." Id. at 193.

As the Court said in Wright, supra

Blind and mechanical application can often lead to a "improper interpretation" of the statute being construed. Allstate Ins. Co. v. Malec, 104 N.J. 1 (1986). As in all matters of statutory interpretation, the issue is one of intention. Reilly v. Ozzard, 33 N.J. 529 (1960). The ultimate question is "whether in a given context an express provision with respect to a portion of an area reveals by implication a decision with respect to the remainder." [Id. at 20].

Here in the present case there is nothing which would imply that any amendment of the workers' compensation law or the pension law has suddenly changed the policy against double recovery. Such a change should not be done without a clear and express mandate by the Legislature, which simply does not exist in this case. In fact, our Supreme Court ruled in Bunk, supra that it "interprets the amendments primarily to be a clarification of existing law, not a change in settled law". Id. at 194.

Thus, the reconciliation between those statutes and N.J.S.A. 34:15-43 which this Court effected in Conklin v. City of East Orange, supra, by allowing a claimant to obtain the more advantageous of workers' compensation and disability pension benefits with an offset between the two may be applicable here, and, on a strict construction, the N.J.S.A. 34:15-43 outright disqualification can be applied according to its terms. Conceivably, this Court might wish to utilize a broader measure of legislative intent to produce a result here similar to that in Conklin. Most certainly, however, this Court would not wish to leave in place the result produced by the trial judge's decision, under which petitioner will receive both \$169.52 weekly in disability pension benefits and \$329.19 weekly in workers'

compensation benefits in addition to Social Security disability benefits.

As stated at the outset, the question presented by this case is a question of statutory meaning. The words used by the Legislature are by no means unclear. The Legislature meant what it said: no employee of a governing body is to receive workers' compensation benefits if he or she has been retired on pension by reason of injury or disability. There is to be no double recovery, and there is to be none particularly in the case of a public entity because such entities, by their nature, are to be financially protected to the end that they might serve the public well and at the least possible cost. The trial judge clearly was wrong in holding otherwise, and the decision therefore should now be reversed or modified to be consistent with the long standing legislative intent to bar dual recoveries.

POINT II

THE JUDGE OF COMPENSATION EXCEEDED HIS AUTHORITY WHEN HE RULED HE WAS NOT BOUND BY THE SUPREME COURT'S INTERPRETATION OF THE 1995 AMENDMENTS TO N.J.S.A. 34:15-43 NOR THE LEGISLATIVE AMENDMENTS IN 1997 AND 1999 BECAUSE THE LEGISLATURE, IN THE JUDGE'S OPINION, WAS UNAWARE OF ITS OWN ACTIONS AND NOT INTENTIONALLY BARRING DUAL RECOVERIES.

A court cannot ignore the plain meaning of the language employed by the Legislature. Singleton v. Consolidated, 64 N.J. 357 (1974); Buzza v. General Motors, 49 N.J. Super. 322 (App. Div. 1958). The provisions and scope of the Workers' Compensation Act are to be fairly construed to effectuate the evident Legislative purpose. Bielak v. Counties Contracting and Const. Co., 95 N.J. Super. 266 (Law Div. 1967); Red Bank Ed. Assn. v. Red Bank High Bd. Of Ed., 151 N.J. Super. 435 (App. Div. 1977), aff'd 78 N.J. 122 (1978). The theory of liberal construction cannot enlarge the intent so expressed and thus be made to trench upon the legislative province. Englebretson v. American Stores, 25 N.J. 106 (1958). The obligation of a court is to enforce the legislative intent once the court is clear as to what that really is. Buzza v. General Motors, supra.

The statute should be construed as written rather than according to some unexpressed intention. Dacienzo v. Edgye, 19 N.J.J 443 (1951). Nothing is to be read into the Workers' Compensation Act by judicial construction because of some supposed reason of policy; the primary subject of inquiry is the legislative intention as expressed in the statute. Bielak v. Counties Contracting & Construction Co., supra. It is the court's responsibility to effectuate the intent of the Legislature rather than permit an overly literal or liberal interpretation to thwart its underlying purpose. Red Bank Ed. Assn. v. Red Bank High Bd. of Ed., supra. Therefore, to resolve any ambiguities, courts should resort to these principals of statutory construction as well as intrinsic and extrinsic aids, including the legislative history of the Act. Levin v. Tp. of Parsippany-Troy Hills, 82 N.J. 174 (1980).

What Judge Moncher has done in this case is quite extraordinary for an administrative court. The judge has decided that the Legislature did not know what it was doing when it amended N.J.S.A. 34:15-43 in 1997 and two more times in 1999. The Judge ruled, therefore, that he was not bound by the clear wording of the statute. He has in effect declared that these amendments are invalid and he has overturned the action of the Legislature.

Clearly, this exceeds the judge's authority as an administrative judge. Courts should defer any decision concerning the validity of a statute to the Supreme Court as these decisions should only be undertaken by that Court. Siglacy v. State, 105 N.J. Super. 507 (App. Div. 1969).

While this action of the trial judge is very unusual, it only addresses the issue concerning the statutory language which calls for a complete bar of a workers' compensation recovery when one is already in receipt of a disability pension. The language is either out based upon the 1995 amendment or is in based upon the 1997 amendment. Since the phrase in question has been interpreted many times, we have a well documented judicial interpretation which states that the statute bars dual recoveries if the language is part of the statute. However, we also have a similar interpretation by the Supreme Court in Bunk, supra, if the language is removed.

The Judge of Compensation correctly stated that he is bound by the decisions of the Supreme Court. However, he then refused to follow the ruling in Bunk, supra merely because it concerned the relationship between a New York disability pension and New Jersey workers' compensation. What the judge ignores is that the Court did not determine that New York pensions should be

treated differently from New Jersey pensions; but rather, determined that they should be treated in exactly the same manner as New Jersey pensions and ordered an offset to avoid a dual recovery. If an offset is appropriate because the New York pension is treated in the same manner as New Jersey pensions, then what other conclusion can be reached than our Supreme Court will order an offset from New Jersey ordinary disability pensions?

The real problem with the trial judge's decision is that he goes to great lengths to rule he is not bound by the 1997 amendments to N.J.S.A. 34:15-43, but overlooks the fact that, if he is correct, we are left with the statute as amended in 1995. Our Supreme Court has already determined the impact of the 1995 amendments to the statute in Bunk, supra. The court in Bunk, supra specifically addressed the meaning of the amendment and held that the "amendments primarily to be a clarification of existing law, not a change in settled law" Id. at N.J. 194 and that the amendment was "not intended to rescind the longstanding equitable bar against double recovery." Id. at N.J. 193. Therefore, even if the judge were correct about the subsequent amendments he would still be required to grant an offset based upon the 1995 statute as interpreted by the Supreme Court in Bunk, supra, which is directly on point with the present case.

The Judge of Compensation should not have substituted his own beliefs for the longstanding policy of our Legislature and Supreme Court. It is the Legislature alone which has the right and power to determine policies which foster the general welfare, not petitioners and not the courts. Paul Kimball Hospital, Inc. v. Brick Tp. Hospital, Inc., 86 N.J. 429 (1981). The fairness of the compensation awarded by the Workers' Compensation Act is not a question for the courts, being within the province of the Legislature. O'Connell v. Simms Management Co., 85 N.J.L. 64 (Sup. Ct. 1913).

The standard which has evolved through legislative enactment and judicial construction by this Court is one which assures that a public employee, at least a public employee who is a member of one of the State employee retirement systems, will not receive both workers' compensation and disability retirement benefits in full measure, but will receive, by means of a set-off between the two, the more advantageous of the benefit packages available.

In New Jersey, workers' compensation benefits are designed to assure income maintenance -- an "absolute but limited and determinate liability upon the employer," Wilson v. Faull, supra, 27 N.J. at 116, which will "provide a dependable minimum of

compensation to insure security from want during a period of disability." Naseef v. Cord, Inc., 48 N.J. 317, 325 (1966). Workers' compensation is, furthermore, one of many interrelated income maintenance programs, all of which, in their totality, constitute a safety net protecting against impoverishment. It is only a safety net, however, not an alternative to working. Working by all those capable of working is, in fact, the purpose in particular of the Second Injury Fund. N.J.S.A. 34:15-94 et seq.

It is clear that a public employee retired because of disability may not simply stack award upon award to attain the highest monetary amount possible, one which, as in the circumstances here, exceeds her pre-injury salary. That potential must not be countenanced.

POINT III

THE DECISION OF THE JUDGE OF COMPENSATION
MUST BE REVERSED BECAUSE THERE IS NOT
SUFFICIENT CREDIBLE FACTUAL EVIDENCE IN
THE RECORD TO CAUSALLY CONNECT THE
PETITIONER'S CONDITION TO HER NEW
OCCUPATIONAL EXPOSURE AND THE
DETERMINATION OF TOTAL DISABILITY IS NOT
BASED UPON SUFFICIENT OBJECTIVE MEDICAL
EVIDENCE SINCE IT IS BASED UPON THE NET
OPINION OF THE PETITIONER'S MEDICAL
EXPERT.

A Judge of Compensation's opinion must be based upon sufficient credible evidence present in the whole record. DeAngelo v. Alsan Masons, Inc., 122 N.J. Super. 88 (App. Div. 1973), aff'd o.b. 62 N.J. 581 (1973); Close v. Kordulak Bros., 44 N.J. 589 (1965). Appellate review of the findings of a workers' compensation judge is not a pro forma exercise and the decision of a workers' compensation judge must be reversed if the judge's findings are not supported by articulated reasons grounded in the evidence. Wiggins v. Port Authority of New York and New Jersey, 267 N.J. Super. 636 (App. Div. 1994). The judge must give explanations for his rulings based on specific findings of fact. Lester v. J. B. Eurell Co., 234 N.J. Super. 64 (App. Div. 1989). The judge must set forth an analytical expression of the basis which applied to the found facts, led to the findings below. Smith v. E.T.L. Enterprises, 155 N.J. Super. 343 (App. Div. 1978). A

judge's findings are entitled to deference but such findings must be supported by articulated reasons grounded in evidence. Lewicki v. New Jersey Art Foundry, 88 N.J. 75 (1981).

Our courts have long held that the burden of proof is on the petitioner to prove by the preponderance of the evidence that any disability is related to a specific accident or occupational exposure and it is not the burden of the respondent to prove there is no disability or causal connection. Celeste v. Progressive Silk Finishing, Co., 72 N.J. Super. 125 (App. Div. 1962). The petitioner's subjective belief that her employment aggravated her prior work related injury is not a sufficient basis for a finding of causal relationship since there must be objective factual and medical evidence to support the claim before an award can be entered. Kozinsky v. Edison Products Company, 222 N.J. Super. 530 (App. Div. 1988). The petitioner must prove permanent partial disability, or in the present case, total disability, by objective demonstratable medical evidence of permanent disability that restricts the function of the body or its organs that results in a material lessening of one's working ability. Perez v. Pantasote, 95 N.J. 105 (1984); defined N.J.S.A. 34:15-36.

Likewise, a medical expert needs more support for his opinion than the mere subjective complaints of the petitioner. A

physician's mere parroting of the petitioner's subjective complaints will not support an award of compensation absent objective evidence of exposure and disability. Saunderlin v. E. I. DuPont Company, 102 N.J. 402 (1986). The "net opinion rule" says that an expert's bare conclusions unsupported by the factual evidence can not be a basis for an award. The rule focuses on the failure of the expert to explain causal connection between an act or incident complained of and the injury or damage allegedly resulting therefrom. Buckelew v. Grossbard, 87 N.J. 512 (1981). The "net opinion rule" requires an expert witness to give the why and wherefore of his opinion, not just mere conclusions. Jimenez v. GNCC Corporation, 286 N.J. Super. 553 (App. Div. 1996). There must be credible evidence in the record to support a doctor's opinion, and if not, his opinion fails. Black v. Mahoney Troast Const. Co., 65 N.J. Super. 397 (1961).

Judge Moncher made a significant mistake in his decision when he found that the petitioner's job duties remained the same after the 1998 award (Aa39). He found no lessening in the intensity or frequency of the work (Aa39). The judge therefore determined he did not even have to address the issue of causal relationship (Aa40). However, the testimony of the petitioner is completely at odds with the judge's ruling. Her testimony was that

prior to the 1998 award she had been relieved of her clerk typist duties and put in the light duty assignment of a receptionist (2T17-12 to 15). She no longer pulled files (2T20-2 to 11) or opened mail (3T16-11 to 20) and her co-workers helped her with her duties (2T17-12 to 15). She was given a headset so she no longer had to hold the telephone (3T12-1 to 16). She was able to take frequent breaks since she no longer had to file (3T10-19 to 3T11-3). Her duties were to mainly photocopy, answer and transfer calls on a three-line telephone and to talk to customers at the receptionist desk (3T13-1 to 3T14-24).

Clearly, this significant change in duties required the judge to discuss causal relationship in his decision since he ordered the award be paid at 1999 rates due to this new exposure. The record is barren of any findings by the judge as to how those changed duties had increased the 45% disability found in 1998 to 100% disability by late 1999. N.J.S.A. 34:15-31 requires the judge to explain what activities peculiar to her employment affected and worsened her medical condition. The judge needed to explain how those alleged conditions forced her to stop working. What the judge actually found was that the petitioner was merely working to reach the years needed to qualify for sufficient disability income so she could stop working all together (Aa42). The judge ruled

that if she qualified sooner she would have stopped work sooner (Aa42). One can assume she would have continued working even longer if she needed more years for her pension since there is nothing in the record that shows a doctor asked her to stop work. The petitioner even applied for her disability pension and social security while she was still working so that the benefits would be in place when she was ready to stop work at age 35.

The judge said he gave little weight to the opinion of Dr. McClure (Aa44). However, other than to say the doctor put too much weight on a finding of lack of atrophy, he does not discuss the balance of the doctor's findings (Aa41). Frankly, the record does not reveal that Dr. McClure based his opinion on this one finding and his findings of no objective evidence of change are remarkably similar to the minimal changes in Dr. Riss' report. The rejection of a doctor's opinion with such little basis should not be allowed to stand.

The judge was also mistaken when he found Dr. Riss had significant increases over his prior examination in 1998 (Aa43). Dr. Riss admitted in his testimony that most of his findings were unchanged since his 1998 report. His only changes were minor: a loss of supination and flexion of the left hand, a minor loss of supination and extension of the right hand and mild supination

changes in the arms (5T29-7 to 5T31-11). The doctor was asked to explain his apportionment of the 100% disability between the body parts and was unable to do it other than to say the petitioner was totally disabled (5T20-1 to 16). This is a classic "net opinion" which the doctor had repeated for years despite the fact the petitioner continued to work. Even if one were to take all of Dr. Riss' individual estimates of disability to each body part and stack them together we do not come close to the weeks needed for total disability.

The judge gives this court no idea of how the petitioner in a light duty job, without any new surgery and limited treatment has suddenly gone from a 45% disability in 1998 to totally disabled in 1999. The petitioner, since her retirement, is not actively treating except for some occupational medication for inflammation (2T26-1 to 7). The petitioner has made no attempt at rehabilitation (3T25-1 to 3) nor has she looked for any alternative work (3T31-15 to 3T32-25). However, she can do her own housework, shopping and laundry (3T31-15 to 3T32-25). Other than the petitioner's subjective complaints of a worsening of her condition, there is little support for the judge's findings. Are we to take individuals such as the petitioner who was capable of a light duty job and throw her on a junk heap of hopeless cases at age 35 merely

because she can potentially do better financially on disability than working?

Notably, the doctrine of liberal construction of remedial statutes such as the workers' compensation law concerns the scope of the act and the coverage provided and has no place in the evaluation of the credibility of witnesses or of the weight or sufficiency of the evidence. Oszmanski v. Bergen Point Brass Foundry, 95 N.J. Super. 92 (App. Div. 1967). The fact alone that an illness occurs at work or near to the time of work does not establish causal relationship; there must be affirmative proof of causal relationships between the illness and work itself. Moller v. Atlas Steel Products Co., 26 N.J. Misc. 163 (1948). If a review of the record "leaves the definite conviction that the judge went so wide off the mark that a mistake must have been made", an appellate court should appraise the record "as if it were deciding the matter at inception" and make its own findings and conclusions. Manzo v. Local 76B, 241 N.J. Super. 604-609 (App. Div. 1990), certif. denied 122 N.J. 372 (1990). Therefore, the decision of the judge concerning causal relationship and total disability must be reversed.

POINT IV

THE JUDGE OF COMPENSATION ABUSED HIS DISCRETION BY REQUIRING A DELAY IN THE PAYMENT OF FEES AND COSTS UNTIL AFTER THE START OF THE SOCIAL SECURITY AWARD IN ORDER TO ENHANCE THE PETITIONER'S AWARD AT THE EXPENSE OF THE STATE OF NEW JERSEY.

A trial judge has broad discretion because "the procedural conduct of a trial rests in the sound discretion of the trial judge and ... no reversal will follow except for an abuse of discretion." Italian Fisherman v. Commercial Un-Assur., 215 N.J. Super. 278 (App. Div. 1987). The "abuse of discretion" standard, "cautions appellate courts not to interfere unless an injustice appears to have been done." Abtrax Pharmaceutical, Inc. v. Etkins-Sinn, Inc., 139 N.J. 499 (1995). However, when that abuse of discretion is clear, an appellate court must modify or set aside an award of counsel fees. Gromack v. John-Manville Products Corp., 147 N.J. Super. 131 (App. Div. 1977).

N.J.S.A. 34:15-64 gives the Judge of Compensation the authority to assess attorney fees and costs. N.J.S.A. 34:15-26 directs that these assessments will be deducted from the weekly compensation benefits as they accrue. Attorney fees in workers' compensation cases are always paid from the initially accrued workers' compensation benefits. In fact, N.J.S.A. 34:15-16

requires that compensation for all classes of injuries are to run consecutively. Therefore, there is no statutory authority for the judge to delay the payment of attorney fees until six months after the permanent disability award started.

The assessment of fees and costs was delayed so that the petitioner's full permanent disability rate would continue longer without any offset. This is based upon 42 U.S.C. §424a* which prohibits any reduction in an award while attorney fees and costs are "actually" being paid. Also, 20 C.F.R. §404.408(d) prohibits any reduction in the award due to "medical, legal or related expenses in connection with the claim." These rules were in place to prevent a dual deduction from an award. A disability award is only reduced by funds actually received by the claimant and not from funds used to pay fees and costs.

However, these rules were never meant to enhance an award at the expense of the employer. If the workers' compensation award in the present case was paid in the same manner as all other workers' compensation awards, the fees and costs would have already been paid in full prior to the effective date of the Social

* N.J.S.A. 34:15-95.5 directs that a New Jersey employer's right to an offset due to the receipt of Social Security benefits be applied in the same manner already being used by the Social Security Administration.

Security award. Therefore, the Social Security offset would have begun immediately without any further delay.

The federal rules which control this offset all clearly state that they consider the actual month that payments are or are not made in applying any reduction. 20 C.F.R. §404.408(k), referring to a deduction due to a workers' compensation award, says in pertinent part,

Adjustments due to a decrease in the amount of the public disability benefit will be effective with the actual date the decreased amount was effective. If the reduction is made under paragraph (a)(2) of this section, any increase or decrease in the reduction will be imposed effective with the actual date of entitlement to the new amount of the public disability benefit. [emphasis added].

A lump sum distribution of accrued benefits, such as the present workers' compensation award, is addressed in 42 U.S.C. §424a(b) which states in pertinent part

that those lump sum payments or a substitute for periodic payments, the reduction under this section shall be made at such time or times and in such amounts as the Commissioner of Social Security finds will approximate as nearly as practicable the reduction prescribed by section (a) of this section.

Throughout the text of 42 U.S.C. §424a, whenever adjustments for attorney fees or workers's compensation benefits are discussed, terms such as "such month", "months", "first month", and "actually paid" are used repeatedly. The most telling section is 42 U.S.C. §424a(7), which controls the "conditions for reduction." It states the effect of any workers's compensation payment shall be applied "for such month which were determined for such individuals and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month) ..."

Clearly, these rules were not meant to be used to in effect have the employer pay a greater portion of the petitioner's attorney fees than would have been required had these fees been paid from the accrued benefits beginning on December 2, 1999. Since the payment was arbitrarily delayed until May 1, 2000, it means the State was required to pay an additional \$4,508.14. This reflects paying 19 1/7 weeks at the full \$329.19 rate rather than the offset rate of \$93.69 between May 1, 2000 and September 12, 2000 as required by the Court's order. Therefore, even if the trial judge's decision is not otherwise reversed, the fee award should be modified so that the attorney fee and costs are paid from

benefits that begin to accrue on December 1, 1999, the date total
disability began.

CONCLUSION

It is respectfully submitted that based upon the foregoing arguments, the decision of the trial judge be reversed and modified to allow a reduction of this workers' compensation award by the disability pension so as to prevent a dual recovery for the same injury. It is also respectfully submitted that the trial judge's decision concerning causal relationship and total disability be reversed as it is not based upon sufficient credible objective medical evidence in the record. Finally, it is submitted that even if the trial judge's decision is otherwise affirmed, the award of counsel fee should be modified to be paid out of the initially accrued benefits.

Respectfully submitted,

PETER C. HARVEY
ACTING ATTORNEY GENERAL OF NEW JERSEY

By Michael O'Brien
Michael O'Brien
Deputy Attorney General

DATED: 6/9/03

A 2110-02T3

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002110-02T3

TAMI ROSALES, :

Petitioner-Respondent, :

v. :

STATE OF NEW JERSEY, :

DEPARTMENT OF THE JUDICIARY, :

Respondent-Appellant, :

v. :

THE SECOND INJURY FUND, :

Respondent-Respondent. :

FILED
APPELLATE DIVISION
JUN 09 2003
Civil Actio
CLERK

RECEIVED
APPELLATE DIVISION
JUN 09 2003
SUPERIOR COURT
OF NEW JERSEY

APPENDIX - VOLUME 1

PETER C. HARVEY
ACTING ATTORNEY GENERAL OF NEW
JERSEY
Mary G. Roebling Building
P.O. Box 620
Trenton, New Jersey 08625
Attorney for Respondent-Appellant
(609) 633-7462

MICHAEL O'BRIEN
Deputy Attorney General
On the Brief

MICHAEL HAAS
Assistant Attorney General
Of Counsel

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State of New Jersey
 Department of Labor
 Division of Workers' Compensation
 CN381
 Trenton, New Jersey 08625-0381

95-9703 DAF
 WC-3652 IR-1
EMPLOYEE'S CLAIM PETITION

(DO NOT FILL IN)

CASE No. 95-034926

SYSTEM GENERATED

D.O. TOMS RIVER

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SOCIAL SECURITY NUMBER 135-68-6441
 NAME TAMI M ROSALES
 ADDRESS (Including County) OCEAN COUNTY
335 ANTHONY AVE
TOMS RIVER NJ 08753
 DECEDENT NAME

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NAME STATE OF NEW JERSEY
 ADDRESS (Including County) MERCER COUNTY
C.N. 620
TRENTON NJ 08625
 NEW JERSEY REGISTRATION NUMBER
 FEDERAL EMPLOYER IDENTIFICATION NUMBER 08-000001-01-001

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NEW JERSEY REGISTRATION NUMBER
 SSN 22-3092031 **AFSS**
 FEDERAL EMPLOYER IDENTIFICATION NUMBER
 NAME CURRY & SALZER
 ADDRESS
611 MAIN STREET
P O BOX 4806
TOMS RIVER NJ 08754-4806
 TELEPHONE (Area Code) (908) 240-4215

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NAME (Indicate if Not Covered or self-insured)
 NJ REG. OR FEIN 93-1000187
BUREAU OF RISK MGMNT
 ADDRESS
CN 620
TRENTON NJ 08625
 CARRIER'S CLAIM FILE NUMBER

TO THE DIVISION OF WORKERS' COMPENSATION:

Petitioner, alleging that Petitioner sustained an injury by an accident arising out of and in the course of Petitioner's employment with Respondent, compensable under R.S. 34:15-7 et seq, supplements and amendments, respectfully states:

DATE OF ACCIDENT OR DATES OF OCCUPATIONAL EXPOSURE <u>OCC/EXP THROUGH 9/95</u>		DATE STOPPED WORK	DATE RETURNED TO WORK
DATE INJURY REPORTED TO EMPLOYER AND TO WHOM <u>8/95</u>	SEX <u>FEMALE</u>	DATE OF BIRTH <u>11/25/63</u>	MARITAL STATUS <u>MARRIED</u>
WHERE <u>EMPLOYER'S PREMISES</u>	OCCUPATION <u>CLERK TYPIST</u>		
HOW INJURY OCCURRED <u>WORK EFFORT ON COMPUTER, TYPEWRITER & CONSTANT USE OF BOTH HANDS & ARMS.</u>			

GROSS WEEKLY WAGES \$	RATE OF COMPENSATION \$	TEMPORARY DISABILITY PAID \$ <u>NONE</u>	PERMANENT DISABILITY PAID \$ <u>NONE</u>
--------------------------	----------------------------	---	---

DESCRIBE EXTENT AND CHARACTER OF INJURY: If there has been amputation or loss of usefulness of any member or impairment of any physical function, explain fully.

PERMANENT INJURY TO BOTH HANDS & BOTH ARMS & NECK WITH NEUROLOGICAL CONSEQUENCES.

Petitioner (DID) (DID NOT) seek compensation at any Informal hearing. A true copy of Petitioner's treating physician's report is attached hereto <input type="checkbox"/> Yes <input type="checkbox"/> No Medical aid (WAS) (WAS NOT) furnished by Petitioner's employer. Give names and addresses of physicians and hospitals: <u>CENTRAL JERSEY HAND SURGERY</u>	DATE OF FILING <u>09/20/95</u>
	JURAT VERIFIED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Aa 1

Were you eligible for Medicaid benefits at the time of the accident? Yes No
 Did you become eligible for Medicaid benefits after the accident? Yes No
 You are advised that Medicaid payments related to the accident are to be repaid in accordance with N.J.S.A. 30:40-1, et seq.

State of New Jersey
 Department of Labor and Industry
 DIVISION OF WORKERS' COMPENSATION

RESPONDENT'S ANSWER TO
 CLAIM PETITION

C.P. NO. 95-034926

D.O. TOMS RIVER

PETITIONER

SOCIAL SECURITY NUMBER
135-5-10000

NAME
TOM SALZER

ADDRESS (Including County)
330 MAIN ST
 TOMS RIVER, NJ 08754

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER
22-3092031

NAME
CURRY & SALZER

ADDRESS (Including County)
611 MAIN ST
 PO BOX 4806
 TOMS RIVER, NJ 08754 4806

RESPONDENT

VS

NAME (Indicate if Not Covered or Self-Insured)
See Self-Insured

CLAIM
95-0001-0009763-DAS

INSURANCE

NAME (Indicate if Not Covered or Self-Insured)
See Self-Insured

CLAIM
95-0001-0009763-DAS

IN THIS CLAIM PETITION IN THIS CAUSE RESPONDENT STATES:

<input type="checkbox"/> RESPONDENT CARRIES CLAIM PETITION SINCE PETITIONER BEEN COVERED	PETITIONER WAS IN EMPLOYMENT ON DATE ALLEGED IN PETITION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF DIFFERENT, INDICATE CORRECT DATE	INJURY OCCURRED OUT OF AND IN THE COURSE OF EMPLOYMENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	EMPLOYMENT WAS COVERED BY ARTICLE 2 R.S. 34:15 <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
	HOW INJURY OCCURRED: ALL SYMPTOMS OF SYNDROME			

WHERE? OCCURRED: TOMS RIVER, NJ

NATURE OF ALL INJURIES	AGE
PETITIONER'S CLAIM	32
DATE RESPONDENT HAD KNOWLEDGE OF INJURY	
PETITIONER'S WORK	
DATE RETURNED TO WORK	
GROSS WEEKLY WAGE	305.23
RATE OF COMPENSATION	213.66 (T) 125.00 (P)
TEMPORARY DISABILITY PAID	NONE
PERMANENT DISABILITY PAID	25% P.T. WHICH EQUAL \$17,580.00

RESPONDENT HAS BEEN REPRESENTED BY THE FOLLOWING INDIVIDUALS AND/OR INSTITUTIONS:

UNION

OTHER PERSONS REPRESENTED BY:

SEE

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief.

DEPUTY ATTORNEY GENERAL

By: Deputy Attorney General

Aa 2

APR 25 1995

DATE



State of New Jersey
DEPARTMENT OF THE TREASURY
GENERAL SERVICES ADMINISTRATION
CN-039
TRENTON NJ 08625-0039

CHRISTINE TODD WHITMAN
Governor

BRIAN W. CLYMER
State Treasurer
GEORGE M. GROSS, JR.
Administrator

1. Respondent denies that the petitioner sustained a compensable accident or occupational exposure arising out of and in the course of the petitioner's employment.
2. Respondent denies that any condition from which the petitioner is now suffering is the result of a compensable accident or occupational exposure.
3. Respondent denies that any condition from which the petitioner of temporary or permanent disability benefits, and denies that the petitioner is entitled to medical treatment.
4. Petitioner was an employee of the County of Ocean at the time of her alleged injury.
5. Petitioner received an award from the County of Ocean in the amount of \$17,580.00 based upon the percentage of 25% partial total.

In response reply to:

- OFFICE OF THE ADMINISTRATOR
CN-039
Trenton NJ 08625-0039
609-292-4330
- BUILDING AND CONSTRUCTION
CN-235
Trenton NJ 08625-0235
609-292-4724
- CENTRAL SERVICES
CN-039
Trenton NJ 08625-0039
(609) 777-1788
- DISABILITIES MANAGEMENT — ADA COMPLIANCE
CN-039
Trenton NJ 08625-0039
(609) 292-7299
- ENERGY AND UTILITY MANAGEMENT
CN-039
Trenton NJ 08625-0039
(609) 984-9701
- PROPERTY MANAGEMENT
CN-229
Trenton NJ 08625-0229
(609) 984-0976
- PURCHASE AND PROPERTY
CN-039
Trenton NJ 08625-0039
(609) 292-4700
- PURCHASE BUREAU
CN-230
Trenton NJ 08625-0230
(609) 292-4700
- RISK MANAGEMENT
CN-620
Trenton NJ 08625-0620
(609) 292-1850
- MARINE SCIENCE RESEARCH FACILITIES
P.O. Box 529
Sandy Hook NJ 07732
(908) 872-1558

Aa3

JUDGMENT
 APPROVING SETTLEMENT
 DISMISSAL

DISCONTINUANCE

District Office: Ocean

PETITIONER

SOCIAL SECURITY NUMBER
135-08-6441

NAME
TAMI ROSALES

AGE
31

ADDRESS (Including County)
335 Anthony Avenue
Toms River, NJ 08753
Ocean County

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER
22-3092031

NAME
CURRY & SALZER

ADDRESS
611 Main St., P.O. Box 4806
Toms River, NJ 08754

APPEARING
FRANK S. SALZER, ESQ.

VS

RESPONDENT

NAME
COUNTY OF OCEAN

ADDRESS (Including County)
Ocean County Court House
Toms River, NJ 08753
Ocean County

ATTORNEY FOR RESPONDENT

NAME
BERRY, KAGAN, SAHRADNIK & ROTZAS

ADDRESS (Including County)
83 Route 37 West
Toms River, NJ 08755

APPEARING
ROBERT D. BUDESA, ESQ.

INSURANCE CARRIER

NAME (Indicate if Not Covered or if Self-Insured)
SELF INSURED-RASMUSSEN AGENCY

DATE OF ACCIDENT:
OR
OCCUPATIONAL EXPOSURE: occ/exp through
DESCRIBE (Briefly) 1991

Weekly Wages	Rate(s)	
		1

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD: DATE: _____ PERMANENT: \$ _____ TEMP: \$ _____

This matter having come on before the Court on this 24th day of July, 1995:

- ORDER FOR JUDGMENT:**
It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent; it is Ordered and Adjudged that petitioner be awarded compensation benefits, payable as indicated on Page 2.
- ORDER APPROVING SETTLEMENT:**
The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; it is Ordered that this settlement be approved and the petitioner be paid as indicated on Page 2.
- ORDER FOR DISMISSAL**
This matter having come on for hearing upon the respondent's motion for Dismissal which was made and duly served and there being good cause shown, the claim petition herein is hereby dismissed for
1. Lack of Prosecution
 2.
- ORDER FOR DISCONTINUANCE**
This matter having come on before the Court and the Court having received evidence that this matter should be discontinued and for good cause shown. It is ORDERED AND ADJUDGED that this matter be discontinued for the following reasons:
- It is FURTHER ORDERED that the payment indicated on Page 2 be made a part of the Order for Discontinuance for petitioner's disability. (Percentages and members involved.)
-

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

(PETITIONER'S ATTORNEY)

PETITIONER (Where Applicable)

(RESPONDENT'S ATTORNEY)

STENO FEE _____ BY _____
James J. O'Connell
JUDGE OF COMPENSATION (DATE) 7-24-95

Aa 4

NAME (PRINT OR TYPE) JAMES J. O'CONNELL, JR.

DIVISION OF WORKERS COMPENSATION

COMPLAINT
AWARDED ORDER
 JUDGMENT
 APPROVING SETTLEMENT
 DISMISSA.
 DISCONTINUANCE

NO. 10'S 91-1116
D. O. Ocean

Permanent Disability (Describe Percentages, Nature and extent of Disability, and Members Involved)

15% of partial total for residuals of bilateral carpal tunnel syndrome and de Quervain's Syndrome and abberant ulnar nerve and status post release of transverse carpal ligament, synovial biopsy, exploration and decompression of ulnar nerve at right wrist and status post left carpal tunnel release and status post right carpal tunnel release and neurolysis median nerve.

DISABILITY AWARDED

State TDB to
be reimbursed.

TEMPORARY: 64 1/7 Weeks at \$ 150.38 - \$ 9,645.90 ^{*} less \$ 5,239.09 paid - Balance due \$ 4,407.71

PERMANENT: 150 Weeks at \$ 117.20 - \$ 17,580.00 less \$ none paid - Balance due \$ 17,580.00

Medical Bills (Doctors and/or Institutions)

Respondent shall pay reasonable and related medical
1) Midshore Physiotherapy \$60.00, 2) Lakewood Surgical \$47.00, 3) Ocean Rehabilitation \$150.00, 4) X-Ray Associates \$250.00, 5) Dr. Richard Sargent \$2,426.00, 6) Dr. Ralph Kuhn: \$84.00, 7) Central Jersey Hand Surgery \$5,847.06, 8) Pt. Pleasant Hospital (admit 4/1/91) \$1,475.00, 9) Community Medical Center (admit 6/3/93) \$683.00, 10) Community Medical Center (admit of 7/21/93) \$461.00, reimburse petitioner \$77.00.

* Temporary disability is due from 4/4/90 to 7/22/90; 7/25/90 to 11/1/90; 4/5/91 to 8/1/91 and 6/1/93 to 10/1/93.

MEDICAL FEE ALLOWED (Expert and/or Testimonial)	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
DR. MARTIN RISS (REIMBURSE PETITIONER'S ATTORNEY)	\$250.00	\$125.00	\$125.00
CURRY & SALZER FOR COSTS	\$773.90	\$773.90	
ATTORNEY(S) FEE	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
CURRY & SALZER	\$7,750.00	\$3,100.00	\$4,650.00
SCENOGRAPHIC SERVICE	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
JOHN F. TRAINOR, INC.	\$ 450.00		\$ 450.00

James J. Donnell 97-24-1
JUDGE OF COMPENSATION

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE A COPY:

(PETITIONER'S ATTORNEY)

(RESPONDENT'S ATTORNEY)

Aa5

PETITIONER (Where Applicable)

JUDGMENT
 APPROVING SETTLEMENT
 DISMISSAL

DISCONTINUAL

District Office: Ocean

PETITIONER

SOCIAL SECURITY NUMBER
135-68-6441

NAME Tami M. Rosales AGE 34

ADDRESS (Including County)
56 Gladney Ave
Toms River, N.J. 08753
Ocean

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER
22-3092031

NAME Curry & Salyer

ADDRESS
611 Main St. PO Box 14806
Toms River, NJ 08754

APPEARING
Frank S Salyer

VS

ATTORNEY FOR RESPONDENT

NAME State of New Jersey
Trial Court Support

ADDRESS (Including County)
Dept. of Treasury
C/O 620
Trenton, N.J. 08625-0620

NAME Horsely General of NJ

ADDRESS (Including County)
Trenton N.J.

APPEARING
Denise Daprile

INSURANCE CARRIER

NAME (Indicate if Not Covered or if Self-Insured)
Self Insured

DATE OF ACCIDENT:
OR
OCCUPATIONAL EXPOSURE: occupational

DESCRIBE (Briefly) exposure 1995

Weekly Wages 305.²³ Rate(s) 213.66 / 213.60

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD: DATE: _____ PERMANENT: \$ _____ TEMP: \$ _____

This matter having come on before the Court on this 15 day of April, 1998:

ORDER FOR JUDGMENT:
It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent; it is Ordered and Adjudged that petitioner be awarded compensation benefits, payable as indicated on Page 2.

ORDER APPROVING SETTLEMENT:
The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; it is Ordered that this settlement be approved and the petitioner be paid as indicated on Page 2.

ORDER FOR DISMISSAL
This matter having come on for hearing upon the respondent's motion for Dismissal which was made and duly served and there being good cause shown, the claim petition herein is hereby dismissed for

1. Lack of Prosecution
 2.

ORDER FOR DISCONTINUANCE
This matter having come on before the Court and the Court having received evidence that this matter should be discontinued and for good cause shown. It is ORDERED AND ADJUDGED that this matter be discontinued for the following reasons:

It is FURTHER ORDERED that the payment indicated on Page 2 be made a part of the Order for Discontinuance for petitioner's disability. (Percentages and members involved.)

WE HEREBY CONSENT TO THE ENTRY AND FORAM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

(PETITIONER'S ATTORNEY)

PETITIONER (Where Applicable)

(RESPONDENT'S ATTORNEY)

STENO FEE _____ BY _____

Phil J. [Signature] 4/15/98
(JUDGE OF COMPENSATION) (DATE)

Christina [Signature]
NAME (PRINT OR TYPE)

Aa6

State of New Jersey
 Department of Labor
 DIVISION OF WORKERS' COMPENSATION

(CONTINUATION)
 ORDER
 JUDGMENT
 APPROVING SETTLEMENT
 DISMISSAL
 DISCONTINUANCE

CF NO.'S
 95-034926
 D.O. Ocean

Permanent Disability (Describe Percentages, Nature and extent of Disability, and Members Involved)

45% partial Total for residuals of nerve impingement and de Quervain's Syndrome with bilateral carpal tunnel release followed by right ulnar nerve release, right median nerve is trigger thumb release, flexor tenosynovectomy with status post anterior transposition & neurolysis right ulnar nerve at right elbow.

TEMPORARY: _____ Weeks at \$ _____ = \$ _____ less \$ _____ paid = Balance due \$ _____
 PERMANENT: 270 Weeks at \$ 213.⁶⁶ = \$ 57,688.²⁰ less \$ 21,360.^{*20} paid = Balance due \$ 36,328.²⁰

Medical Bills (Doctors and/or Institutions)

The Respondent shall reimburse state TDB 6,383.⁶⁸
 All related medical has been or will be provided for by Respondent
 * credit for prior judgment of 25% total against the County of Ocean

MEDICAL FEE ALLOWED (Expert and/or Testimonial)

MEDICAL FEE ALLOWED (Expert and/or Testimonial)	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
Dr. M. Less <i>reimburse bill hours</i> <i>attorney</i>	400 ⁰⁰	200 ⁰⁰	200 ⁰⁰
Curry & Salzer <i>Costs</i>	35 ⁰⁰	35 ⁰⁰	—
ATTORNEY(S) FEE Curry & Salzer	TOTAL 3000	PAYABLE BY PETITIONER 3000	PAYABLE BY RESPONDENT 4800 ⁰⁰⁰
STENOGRAPHIC SERVICE John Trainor	TOTAL 65	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT 65

* PARM - 36,328.20
 TDB 6,383.68
 42,711.88

[Signature]
 (JUDGE OF COMPENSATION)
 HESTER APY
 4/5/98 (DATE)

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE A COPY:

[Signature]
 (PETITIONER'S ATTORNEY)

[Signature]
 (RESPONDENT'S ATTORNEY)

[Signature] Ac 7
 PETITIONER (Where Applicable)

DAG John P. Venu

(DO NOT FILL IN)

State of New Jersey
Department of Labor
Division of Workers' Compensation
CN381
Trenton, New Jersey 08625-0381

APPLICATION FOR REVIEW OR
MODIFICATION OF FORMAL AWARD

CASE No. 95-034926

SYSTEM GENERATED

D.O. TOMS RIVER

PETITIONER	SOCIAL SECURITY NUMBER	135-68-6441
	NAME	TAMI M ROSALES
	ADDRESS (Including County)	OCEAN COUNTY
		56 GLADNEY AVENUE TOMS RIVER NJ 08753
	DECEDENT NAME	

PETITIONER FOR

NEW JERSEY REGISTRATION NUMBER	22-3092031	AFSS
SSN		
FEDERAL EMPLOYER IDENTIFICATION NUMBER		
NAME	CURRY & SALZER	
ADDRESS	611 MAIN STREET P O BOX 4806 TOMS RIVER NJ 08754-4806	
TELEPHONE (Area Code)	(908) 240-4215	

VS

RESPONDENT	NAME	STATE OF NEW JERSEY
	ADDRESS (Including County)	MERCER COUNTY
		TRIAL COURT SUPPORT CN 620 TRENTON NJ 08625
	NEW JERSEY REGISTRATION NUMBER	
	FEDERAL EMPLOYER IDENTIFICATION NUMBER	08-000001-01-001

INSURANCE

NAME (Indicate if Not Covered or self-insured) NJ REG. OR FEIN	93-1000187
BUREAU OF RISK MGMNT	
ADDRESS	CN 620 TRENTON NJ 08625
CARRIER'S CLAIM FILE NUMBER	

TO THE DIVISION OF WORKERS' COMPENSATION:

Petitioner, alleging that Petitioner sustained an injury by an accident arising out of and in the course of Petitioner's employment with Respondent, compensable under R.S. 34:15-7 et seq., supplements and amendments, respectfully states:

DATE OF ACCIDENT OR DATES OF OCCUPATIONAL EXPOSURE	DATE STOPPED WORK	DATE RETURNED TO WORK	
OCCUPATIONAL/EXPOSURE			
DATE INJURY REPORTED TO EMPLOYER AND TO WHOM	SEX	DATE OF BIRTH	MARITAL STATUS
8/95	FEMALE	11/25/63	MARRIED
WHERE	OCCUPATION		
EMPLOYER'S PREMISES	CLERK TYPIST		
HOW INJURY OCCURRED	WORK EFFORT ON COMPUTER, TYPEWRITER & CONSTANT USE OF BOTH HANDS & ARMS.		

GROSS WEEKLY WAGES	RATE OF COMPENSATION	TEMPORARY DISABILITY PAID	PERMANENT DISABILITY PAID
\$	\$	\$NONE	\$NONE

DESCRIBE EXTENT AND CHARACTER OF INJURY: If there has been amputation or loss of usefulness of any member or impairment of any physical function, explain fully.

PERMANENT INJURY TO BOTH HANDS & BOTH ARMS & NECK WITH NEUROLOGICAL CONSEQUENCES.

SINCE ENTRY OF JUDGEMENT IN DIVISION OF COMPENSATION BY HONORABLE CHESTER APLY JUDGE OF COMPENSATION ON 04/15/98 FOR 45% OF PARTIAL TOTAL MY CONDITION HAS WORSENERD AND MY COMPLAINTS HAVE WORSENERD AND I REQUIRE ADDITIONAL AND FURTHER MEDICAL CARE AND SURGERY HAS BEEN PRESCRIBED DATE OF LAST COMPENSATION PAID, PAYMENTS CURRENT

Petitioner (DID) (DID NOT) seek compensation at any Informal hearing.
A true copy of Petitioner's treating physician's report is attached hereto Yes No
Medical aid (WAS) (WAS NOT) furnished by Petitioner's employer.
Give names and addresses of physicians and hospitals:
CENTRAL JERSEY HAND SURGERY
PRESENT EMPLOYMENT STATUS, WITH RESPONDENT

DATE OF FILING
03/04/99
JURAT VERIFIED
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Aa 8

Were you eligible for Medicaid benefits at the time of the accident? Yes No
Did you become eligible for Medicaid benefits after the accident? Yes No
You are advised that Medicaid payments related to the accident are to be repaid in accordance with N.J.S.A. 30:40-1, et seq.

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKMAN'S COMPENSATION

ANSWER TO APPLICATION FOR
REVIEW OR MODIFICATION OF
FORMAL AWARD

C.P. NO. 95-034926

D.O. TOMS RIVER

PETITIONER

SOCIAL SECURITY NUMBER 135-68-6441
NAME TAMI ROSALES
ADDRESS (Including County) 56 GLADNEY AVE. TOMS RIVER, NJ 08753

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER 22-3092031
NAME CURRY & SALZER
ADDRESS (Including County) 611 MAIN ST PO BOX 4806 TOMS RIVER, NJ 08754 4806

VS

RESPONDENT

NAME State of New Jersey TRIAL COURT SUPPORT
ADDRESS (Including County) c/o Dept. of Treasury P.O. BOX 620 Trenton, NJ 08625-0620

INSURANCE CARRIER

NAME (Indicate If Not Covered or Self-Insured) Se Self-Insured
CLAIM 95-0001-0009763-BJH

TO THE DIVISION OF WORKMEN'S COMPENSATION: BUREAU OF RISK MANAGEMENT
in answer to the application for review or modification respectfully states:
Answering party's address is: P.O. BOX 620, Trenton, NJ 08625-0620

TEMPORARY DISABILITY WAS PAID FROM _____ TO _____
for a total of _____ weeks at _____/week, or: _____

PERMANENT DISABILITY WAS PAID FROM 09/01/95 TO 11/02/00
for a total of 270.00 weeks at 213.66 /week, or: 57688.20

The date of the last compensation payment was 11/02/00

THE FACTUAL, LEGAL AND MEDICAL REASONS FOR DENYING THE APPLICATION
ARE AS FOLLOWS:

1. Petitioner received an award for permanent disability of 45.00 % of partitial total amounting to \$ 57688.20 , pursuant to Judgement signed 04/15/98 by Honorable CHESTER APY , Judge of Compensation.
2. The petitioner has been fully compensated for the injuries sustained on 09/01/95 and is not entitled to additional medical treatment, temporary disability or permanant disability benefits.
3. Respondent denies liability and responsibility for any medical and/or hospital treatment or services not authorized by the respondent.

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief.

PÉTER VERNIERO, ATTORNEY GENERAL

Michael O'Brien Aca9

ATTORNEY FOR RESPONDENT

DATE

By: Michael O'Brien, Deputy Attorney General

State of New Jersey
Department of Labor
Division of Workers' Compensation
CN381
Trenton, New Jersey 08625-0381

EMPLOYEE'S CLAIM PETITION
SYSTEM GENERATED

CASE No. 99-007099
D.O. TOMS RIVER

P E T I T I O N E R	SOCIAL SECURITY NUMBER	135-68-6441
	NAME	TAMI M ROSALES
	ADDRESS (Including County)	OCEAN COUNTY 56 GLADNEY AVENUE TOMS RIVER NJ 08753
	DECEDENT NAME	

A P P E L I C A T I O N E R F O R I N C A S U R A N C E	<input type="checkbox"/> NEW JERSEY REGISTRATION NUMBER	22-3637339	ASKD
	<input type="checkbox"/> SSN		
	<input checked="" type="checkbox"/> FEDERAL EMPLOYER IDENTIFICATION NUMBER		
	NAME	SALZER KUSHINSKY & DEVINCENS	
ADDRESS	82 EAST WATER ST PO BOX 1120 TOMS RIVER NJ 08754-1120		
TELEPHONE (Area Code)	(732)	349-0188	

VS

R E S P O N D E N T	NAME	STATE OF NEW JERSEY
	ADDRESS (Including County)	MERCER COUNTY CN 620 TRENTON NJ 08625
	<input checked="" type="checkbox"/> NEW JERSEY REGISTRATION NUMBER <input type="checkbox"/> FEDERAL EMPLOYER IDENTIFICATION NUMBER	08-000001-01-001

NAME (Indicate if Not Covered or self-insured) NJ REG. OR FEIN	93-1000187
BUREAU OF RISK MGMNT	
ADDRESS	PO BOX 620 TRENTON NJ 08625-0620
CARRIER'S CLAIM FILE NUMBER	

TO THE DIVISION OF WORKERS' COMPENSATION:

Petitioner, alleging that Petitioner sustained an injury by an accident arising out of and in the course of Petitioner's employment with Respondent, compensable under R.S. 34:15-7 et seq, supplements and amendments, respectfully states:

DATE OF ACCIDENT OR DATES OF OCCUPATIONAL EXPOSURE OCCUP EXP TO PRESENT	DATE STOPPED WORK	DATE RETURNED TO WORK	
DATE INJURY REPORTED TO EMPLOYER AND TO WHOM	SEX FEMALE	DATE OF BIRTH 11/25/63	MARITAL STATUS MARRIED
WHERE EMP. PREMISES	OCCUPATION CLERK TYPIST		
HOW INJURY OCCURRED WORK EFFORT ON COMPUTER AND CONSTANT USE OF BOTH HANDS, ARMS, SHOULDERS.			

GROSS WEEKLY WAGES \$ 395.78	RATE OF COMPENSATION \$	TEMPORARY DISABILITY PAID \$ SALARY	PERMANENT DISABILITY PAID \$ NONE
---------------------------------	----------------------------	--	--------------------------------------

DESCRIBE EXTENT AND CHARACTER OF INJURY: If there has been amputation or loss of usefulness of any member or impairment of any physical function, explain fully.

INJURY TO HANDS, ARMS, SHOULDERS AND NECK WITH NEURO CONSEQUENCES.

Petitioner (DID) (DID NOT) seek compensation at any Informal hearing. A true copy of Petitioner's treating physician's report is attached hereto <input type="checkbox"/> Yes <input type="checkbox"/> No Medical aid (WAS) (WAS NOT) furnished by Petitioner's employer. Give names and addresses of physicians and hospitals: CENTRAL JERSEY HAND SURGERY	DATE OF FILING 03/04/99 JURAT VERIFIED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	---

Aa10

Were you eligible for Medicaid benefits at the time of the accident? Yes No
Did you become eligible for Medicaid benefits after the accident? Yes No
You are advised that Medicaid payments related to the accident are to be repaid in accordance with N.J.S.A. 30:40-1, et seq.

State of New Jersey
Department of Labor and Industry
DIVISION OF WORKMAN'S COMPENSATION

RESPONDENT'S ANSWER TO
CLAIM PETITION

C.P. NO. 99-007099

D.O. TOMS RIVER

PETITIONER

SOCIAL SECURITY NUMBER

135-68-6441

NAME

TAMI ROSALES

ADDRESS (Including County)

56 GLADNEY AVE.

TOMS RIVER, NJ 08753

ATTORNEY FOR PETITIONER

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER

22-3637339

NAME

SALZER KUSHINSKY & DEVINCENS

ADDRESS (Including County)

P O BOX 1120
82 EAST WATER ST
TOMS RIVER, NJ 08754 1120

VS

RESPONDENT

NAME

State of New Jersey
TRIAL COURT SUPPORT

ADDRESS (Including County)

c/o Dept. of Treasury
CN 620
Trenton, NJ 08625-0620

INSURANCE CARRIER

NAME (Indicate if Not Covered or Self-Insured)

Se **Self-Insured**

CLAIM

99-0001-0001638-BJH

IN ANSWER TO CLAIM PETITION IN THIS CAUSE RESPONDENT STATES:

<input type="checkbox"/> RESPONDENT AND CARRIER INFORMATION SUPPLIED BY PETITIONER HAS BEEN CORRECTED	PETITIONER WAS IN EMPLOYMENT ON DATE ALLEGED IN PETITION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF DIFFERENT, INDICATE CORRECT DATE	INJURY OCCURRED OUT OF AND IN THE COURSE OF EMPLOYMENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	EMPLOYMENT WAS COVERED BY ARTICLE 2 R.S. 34:15 <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
---	---	-------------------------------------	---	---

HOW INJURY OCCURRED?

ALLEGES COMPUTER AND CONSTANT USE OF HANDS.

WHERE?

TRIAL COURT.

NATURE OF INJURY OR DISEASE

ALLEGES HANDS, ARMS, AND SHOULDERS.

PETITIONER'S OCCUPATION

CLERK TYPIST

AGE
35

DATE RESPONDENT HAD KNOWLEDGE OF INJURY	DATE PETITIONER STOPPED WORK	DATE RETURNED TO WORK	GROSS WEEKLY WAGE	RATE OF COMPENSATION	TEMPORARY DISABILITY PAID	PERMANENT DISABILITY PAID
03/04/99	NCLT		470.27	329.18 (T) 138.00 (P)	* SEE BELOW	

RESPONDENT RENDERED AID TO THE PETITIONER BY THE FOLLOWING INDIVIDUALS AND/OR INSTITUTIONS:

OTHER PERTINENT INFORMATION:
IF THERE IS A CLAIM INVOLVING A THIRD PARTY IN THIS CASE, THE RESPONDENT ASSERTS ITS RIGHTS TO REIMBURSEMENT CONTAINED IN N.J.S.A. 34:15AT40.

* DENIAL- SEE ATTACHED.
NO TREATMENT, NO REPORT FILED, SAME AS C.P.95-034926 RE-OPENED.

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief.

PETER VERNIERO, ATTORNEY GENERAL

Michael O'Brien Aa 11

ATTORNEY FOR RESPONDENT

DATE

By: Michael O'Brien, Deputy Attorney General

Respondent denies that the petitioner sustained a compensable accident or occupational exposure arising out of and in the course of the petitioner's employment.

Respondent denies that any condition from which the petitioner is now suffering is the result of a compensable accident or occupational exposure.

Respondent denies that the petitioner is entitled to payments of temporary or permanent disability benefits, and denies that the petitioner is entitled to medical treatment.

Aa 12

611 MAIN STREET
P.O. BOX 4806
TOMS RIVER, NJ 08754-4806
TELEPHONE
732-914-8707
732-505-0230
TELEFAX
732-240-7767

82 EAST WATER STREET
P.O. BOX 1120
TOMS RIVER, NJ 08754-1120
TELEPHONE
732-914-8700
732-349-0188
732-240-4215

EMAIL: SKDLAW@AOL.COM

**SALZER,
KUSHINSKY
& DEVINCENS, LLC**
ATTORNEYS AT LAW

FSS/mjk

SALZER, KUSHINSKY & DeVINCENS
611 Main Street
P. O. Box 4806
Toms River, NJ 08754
(732) 240-4215
Attorneys for Petitioner

**NEW JERSEY DEPARTMENT OF LABOR
AND INDUSTRY
DIVISION OF WORKERS' COMPENSATION
OCEAN COUNTY**
C.P. Nos. 99-007099, 95-034926

TAMI M. ROSALES
S. S. NO. 135-68-6441

Petitioner,

vs.

STATE OF NEW JERSEY

Respondent

**NOTICE OF MOTION TO JOIN THE
SECOND INJURY FUND**

IN THE MATTER OF THE APPLICATION OF
TAMI M. ROSALES FOR BENEFITS UNDER
THE SECOND INJURY FUND:

Aa13

611 MAIN STREET
P.O. BOX 4806
TOMS RIVER, NJ 08754-4806
TELEPHONE
732-914-8707
732-505-0230
732-240-7767
TELEFAX

EMAIL: SKDLAW@AOL.COM

82 EAST WATER STREET
P.O. BOX 1120
TOMS RIVER, NJ 08754-1120
TELEPHONE
732-914-8700
732-349-0188
732-240-4215

**SALZER,
KUSHINSKY
& DEVINCENS, LLC**
ATTORNEYS AT LAW

TO: COMMISSIONER OF LABOR & INDUSTRY
John Fitch Plaza
CN-399
Trenton, NJ 08625

HONORABLE PETER VERNIERO
Attorney General
Department of Law & Public Safety
Hughes Justice Complex
CN-105
Trenton, NJ 08625

MICHAEL O'BRIEN, ESQ.
c/o Dept. of Treasury
C. N. 620
Trenton, NJ 08625

SIRS:

PLEASE TAKE NOTICE that on a date to be set by the Court, I shall make application to the Presiding Judge of Compensation, at the Division of Worker's Compensation, 954 Route 166, Toms River, New Jersey at 9:00 a.m. or as soon thereafter as counsel may be heard, for an Order joining the Commissioner of Labor & Industry as a party to the proceedings in his capacity as Custodian of the Second Injury Fund pursuant to the Rules of the Division of Worker's Compensation.

At the time and place aforementioned, the undersigned shall also make application for a Consolidation of the trial of all cases mentioned and for such other relief as the Court may deem necessary and proper.

Aa14

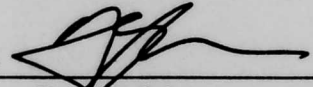
**SALZER,
KUSHINSKY
& DEVINCENS, LLC**
ATTORNEYS AT LAW

82 EAST WATER STREET
P.O. BOX 1120
TOMS RIVER, NJ 08754-1120
TELEPHONE
732-914-8700
732-349-0188
732-240-4215

611 MAIN STREET
P.O. BOX 4806
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TELEPHONE
732-914-8707
732-505-0230
732-240-7767

EMAIL: SKDLAW@AOL.COM

SALZER, KUSHINSKY & DeVINCENS
Attorneys for Petitioner

BY: 
Frank S. Salzer

Dated: 1-26-2000

A 215

2317
FSS/mjk

SALZER, KUSHINSKY & DE VINCENS
611 Main Street
P. O. Box 4806
Toms River, NJ 08754
(732) 240-4215
Attorneys for Petitioner

NEW JERSEY DEPARTMENT OF LABOR
AND INDUSTRY
DIVISION OF WORKERS' COMPENSATION
OCEAN COUNTY
C.P. Nos. 99-007099, 95-034926

611 MAIN STREET
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82 EAST WATER STREET
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TELEPHONE
732-914-8700
732-349-0188
732-240-4215

SALZER,
KUSHINSKY
& DE VINCENS, LLC
ATTORNEYS AT LAW

-----X
TAMI M. ROSALES
S. S. NO. 135-68-6441

Petitioner,

VERIFIED PETITION

vs.

STATE OF NEW JERSEY

Respondent.
-----X

IN THE MATTER OF THE APPLICATION OF FOR
BENEFITS UNDER THE SECOND INJURY FUND:

TO: COMMISSIONER OF LABOR & INDUSTRY
John Fitch Plaza
CN-110
Trenton, NJ 08625

HONORABLE PETER VERNIERO
Attorney General
Department of Law & Public Safety
Hughes Justice Complex
CN-116
Trenton, NJ 08625

Aa 16

MICHAEL O'BRIEN, ESQ.
c/o Dept. of Treasury
C. N. 620
Trenton, NJ 08625

SIRS:

YOUR PETITIONER, TAMI M. ROSALES, residing at 56 Gladney Avenue,
Toms River, Ocean County, NJ, does say as follows:

1. Your Petitioner was born on 11/25/63 and is presently 35 years of age.
2. Your Petitioner is divorced with one infant child.
3. Your Petitioner did graduate from high school and can read and write in the English language.
4. Your Petitioner has been in the employ of the State of New Jersey as a clerk typist for in excess of 10 years.
5. Your Petitioner has filed Claim Petition 99-007099 alleging that in the course of her work effort with the State of New Jersey as a clerk typist she was required to work on a computer and this involved constant use of both hands, arms and shoulders resulting in injuries to those parts of her body and injuries to her neck with neurological consequences.
6. Your petitioner has filed Claim Petition 95-034926 which is in the nature of an Application to Review a previously entered Judgment on April 15, 1998 which Judgment provided for 45% of partial total for residuals of nerve impingement and de quervain's syndrome with bilateral carpal tunnel release followed by right ulnar nerve release and right median nerve and trigger thumb release and flexor tenosynovectomy with status post anterior disposition and neurolysis right ulnar nerve at the right elbow.

Aa17

611 MAIN STREET
P.O. BOX 4806
TOMS RIVER, NJ 08754-4806
TELEPHONE
732-914-8707
732-505-0230
TELEFAX
732-240-7767

EMAIL: SKDLAW@AOL.COM

82 EAST WATER STREET
P.O. BOX 1120
TOMS RIVER, NJ 08754-1120
TELEPHONE
732-914-8700
732-349-0188
732-240-4215

**SALZER,
KUSHINSKY
& DEVINCENS, LLC**
ATTORNEYS AT LAW

Rup
W/M 100% @ OAR in 1998

The respondent received a credit in the amount of 25% of partial total which was subtracted from the 45% of partial total as the petitioner had received an earlier Judgment in the amount of 25% of partial total on Claim Petition 91-015164 which earlier Judgment was for bilateral carpal tunnel syndrome with de quervain's syndrome and ulnar nerve disability involving an occupational exposure through 1991.

7. For some time prior to your petitioner's employment, or prior to the manifestation of any compensable injuries, your petitioner had also been partially and permanently disabled due to the following conditions:

- A. Your petitioner suffered a fractured right arm on two occasions at age 10 and 12.
- B. Your petitioner did undergo left knee surgery by Dr. Ralph Kuhn at Kimball Medical Center in and about 1981.
- C. Your petitioner has been diagnosed with mitral valve prolapse.
- D. Your petitioner has been admitted to Kimball Medical Center by Dr. Kramer in and about April of 1998 for right ankle surgery.

8. Your Petitioner alleges that she is totally and permanently disabled as a result of experiencing injuries under conditions entitling her to compensation therefore when she had previously been partially and permanently disabled from other causes as hereinabove set forth. By reason thereof and therefor, your Petitioner alleges that she is entitled to benefits under the Second Injury Fund pursuant to appropriate statutes.

9. Your Petitioner alleges further that she is totally and permanently disabled as a result of the injuries received in the last compensable occupational exposure in combination with

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TELEPHONE
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732-505-0230
732-240-7767

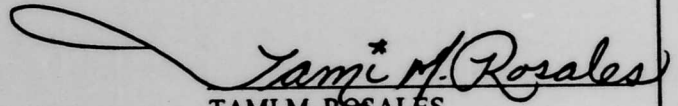
EMAIL: SKDLAW@AOL.COM

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& DEVINCENS, LLC**
ATTORNEYS AT LAW

previous compensable occupational exposures for which she received a Judgment in the Division of Compensation in the amount of 45% of partial total on Claim Petition 95-034926 involving occupational exposure through 1995 and in connection with a certain Judgment entered on Claim Petition 91-015164 for which she received an Order of Settlement in the amount of 25% of partial total for an occupational exposure through 1991 all with the County of Ocean.

10. Your Petitioner is not presently receiving Social Security Disability Benefits will be making application in connection therewith and will be making application for ordinary disability pension.


TAMI M. ROSALES

DATED: 10/13/99

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TELEPHONE (732) 458-0300

January 10, 2000

Frank S. Salzer, Esq.
PO Box 4806
Toms River, NJ 08753

Dear Frank S. Salzer, Esq.:

Respondent:	State of NJ
Petitioner:	Tami Rosales
Date of Accident:	1989 - present
Date of examination:	December 30, 1999

HISTORY:

The case in question is one in which Ms. Tami Rosales of 56 Gladney Avenue, Toms River, NJ was injured while working. Ms. Rosales is 36 years of age and is divorced with one child. She gives a medical history of right hand fracture as a child, tonsillectomy in 1971, left knee arthroscopic surgery in 1989, and surgery for right tarsal tunnel in June 1998.

The alleged accident occurred during the course of her employment. Please refer to my reports dated January 16, 1998, April 16, 1996, January 20, 1994 and August 1, 1991 for pertinent information regarding the history of the accident and injuries sustained.

Since the petitioner was last seen in my office her complaints persisted and her condition worsened. Ms. Rosales continued under the care of Dr. Pess of Central Jersey Hand. A NCS of March 2, 1999 showed slowing of conduction velocity ulnar nerve across the elbow compared to below the elbow. An NCS of April 6, 1999 was positive for right carpal tunnel syndrome and right ulnar neuropathy. Treatment received was conservative and included physical therapy and injections of Xylocaine and Celestone to her elbow and wrists. She was given an elbow strap to wear. A diagnoses of left cubital tunnel syndrome and bilateral tendinitis was made.

The petitioner last worked on November 5, 1999. She applied for disability as she is not able to use her arms or hands to work.

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SUBJECTIVE EXAMINATION:

The petitioner complains that pain is present even with her normal everyday activities. It takes longer for her to do things. Her sleep is disturbed and her pain is worse at night. Since her last evaluation her symptoms have increased. She has twitches in her neck, which gives her headaches. The twitches usually occur at night and come out of the blue. Any draft aggravates her pain. She is angry and depressed because she is not able to work. She has electric shocks that radiate up and down her arms. She has loss of grip in her right hand and thumb. Her right index finger does what it wants to do. Objects drop from her right hand.

She finds it difficult to write. Her right hand gets tight. Her right hand turns ice cold during cold, damp, and changing weather. Her scars become bright purple during winter. She has numbness that radiates up into her right elbow and neck, which creates headaches. The right side of her back goes numb and the numbness extends into her mid back. She is not able to do any type of heavy work. She takes medication to help her sleep. Playing with her child is limited. She is not able to work on a computer, which was part of her job requirement. Sport playing is limited.

OBJECTIVE EXAMINATION:

Examination of the petitioner reveals a well-developed female complaining of pain. The petitioner is 5 feet 8 inches tall and weighs 248 pounds. Blood pressure is 140/82.

Examination of the cervical spine reveals tenderness to palpation with spasm over the bilateral cervical paravertebral and bilateral trapezius muscles. Flexion is to 45 degrees. Extension is to 5 degrees. Sidebending is to 15 degrees on the right and to 10 degrees on the left. Rotation is to 30 degrees bilaterally. Her strength is markedly diminished on the right as compared to the left. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She is able to shrug her shoulders.

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Examination of the shoulders reveals tenderness to palpation over the superior posterior aspects bilaterally. Flexion is to 135 degrees on the right and to 170 degrees on the left. Extension is to 30 degrees on the right and to 70 degrees on the left. Abduction is to 135 degrees on the right and to 165 degrees on the left. There is an audible palpable crepitus noted on the right during abduction that is not present on the left. Rotation is to 100 degrees on the right and to 105 degrees on the left. Her strength is markedly diminished on the right as compared to the left. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She is able to shrug her shoulders.

Examination of the right elbow reveals a scar that measures 10 cm over the medial aspect of the elbow. Examination of the elbows reveals tenderness to palpation over the medial aspects bilaterally. Flexion, extension, and pronation of the elbows are complete. Supination is to 155 degrees on the right and to 160 degrees on the left.

Examination of the right wrist and palm reveals a 9-½ cm scar. Over the anterior aspect of the right MP joint reveals a scar that measures 2.3 cm. There is a 1.4-cm horizontal scar over the anterior palm. Examination of the wrists reveals tenderness to palpation over the anterior wrists and palms bilaterally. Flexion is to 10 degrees on the right and to 20 degrees on the left. Extension is to 10 degrees on the right and to 20 degrees on the left. Inversion is to less than 5 degrees bilaterally. Eversion is to less than 5 degrees bilaterally. Pronation is to 180 degrees bilaterally (complete). Supination is to 155 degrees on the right and to 160 degrees on the left. Her strength is markedly diminished on the right as compared to the left. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She makes weak fists bilaterally. She cannot flex, flare, extend, or oppose any digits of the right hand. She is able to flex, flare, extend, or oppose the digits of her left hand.

Examination of the thumb reveals tenderness to palpation over the thumb. Flexion of the thumb at the MP joint is to 45 degrees on the right and to 70 degrees on the left. Extension of the thumb at the MP joint is to 170 degrees on the right and to 180 degrees on the left. Flexion of the thumb at the IP Joint is to 30 degrees on the right and to 75 degrees on the left. Extension of the thumb at the IP Joint is to 170 degrees on the right and to 180 degrees on the left.

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The right biceps measures 36 $\frac{1}{4}$ cm and the left biceps measure 37 cm. The right and left elbows measure 27 cm. The right forearm measures 25 cm and the left forearm measures 25 $\frac{3}{4}$ cm. The right and left wrists measure 15 $\frac{1}{2}$ cm. The right palm measures 19 $\frac{3}{4}$ cm and the left palm measures 19 cm.

Examination of the left knee reveals arthroscopic scars about the periphery. Examination of the left knee reveals tenderness to palpation over the medial and anterior aspects. Flexion in the standing position is to 80 degrees on the right and to 45 degrees on the left. Extension in the sitting position is to 180 degrees bilaterally. She elicits pain upon medial and lateral compression of the left leg. Her sensation is equal and normal. Negative pivot shift test and Lachman's test bilaterally. She is able to perform toe stands. She is not able to perform heel stands. She is only able to perform a partial squat not a complete one and there is an audible palpable crepitus noted in her left knee that is not present in her right knee. There is an antalgic gait noted. She is not able to support her body weight on her left leg alone. She is able to support her body weight on her right leg alone.

Examination of the right ankle reveals a "J" Shaped scar medial aspect of the ankle that measures 9 cm. Examination of the right foot reveals tenderness to palpation over the medial aspect. Plantar flexion is to 25 degrees on the right and to 35 degrees on the left. Dorsi flexion is to 15 degrees on the right and to 20 degrees on the left. Inversion is to 15 degrees on the right and to 35 degrees on the left. Eversion is to 5 degrees on the right and to 10 degrees on the left. Her sensation is equal and normal. Her sensation is equal and normal. Pulses are good. She is able to perform toe stands. She is not able to perform heel stands. She is only able to perform a partial squat not a complete one and there is an audible palpable crepitus noted in her left knee that is not present in her right knee. There is an antalgic gait noted. She is not able to support her body weight on her left leg alone. She is able to support her body weight on her right leg alone.

The right and left knees measure 43- $\frac{1}{2}$ cm. The right and left calves measure 43- $\frac{1}{2}$ cm. The right and left distal legs measure 21- $\frac{1}{2}$ cm. The measurement across the right and left longitudinal arch is 24 $\frac{1}{4}$ cm.

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DIAGNOSES:

RIGHT CARPAL TUNNEL SYNDROME, BILATERALLY

DEQUERVAIN'S DISEASE

ABERRANT ULNAR NERVE, RIGHT

**STATUS POST RELEASE TRANSVERSE CARPAL LIGAMENT,
SYNOVIAL BIOPSY, EXPLORATION, AND DECOMPRESSION
OF THE ULNAR NERVE, RIGHT**

STATUS POST LEFT ENDOSCOPIC CARPAL TUNNEL RELEASE

**STATUS POST RIGHT CARPAL TUNNEL RELEASE AND
NEUROLYSIS OF THE MEDIAL NERVE**

**NEUROPATHY OF THE RIGHT MEDIAN NERVE AND
RIGHT TRIGGER FINGER**

**STATUS POST NEUROLYSIS OF RIGHT MEDIAL NERVE
WITH RIGHT TRIGGER THUMB RELEASE AND FLEXOR
TENOSYNOVECTOMY OF WRIST AND PALM**

RIGHT CUBITAL TUNNEL SYNDROME

**STATUS POST ANTERIOR TRANSPOSITION AND NEUROLYSIS
RIGHT ULNAR NERVE, ELBOW**

**AGGRAVATION, ACCELERATION, AND EXACERBATION OF
PRIOR RIGHT AND LEFT HAND INJURIES**

PERSISTENT RIGHT CARPAL TUNNEL SYNDROME

LEFT CUBITAL TUNNEL SYNDROME

LEFT ULNAR NEUROPATHY

BILATERAL TENDINITIS

STATUS POST LEFT KNEE ARTHROSCOPY

STATUS POST TARSAI TUNNEL SURGERY, RIGHT

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January 10, 2000
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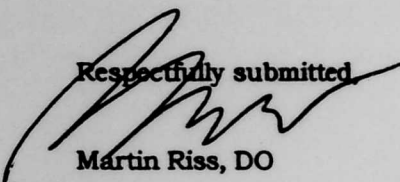
DISABILITY AND OPINION:

It is my opinion that there is demonstrable objective medical evidence of restriction of function and lessening to a material degree of working ability and that the petitioner is disabled orthopedically to the extent of 100% of the total and is totally disabled. No fundamental or marked improvement can be reasonably expected and the prognosis for improvement is not favorable.

It is my opinion that the petitioner is not fit as a working unit nor is she a fit candidate for vocational rehabilitation.

It is my opinion the aforementioned complaints, findings, and diagnoses are causally related to the occupational exposure of 1989 and to her pre-existing conditions and are permanent in nature.

Respectfully submitted


Martin Riss, DO

MR/saws

Aa 26

JAN 04 2002

STATE OF NEW JERSEY
DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
OCEAN COUNTY DISTRICT
C.P. # 99-7099
95-34926

TAMI ROSALES ,
Petitioner

vs.

INTERIM DECISION

STATE OF NEW JERSEY,
Respondent

vs.

SECOND INJURY FUND

APPEARANCES:

For the Petitioner: SALZER, KUCHINSKY, & MARUT, Esquires
by: FRANK S. SALZER, Esquire

For the Respondent: JOHN J. FARMER, Attorney General of New Jersey, Esquire
by: JANE LAFFERTY , Deputy Attorney General, Esquire

For SECOND INJURY FUND: JOHN J. FARMER, Attorney General of New Jersey, Esquire
by: LOIS J. GREGORY, Senior Deputy Attorney General, Esquire

MONCHER, LAWRENCE G., J.W.C.,

Mrs. Rosales is a 38 year old disabled judicial trial court support clerk initially employed by the County of Ocean. In January 1995, she was transferred to the State Judiciary. Her claim is that repetitive use of her hands caused and/or aggravated bilateral carpal tunnel syndrome, bilateral De Quervain syndrome, and bilateral cubital tunnel syndrome. Her case was that the

trauma of using her hands and arms in her job functions caused injury to the nerves and tendons of both upper extremities. She has been subjected to multiple surgeries, therapy and procedures, the net result has been minimal relief from constant pain, especially whenever she tried to perform simple job duties such as keyboarding on a computer, answering the telephone, and pulling files from a drawer.

Petitioner has filed 3 claims. One is an application for review and modification of an April 15, 1998 award against the State for essentially the same impairment as the subsequent exposure until 1999. The second is a claim against the State for the consequences of an exposure from April 15, 1998 award until the filing of the claim petition on March 4, 1999.¹ The third claim is a Second Injury Fund Verified Petition which she filed on February 23, 2000, seeking permanent total disability benefits from the Fund to commence when the respondent's benefits expire. See N.J.S.A. 34:15-95. For the reasons set forth in this decision, I have determined that she sustained a compensable occupational disease which has progressed and been aggravated by her work to the point where she is now permanently totally disabled and most likely entitled to Second Injury Fund benefits.

This trial commenced with the testimony of Mrs. Rosales. Before the first medical witness could testify, I was transferred to another county. Both Deputy Attorneys General were not available on the same day I was present in Toms River. As a consequence, I decided it was appropriate to proceed with the trial under the Second Injury Fund Bifurcation Rule. N.J.A.C.

¹ I have amended the pleadings to conform to the proofs, the last day of exposure is the last day of her employment, November 4, 1999. The proofs before me demonstrate she continued to engage in the very same duties which gave rise to the original award plus some additional duties which placed stress on her previously disabled hands, wrists, forearm, and elbows.

12:235-7.2, et seq. This rule provides for an initial trial on the issue of compensability and total disability with petitioner and the employer's attorney. The question of Second Injury Fund liability is decided latter with the participation of a Deputy Attorney General representing the Fund. Because, the Fund and the State as an employer were each represented by a Deputy Attorney General and both had the same interest in the testimony of the forensic witnesses, this case was most appropriate for bifurcation. Nevertheless, Fund shall be afforded the opportunity to be heard.

The respondent presented no lay witnesses. The petitioner and the respondent each presented one forensic witness. Both of whom was qualified by experience and education to testify on the subject matter of this case. Petitioner's expert, Dr. Martin Riss, is engaged in the active practice of medicine including industrial medicine for local employer and has conducted orthopedic examinations for petitioners in compensation cases. He is board certified in family medicine and geriatric medicine and has qualified as an expert in forensic medicine on numerous occasions. Respondent's expert, Dr. A. Gregory Mc Clure is board eligible in internal medicine. His practice has been restricted to conducting forensic orthopedic examinations for insurance companies. He has qualified as an expert in this division on numerous occasions.

Petitioner placed 21 exhibits into evidence, including a description of duties of petitioner's job title as a Support Staff Judicial Clerk 2; 5 reports of physical examination and review of medical records prepared by Dr. Martin Riss conducted from August 1, 1991 to January 10, 2000; a detailed accurate hypothetical question; Point Pleasant Hospital record of April 5, 1991; Community Hospital records of June 3, 1993, July 21, 1993, & October 18, 1995; Paul Kimbal Hospital record of August 14, 1996; Shore Neurology reports of nerve conduction and EMG

studies of petitioner's arms performed in March and April 1999; X-Ray Associates reports of studies conducted in July 1999 which reported possible calcific tendinitis in the right shoulder and a normal MRI of the cervical spine; Dr. Gary Pess', petitioner's treating physician, office records from October 3, 1998 to September 14, 1999; an October 5, 1999 medical examination report prepared by Dr. Gary Pess in connection with petitioner's disability retirement application; office records of treating physicians at Community Medical Associates; a Jersey Shore Neurological report of Dr. Gilson dated January 1, 2001 and Dr. Riss' CV. Respondent introduced the CV of its forensic witness, Dr A. Gregory Mc Clure. The expert medical examination reports from the 1998 settlement with the State were a part of the record of this case..

At the conclusion of the trial, petitioner and the respondent were offered the opportunity to file memoranda which summarized their respective interpretation of the record and proposed findings of fact and conclusions. Petitioner's counsel submitted a letter memorandum which was quite helpful. The respondent declined the invitation to submit a memorandum and rested on the record.

The burden of proof here, as in all Workers' Compensation contested cases, is on the petitioner who must produce the evidence and persuade the trier of fact by a preponderance of the credible evidence of the existence of each element of the claim. Perez v. Pantasote, Inc., 95 N.J. 105, 118 (1984). The same evidential standard applies to the elements of the case on which respondent has the burden of proof. Fiore v. Consolidated Freightways, 140 N.J. 452, 479 (1995). This burden has been described as:

All that is required is that the claimed conclusion from the offered facts must be a probable or a more probable hypothesis. . . The test is probability rather than a certainty. . . . However, the evidence

must be such as to lead a reasonably cautious mind to the given conclusion. 'The standard is one of reasonable probability; i.e., whether or not the evidence is of sufficient quality to generate a belief that the tendered hypothesis is in all likelihood the truth. It need not have the attribute of certainty, but it must be well founded in reason and logic, mere guess or conjecture is not a substitute for legal proof.' [Citations omitted.] Laffey v. City of Jersey City, 289 N.J. Super. 292, 303(App. Div. 1996).

The respondent must carry that same burden of production of evidence and persuasion as to its factual contentions including issues of prior loss of function for a credit or shift of liability to the Second Injury Fund. Katz v. Township of Howell, 68 N.J. 125, 132 (1975); Gulick v. H.M. Enoch, Inc., 280 N.J. Super. 96, 109 (App. Div. 1995); Abdullah v. S.B. Thomas, Inc., 190 N.J. Super. 26, 29-30 (App. Div. 1983); and N.J.S.A. 34:15-12(d). The obvious intent of this reduction of an employer's liability is to encourage the employment of the handicapped. See Abdullah v. S.B. Thomas, Inc., *supra.*; Fiore v. Consolidated Freightways, *supra.*, 140 N.J. at 478-479; Lewicki v. New Jersey Art Foundry, 88 N.J. 75 (1981).

The Workers' Compensation Act "is remedial social legislation designed to place the costs of accidental injuries which are work-connected upon employers who may readily provide for them as operating expenses." Secor v. Penn Service Garage, 19 N.J. 315, 319 (1955). Judges are directed to "liberally appl[y] [its provisions] . . . to protect employees in the event of work-related injuries . . ." *Ibid.* The Supreme Court has reiterated recently that the Workers' Compensation Act is to be liberally construed in order that its beneficent purposes may be accomplished. Fiore v. Consolidated Freightways, *supra.*, 140 N.J. at 465. On the other hand, this directive to construe the act liberally does not extend to ignoring the burden of proof. It does not release petitioner from the burden to persuade the trier of fact that his factual contentions are

valid.

The repetitive motion claim must satisfy the definition of

a. [T]he phrase "compensable occupational disease" . . . [does] include all diseases arising out and in the course of employment which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment.

b. Deterioration of a tissue, organ or part of the body in which the function of such tissue, organ or part of the body is diminished due to the natural aging process thereof is not compensable. N.J.S.A. 34:15-31.

This statute is a part of a legislative plan to contain compensation costs as a balance for increased disability benefits for serious injuries. Fiore v. Consolidated Freightways, 140 N.J. 452, 468 (1995). Previously it was only necessary to show the occupation was a contributing cause. Giambattista v. Thomas A. Edison, Inc., supra. Now it must be shown the disease or the acceleration of the disease was "due in a material degree" to the exposure. Peterson v. Hermann Forwarding Co., 267 N.J. Super. 493, 503-508 (App. Div. 1993), certif. den. 135 N.J. 304 (1994) and Kozinsky v. Edison Products Co., 222 N.J. Super. 530 (App. Div. 1988). Further the employee must also show the exposure or condition was characteristic of or peculiar to the occupation, process or place of employment and the material cause of the occupational disease. Fiore v. Consolidated Freightways, supra. 140 N.J. @ 468-470.

Resolution of the issue of whether the employment risk was the material cause of the disease depends on whether the proofs establish the compensable disease would not have occurred to the extent it did in the absence of the described employment exposure. See Fiore v. Consolidated Freightways, supra., at 473-477. If the condition would have occurred to the same

extent without the exposure, it is not compensable. See Peterson v. Hermann Forwarding Co., supra. If the occupational exposure was a real causative factor in bringing about the disease or its extent, the injury may be compensable. Fiore, at 477.

In Prettyman v. State, 298 N.J. Super. 580, 591 (App. Div. 1997), An occurrence will be considered an accident "if either the circumstance causing the injury *or* the result on the employee's person was unlooked for...." The court instructed

We have recognized that there are "three categories of risk used in determining the connection between employment and injury." Id. at 126 (citing Howard v. Harwood's Restaurant Co., 25 N.J. 72, 83 (1957)). These categories are used to decide whether an injury arose out of the employment as required by N.J.S.A. 34:15-7. Verge, supra, 272 N.J. Super. at 126-28. The first category, described as a "but for" test, questions whether it is more likely than not that the injury would have occurred in the workplace rather than somewhere else. Id. at 126. The second category of risks are classified as "neutral risks" and are those risks that occur due to "uncontrollable circumstances which do not originate in the employment environment but which happen to befall the employee during the course of his employment." Id. at 127 (quoting Howard, supra, 25 N.J. at 84). The third category of risks are those which "do not bear a sufficient causative relationship to the employment" and are considered "personal to the claimant" or "idiopathic." Ibid. (citations omitted).

In Dietrich v. Toms River Bd. of Education, 294 N.J. Super. 252 (App. Div. 1996) the court instructed that the compensation law did not allow compensability when an underlying idiopathic cardiomyopathy condition became evident during stressful employment occurrences unless there was a material causal nexus between the employment happenings and the worsening of the underlying heart disease. The happening of acute symptoms while Dietrich was at work was merely an idiopathic occurrence. There was no credible medical evidence that the work

conditions caused the heart condition. In Dietrich, the court observed there was a lack of

“suitable medical evidence that the job stress substantially contributed to the condition or disease that developed, and that without the exposure, it would not have developed to the extent that it caused the disability manifested.”

Here, unlike Dietrich, the pathology which Mrs. Rosales sustained in her upper extremities does not fit within the third risk category discussed in Harwood. The medical pathology has already been conceded to be compensable by reason of the 1998 award. This pathology has the potential of satisfying the conditions for both of the first two risk factors. Mrs. Rosales described work conditions which were peculiar to her job duties and which her medical proofs establish were capable of causing the impairment which now afflicts her. If that is the final decision reached here, she will receive an award consistent with her wage and disability chart for 1999. If her current condition is a consequence of progression of the medical conditions described in her 1995 award, then the award here will be at constructed at the 1995 wage calculated consistent with the 1995 disability rate chart. The 1998 judgment was based on a 1995 date of exposure and manifestation of impairment in 1995. See Falcon v. American Cyanamid, 221 N.J. Super. 252 (App. Div. 1987). As discussed below, I have found petitioner to be permanently totally disabled, her compensation rate at 70 % of the pertinent wage subject to adjustment for Social Security Disability benefits yields a similar weekly rate under each claim petition for the next 24 years until this 38 year old woman attains age 62.

The Workers' Compensation statute contains this definition of permanent disability:

"Disability permanent in quality and partial in character" [is] ... permanent impairment caused by a compensable accident or compensable occupational disease, based on demonstrable objective medical evidence, which restricts the function of the body or its

members or organs; included in the criteria which shall be considered shall be whether there has been a lessening to a material degree of an employee's working ability. ... Injuries such as minor lacerations, minor contusions, minor sprains, and scars which do not constitute significant disfigurement, and occupational diseases of a minor nature such as mild dermatitis and mild bronchitis shall not constitute permanent disability within the meaning of this definition.

"Disability permanent in quality and total in character" [is] ... physical or neuropsychiatric total permanent impairment caused by a compensable accident or occupational disease, where no fundamental or marked improvement in such condition can be reasonably be expected.

Factors other than physical and neuropsychiatric impairments may be considered in the determination of permanent total disability, when such physical and neuropsychiatric impairments constitute at least 75% or higher of total disability. N.J.S.A. 34:15-36.

If petitioner is totally disabled, the Second Injury Fund shall relieve the State from the full measure of total disability weekly benefits. It is likely that petitioner's prior right tarsal tunnel surgery caused preexisting permanent partial disability within the meaning of N.J.S.A. 34:15-95. This element of partial disability is present, the question to be resolved at the follow up Second Injury Fund trial will be whether that impairment contributed to total disability or whether Mrs. Rosales is totally disabled without regard to the presence of the prior foot impairment. Put in another way is she totally disabled as a result of a series of compensable injuries to her upper extremities. Without question, the award entered in 1995 against Ocean County for 25% permanent partial disability for bilateral carpal tunnel syndrome is a prior disability for Second Injury Fund purposes. Cf. Paul v. Baltimore Upholstering Co., 66 N.J. 111 (1974) which was decided before the 1979 repeal of N.J.S.A. 34:15-95 (b). Further if the exposure from 1995 to

1999 gives rise to additional compensation disability then the net award made in 1998 is a prior disability for Second Injury Fund purposes.

Recently, in Walsh vs. RCA, 334 N.J. Super. 1, 6-8 (App. Div. 2000), Judge Cuff observed that

The Fund was established by the Legislature, pursuant to N.J.S.A. 34:15-95, as a means to "encourage the hiring by industry of people handicapped by pre-existing disabilities..." Paul v. Baltimore Upholstering Co., 66 N.J. 111, 129 (1974). The Fund is liable when a pre-existing condition combined with a work-related accident or disease renders a person totally and permanently disabled. N.J.S.A. 34:15-95; Lewicki v. New Jersey Art Foundry, 88 N.J. 75, 83 (1981). The statute aims to protect employees from being denied employment based on their pre-existing condition and risk of total disability. It also protects the employer from the obligation of absorbing the entire burden of paying for a total disability it did not cause. [Citations omitted.] Under present law, an employer is only required to pay the value of the disability caused by the occupationally compensable condition related to the employment. N.J.S.A. 34:15-95; Lewicki, supra, 88 N.J. at 83. The Fund then pays the value [at total permanent disability rates] of the partial permanent disability which pre existed the last compensable disability. Ibid. Total and permanent disability extends for a period of 450 weeks; once this period expires, the Fund is responsible for paying continuing lifetime benefits pursuant to N.J.S.A. 34:15-12(b).

N.J.S.A. 34:15-95, governing liability of the Fund, provides in pertinent part: . . . compensation payments in accordance with the provisions of paragraph (b) of [N.J.S.A.] 34:15-12 shall be made to persons totally disabled, as a result of experiencing a subsequent permanent injury under conditions entitling such persons to compensation therefor, when such persons had previously been permanently and partially disabled from some other cause . . .

There are provisions which limit the Fund's liability:

[N]o person shall be eligible to receive payments from the Second Injury Fund:

(a) If the disability from the injury caused by the person's last

compensable accident in itself and irrespective of any previous condition or disability constitutes total and permanent disability within the meaning of this Title.

(b) (Deleted by amendment.)

(c) If the disease or condition existing prior to the last compensable accident is progressive and by reason of such progression subsequent to the last compensable accident renders the person totally disabled within the meaning of this Title.

(d) If a person who is rendered permanently partially disabled by the last compensable injury subsequently becomes permanently totally disabled by reason of progressive physical deterioration or pre-existing condition or disease.

Nothing in the provisions of said paragraphs (a), (c) and (d), however, shall be construed to deny the benefits provided by this section to any person who has been previously disabled by reason of total loss of, or total and permanent loss of use of, a hand or arm or foot or leg or eye, when the total disability is due to the total loss of, or total and permanent loss of use of, two or more of said major members of the body, or to any person who in successive accidents has suffered compensable injuries, each of which, severally, causes permanent partial disability, but which in conjunction result in permanent total disability. Nor shall anything in paragraphs (a), (c) or (d) aforesaid apply to the case of any person who is now receiving or who has heretofore received payments from the Second Injury Fund.

With these considerations in mind, I now make the following findings and conclusions

Mrs. Rosales' date of birth is November 25, 1963. She is now 39 years of age. She is the divorced custodial parent of a 9 year old child. She is a high school graduate with an Associates degree from Ocean County Community College in merchandising. She does have a few additional college credits, but not enough to qualify for a 4 year degree. Despite her formal education level, nothing in her employment record suggests a basis to believe her employment skills were any greater than those used for Ocean County and the State.

Her work for the State except for some minor modifications were the same as when she was on the Ocean County payroll. Her duties for the State were essentially unchanged from 1995 until 1999. There was an attempt to lessen her exposure to repetitive movements of her upper extremities. However, in practice there was little difference in her daily activities and physical stress on her wrists and elbows. While many of the movements of her hands were not unlike those that people engage in everyday life, still, the frequency, intensity and number of such movements in her work a day life, especially for a person who had sustained so much impairment as was measured in 1998, was devastating. I find her described activities to be greatly in excess of what people do in their everyday life. She was busy doing these activities for the full work day. There does not appear to have been any lessening of the intensity of her daily routine until the very end of her employment on November 4, 1999. Unfortunately her anatomy was unable to withstand this persistent physical stress. As explained by Dr. Riss, this did cause deterioration on the ligament sheaths and tunnels through which passed nerves supplying her upper extremities. This caused pain and the interruption of nerve feed caused damage to muscle tissue and distorted function of tendons and other connective tissue.

Her testimony and the documentary evidence was the only evidence of her work activity. I heard nothing to make me doubt the truthfulness of her evidence. She was assigned as a receptionist for written, walk in, and telephone contacts for the judiciary records in the Ocean County court house. Her physical activities included keyboarding for input and accessing of information into the judiciary computers. She also described how such tasks as moving her arms and wrists to answer the telephone or pulling files gave rise to increased pain in her hands, wrists and arms.

On April 15, 1998, Mrs. Rosales did receive an award for 45% permanent partial total for the same conditions which were the subject of this trial. The State and petitioner entered into an Order Approving Settlement approved by Judge of Compensation Apy for an occupational exposure which ended in 1995 with the State receiving a credit for a prior 25% disability judgment entered against Ocean County for the same conditions for an earlier exposure period. No appeal was taken by the State or petitioner from these awards. The impact of the Order Approving Settlement is the same as a litigated judgment. The State agreed to the fact of a compensable exposure and resultant disability. Compensability for the consequence of her occupational exposure for repetitive motion of her hands was not challenged by the State. Coverage for the consequences of that occupational exposure is now the law of the case. The parties are now estopped from disputing the compensability of her occupational disease and the extent of disability which existed on that date. Respondent can not argue that her disability was more on that date and petitioner can not argue it was other than as found in that judgment.

The 1998 judgement described the permanent disability as

45 % partial total for the residuals of nerve impingement and de Quervains Syndrome with bilateral carpal tunnel release followed by right ulnar nerve release, right median nerve & trigger thumb release & flexor tenosynovectomy with status post anterior transplantation & nearolysis right ulnar nerve at right elbow. Credit for 25 % for prior judgment against the County of Ocean.

If the work effort following the 1995 judgment does not meet the standards of Occupational Disease Statute, N.J.S.A. 34:15-31 (a), then applying the theory of respondent's forensic witnesses that her problem is a natural progression of her underlying disease process, it would be liable for the increase in the impairment from this occupational disease. See N.J.S.A. 34: 15-27.

Turning now to the medical aspect of her problem.

Mrs. Rosales is now unable to use her hands and arms to perform the normal functions required by her former occupation or any other employment activity on a regular full time basis. She can not operate a computer keyboard or any engage in any other repetitive use of her hands. Even such simple tasks as retrieving files from a file draw causes tremendous pain. Her hands are now so weak that she can not hold much more than minimum weight before she drops whatever she is attempting to lift and she experiences unbearable pain. She has been left with intractable pain. In the words of Dr. Riss, she can not reasonably be expected to engage in any employment activity on a regular basis. I doubt she could even show up for work on a regular basis. Even respondent's expert, Dr. Mc Clure stated that she was only capable of working at a sedentary type job but would be required to take frequent breaks. At first he based his conclusion of minimal impairment on a lack of atrophy. Yet when questioned closely and shown the diagnostic testing, he did concede when pressed that petitioner might have some mild atrophy in right forearm. I find this minimalist approach to the medical situation of this case lacking in credibility.

I find that her use of her hands will definitely cause increased pain and cause her impairment to increase. Mrs. Rosales complaints of pain on movement of her arms and hands were validated by clinical examination and electrodiagnostic testing by her treating physicians on multiple occasions. In recounting progression of her medical impairment it is important to note that she is right handed and that this dominant hand which would receive most of the physical activity was the first extremity to become impaired. She continued working as long as she could bear the pain and to insure that she obtained sufficient time to qualify for a disability pension. She

probably should have retired earlier, but her family monetary needs motivated her to keep working longer than she probably should have. She also wanted to be sure that she put in sufficient time, 10 years, to qualify for an Ordinary disability Pension. She last worked on November 4, 1999. She is now retired on an Ordinary Disability Pension from the Public Employee Retirement System and receives Social Security Disability for herself and her 9 year old son.

A brief summary of the pertinent medical treatment history is appropriate. In 1991 after working for the County for about 2 years, Mrs. Rosales had severe pain in her right dominant hand. Following testing she received a right carpal tunnel release in 1991. In 1994, she had a left carpal tunnel release. Dr. Pess, her board certified hand surgeon, diagnosed De Quervain tenosynovitis of the left wrist. Her disease progressed. In June 1995, electrodiagnostic studies showed the continued presence of pressure on the right carpal tunnel. She underwent a revision of the surgery to her right wrist with a right trigger finger release of her right thumb. By August 1996, studies diagnosed right cubital tunnel syndrome, which required a third surgical procedure, this time she received an anterior transposition of the right ulnar nerve at the elbow plus neurolysis. As she continued to work, her problems continued.

She was in extreme pain and almost unable to write or hold objects in her hands. She again consulted Dr. Pess in October 1998. She had continued working because she needed the job to support herself. An EMG performed by Shore Neurology on March 2, 1999 now reports a left elbow ulnar neuropathy. On April 6, 1999 nerve conduction studies and an EMG of the right arm reported median nerve disorder suggestive of a right carpal tunnel disorder. Compared to the June 1995 studies, there was a worsening of the carpal tunnel syndrome but some improvement of

the right ulnar nerve neuropathy. As an aside, I observe, at least some part of the multiple surgeries yielded some improvement over the pre-surgery status, even if that improvement is minor.

On May 25, 1999 and again on September 14, 1999, Dr. Pess administered Xylocaine and Celestone injections to the dorsal side of petitioner's right hand. There was little relief from the pain and limitation of use of both arms. In January 2000 petitioner again consulted physicians because of continued stiffness and swelling of the left statutory 3rd and 4th fingers. She has been offered additional surgery, but declines it. Frankly, considering her repeated poor results of these multiple surgeries and the continued worsening her symptoms, I can not fault her wisdom.

I find a comparison of the findings as detailed by Dr. Riss in his last examination after the end of her employment exposure reflects a significant increase in her objective impairment to the point of permanent total disability. On the other hand, Dr. Mc Clure's opinion on impairment in 1996 compared to his opinion expressed in May 1997 following his review of additional medical records is at best a minimal increase in permanent disability. On September 28, 1999 following a physical examination and review of medical records Dr. Mc Clure noted findings of residual limitation following multiple surgeries and unsuccessful injection therapy to her hands. He opines a disability for the residuals a right ulnar nerve release at the elbow and bilateral median nerve entrapment. Dr. Mc Clure quantified permanent disability of 7 ½ % to the right arm an additional 10 % of her right hand as a residual of repeat right carpal tunnel release and a 5 % disability referable to the left hand following the carpal tunnel release. Looking at his opinion, it is obvious that Dr. Mc Clure increased his findings of impairment. Yethe opined that Mrs. Rosales had less disability than the respondent had earlier agreed was present. His physical findings and the

significance of the findings are completely different than the opinion and findings of Dr. Riss. Dr. Mc Clure disagreed with the conclusions of Dr. Pess. I find Dr. Mc Clure unduly minimized the impact of this injury on petitioner and place little weight on his opinions in this case.

I find Dr. Riss' findings and opinion on disability is consistent with the findings of the treating physicians and thus entitled to more weight. Additionally Dr. Pess, her board certified hand surgeon has stated unequivocally, that there is a relationship between her work and her medical impairment in her upper extremities which do cause permanent total disability. Dr. Martin Riss, petitioner forensic witness examined Mrs. Rosales on 5 occasions from August 1, 1991 to January 10, 2000. Dr. Riss was presented with 13 separate records concerning imaging reports, treating physician records, hospital records for multiple surgeries to her upper extremities, and a hypothetical question which accurately described the record in this case. In each occasion he detailed his findings on examination and commented on the extensive treating record. He traced the gradual progression of her impairment as she continued to engage in repetitive motion at work. He opined Mrs. Rosales was totally disabled and not capable of employment at the time of his last examination and detailed his medical examination findings which dovetailed with the treating records. He offered the opinion that petitioner was permanently totally disabled and gave his reasons for that opinion rooted in his medical findings and the treatment records. He traced the connection of increase in her impairment to her work activities.

I do reach the factual determination that Mrs. Rosales permanent disability following this injury is total and unlikely to ever improve. This total disability is separate and apart from the other complaints she voiced about the continued decline of her physical health and emotional

state. This subsequent deterioration of her health may be related to the compensable injury, but I was not presented with sufficient proofs to reach such a conclusion. That issue, if pertinent, can be considered if there ever was a claim for medical treatment benefits.

Here, I have paid particular attention to the records of the treating physicians. Our courts have consistently held that a treating physician in a Workers' Compensation case is in a better position to express an opinion as to cause and effect than one making an examination in order to give expert medical testimony. Bober v. Independent Plating Corp., 28 N.J. 160, 167 (1958); DeVito v. Mullen's Roofing Co., 72 N.J. Super. 233, 236 (App. Div. 1962); Celeste v. Progressive Silk Finishing Co., 72 N.J. Super. 125, 143 (App. Div. 1972). The records of Dr. Pess Jersey and Shore Neurology were prepared for purposes of treatment, not for litigation purposes. I give them great weight and they do support the conclusion that this woman has substantial totally disabling pathology. While Dr. Pess' October 5, 1999 report states she is totally disabled as a result of her work injuries, it appears to have been authored in support of her disability pension application. Thus it is not truly a treating physician office record of observations and treatment, still, it does have weight because it is similar to his findings during treatment. Dr. Pess' recommendation that she be retired is the well reasoned conclusion of a hand surgeon concerning the future activities of this seriously impaired young woman. Further exposure to the work activities described above will only cause further complications. One can not ignore the history of this ladies physical deterioration and its continued association with work activities. Dr. Pess's report to the PERS is consistent with the treatment record and with the independent findings and opinions of Dr. Riss. The granting of total disability benefits by the Public Employee Retirement System and the Federal Social Security Administration is not

probative or evidential before this tribunal, but, it is interesting to note that those entities have also decided that this young woman is totally disabled.

Petitioner pled in the alternative that either disability for which she sustained in 2 or more separate employment injuries for exposures ending in 1995 or ending in 1999 caused total disability. For the reasons discussed below, I have found that petitioner is totally permanently disabled following manifestation of permanent disability from the last compensable injury and that she is most likely eligible for Second Injury Fund benefits. Therefore, pursuant to N.J.A.C. 12:235-7.2, et seq. I am entering an interim order directing the respondent to begin payment of total permanent disability effective January 1, 2002 at the weekly benefit rate reduced for Social Security Benefits until further order of this tribunal. See N.J.A.C. 12:235-7.2.

Petitioner's wage for the prior judgment against state was \$305.23 yielding a total disability rate of \$213.66 per week. Her wage for the 1999 claim was \$470.27, yielding a total disability rate of \$329.18 per week. As seen below her weekly benefits are capped by operation of the Social Security reverse offset until age 62, some 24 years hence. No matter which wage governs her award, her weekly benefit in Workers Compensation will be the same.

Petitioner's 80 % A. C. E. as reported by the Social Security Administration was \$1468 per month. Her initial award of Social Security Benefits, effective May 1, 2000 was \$708 and she receives an auxiliary benefit of \$354 per month for her son Andre, date of birth September 22, 1992. Subtracting the total family benefit of \$1,062 from \$1,468 yields a difference of \$308 per month as the maximum compensation benefit payable at this time. N.J.S.A. 34:15-95.5. This number times 12, divided by 52 gives a weekly benefit of \$93.69. When her son's social security ends, the weekly Worker's Compensation disability benefit shall increase to \$175.39 until her 62nd

birthday.

Pursuant to the terms of the bifurcation procedure the case will now proceed to the second hearing where the Fund appears with its own counsel, a Deputy Attorney General. That hearing shall be conducted on January 29, 2002 at 9 A.M. At least 14 days before that hearing the State shall advise the petitioner, the Fund and this tribunal whether it intends to produce any witnesses. At least 7 days before that hearing the Fund shall advise this tribunal and the other parties of any witness it wishes to examine or present. For the reasons set forth in this decision, I conclude that Mrs. Rosales is permanently totally disabled as a result of her occupational conditions incurred in her employment with the State of New Jersey and prior disability.

Dated: January 2, 2002

Lawrence G. Moncher

Lawrence G. Moncher, J.W.C..

JAN 04 2002

STATE OF NEW JERSEY
DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
OCEAN COUNTY DISTRICT
C.P. # 99-7099
95-34926

TAMI ROSALES ,
Petitioner

vs.

INTERIM ORDER FOR BENEFITS

STATE OF NEW JERSEY,
Respondent

vs.

SECOND INJURY FUND

APPEARANCES:

For the PETITIONER: SALZER, KUCHINSKY, & MARUT, Esquires
by: FRANK S. SALZER, Esquire

For the RESPONDENT: JOHN J. FARMER, Attorney General of New Jersey, Esquire
by: JANE LAFFERTY , Deputy Attorney General, Esquire

For SECOND INJURY FUND: JOHN J. FARMER, Attorney General of New Jersey, Esquire
by: LOIS J. GREGORY, Senior Deputy Attorney General, Esquire

This case having been tried before me, Lawrence G. Moncher, Judge of Workers' Compensation, on various dates at the court rooms of the Division of Workers Compensation in Toms River, New Jersey, pursuant to the Second Injury Fund Bifurcation Procedure, N.J.A.C., 12:235-7.2, et seq. , and for the reasons set forth in my written decision dated January 2, 2002, which is incorporated herein by reference it is

ORDERED that respondent state of New Jersey commence payment of compensation benefits retroactively to January 1, 2002 at \$93.69 per week until further order of this tribunal; said payments to be subject to the terms of N.J.A.C., 12:235-7.2, et seq. It is further

ORDERED that the case be set down for a Second Injury Fund Trial before me on Tuesday January 29, 2002 at 9 AM.

Dated: January 2, 2002

Lawrence G. Moncher

Lawrence G. Moncher, J.W.C..



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
(609) 292-7524 TDD (609) 292-7718
www.state.nj.us/treasury/pensions

JAMES E. MCGREEVEY
Governor

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50 West State Street
Trenton, New Jersey

JOHN E. MCCORMAC, CPA
State Treasurer

THOMAS P. BRYAN
Director

June 19, 2002

FRANK S. SALZER
SALZER, KUSHINSKY & MARUT
PO BOX 4806
TOMS RIVER NJ 08754

Re: Tami Rosales
Ret. 2-10-165421
Your file 135

Dear Mr. Salzer:

This is in reply to your letter concerning Tami Rosales dated April 23 but postmarked May 7. I apologize for the delay in responding.

Tami Rosales was granted an Ordinary Disability Retirement from the Public Employees' Retirement System (PERS) effective December 1, 1999. She receives a regular monthly retirement allowance of \$734.61, a cost-of-living adjustment of 25.11, and a Medicare Part B premium reimbursement of \$46.10 for a gross monthly allowance of \$805.82. The cost-of-living adjustment is changed annually with the February 1 check.

Other than disability retirement, the only way for a member of the PERS to terminate employment and begin receiving an immediate retirement benefit is to work until age 60 or until the member has at least 25 years of service in the retirement system. Since Ms. Rosales was age 36 on her retirement date and had only 10 years of service credit, the only way she could have collected an immediate retirement benefit at that time was a disability retirement. She could have applied for a Deferred Retirement, but she would not begin collecting a retirement benefit until age 60. The regular monthly allowance under a Deferred Retirement would have been \$303.36.

Ms. Rosales has enrolled in State-paid State Health Benefits Program coverage for her self and her child. She has chosen NJ PLUS as the provider of her coverage. She is entitled to that coverage for the rest of her life. Her child is eligible until age 23 or until marriage. If she had applied for a Deferred Retirement, she would not have been eligible for SHBP coverage in retirement.

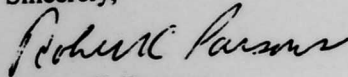
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Frank S. Salzer
Page 2
June 19, 2002

Ms. Rosales contributed a total of \$6,440.61 to the Public Employees' Retirement System before terminating employment. There is no distinction made as to what type of retirement those contributions would be used for. Employer contributions to the retirement system are never credited to an individual member's account but are paid into a fund which is invested and drawn from to pay monthly retirement allowances.

If you have any further questions, please feel free to write to me. I am happy to be of service.

Sincerely,



Robert C. Parsons
Client Services

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STATE OF NEW JERSEY
DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
MONMOUTH COUNTY DISTRICT
C.P. # 99-7099
95-34296

TAMI ROSALES ,
Petitioner

vs. Decision on Motion for Reduction of Compensation Benefits

STATE OF NEW JERSEY,
Respondent

APPEARANCES:

For the Petitioner: SALZER, KUCHINSKY & MARUT, Esquires
by: FRANK S. SALZER, Esquire

For the Respondent: DAVID SAMSON, Esquire, ATTORNEY GENERAL OF NEW JERSEY
by: MICHAEL O'BRIEN, Esquire, Deputy Attorney General for the
movant, Dept. of Treasury Division of Risk Management

For Second Injury Fund: DAVID SAMSON, Esquire, ATTORNEY GENERAL OF NEW
JERSEY
by: LOIS J. GREGORY, Esquire, Deputy Attorney General for the
Commissioner of Labor, Second Injury Fund, appeared but
presented no argument

LAWRENCE G. MONCHER, J.W.C.:

The State of New Jersey, Treasury Department, Bureau of Risk Management (Risk Management) seeks to cancel its obligation to make weekly permanent total disability payments to Mrs. Rosales because she received an Ordinary Disability Pension from the Public Employees Retirement System (PERS). This is a novel application, the first of its kind made by the State of

New Jersey since the early 1970's. This decision denying that request has been reached after studying the trial briefs, pertinent legislation, legislative history, plus regulatory and administrative agency action implementing the pertinent provisions of the Workers' Compensation statute, the PERS statute, and case law.

While this application concerns a specific state employee member of PERS, the legal principle which Risk Management urges, is one, which if correct, would apply to public employee members of most other New Jersey government pension systems which provide the same type of disability retirements. The Teachers Pension and Annuity Fund (TPAF), The Police and Firemen's System (PFRS), and the State Police Retirement System (SPRS) contain provisions similar to PERS. The Judicial Retirement System and the Alternative Benefit Plan which covers certain public college employees contain different disability concepts and interaction with post retirement periodic workers' compensation.

Both litigants presented impressive detailed written arguments and oral argument. Both parties commented on the relevant case law and statutes. Certain facts concerning Mrs. Rosales pension, as well as the procedures followed by the Treasury Department, Division of Pensions in administering pension law reductions were reviewed in a telephone conference call between Division of Pensions officials and counsel for the parties.

Factual and Procedural History

The underlying facts and procedural history of Mrs. Rosales' case should be considered. I decided that Ms. Rosales is permanently totally disabled because of physical impairments arising from a series of compensable occupational injuries sustained over a 10 year period initially while in the employ of Ocean County and then the State of New Jersey. Mrs. Rosales started her public

career working for Ocean County in 1989. During that employment she sustained a carpal tunnel syndrome for which she was awarded a workers' compensation permanent partial disability of 25%. She was then transferred to State employment and additional exposure increased her carpal tunnel disability to 45% permanent partial. She reopened her prior claims and filed a new claim petition for additional exposure which she claimed increased her carpal tunnel impairment, caused additional physical impairments increasing her overall disability to total permanent. The premise of respondent's application is not dependent on a finding of total disability and would have equal application to any entitlement to all classes of disability payable under N.J.S.A. 34:15-12, i.e. temporary total, permanent partial, amputation bonus and permanent total.

Her last compensation claims were tried before me pursuant to the bifurcation procedure for Second Injury Fund claims. N.J.A.C. 12:235-5.7.2, et seq. On January 2, 2002, I released a 20 page written decision setting forth findings of facts pertinent to her medical impairments, total permanent disability, and the series of occupational activities which caused her total disability. Her wages entitled her to a total disability rate at 70% of her weekly wage. N.J.S.A. 34:15-12. She receives Social Security Disability which plays an important historical role because of the legislature's specific direction to integrate permanent total disability with Social Security Disability. N.J.S.A. 34:15-95.5. This causes her weekly compensation rate to be reduced from a maximum of \$329.19 per week to \$93.69 per week. N.J.S.A. 34:15-95.5. I entered an interim order for payment commencing January 1, 2002 at \$93.69 per week and scheduled a hearing for January 29, 2002 to take proofs on Second Injury Fund liability and to enter a final order including retroactive payments to the date of the commencement of her total disability and for future payments. On the return date, both the deputy attorney general representing Risk

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Management and the deputy attorney general representing the Second Injury Fund announced they would present no further facts on the liability issues. I announced the finding that petitioner became totally disabled as a consequence of additional employment activities to 1999 and that the 1999 wage would determine her permanent total disability rate. Her wage of \$470.27 per week yielded a total disability rate rounded up to \$329.19 per week and shall be corrected in the judgment. The weekly compensation rate would begin to accrue after the date she left the State payroll on November 30, 1999 and continue until Risk Management's liability expired. Second Injury Fund weekly benefits would be payable at the same rate. Since both temporary total and permanent total are in a realistic sense a replacement for wages, it is appropriate to start total permanent disability on the date she left the payroll. In light of this decision, I have made no finding of facts as to whether there should be an award of permanent partial disability overlapping her employment for which Risk Management would not assert a pension offset.

The additional impairment which brought her to total permanent disability resulted in a judgment of 55% total permanent disability or 247.5 weeks, payable by Risk Management at \$329.19 per week, a total of \$81,474.53 from December 1, 1999 until August 29, 2004 inclusive. Thereafter, compensation benefits are payable by the Second Injury Fund pursuant to the continuation of benefits provision of N.J.S.A. 34:15-12(b) and 34:15-95 at \$329.19 per week. As noted above, this is subject to reduction on account of her receipt of Social Security Disability for herself and her child.

Petitioner, a single mother, began to receive Social Security Disability benefits for herself and her 9 year old son effective May 1, 2000. As a consequence, starting May 1, 2000, and after provision for her share of litigation expenses and allowances, her compensation rate must be

reduced pursuant to N.J.S.A. 34:15-95.5. Eighty percent of Mrs. Rosales' average current earnings, (80% A.C.E.) is \$1,468 per month. Her initial social security disability award, effective May 1, 2000 was \$708 per month. She receives an auxiliary payment for her dependent son, Andre, date of birth September 22, 1992, in the amount of \$354 per month. This auxiliary benefit is payable until the earlier of Andre's graduation from high school or 19th birthday. As calculated in my interim decision, her weekly compensation benefit rate payable by Risk Management and then by the Second Injury Fund is reduced from \$325.19 to \$93.69 per week until Andre's Social Security Auxiliary benefit ends, this will probably be June 1, 2010. On or about June 1, 2010, Mrs. Rosales weekly Workers' Compensation disability payment will increase to \$175.39. She will not receive her full weekly compensation rate of \$329.19 until her 62nd birthday, November 25, 2025.

At the return date for the second stage Second Injury Fund hearing, the deputy attorney general representing Risk Management, for the first time, advanced an argument based on N.J.S.A. 34:15-43 that Risk Management did not have to pay compensation benefits because Mrs. Rosales had received an ordinary disability pension for the same injuries. I granted continuing extensions to file written arguments. Risk Management's brief and appendix was received on May 23, 2002. Unfortunately its appendix of legislative bills and statements was not paginated and out of order so it was of little help and the field had to be retread anew. In its brief, Risk Management abandoned its previous argument of a complete bar. It now argued that pursuant to N.J.S.A. 34:15-29 and Bunk v. Port Authority of New York and New Jersey, 144 N.J. 176 (1996), it was entitled to offset workers' compensation weekly benefits on a dollar for dollar for each dollar of ordinary disability pension which exceed the annuity based on the

employee's contribution and that its offset should be limited to pension monies paid for the work related conditions. Petitioner's response which argued against an offset was received on July 8, 2002 . Additional stipulated facts were placed on the record and the parties offered oral argument.

In this case, the parties stipulated that the medical conditions which qualified Mrs. Rosales for the Ordinary Disability Pension are the very same physical impairments which resulted in the prior compensation judgments of 45% by Ocean County and then by the State and the 55% payable by Risk Management for the final exposure. PERS does not issue detailed medical findings when it makes an award of an Ordinary Disability. Unless the pension award is a consequence of administrative litigation, the PERS determination does not include the type of medical fact findings and conclusions made in a Workers' Compensation judgment. Here Mrs. Rosales was granted the pension following administrative processing of her application.

Mrs. Rosales had applied for and was granted an Ordinary Disability Pension at 40% of her average wage, effective December 1, 1999 at \$673.49 per month. Her contributions of \$6,440.61 yield an annuity of \$79.34 per month, the PERS funded portion of her disability pension is \$594.56 per month. Effective November 1, 2001, all PERS disability pensions were increased 9%. L. 2001 c. 353. Now all Ordinary Disability Pensions are 43.6% of the final average wage. The same bill increased Accidental Disability Pensions from 66 2/3% of the final wage to 72.7%. If Risk Management's argument is correct, both the amount of Mrs. Rosales' initial pension award and the enhanced monthly pension payment would terminate its payment of her weekly compensation award..

LEGAL CONCLUSIONS

I.

All of the major public pension systems for public employees including PERS, PFRS, SPRS, and TPAF are defined benefit plans keyed to the employee's wage. There are three basic types of pension benefits, the current rates are: 1) Retirement based on years of service over 55 multiplied by the pertinent wage, 2) Accidental Disability Pension set at 72.67% of the pertinent wage, and 3.) Ordinary Disability Pension set at 43.6 % of the pertinent wage. The two law enforcement pension feature a shorter period of employment for calculating a time service pension and for an Ordinary Disability Pension. Those differences are not pertinent to the issues of this case. All three pension categories contain two separate components. One is an annuity based on the employee's contributions, the other is the State funded difference to bring the employee to the maximum defined benefit for that category. Furthermore, employees are entitled to choose one of nine separate payment options which will reduce the pension and provide a benefit for a spouse or the employee's estate. In this case, the petitioner is presently unmarried and the mother of a 9 year old child. She elected to receive the maximum benefit available to her.

Each type of pension yields a different income tax consequence. The following information was provided to counsel and this court by representatives of PERS. The time service pension is fully taxable after allowing for amortization of the employee's contribution. The Accidental Disability Pension has been classified as a Workers' Compensation benefit and as such is fully tax exempt from state and federal income tax. PERS informed counsel and this court that pursuant to independent legal opinion and it does not issue a 1099 information form for Accidental Disability Pensions. IRS treats Accidental Disability Pensions as workers compensation benefits which are exempt from income tax. The Ordinary Disability Pension is

subject to state and federal income tax reporting in the same manner as a time service pension.

On the other hand, the IRS code and the New Jersey Gross Income Tax exempt Workers' Compensation benefits from taxation.

Until 1971, disability pensions and workers' compensation benefits were mutually exclusive. The receipt of one would bar the receipt of the other. See In re Application of Howard Smith, 57 N.J. 368 (1971) and Conklin v. City of East Orange, 73 N.J. 198 (1977). The employee had to make an election between receiving a disability pension or periodic workers' compensation disability weekly benefits. No matter which turned out latter to be more beneficial, the first one awarded by the State was binding as the exclusive remedy. The section of N.J.S.A. 34:15-43 which made Workers' Compensation available to public employees provided that

No former employee who has been retired on pension by reason of injury or disability shall be entitled under this section to compensation for such injury or disability . . .

PERS as well as the other public employee pension systems provided

No . . . application for retirement benefits may be approved . . . while the member . . . is in receipt of periodic benefits under the workers compensation law. See In re Application of Howard Smith, supra.

This requirement to choose between Workers Compensation weekly disability on one hand and a disability pension was applicable whether the employee received an Accidental Disability Pension at 66 2/3% of wages and to Ordinary Disability Pensions at 40% of wages. As a practical matter this did give rise to very practical, real hardships. The procedural situation was that an employee who sustained an injury or occupational disease and who had to cease public

employment would file for an Accidental Disability Pension and Workers' Compensation. The Pension system after reviewing medical reports from its examining physician could either grant the pension or more probably it would decide the disability did not meet the "traumatic event" requirements and award an Ordinary Disability Pension and afford the employee the opportunity for a hearing before a hearing officer with further review by the particular pension board. When the employer or its workers' compensation insurer contested the claim, the only way the employee could avoid starvation would be to accept the interim Ordinary Disability Pension and be barred from compensation periodic benefits. The legislature finally decided to remedy this obviously unfair situation.

A 1971 amendment to the pension statutes ended this dilemma. For example see L. 1971 c. 216 sec. 46 which amended PERS

b. An application for retirement benefits may be approved by the board of trustees while the member, applying for such benefits, is in receipt of periodic benefits under the Workmen's Compensation Law. In this event the actuarial equivalent of such periodic benefits remaining to be paid shall be computed and will serve to reduce the pension portion of the retirement allowance payable to the retirant, subject to the provisions of section 19 of this amendatory and supplementary act.

Similar amendments were made to the TPAF, PFRS & the SPRS. No change was made in the language of N.J.S.A. 34:15-43. In Conklin v. City of East Orange, supra., the Court held that although the legislature did not repeal the pertinent provision of section 43, the amendment to the pension laws removed the need to choose between applying for a disability pension or seeking workers' compensation disability or any different result arising from which benefit was received first. The result was that public employees receiving either form of disability pension could

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receive compensation weekly benefits but their pension would be reduced by the actuarial equivalent of the compensation award.

In Conklin, the petitioner was disabled in a compensable accident to the extent that he could no longer perform his duties as a firefighter. His claim for an Accidental Disability Pension was denied because his injury did not meet the pension law standard that it be a "direct result of a traumatic event." The Pension Board awarded him an Ordinary Disability Pension at 40% of his wage which was affirmed after an administrative hearing. In the meantime, his disability under the Workers' Compensation Law was determined to be 60% permanent partial entitling him to an award of 330 weeks at \$40 per week. The City obtained an order from a Compensation Judge that because the Ordinary Disability Pension was received first, section 43 barred the subsequent award of periodic compensation benefits. Petitioner appealed both the pension and compensation decisions. The Appellate Division affirmed both. The Supreme Court reversed the abatement of the compensation award. The Court held that the legislature in changing the pension law intended to modify the bar to disability pension recipients receiving compensation benefits imposed by N.J.S.A. 34:15-43. The Court at Conklin v. City of East Orange, supra 73 N.J. at 204 held

We are confident that the Legislature, in adopting the 1971 amendment, did not intend that the relief it was granting from the strictures of the old law should depend on the chance of whether the pension, or compensation, was awarded first. While the Legislature did not modify the restriction contained in section 43 of the Compensation Act at the time it was adopting the 1971 amendment, we think this was inadvertent.

We conclude that it is immaterial whether the pension or compensation comes first. An injured fireman can be retired on an ordinary disability pension, and then be awarded compensation benefits for the same disability, however, the actuarial equivalent

of the periodic benefits payable or remaining to be paid under the workmen's compensation award will serve to reduce the pension portion of the retirement allowance. To that extent we find that the legislative policy set forth in the 1971 amendment is at odds with the limitation contained in that part of section 43 of the Compensation Act above quoted, so that a purpose to modify the earlier provision, insofar as it is inconsistent with such policy, must be implied. [Citation omitted.] This construction harmonizes the provisions of the Workers' Compensation Act and the Pension Act in question and, at the same time prevents the double recovery of benefits for the same disability[.]

Following Conklin, the actuarial equivalent value of Workers' Compensation periodic disability when spread over the expected lifetime of the worker was deducted from both Accidental and Ordinary Disability Pension. The sole criteria for this deduction was whether the periodic compensation award and the disability pension were paid for the post retirement time. This deduction was taken whether the compensation judgment was for a short period of time or was for total permanent disability. As a result, the time period and the total amount of the deduction taken by the pension system could and frequently did exceed the total value of the compensation judgment. It is not unusual for the compensation award to be due to medical causes which differ in cause, nature, extent or type from the conditions which prompted the award of an Ordinary Disability Pension. They can be for entirely different impairments which occur at different times. The criteria for an award of a disability pension is whether the public employee is unable to perform the duties of the public employee's job. See 26 N.J.R. 2201-2202 and 3461. The criteria for a compensation award is different.

Although the pension statutes use the term total and permanent disability as the qualifying medical test of impairment for eligibility for a disability pension, the medical test is related to the functions of the job. The PERS statutory test for award of an Ordinary Disability Pension

contained in N.J.S.A. 43:15A-42 provides that

A member, [under 60 years of age,] who has 10 or more years of credit for New Jersey service, shall . . . be retired for ordinary disability by the board of trustees. The physician or physicians designated by the board shall have first made a medical examination of him . . . and shall have certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired.

The Teachers Pension and Annuity Fund has a similar definition of disability

A member [under age 60 years of age] who has credit therein for 10 years, who shall become incapacitated, either mentally or physically, and who cannot perform the regular duties of employment, or who is found unfit for the performance of his or her duties . . . N.J.S.A. 18a:66-32.1(c).

The Police and Fireman's Pension Retirement Act (PFRS) and the State Police Retirement System (SPRS) contain a slightly different standard for an Ordinary Disability Pension. PFRS requires 4 years of employment for eligibility and the SPRS requires 5 years. N.J.S.A. 43:16A-6(1) & 53:5A-10. Each of these provisions contain a disability test that the member be permanently mentally or physically incapable of performing usual duty or any other available duty to which the employer is willing to assign the officer. N.J.S.A. 43:16A-6(1) & 53:5A-10.

To reprise, post 1971 the various pension systems reduced the periodic payments for Accidental Disability Pensions and Ordinary Disability Pensions for their entire duration for the "actuarial equivalent" of post retirement periodic workers compensation payments. This all changed in 1994. In 1994, Division of Pensions proposed and enacted regulations which ended the offset on Ordinary Disability Pensions and changed the offset taken against Accidental Disability Pensions to a dollar for dollar offset for periodic compensation disability paid for the time covered by the pension. N.J.A.C. 17:1-4.32; 26 N.J.R. 2201-2202 and 3461 (June 6, 1994 &

August 15 1994). The Division of Pension gave cogent reasons for ending the reduction against Ordinary Disability Pensions because of the differing criteria between Ordinary Disability Pensions qualification and that for award of Workers Compensation. The pension is based on age, years of service, wage loss and inability to perform the former duties of the specific job. Workers' Compensation is calculated on a schedule keyed to physical impairment and bears no relation to years of service or age. Cf. Starkey v. State of New Jersey, 183 N.J. Super. 1 (App. Div. 1982) which denied an offset for workers' compensation benefits against a time service pension based on veteran's service time. While one of the criteria for consideration of an award of Workers' Compensation disability is a lessening of ability to perform in the work place, that same statutory definition, N.J.S.A. 34:15-36, makes it clear that earnings reduction is not a requirement. See Perez v. Pantasote, Inc., 95 N.J. 105 (1984).

Practically simultaneous with the publication of N.J.A.C. 17:1-4.32 legislation, A1977 to the same effect was introduced and eventually enacted on January 5, 1996. L. 1995 c. 369. Now the various pension systems only take an offset for Workers' Compensation against Accidental Disability Pensions which would be limited to a dollar for dollar offset paid for the same time period. N.J.S.A. 18A:66-32.1(b), 43:15A-25.1(b), 43:16A-15.2(b), and 53:5A-38.1(b). This act also deleted the sentence of N.J.S.A. 34:15-43 which barred the receipt of periodic compensation if the person received a disability pension for the same injury or disability. A1977 on file in the State Library clearly shows it was the intent of the legislature to repeal the section 43 language. The sentence is lined out, plus the Appropriation Committee statement to the bill says the language is being removed for "consistency with court decisions and pension systems offset provisions."

From this point forward and continuing to the date of this Decision, the Division of Pensions has consistently interpreted and applied the various statutory provisions to mean that there is no reduction of benefits for recipients of Ordinary Disability Pensions. The Division of Pensions in all of its publications, employee advisory releases and on its web site have told all public employees and employers that Ordinary Disability Pensions are not subject to a reduction for receipt of Workers' Compensation periodic benefits. Similarly, neither Risk Management nor other public employers sought or obtained a reduction in Workers Compensation periodic benefits for Ordinary Disability Pension benefits. Until this year, there has been no reduction obtained or sought by any public employer or their insurers. This long term administrative agency interpretation is entitled to deference. Here one Division of the Treasury Department is attempting to do that which the Division of Pensions of that same Department and the Legislature have decided should not be done.

At the same time as A1977, referred to above, was being considered by the legislature, S128, was also under consideration. A few days after the enactment of L. 1995 c. 369, S128 was enacted effective February 9, 1995 amending N.J.S.A. 34:15-43 and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, to extend employee type coverage to authorized volunteers in emergency management and authorized volunteers for designated agencies of the Department of Environmental Protection. L. 1995 c. 383. The benefits to these volunteers were to be excess of other similar available sources. However, the text of this bill contained the same sentence which had just been deleted from section 43 a few days earlier by L. 1995 c. 369. S128 contained no indication in the text of the bill, in the title of the bill, or in the statement that previously deleted language was being restored. This bill was solely concerned with extending limited

compensation coverage to a few persons who assist government and nothing else. Nowhere does this bill or any of the other statements of legislative intent purport to have any connection to disability. Compare this to the State Constitution mandate that each bill must be directed to single object. Cf. N.J. Constitution 4:7-4.

The standard in bill drafting is that new language is underlined or in italics. That is how the language which extended coverage to volunteers was printed. Obviously confusion stemmed from the A977 and S128 going through the legislature at the same time. This inadvertence was recognized by the legislative service staff. The conflicting amendments were reconciled and this technical error was corrected via a letter signed by Albert Poroni, Esquire, the Legislative counsel and concurred in by Attorney General Poritz pursuant to the authority of N.J.S.A. 1:3-1. That letter directed that the sentence in chapter 383 of section 43 mentioning disability pensions which had been deleted by chapter 369 be corrected and omitted from chapter 383 in the printed pamphlet laws. Attached to this letter was a copy of S180, on which several corrections were made including a lining out of the disability sentence. I am left with the distinct impression that the intent of the Legislature as known to its officer and to the State's chief legal officer was that this paragraph was not reenacted by chapter 383. The continuation of this language in the pamphlet laws and subsequent enactments appears to be the product of a mistake. However, three subsequent amendments to section 43 concerning volunteers have been enacted, each continued the previously deleted language, but gave no indication that there was an intent to deal with the disability language. L. 1997 c.199, L. 1999 c. 152, and L. 1999 c. 251. But even if continuance of the language is valid, there is no legislative history or apparent conscious effort by the Legislature to revise the heart of the Court's holding in Conklin v. City of East Orange, supra.

Conklin holds that the section 43 bar was modified, the legislative intent is that the New Jersey pension statutes control the interaction between public disability pensions and Workers' Compensation periodic benefits for disabled retired public employees. If anything, the Legislature's clear intent in enacting L. 1995 c. 369 was to permit public employees to receive their Ordinary Disability Pension without reduction by the amount of any post retirement compensation. It would be inconsistent with that statute to do the reverse and reduce Workers' Compensation disability payments by the amount of the disability pension. What Risk Management is attempting to accomplish is what the Legislature has decided to the contrary.

Risk Management's claim that N.J.S.A. 34:15-29 directs the reduction of compensation periodic benefits by the amount of a disability pension is misplaced. The language of this section does not support that claim. Section 29 establishes a preference for workers' compensation by exempting benefits from levy and prohibiting assignment. A sentence was added in 1947 to permit Risk Management an offset for a disability pension. L. 1977 c. 156. The pertinent language states

The right to compensation granted by this chapter *may* be set off against disability pension benefits or payments but shall not be set off against an employees retirement pension benefits or payments.
[Emphasis added.]

The addition of this section had nothing to do with New Jersey public employee pension laws. This provision was added in response to Renshaw v. U.S. Pipe and Foundry Co., 30 N.J. 458 (1959) which had permitted reduction in an industry wide steel workers pension plan time service retirement payments for the amount of periodic Workers' Compensation benefits paid post retirement. When reading this language it is well to remember that state statutes cannot

impact private industry ERISA pension payments which are controlled by federal law. Alessi v. Raybestos-Manahatten, Inc., 451 U.S. 504 (1981). The key to whether an employer is entitled to reduce Workers' Compensation periodic benefits for disability pensions is the terms of the pension plan. Illustrative of this principle is Young v. Western Electric Co., Inc., 96 N.J. 220, 232 (1984) where Justice Schreiber instructed

Whether disability benefits would be included within the amendment [N.J.S.A.34:15-29] would depend in the first instance on the plan. If the benefits under the plan represent payments for a compensable disability and the plan integrates the two, then an offset against a compensation award would be in order. [Emphasis added.]

Neither PERS nor any of the other pertinent public employee pension laws provide for reduction in benefits when an employee receives both an Ordinary Disability Pension and Workers' Compensation periodic benefits. The common sense interpretation of section 29 is that it does not speak to reduction of a Workers' Compensation award for the amount of an Ordinary Disability Pension under PERS or the other New Jersey public employee pension laws. If the legislature had wanted to provide for such a reduction it would have said so. It did not. The Legislature has taken the opposite tack and decided that a public employee may receive both the full Workers' Compensation periodic payment and the full Ordinary Disability Pension.

III.

The third leg on which Risk Management rests its argument is the strong public policy of this state against duplicate payments for injuries caused by the same disability. See Bunk v. Port Authority of New York and New Jersey, 144 N.J. 176, (1996) and James v. Board of Trustees of PERS, 164 N.J. 396, 409 (1999). Both Bunk and James are not pertinent. James presents a

cogent review of pension and workers' compensation enactments and cases, but concerned whether a public employee should be continued as an active pension fund member for a period during which the employer subsequently paid workers' compensation periodic benefits. It did not deal with the question of an offset for an Ordinary Disability Pension.

In Bunk, the Court was engaged in a delicate balancing of the integration of benefits of the New Jersey Workers' Compensation law with a New York State pension law over which it exercised no control. Bunk did not invoke provisions or depend on the evolution of New Jersey public employee pension law. Bunk presented a situation where of a Port Authority employee sustained orthopedic and neurological disability in a motor vehicle accident and latter sustained a pulmonary impairment, both incurred in the course of his employment. He received an Ordinary Disability Pension from a New York State pension system at 33 1/3% of his wage. The New York pension law did not provide for reduction in this pension on account of the receipt of compensation benefits. The Court did weigh the repeal of the section 43 language and discussed the offset for Accidental Disability Pensions, but, the case did not implicate the terms of the New Jersey PERS. Resolution of Bunk did not provide the occasion or need for the Court to consider that the provision of the 1996 pension law amendment which ended the Workers' Compensation offset in Ordinary Disability Pensions but continued it for Accidental Disability Pensions. L. 1995 c. 369. In Bunk the Appellate Division had reached a conclusion at odds with Wright v. Port Authority of New York and New Jersey, 263 N.J. Super. 6 (App. Div. 1993) certif. denied 133 N.J. 442 (1993). Bunk vs. Port Authority of New York and New Jersey, 279 N.J. Super 613, 617-618 (App. Div. 1995). The Supreme Court reversed.

Wright barred payment of New Jersey Workers' Compensation when a Port Authority

employee received a New York Accidental Disability Pension at 75% of wages which required deduction of compensation benefits, but by administrative interpretation limited the deduction to benefits awarded by the New York Workers' Compensation Board. New Jersey Workers' Compensation disability caps out at 70% of wages. N.J.S.A. 34:15-12. Mr. Wright received the maximum benefit he could receive under either state's laws.

If Mrs. Rosales' case had been presented before 1996, or in absence of the terms of L. 1995 c. 369, there is no doubt that the public policy expressed by the then effective provisions of N.J.S.A. 43:15A-25 barred duplicate payments from two sources for the same impairment. But this policy was changed by the Legislature when it amended that statute. A trial judge is obligated to follow and apply a rule of law decided by an appellate court, especially a holding of the Supreme Court. We are not free to ignore or to decline to follow the ruling of an Appellate Court. But a trial venue must also abide by statutes. Here a different public policy is expressed in the current terms of N.J.S.A. 43:15A-25. That statute was not pertinent to the dispute resolved by the Court in Bunk.

This case, however, presents a substantially different legislative situation than that discussed in Bunk and James. The public policy against double recovery which required offset of a workers' compensation award for a New York State public employee ordinary disability pension for the same injury enunciated in Bunk would apply if the legislature had not acted as it did here. The rule of statutory interpretation followed in Bunk, supports the conclusion that there is no reduction in Mrs. Rosales' total disability judgement.

In cases such as this [Bunk], where it is clear that the drafters of a statute did not consider or even contemplate a specific specific situation, this Court has adopted as an established rule of statutory

construction the policy of interpreting the statute consonant with the probable intent of the draftsman had he anticipated the situation at hand. Such an interpretation will not turn on literalisms, technisms or the so called rules of interpretation; rather it will turn on the breadth of the objectives of the legislation and the commonsense of the situation. [Citations omitted.] Bunk v. Port Authority of New York and New Jersey, supra, 144 N.J. at 190-191.

Unlike the situation in Bunk, the Legislature has spoken and enacted L. 1995 c. 369 that Ordinary Disability Pensions and Workers' Compensation shall not be offset. This enactment followed a comprehensive review and weighing of when and how New Jersey public employee disability pensions shall be integrated with workers compensation disability. I find that by reason of specific legislative enactments, that the public policy implicated in Bunk at 189 against full recovery from both sources is not pertinent. In L. 1995 c. 369 the legislature has made clear its determination to decouple Ordinary Disability Pensions from post retirement Workers' Compensation and permit receipt of both periodic benefits without offset by the other.

It would be inconsistent and perhaps a bit absurd to hold that the Legislature ended the reduction of Ordinary Disability Pension by the amount of a post retirement periodic compensation award, but that the compensation insurer or self-insured employer without Legislative sanction can take such a reduction.

A court's overriding goal in construing a statute is to determine and give effect to the underlying legislative intent. James v. Board of Trs. of Pub. Employees' Ret. Sys. 164 N.J. 396 404-05 (2000). To this end, individual statutory provisions should not be read in isolation but rather as parts of a harmonious legislative plan. Fiore v. Consolidated Freightways 140 N.J. Super. 452, 466 (1995). Moreover, "[i]nterpretations [of a statute] which lead to absurd or unreasonable results are . . . to be avoided." State v. Gill, 47 N.J. 441, 444 (1966). Barron v. State Health Benefits Commission, 343 N.J. Super. 583, 587 (App. Div. 2001).

The common sense interpretation of the relationship between the state pension laws and the workers compensation law is that, an offset as a consequence of benefit integration, to the extent there was one, belonged to the pension system, not the employer. Cf. Conklin v. City of East Orange, supra; N.J.S.A. 34: 15A-25.1(b).

IV.

From the practical view point of application and interpretation of the New Jersey Compensation law, there are many good reason why a respondent should not be given the right to decrease Workers' Compensation judgments for pension benefits paid by the State pension plan. In the first instance there is no specific statutory authority for such a deduction.

No doubt the workers' compensation law confers a needed benefit on injured employees. Any provision which is alleged to effect a withholding of that benefit should be strictly construed against forfeiture. In re Application of Smith, 57 N.J. 368, 374(1971); Swan v. Board of Trustees of Teachers' Pension and Annuity Fund, 85 N.J. Super. 226, 231, 204 (App.Div.1964). And any such withholding or offset must be specifically authorized by statute. Wright v. Port Authority of New York and New Jersey, supra. 263 N.J. Super. @ 23

There is statutory authorization for every reduction of compensation benefits. The employee's counsel fees and litigation allowances are authorized by N.J.S.A. 34:15-64. Deduction of amounts paid by public and private temporary disability plans are authorized by N.J.S.A. 43:21-30. Total permanent disability may be reduced as was done in Mrs. Rosales' case to the extent that initial Social Security Disability and the total disability exceeds 80% of the wages earned in employees highest year as authorized by N.J.S.A. 34:15-95.5. Child support payment liens must be deducted. N.J.S.A. 2A:17-56.23(b). Medicare and Medicare liens must be recognized. 42 U.S.C. 1395y. Disability pension plans which require integration with workers' compensation are

authorized deductions from compensation by N.J.S.A. 34:15-29. See Young v. Western Electric Co., Inc., supra. Finally, the legislature made an affirmative decision to avoid double recovery when there has been a recovery in a tort action. N.J.S.A. 34:15-40. Section 40 goes so far as to authorize the insurer to prosecute a tort case in the employees name when the employee failed to prosecute the claim. In view of this wide ranging legislative action, the logical inference is the absence of legislative authorization shows the omission of authorization to deduct Ordinary Disability Pensions was intentional.

There are other practical considerations weighing against what Risk Management seeks to accomplish. The Division of Pensions has informed us that in the fiscal year ending July 1, 2001, 1304 state and local employees received Ordinary Disability Pensions. The breakdown by pension system was: PERS 981, PFRS 175, TPAF 144 and SPRS 4. If a reduction of Workers' Compensation weekly disability benefits were to be permitted, the potential for extensive litigation on what portion of the pension could be said to overlap the compensation award would be extensive.

The workers' compensation benefits of State and some local entities are self-insured to some extent. Others have obtained commercial insurance coverage. Most self-insured public entities and Joint Insurance Funds have obtained excess or umbrella insurance policies to cover serious losses. The benefit of a pension deduction could flow to the insurers, not the public employer. The technical explanation is that loss experience factors in fixing premiums are closed three years following the policy year and the dollar amount of the anticipated loss could easily be delayed until permanent disability was ascertainable more than three years latter.

In instances where the employee successfully appealed denial of an Accidental Disability

Pension, and the employer had previously reduced Workers' Compensation benefits for the amount of the Ordinary Disability Pension, several problems would be present. All judicially approved Workers' Compensation awards are "final and conclusive between the parties and shall bar any subsequent action or proceeding, unless reopened by the Division of Workers' Compensation . . ." N.J.S.A. 34:15-58. Because a "re-opener" is subject to a strict jurisdictional two year period following the last payment of compensation, the potential is there for either the employee, the pension system, or the employer to be deprived of their rights unless there is specific legislation implementing the proposed deduction. N.J.S.A. 34:15-27.

If there were an offset as proposed by Risk Management, there would have to be a separate proceeding in the Division of Workers' Compensation to second guess the earlier decision of the pension system as to which ailments or conditions prompted the Ordinary Disability Pension award. As noted earlier in this decision, the pension fund does not make detailed medical findings of fact unless there was a contested administrative trial before an Administrative Law Judge on that issue. The Disability recommendation is made by a medical board after review of the examination report of one of its members. The Division of Pensions holds all information they receive or have on pension recipients including medical data as privileged. The Deputy Attorney General told us that he could not obtain even the monetary data. Presumptively, the Division of Pensions, on request of the pensioner, would release all medical information and monetary information in their file. Access to information, privacy issues, interpretation of data, questions as to what portion of a pension could be subject to an offset, whether the 1991 pension adjustment should be included in an offset, whether a pension offset would include the annual cost of living pension adjustments are just some of the multitude of

policy issues which would have to be addressed by rule making by the Department of Treasury and the department of Labor or more likely by the Legislature.

Most seriously is the question of whether a pension offset would apply before or after reduction of compensation for Social Security Disability under N.J.S.A. 34:15-95.5. Risk Management claims it has the right to reduce compensation after that reduction, which would enable it to end this and similar disabled employees' total compensation payments. Simple math tells one that this is a major confiscatory approach. The opposite approach would leave this petitioner with the full Workers' Compensation benefit she would recover in the absence of any reduction for an Ordinary Disability Pension. Petitioner's weekly compensation rate is \$329.19, if one were to deduct the weekly value of her pension \$137.20 ($\$594.36 \times 12 / 52$), leaving a net weekly compensation award of \$181.99. Application of N.J.S.A. 34:15-95.5 subtracting the weekly value of the Social Security benefits received by Mrs. Rosales and her 9 year old son, \$245.07 from the weekly value of her 80% A.C.E. \$338.76, leaving her with a maximum weekly compensation of \$93.69. This is the very same award petitioner would receive if Risk Management were not seeking to take away her permanent total disability judgment. This is the same result if the Social Security Administration had taken an offset for Workers' Compensation under 42 U.S.C. 424a. The legislature conditioned the offset for Social Security Disability to provide that the reduction would be no more than that taken by the Social Security Administration. N.J.S.A. 34:15-95.5.

Some, but not all of these issues can be handled by regulations, but others would to require specific legislative enactment. There are policy questions which probably exceed the inherent rule making authority of executive branch agencies. A further issue which would have to

be addressed is the effective date of any such pension deduction. Would it be retroactive as to judgements or voluntary offers of compensation? It would seem that this would disturb vested interests, where the employer could have advanced such an affirmative defense at the time of the original litigation but did not do so. There are other practical consideration which weigh in against allowing the deduction sought by Risk Management.

An employee could retire on disability in one year for one or more non compensable illnesses, or a stroke or orthopedic consequences of an off duty accident and still be able to work at any one of a multitude of other occupations. The Ordinary Disability statutes speak to inability to perform duties of the public employee's specific job. Several years latter, previously undiscovered latent occupational disease or progression of physical injuries could manifest and for the first time cause disability. For that matter a compensable injury could be present and have no impact on the disability pension. This is not a situation of an individual who was adjudged totally permanently disabled and then seeks disability payments in excess of that for that same employment. Cf. Taylor by Taylor v. Englehard Industries, 230 N.J.Super. 245, 250-251 (App. Div. 1989). If one were to hold that the mere payment of an Ordinary Disability Pension must be deducted from the eventual compensation award, the former employee would be deprived of compensation for injuries not even contemplated by the award of the disability pension. The employee could be deprived of compensation for personal physical impairment and probably wage loss well beyond the scope of the disability pension. All of these weigh against allowing a deduction in periodic compensation payments for Ordinary Disability Pension payments. Some of these differences were noted and weighed by the Pension Fund Systems when they dropped workers' compensation deductions from Ordinary Disability Pensions and ratified by the

Legislature when it passed L. 1995 c. 369, N.J.A.C. 17:1-4.32; 26 N.J.R. 2201-2202 and 3461 (June 6, 1994 and August 15 1994); and several Statements to A1977 which became L. 1995 c. 369. Finally one should not overlook the fact that allowing the offset would require reducing income tax exempt Workers' Compensation by an amount of an Ordinary Disability Pension which is subject to State and Federal income tax. A thorough analysis of all these factors leaves me with the abiding belief, that this policy issue concerning public money for disabled public employees has been addressed by the Legislature which has decided there should be no such diminishment of compensation benefits.

The motion is denied.

CONCLUSION

Petitioner's counsel is directed prepare a proposed form of judgment and a Decision of Eligibility for Second Injury Fund Benefits and serve counsel for the other parties by email or fax with a notice that they have 5 business days to object to the form of the orders.

Allowances are:

Martin Riss, D.O. for examination and report \$200, payable one-half each party.

Martin Riss, D.O. for appearance and testimony on 2 occasions, \$400, payable \$300 by respondent and \$100 by petitioner (See transcript of August 6, 1991 5-21 to 23.)

Salzer, Kuchinsky and Marut, Esquires, attorney fee \$16,294, payable \$11,294 by respondent, \$5,000 by petitioner.

Petitioner's counsel shall be reimbursed by his client for trial transcripts and costs of medical records.

Respondent shall pay stenographic fees to: State Shorthand Reporting Service \$900 and

John F. Trainor, Inc. \$150.

Permanent Total Disability shall begin on December 1, 1999 at \$329.19 per week until April 30, 2000 without offset. Commencing May 1, 2000, she will continue to receive \$329.18 per week until she has accrued sufficient monies to equal her share of counsel fees, allowances and costs. This postponement of the Social Security offset is required so that this reduction not exceed that allowed by 42 U.S.C. sec. 424a. See N.J.S.A. 34:15-95.5. After sufficient monies are accrued, her benefits payable by the Risk Management shall be at \$93.69 until August 29, 1904. So long as petitioner is totally disabled, respondent shall, on request of petitioner, provide such medical care, medication, therapy, and supplies as may be reasonably necessary to relieve the effects of this injury. Respondent shall receive credit for all payments made under the interim order. Since petitioner is permanently totally disabled as a consequence of a series of compensation injuries, benefits payable by the Second Injury shall commence on August 30, 2004 and continue pursuant to the terms of N.J.S.A. 34:15-12(b) with allowance for reduction for Social Security benefits.

Dated: September 23, 2002

Lawrence G. Moncher, J.W.C.,

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FSS/mjk

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-----x
TAMI M. ROSALES
135-68-6441
56 Gladney Avenue
Toms River, NJ 08753

Petitioner,

JUDGMENT

vs.

STATE OF NEW JERSEY
TRIAL COURT SUPPORT

Respondent.

-----x
APPEARANCES: FRANK S. SALZER, ESQ.
SALZER, KUSHINSKY & MARUT
611 Main Street, P. O. Box 4806
Toms River, NJ 08754

Fed. I. D. No. 52-2285780
Attorney for Petitioner

Aa 80

MICHAEL O'BRIEN
DEPUTY ATTORNEY GENERAL
State of New Jersey
Hughes Justice Complex
P. O. Box 105
For Respondent

LOIS J. GREGORY, ESQ.
SENIOR DEPUTY ATTORNEY GENERAL
Richard J. Hughes Justice Complex
P. O. Box 105
Trenton, NJ 08625

For the Second Injury Fund

STATEMENT OF AWARD

ASSESSED AGAINST RESPONDENT:

TEMPORARY DISABILITY: Temporary benefits as paid are deemed adequate.

PERMANENT DISABILITY:

The petitioner is hereby adjudged and determined to be 100% totally and permanently disabled as of 12/1/99 and I hereby determine that 55% of said disability is assessed against respondent and respondent shall make payments for 247.5 weeks at \$329.19 per week from and including 12/1/99 to and including 8/29/2004, with payments from and after 8/30/04 to be made by the Second Injury Fund. The entire Judgment against the respondent is subject to adjustment for social security disability benefits. \$81,474.53

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I further find that the petitioner is receiving social security disability benefits as of May 1, 2000 and the respondent and the Second Injury Fund are entitled to a reverse offset rate and therefore payments by the respondent and the Second Injury Fund shall be made as follows:

1. The respondent shall pay at the full rate without offset of \$329.19 per week from 12/1/99 being the date of totality to and including 4/30/2000 as petitioner was not receiving social security disability during this period.
2. Respondent shall then pay at \$329.19 per week from 5/1/2000 for 19 1/7 weeks while petitioner's share of fees and costs accumulate.
3. Respondent shall then pay at the reverse offset rate of \$93.69 per week to 8/29/04.
4. The Second Injury Fund shall make payments at the reverse offset rate of \$93.69 per week from 8/30/04 through the 18th birthday of the petitioner's son which is on 9/22/2010 or any earlier termination of his social security benefits.
5. The Second Injury Fund shall make payments at the rate of \$175.38 per week thereafter through and including 11/24/2025 or should there be an earlier termination of her social security benefits.
6. From and after the petitioner's 62nd birthday on 11/25/2025, the Second Injury Fund shall pay at the full rate without offset of \$329.19 per week.
7. The respondent shall receive credit for all payments made pursuant to an Interim Order previously entered.

I have found and I do determine that the Second Injury Fund has liability as described in a Decision of Eligibility and as indicated herein and their payments shall begin as of 8/30/2004.

MEDICAL BILLS: The respondent is responsible for necessary and reasonably related medical attention incurred as a result of a compensable condition. If there is a dispute as to whether medical bills are related, reasonable or necessary then either party may submit the dispute to the Division of Compensation for resolution.

DR. MARTIN RISS - For examination and report and testimony.
Federal I. D. No. 222065454
Bricktown Medical Group
34 Lanes Mill Road
Brick, NJ 08724

(REIMBURSE PETITIONER'S ATTORNEY)

\$ 225.00

DR. MARTIN RISS - For second day of testimony
(REIMBURSE PETITIONER'S ATTORNEY)

\$ 250.00

PETITIONER'S ATTORNEY'S COUNSEL FEE
PAYABLE TO SALZER, KUSHINSKY & MARUT
611 Main Street
Toms River, NJ 08754

\$ 11,294.00

STENOGRAPHIC FEES assessed against respondent and payable to:
STATE SHORTHAND

\$ 900.00

STENOGRAPHIC FEES assessed against respondent and payable to:
JOHN TRAINOR, INC.

\$ 150.00

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ASSESSED AGAINST PETITIONER:

DR. MARTIN RISS \$ 200.00
(REIMBURSE PETITIONER'S ATTORNEY)

SALZER, KUSHINSKY & MARUT FOR
COSTS PAYABLE BY PETITIONER INCLUDING
TRANSCRIPTS AND MEDICAL RECORDS: \$ 1,079.22

PETITIONER'S ATTORNEY'S COUNSEL FEE PAYABLE TO
SALZER, KUSHINSKY & MARUT
611 Main Street
Toms River, NJ 08754 \$ 5,000.00

A formal Claim Petition having been filed claiming compensation under R. S. 34:14-7 et seq. as amended and supplemented, an Answer having been filed, and the parties having appeared before me, Lawrence G. Moncher, Judge of Compensation, at the Division of Compensation, 954 Route 166, Toms River, Ocean County, New Jersey, on various dates for trial, and testimony having been presented on the issues involved and stipulations having been entered on the record, I find and determine as follows:

1. The petitioner was in the employ of the respondent through November of 1999 and did sustain personal injuries which did arise out of and in the course of her employment with the respondent, State of New Jersey. The injuries are orthopedic and neurological in nature and do involve bilateral carpal tunnel with bilateral release, bilateral ulnar entrapment at the elbow with decompression on the right, de Quervain's disease bilaterally.
2. The respondent did have due and timely notice and actual knowledge thereof.
3. The respondent has not furnished and paid for medical treatment because of said injuries and has been ordered to provide for and pay for reasonable, necessary and related

medical care and hold petitioner harmless with regard to outstanding medical bills for related medical attention and shall hold harmless with regard to any claims by any other carrier who may have paid for related medical care.

I further Order that the respondent shall furnish to the petitioner, upon request from the petitioner or her representative, such medicines, medical attention, therapy, medical supplies, hospitalizations, as her condition may require from time to time and which are causally related to the compensable injury during the period of payment of periodic payments by respondent and the Second Injury Fund.

4. Emergency treatment may be obtained without the necessity of notice to the employer respondent but notice must be given to the respondent.

5. Petitioner's wages were \$470.27 per week making temporary and permanent total disability rates \$329.19 per week.

6. Compensation shall be paid by the respondent under the Statute.

7. Payment shall be made as set forth in the Statement of Award.

8. The permanent disability resulting from said accident and occupational exposure is orthopedic and neurological in nature.

Benefits shall be paid pursuant to the Statement of Award contained herein.

At the conclusion of the trial, I made certain observations and findings which were recorded in two written decisions which are made a part hereof as if set forth fully herein.

Pursuant to such findings, Judgment is entered in accordance with the Statement of Award for total and permanent disability benefits.

Pursuant to the provisions of R. S. 34:15-64 as amended, it is directed that the amounts to be deducted from the petitioner's expenses are to be paid to the persons entitled to the same. The remainder is to be paid directly to the petitioner.

I have entered a Decision of Eligibility for Second Injury Fund benefits.

At the end of trial the respondent, State of New Jersey moved before the court to cancel its obligation to pay workers compensation permanent total disability benefits to the petitioner or to offset the same because she was receiving an ordinary disability pension from the Public Employees Retirement System (PERS). Having heard oral argument in connection with this Motion and having considered the briefs and arguments, and for the reasons set forth in my written decision of 9/23/02, I do hereby deny the respondent's Motion.

Dated:

11/4/02



LAWRENCE G. MONCHER
JUDGE OF COMPENSATION

STATE OF NEW JERSEY
DEPARTMENT OF LABOR
DIVISION OF WORKERS' COMPENSATION
OCEAN COUNTY DISTRICT
C.P. Number 95-34926

TAMI ROSALES ,
Petitioner

vs.

ORDER DISMISSING CLAIM

STATE OF NEW JERSEY,
Respondent

vs.

SECOND INJURY FUND

APPEARANCES:

For the Petitioner: SALZER, KUCHINSKY, & MARUT, Esquires
by: FRANK S. SALZER, Esquire

For the Respondent: JOHN J. FARMER, Attorney General of New Jersey, Esquire
by: JANE LAFFERTY , Deputy Attorney General, Esquire

For SECOND INJURY FUND: JOHN J. FARMER, Attorney General of New Jersey, Esquire
by: LOIS J. GREGORY, Senior Deputy Attorney General, Esquire

This application for review and modification of a judgment entered on April 15, 1998 having come on for trial as consolidated with C.P. 1999-7099 and an Application for Second Injury Fund Benefits before me, Lawrence G. Moncher, Judge of Workers Compensation at the hearing rooms of the Division of Workers Compensation in Toms River and then in Freehold, New Jersey, and it

appearing that petitioner's impairment was further aggravated and increased by reason of employment activities peculiar to her job with the State of New Jersey until November, 1999 for which I entered a separate award of 55 % permanent total disability against the respondent and Second Injury Fund Benefits to commence after respondent's payments expire; for good cause shown, it is on this 4th day of November, 2002

ORDERED that the within claim petition be dismissed with prejudice. There will be no award of another stenographic fee, since the award in the judgment in C.P. 1999-7099 is sufficient.

Lawrence G. Moncher
Lawrence G. Moncher, J.W.C.

NOTICE OF APPEAL

PLEASE PRINT OR TYPE

SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

TITLE OF ACTION ASCAPTIONED BELOW

TAMI ROSALES,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF THE JUDICIARY,

Respondent,

and

SECOND INJURY FUND,

Respondent.

NOTICE IS HEREBY GIVEN THAT Respondent, State of New Jersey

APPEALS TO THE SUPERIOR COURT OF N J APPELLATE DIVISION FROM THE JUDGMENT (X) ORDER ()

OTHER (SPECIFY) _____

ENTERED IN THIS ACTION ON November 2 2002 IN FAVOR OF Petitioner

IF APPEAL IS FROM LESS THAN THE WHOLE SPECIFY WHAT PARTS OR PARAGRAPHS ARE BEING APPEALED.

ARE ALL ISSUES AS TO ALL PARTIES DISPOSED OF IN THE ACTION BEING APPEALED? YES (X) NO ()

IF NOT IS THERE A CERTIFICATION OF FINAL JUDGMENT ENTERED PURSUANT TO R. 4:42-2? YES () NO ()

PRIORITY UNDER R 1:2-5 YES () NO (X) APPLICABLE SECTION UNDER THE RULE _____

IN CRIMINAL, QUASI-CRIMINAL AND JUVENILE CASES. NOT INCARCERATED () INCARCERATED ()
CONFINED AT _____
GIVE A CONCISE STATEMENT OF THE OFFENSE AND OF THE JUDGMENT. DATE ENTERED AND ANY SENTENCE OR DISPOSITION IMPOSED _____
Aa 89

ATTORNEY OF RECORD
 NAME DAVID SAMSON, ATTORNEY GENERAL OF NEW JERSEY
By: Michael O'Brien, DAG
 ADDRESS Mary G. Roebing Bldg., 20 West State St.
P.O. Box 620, Trenton, NJ 08625
 PHONE NO 609-633-7462
 ATTORNEY FOR Respondent, State of New Jersey
 ON APPEAL FROM
Workers' Compensation
 TRIAL COURT STATE AGENCY
95-034926 and 99-007099
 TRIAL DOCKET OR INDICTMENT NUMBER
Honorable Lawrence G. Moncher
 TRIAL COURT JUDGE
 CIVIL (X) CRIMINAL () JUVENILE ()

1 NOTICE OF APPEAL HAS BEEN SERVED ON:

NAME	DATE OF SERVICE	TYPE OF SERVICE	
TRIAL COURT JUDGE <u>Honorable Lawrence G. Moncher</u>	<u>12/19/02</u>	<u>Reg. Mail</u>	
TRIAL COURT CLERK STATE AGENCY <u>Division of Workers' Compensation</u>	<u>12/19/02</u>	<u>Reg. Mail</u>	
ATTORNEY GENERAL OR GOVERNMENTAL OFFICE UNDER R 2.5-1.1			
OTHER PARTIES			
NAME AND DESIGNATION	ATTORNEY NAME, ADDRESS & TELEPHONE NO	DATE OF SERVICE	TYPE OF SERVICE
<u>Petitioner</u> <small>SERVE THIS PARTY WITH TRANSCRIPT</small>	<u>Frank S. Salzer, Esq.</u> <u>611 Main Street</u> <u>P.O. Box 4806</u> <u>Toms River, New Jersey 08754</u>	<u>12/19/02</u>	<u>Reg. Mail</u>
<u>Respondent,</u>	<u>Lois Gregory, DAG</u>	<u>12/19/02</u>	<u>Reg. Mail</u>
<u>Second Injury Fund</u>	<u>Richard J. Hughes Justice Complex</u> <u>P.O. Box 105</u> <u>Trenton, NJ 08625</u>		

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THIS NOTICE OF APPEAL ON EACH OF THE PERSONS REQUIRED AS INDICATED ABOVE

December 19, 2002 Kathleen J. O'Brien

Kathleen J. O'Brien, DAG for Michael O'Brien, DAG
SIGNATURE OF ATTORNEY OF RECORD

2 PRESCRIBED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:
(ALSO INDICATE IF SOUND RECORDED)

NAME	DATE OF SERVICE	AMOUNT OF DEPOSIT
ADMINISTRATIVE OFFICE OF THE COURTS CHIEF COURT REPORTING SERVICES		
COURT REPORTERS SUPERVISOR CLERK OF COUNTY OR AGENCY		
COURT REPORTER <u>John F. Trainor, Inc.</u>	<u>12/19/02</u>	
<u>72 Benson Avenue</u> <u>Trenton, NJ 08610</u>		

I HEREBY CERTIFY THAT I SERVED THE PRESCRIBED COURT TRANSCRIPT REQUEST FORM ON EACH OF THE ABOVE PERSONS AND PAID THE DEPOSIT AS REQUIRED BY R 2.5-3(d).

December 19, 2002 Kathleen J. O'Brien

Kathleen J. O'Brien, DAG for Michael O'Brien, DAG
SIGNATURE OF ATTORNEY OF RECORD

3 I HEREBY CERTIFY THAT:

- () THERE IS NO VERBATIM RECORD
- () TRANSCRIPT IS IN THE POSSESSION OF THE ATTORNEY OF RECORD. Have all transcripts for all dates except 7/9/02, which has been requested
- () A MOTION FOR ABBREVIATION OF TRANSCRIPT HAS BEEN FILED WITH THE COURT OR AGENCY BELOW.
- () A MOTION FOR FREE TRANSCRIPT HAS BEEN FILED WITH THE COURT BELOW

December 19, 2002 Kathleen J. O'Brien Aa 90

Kathleen J. O'Brien, DAG for Michael O'Brien, DAG
SIGNATURE OF ATTORNEY OF RECORD

COURT TRANSCRIPT REQUEST
State of New Jersey (R.2:5-3(a))

PLAINTIFF(S)
 TAMI ROSALES

INSTRUCTIONS:

- Complete all information
- File a separate request for each court reporter or court clerk who recorded a portion of the proceeding
- Attach the Appellate or Supreme Court Clerk's copy to the Notice of Appeal (R.2:5-1(f)) if an appeal
- Attach transcript fee.

NAME ADDRESS (COURT REPORTER or COURT CLERK, if sound recorded)

TO: [JOHN F. TRAINOR, INC.
 72 Benson Avenue
 Trenton, New Jersey 08610]

It is hereby requested that you prepare for use on
 (Check one)

- appeal
 non-appeal*

an original and 5 copies of the following

V.

DEFENDANT(S)
 STATE OF NEW JERSEY, DEPARTMENT OF THE JUDICIARY

TRIAL COURT DOCKET NUMBER
 95-034926 and 99-007099

COUNTY/COURT
 Workers' Compensation

REQUESTING PARTY (Name/Address)
 Michael O'Brien, DAG
 Mary G. Roebing Building
 20 West State Street
 P.O. Box 620
 Trenton, New Jersey 08625

DATE OF PROCEEDING	TYPE OF PROCEEDING (e.g., trial, sentencing, motion, etc.)	NAME OF JUDGE
7/9/02	Oral Argument	Honorable Lawrence G. Moncher

I agree to pay for the preparation and any copies ordered of the transcript(s) for the above date(s) pursuant to R.2:5-3(d).

Kathleen J. O'Brien
 SIGNATURE OF REQUESTING PARTY

12-19-02
 DATE

Transcript fees are set by New Jersey Statute 2A:11-15. An additional sum or reimbursement may be required prior to or at the completion of the transcript order.

DEPOSIT ATTACHED \$ _____

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APPELLATE DIVISION CIVIL CASE INFORMATION STATEMENT

TITLE IN FULL: TAMI ROSALES v. STATE OF NEW JERSEY, DEPARTMENT OF THE JUDICIARY and THE SECOND INJURY FUND

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.:**

APPELLANT'S ATTORNEY: NAME	Plaintiff ADDRESS	Defendant TELEPHONE	X Other (Specify) CLIENT
David Samson, Attorney General of New Jersey By: Michael O'Brien Deputy Attorney General	Mary G. Roebling Bldg. 20 West State St. Trenton, NJ 08625	609-633-7462	Respondent, State of New Jersey, Deaprtment of the Judiciary

RESPONDENT'S ATTORNEY*: NAME	ADDRESS	TELEPHONE	CLIENT
Frank Salzer, Esq. Salzer, Kushinsky & Marut	611 Main Street P.O. Box 4806 Toms River, NJ 08754	732-240-4215	Tami Rosales
David Samson, Attorney General of New Jersey By: Lois Gregory, DAG	Richard J. Hughes Justice Complex - P.O. Box 105 Trenton, NJ 08625	609-292-3533	Second Injury Fund

[*Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.]

GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:

See Attached.

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?

Yes ___ No X
Yes ___ No ___

If so, has the order been certified as final pursuant to R.4:42-2? (If the order has not been certified, leave to appeal must be sought. R.2:2-4, 2:5-6.)

Yes ___ No X

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R.2:5-1(h)).

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

See Attached

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R.2:6-2(a)(5). (Appellant or cross-appellant only.)

See Attached

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IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or opinion? Yes ___ No X
If so, on what date? _____

2. Did the trial judge issue written findings or opinion? Yes X No ___
If so, on what date? _____

Caution: Before you indicate that there was neither an opinion nor findings, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R.2:5-1(b).
Date of your inquiry: 12/18/02

Will the trial judge be filing a statement or opinion pursuant to R.2:5-1(b)? Yes ___ No X

Civil appeals are screened under the Civil Appeals Settlement Program to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a conference. Yes X No ___

Explain your answer:

1. IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

(A) Arises from substantially the same case or controversy as this appeal? Yes ___ No X

(B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Yes ___ No X

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? Yes ___ No X

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:
Case Name:

Appellate Division Docket No.:

State of New Jersey, Department of the Judiciary

DAVID SAMSON, ATTORNEY GENERAL OF NEW JERSEY

By: Michael O'Brien, DAG

Name of Appellant or Respondent

Name of Counsel of Record

December 19, 2002

Date:

Kathleen J. O'Brien

Signature of Counsel of Record

KATHLEEN J. O'BRIEN, DAG FOR MICHAEL O'BRIEN, DAG

ATTACHMENT

DATE & SUMMARY OF JUDGMENT

Final Judgment entered on November 4, 2002. The Judge of Compensation found that the petitioner, Tami Rosales was totally and permanently disabled due to her employment exposure with the Department of the Judiciary due to bilateral carpal tunnel, bilateral ulnar entrapment and bilateral de Quervain's disease. The Department of the Judiciary was found to be responsible for 55% of the disability and the balance of the award was the responsibility of the Second Injury Fund due to pre-existing disability. The Judge of Compensation denied the Department of the Judiciary's motion to offset a portion of this award due to the receipt of an ordinary disability retirement for the same disability.

STATEMENT OF FACTS & PROCEDURAL HISTORY

The petitioner had originally filed claim petition 95-034926 on September 20, 1995 and alleged an occupational exposure to her hands and arms. Judgment was entered on that claim on April 15, 1998 awarding the petitioner 45% of partial total with a credit for a prior award of 25% of partial total that had been previously been entered against the County of Ocean. The petitioner filed an application for a review or modification of that award on March 4, 1999. She also filed claim petition 99-007099 on March 4, 1999, which alleged continued occupational exposures with the State of New Jersey had caused an increase in disability. The State of New Jersey filed Answers to these petitions denying any increase in disability due to any work exposure. The petitioner filed a Petition to Join the Second Injury Fund on January 26, 2000. Since the claim could not be settled, there was a bifurcated trial without Second Injury Fund participation before the Honorable Lawrence G. Moncher. The Judge entered an Interim Order for Benefits on January 2, 2002 finding the petitioner totally disabled and directed the matter be set down for a Second Injury Fund trial. The State of New Jersey moved before the Court on May 22, 2002 seeking a reduction of any workers' compensation award because the petitioner was receiving an ordinary disability pension for the same injury. Oral argument was presented on this issue. The State's motion was denied and a decision was issued granting the petitioner total disability with Second Injury Fund involvement on September 23, 2002. The Final Judgment was entered on November 4, 2002.

ISSUES ON APPEAL

1. The petitioner is not totally disabled due to any compensable occupational exposure.

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2. The Judge of Compensation erred by denying the State of New Jersey's motion for an offset resulting in an award to the petitioner in excess of 100% of her former salary.

3. The Judge of Compensation erred in his calculations when entering the attorney's fees in this matter.

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because of my experience
 scored #3 in state test of all counties
 for civil service
 + told I was removed from all promotions
 because of disability.

JUDICIARY OF THE STATE OF NEW JERSEY
 Support Staff Band Specification
 Judiciary Clerk 2

BAND SUMMARY

Support Staff perform a variety of clerical, administrative, and supportive tasks in connection with proceedings instituted before courts of justice or programs administered under the supervision of the courts; in support of the business operations of such courts; and as contact representatives for clients and customers or users of the services provided by the Judicial Branch of the State of New Jersey.

LEVEL SUMMARY

Level 2 - Basic (Keyboarding) (Judiciary Account Clerk 1 and Judiciary Clerk 2)

NOTE: The above summary and following examples of work are for illustrative purposes only. Any one position may not necessarily include all of the tasks listed, nor do the examples cover all of the duties which may be performed.

PIE

✓ - Job Duties TASKS

- ✓ Operate photocopying machines.
- ✓ Answer routine questions.
- ✓ File records, cards, reports, forms, letters or other written documents alphabetically, numerically, or by subject.
- ✓ Route telephone calls.
- ✓ Search files, reports, or other documents for information.
- ✓ Sort mail, cards, letters, forms, or other documents.
- ✓ Route correspondence or files to appropriate offices or people.
- ✓ Distribute judges' orders or requests.
- ✓ Send regular, insured, special delivery, express, certified, or registered mail to appropriate individuals or agencies.
- ✓ Store records, materials, parts, or other supplies for future needs.
- ✓ Assemble materials for distribution.
- ✓ Record (log) incoming or outgoing documents, materials or files.

Stopped
 doing this
 last year

✓ Record applications, transactions, requests, or fees.

Record courtroom activities such as daily attendance of jurors; payments, fines or other charges as directed by the court; dispositions of motions or discoveries; or verdicts from juries.

✓ Receive insured, special delivery, express, certified, or registered mail.

✓ Select appropriate form letter for routine correspondence.

✓ Distribute mail or office supplies.

✓ Complete standard office or agency business forms.

✓ Correct errors on finished copy.

✓ Collect (pick up) correspondence, packages, reports and other materials.

✓ Record information into manual record keeping systems.

Operate a date stamping machine.

✓ Compute simple numerical data (addition, subtraction, multiplication, division).

Locate law books, documents, records, tape recordings, or other reference materials for judges or other court officials.

Operate video or sound recording equipment.

IF Computer Problem Report hardware malfunctions to supervisors or repair persons.

✓ Inventory materials, parts, or supplies.

Adjust office machines.

Secure titles and registrations for fleet vehicles.

Maintain and reshelve books and publications in a law library.

✓ Treat all personnel, clients and the public with dignity and respect.

✓ Operate computer terminal or personal computer for information processing.

✓ Provide information to the public.

✓ Index new documents, records or writs, manually or by computer.

✓ Call (on telephone) for case-related or other needed information or materials.

✓ Conduct docket searches by computer.

✓ Obtain necessary signatures on legal documents.

✓ Apply official stamps to legal documents.

Use the Type narrative statements, reports, ~~correspondence~~ or memoranda.

✓ Obtain (or update) case information or files for trial.

✓ Request needed information from individuals or agencies, office visitors or customers.

✓ Record information into computerized record keeping or accounting systems.

✓ Complete detailed log sheets of recordings.

did at times Prepare trial notices or calendars.

when needed Type warrants, subpoenas or other legal documents.

Inform judges or hearing officers on the status of case-related matters.

Do on times Notify parties of dates or times of scheduled proceedings.

✓ Issue case numbers for new cases.

✓ Compose routine correspondence, such as form letters or standard replies to inquiries.

Distribute judgments to all parties concerned.

Assign codes to new cases.

✓ Complete subpoenas, writs, or other related legal documents.

Operate transcription equipment.

Attend the call of both civil or criminal trial lists to record information.

✓ Record complaints.

Requests to Supervisor Requisition materials, equipment, parts or supplies.

Release exhibits into evidence for trials.

Participate in team/work unit meeting.

Be to type some documents Type statistical, financial or technical documents.

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Annotate calendars with additional information required by judges.

✓ Calculate attorneys' fees or court costs.

Maintain personnel records.

✓ Record cash transactions.

Compare computer-generated output to manually-maintained journals.

Schedule meetings, travel arrangements, or other group activities.

Duplicate and reformat video/audio tapes.

Secure books and periodicals from other libraries on interlibrary loan.

Operate a cash register.

Take dictation.

~~Operate a microfilm/microfiche machine.~~

✓ Orient fellow team members to job or tasks.

✓ Collect fees or costs as directed by the court.

✓ Inform clients or customers about available services.

Have
done

Aa 99

language in ways that are appropriate to listeners and situations, and shows dignity and respect to all.

Resource Handling -- Selects, acquires, stores, and distributes resources such as materials, equipment or money.

Team Work -- Encourages and facilitates cooperation, pride, trust, and group identity; fosters commitment and team spirit, works with others to achieve goals.

Organizational Awareness -- Knows how social, political, organizational, and technological systems work and operates effectively within them. This includes the policies, procedures, rules and regulations of the work or organization.

Customer Service -- Works and communicates with clients and customers (for example, any individuals who use or receive the services or products that your work unit provides, including individuals who work in your agency or in other agencies or organizations outside the government) to satisfy their expectations. Committed to quality services.

Reading -- Learns from written material by determining the main idea or essential message. Recognizes correct English grammar, punctuation, and spelling.

Arithmetic/Mathematical Reasoning -- Performs computations such as addition, subtraction, multiplication, and division correctly; solves practical problems by choosing appropriately from a variety of mathematical techniques such as formulas and percentages.

Manages and Organizes Information -- Identifies a need; gathers, organizes, and maintains information; determines its importance and accuracy, and communicates it by a variety of methods, e.g. record keeping.

Conscientiousness -- Displays a high level of effort and commitment towards performing work; demonstrates responsible behavior.

Perceptual Speed -- Sees details in words, numbers, pictures, and graphs, quickly and accurately.

MINIMUM REQUIREMENTS

KEYBOARDING SKILLS

Applicants for appointment to the band must pass an appointing authority administered examination to demonstrate keyboarding skills at the Judiciary standard of twenty-five (25) words-per-minute.

5
Aa100

SPECIAL REQUIREMENTS/SPECIAL SKILLS/CONSIDERATIONS

BILINGUAL IN SPANISH AND ENGLISH VARIANT

The above examples of work are to be performed by utilizing Spanish or English, as required, depending on the needs of the individual persons communicated with during the course of official duties. Such examples do not require an individual to interpret or translate any court proceeding or in any other context.

STENOGRAPHIC VARIANT

The above examples of work are to be performed utilizing Stenography as required.

10/25/99

⁶
Aa 101

**JOB BANDS AND LEVELS CHART
THE JUDICIARY CLASSIFICATION AND COMPENSATION SYSTEM**

Note: Confidential titles are included in base titles, i.e. Judiciary Clerk 2 = Judiciary Clerk 2-Confidential.

Band/ Level	Band Name	Level Description	Title	Bargaining Unit	Salary Range as of 1/2/99
1-1	Support Staff	No Keyboard Skills	Court Services Representative	JCAU-SS JCAU-SSUP	\$17,365-26,365
1-1	Support Staff	No Keyboard Skills	Judiciary Clerk 1	JCAU-SS	\$17,365-26,365
1-2	Support Staff	Basic	Judiciary Account Clerk 1	JCAU-SS	\$18,365-32,365
1-2	Support Staff	Basic	Judiciary Clerk 2	JCAU-SS	\$18,365-32,365
1-2	Support Staff	Basic	Printing Operations Technician 1	JCAU-SS	\$18,365-32,365
1-3	Support Staff	Journey	Building Maintenance Worker, Judiciary	JCAU-SS	\$24,865-37,865
1-3	Support Staff	Journey	Clerk of Grand Jury	JCAU-Admin	\$24,865-37,865
1-3	Support Staff	Journey	Court Clerk	JCAU-Admin	\$24,865-37,865
1-3	Support Staff	Journey	Information Systems Technician 1	JCAU-SS JCAU-Admin	\$24,865-37,865
1-3	Support Staff	Journey	Judiciary Account Clerk 2	JCAU-SS	\$24,865-37,865
1-3	Support Staff	Journey	Judiciary Clerk 3	JCAU-SS JCAU-Admin JCAU-SSUP	\$24,865-37,865
1-3	Support Staff	Journey	Judiciary Secretary 1	JCAU-SS	\$24,865-37,865
1-3	Support Staff	Journey	Library Assistant	JCAU-SS CWA-PNC	\$24,865-37,865
1-3	Support Staff	Journey	Printing Operations Technician 2	JCAU-SS	\$24,865-37,865
1-4a	Support Staff	Mastery	Executive Secretary 1	Nonrep'd	\$27,365-41,025
1-4b	Support Staff	Mastery	Administrative Specialist 1	CWA-PNC	\$27,365-43,365
1-4b	Support Staff	Mastery	Information Systems Technician 2	JCAU-SS JCAU-Admin	\$27,365-43,365
1-4b	Support Staff	Mastery	Judiciary Clerk 4	JCAU-SS JCAU-Admin JCAU-SSUP	\$27,365-43,365
2-1	Case Processing	Trainee/ Investigator	Investigator 1	JCAU-SS JCAU-Admin	\$25,365-40,365

Bargaining Unit Codes:

JCAU: Admin=Administrative Unit; SS=Support Staff Unit; SSUP=Support Staff Supervisory Unit

CWA-PNC: Professional Non-Case Related Unit

PANJ-PC: Professional Case-Related Unit

Aa 102

JOB BANDS AND LEVELS CHART
THE JUDICIARY CLASSIFICATION AND COMPENSATION SYSTEM

Note: Confidential titles are included in base titles, i.e. Judiciary Clerk 2 = Judiciary Clerk 2-Confidential.

Band/ Level	Band Name	Level Description	Title	Bargaining Unit	Salary Range as of 1/2/99
2-1	Case Processing	Trainee/ Investigator	Investigator 2	JCAU-Admin	\$28,365-46,365
2-2 a	Case Processing	Basic	Court Services Officer 1	CWA-PNC	\$27,365-43,365
2-2 b	Case Processing	Basic	Probation Officer	PANJ-PC	\$29,000-49,000
2-3 a	Case Processing	Journey	Court Services Officer 2	CWA-PNC	\$33,365-54,365
2-3 b	Case Processing	Journey	Senior Probation Officer	PANJ-PC	\$36,000-60,000
2-4 a	Case Processing	Mastery	Master Probation Officer	PANJ-PC	\$40,000-64,000
2-4 b	Case Processing	Mastery	Court Services Officer 3	CWA-PNC	\$46,365-71,365
3-1	Administrative Professional	Basic	Administrative Specialist 2	CWA-PNC	\$29,365-48,365
3-2a	Administrative Professional	Journey	Executive Secretary 2	Nonrep'd	\$32,609-44,865
3-2b	Administrative Professional	Journey	Executive Secretary 3	Nonrep'd	\$35,609-50,390
3-2c	Administrative Professional	Journey	Administrative Specialist 3	CWA-PNC	\$33,365-54,365
3-2c	Administrative Professional	Journey	Financial Specialist 1	CWA-PNC	\$33,365-54,365
3-2c	Administrative Professional	Journey	Judiciary Coordinator 1	CWA-PNC	\$33,365-54,365
3-2c	Administrative Professional	Journey	Librarian 1	CWA-PNC	\$33,365-54,365
3-3	Administrative Professional	Mastery	Administrative Specialist 4	CWA-PNC	\$44,365-69,365
3-3	Administrative Professional	Mastery	Financial Specialist 2	CWA-PNC	\$44,365-69,365
3-3	Administrative Professional	Mastery	Judiciary Coordinator 2	CWA-PNC	\$44,365-69,365
4-1	Information Technology	Computer Operations	Information Technology Technician	CWA-PNC	\$26,365-45,365
4-2	Information Technology	Basic	Information Technology Analyst 1	CWA-PNC	\$33,365-56,365

Bargaining Unit Codes:

JCAU: Admin=Administrative Unit; SS=Support Staff Unit; SSUP=Support Staff Supervisory Unit

CWA-PNC: Professional Non-Case Related Unit

PANJ-PC: Professional Case-Related Unit

Date: 1/1/00

Ac 103

JOB BANDS AND LEVELS CHART

THE JUDICIARY CLASSIFICATION AND COMPENSATION SYSTEM

Note: Confidential titles are included in base titles, i.e. Judiciary Clerk 2 = Judiciary Clerk 2-Confidential.

Band/ Level	Band Name	Level Description	Title	Bargaining Unit	Salary Range as of 1/2/99
4-3	Information Technology	Journey	Information Technology Analyst 2	CWA-PNC	\$38,365-66,365
4-4	Information Technology	Mastery	Information Technology Analyst 3	CWA-PNC	\$51,365-72,365
5-1	Court Interpreter	Basic	Court Interpreter 1	CWA-PNC	\$29,365-48,365
5-2	Court Interpreter	Journey	Court Interpreter 2	CWA-PNC	\$33,365-54,365
6	Official Court Reporter		Existing agreement expires 6/30/99.	OPEIU	No change/Past practice
7-1	Legal	Law Clerk	Law Clerk	Nonrep'd	\$30,000-38,000
7-2	Legal	Journey	Attorney 1	CWA-PNC	\$44,365-69,365
7-3	Legal	Mastery	Attorney 2	CWA-PNC	\$54,365-79,365
8-1	Support Staff Supervisory	Support Staff Supervisor 1	Supervising Investigator	JCAU-SSUP	\$30,365-48,365
8-1	Support Staff Supervisory	Support Staff Supervisor 1	Supervisor 1	JCAU-SS JCAU-SSUP	\$30,365-48,365
8-2	Support Staff Supervisory	Support Staff Supervisor 2	Supervisor 2	JCAU-SSUP	\$34,365-56,365
9	Professional Supervisory		No change. Labor agreement being negotiated.	PANJ-PS	No change/Past practice
10-1a	Court Executive		Court Executive 1	Nonrep'd	\$38,365-63,365
10-1b	Court Executive		Court Executive 1	Nonrep'd	\$48,365-73,365
10-2a	Court Executive		Court Executive 2	Nonrep'd	\$58,365-83,365
10-2b	Court Executive		Court Executive 2	Nonrep'd	\$58,365-86,365
10-2c	Court Executive		Court Executive 2	Nonrep'd	\$58,365-86,865
10-3a	Court Executive		Court Executive 3	Nonrep'd	\$68,365-93,865
10-3b	Court Executive		Court Executive 3	Nonrep'd	\$78,365-96,365
10-4	Court Executive		Court Executive 4	Nonrep'd	\$88,365-101,365

Bargaining Unit Codes:

JCAU: Admin=Administrative Unit; SS=Support Staff Unit; SSUP=Support Staff Supervisory Unit
 CWA-PNC: Professional Non-Case Related Unit
 PANJ-PC: Professional Case-Related Unit

A2104

Bricktown Medical Group, P.A.

DORADO SHOPPING PLAZA
LANES MILL ROAD
LAKEWOOD, NEW JERSEY 08701

TELEPHONE (201) 458-0300

August 1, 1991

P2E

Frank S. Salzer, Esq.
611 Main Street
P.O. Box 4806
Toms River, New Jersey 08754

Dear Mr. Salzer,

Respondent:	County of Ocean
Petitioner:	Tami Rosales
Occupational Exposure:	October 1989 til present
Date of Examination:	July 2, 1991

HISTORY:

The case in question is one in which Mrs. Tami Rosales of 950 Utah Drive, Toms River, New Jersey was injured while working. Mrs. Rosales is 27 years of age and is married. She gives a previous medical history of fractured right hand as a child, tonsillectomy in 1971 and left knee arthroscopic surgery in 1989.

The alleged accident occurred during the course of her employment. While working the petitioner's work effort required her to use a computer and typewriter, constantly using both her hands resulting in injury to her hands. On or about February 1990 the petitioner woke to numbness and bluecolor in her right hand extending up into her entire arm. She did go to work but was advised by her supervisor to see a doctor. She did "light" duty. During her work effort she was advised not to use her right and and use her left hand. She developed symptoms in her left hand. She came under the care of Dr. Kuhn. She was referred to Dr. Silver, a vascular specialist who evaluated her and diagnosed it not to be vascular but orthopedic. He suggested her to see a hand specialist. She was seen by Dr. Pess. Xrays were taken. Her right hand was casted and injections of cortisone was given. At this point her arm improved but she still hand numbness and weakness in the hand and wrist. The petitioner was referred to Dr. DiBella and physical therapy was prescribed.

Aa105

Both hands were placed in splints. She remained under active care and remained out of work through November 1, 1990. She returned to work with her hands continuing to have numbness and pain. The petitioner came under the care of Dr. Sargent. Xrays were taken. She was admitted to Brick Hospital and underwent carpal tunnel release on the right. At home exercises were prescribed. She was sent to a dermatologist because of her nails stopping growing and they were very brittle. She continued to develop numbness and pain in the right hand. She was out of work approximately 8 months and she received compensable monies.

SUBJECTIVE EXAMINATION:

The petitioner complains of pain in her right hand. She cannot wear a bracelet or watch on the right wrist. Her wrist becomes very tight. She does her own exercises. There is no feeling in the last finger and end of palm. There is tingling sensation in the right hand. The right hand is colder than the left. The scar is sensitive and tight. The petitioner is right hand dominant. Her writing is sloppy. She has pain in her left hand as well as numbness and tingling in the fingers. Her hand swells. Her hands tire quickly. Inclement weather aggravates her pain and discomfort. Her sleeping habits are interrupted due to pain. She has loss of strength in the right hand. She has difficulty lifting objects. The petitioner is afraid to do any strenuous work with the right hand. She feels as if her hand is returning to the same condition as before the surgery.

OBJECTIVE EXAMINATION:

Examination of the petitioner reveals a well developed female complaining of pain. Cardiovascular and respiratory systems are within normal limits. Blood pressure is 130/84. The petitioner is 5 feet 8 inches tall and weighs 228 pounds.

Examination of the petitioner's right wrist reveals a 7cm. scar over the anterior wrist and palm. There is tenderness to palpation over the wrists bilaterally. Flexion is to 45 degrees on the right and to 60 degrees on the left. Extension is to 30 degrees on the right and to 45 degrees on the left. Inversion is to 30 degrees on the right and to 45 degrees on the left. Eversion is to 5 degrees bilaterally. Pronation is complete. Supination is to 165 degrees on the right and to 180 degrees on the left. Strength is diminished on the right as compared to the left. The petitioner is right hand dominant. She is able to make a fist. She is able to flex, flair, extend and oppose all digits. The right and left forearms measure 25 3/4cm. The right and left wrists measure 15 1/2cm. The right palm measures 19 3/4cm. and the left palm measures 19cm.

Aa 106

DIAGNOSES:

CARPAL TUNNEL SYNDROME, BILATERALLY
DEQUERVAIN'S DISEASE
ABERRANT ULNAR NERVE
STATUS POST RELEASE TRANSVERSE CARPAL LIGAMENT, SYNOVIAL
BIOPSY, EXPLORATION AND DECOMPRESSION OF THE ULNAR NERVE
RIGHT WRIST

*worsening or
deviating from
normal course*

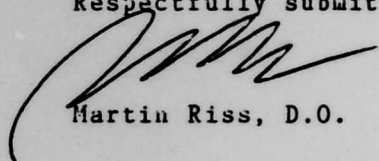
*desire of tendon & inflamation
caused by
fibrous tissue
requires surgery at this
a duplication of*

DISABILITY AND OPINION:

It is my opinion that there is demonstrable objective medical evidence of restriction of function and lessening to a material degree of working ability, and that the petitioner is disabled orthopedically to the extent of 40% of the right hand and to 20% of the left hand. No fundamental or marked improvement can be reasonably expected and the prognosis for improvement is not favorable.

It is my opinion the aforementioned complaints, findings, and diagnoses are causally related to the occupational exposure from October 1989 until the present and are permanent in nature.

Respectfully submitted,



Martin Riss, D.O.

MR/np

*average for
median nerve - both
ulnar nerve - rt
diff of both carpal
tunnel syndrome*

Aa107

Bricktown Medical Group, P.A.

DORADO SHOPPING PLAZA
34 LANES MILL ROAD
LAKEWOOD, NEW JERSEY 08701

TELEPHONE (908) 458-0300

January 20, 1994

Frank S. Salzer, Esq.
611 Main Street
P.O. Box 4806
Toms River, New Jersey 08754

P3

Dear Mr. Salzer,

Respondent:	County of Ocean
Petitioner:	Tami Rosales
Date of Accident:	10/89 to present
Date of Examination:	December 27, 1993

HISTORY:

The case in question is one in which Ms. Tami Rosales of 335 Anthony Avenue, Toms River, New Jersey was injured while working. Ms. Rosales is 30 years of age and is separated. She gives a previous medical history of fractured right hand as a child, tonsillectomy in 1971 and left knee arthroscopic surgery in 1989.

Please see my report dated August 1, 1991 for pertinent facts of this petitioner's injury to both hands.

Since she was here last the petitioner continued under the care of Dr. Pess. She was admitted to Community Medical Center on June 3, 1993 and underwent left endoscopic carpal tunnel release. She was admitted again to Community Medical Center on July 21, 1993 and underwent right carpal tunnel release and neurolysis of the median nerve. She had follow up visits with Dr. Pess through September 1993. The petitioner saw Dr. Pess last week because of ~~bruising~~ add. tingling in her hands. Therapy was prescribed. The petitioner returned to work in October 1993 and she received disability.

Aa 108

SUBJECTIVE EXAMINATION:

The petitioner complains of pain in her hands. She has numbness and tingling in both hands but moreso on the right. She has black and blue bruises on her hands and wrists. She cannot open her right hand all the way. Her fingers are stiff. Her wrists are restricted in mobility. Grasping is difficult. Her hands are weak bilaterally. She has limited her activities. Inclement and cold weather aggravates her pain. She is right hand dominant. Her scars turn purple in the cold weather. Prolonged use of her hands increase her pain and discomfort. She cannot write for any length of time and she must stop and rest.

OBJECTIVE EXAMINATION:

Examination of the petitioner reveals a well developed female complaining of pain. Cardiovascular and respiratory systems are within normal limits. Blood pressure is 112/62. The petitioner is 5 feet 8 inches tall and weighs 240 pounds.

Examination of the petitioner's wrists reveal a 7cm. scar over the right wrist and palm. There is a horizontal scar measuring 14cm. over the left anterior aspect and a 1cm. scar over the anterior palm. There is tenderness to palpation over the anterior aspect of the wrists. Flexion is to 30 degrees on the right and to 50 degrees on the left. Extension is to 20 degrees on the right and to 30 degrees on the left. Inversion is to 20 degrees on the right and to 30 degrees on the left. Eversion is to less than 5 degrees on the right and to 5 degrees on the left. Strength is diminished on the right as compared to the left. The petitioner is right hand dominant. Sensation is diminished on the right as compared to the left. She is able to make a fist on the left but not able on the right. She is able to flex, flair, extend and oppose all digits adequately on the left but not able adequately on the right. Pronation is complete. Supination is to 165 degrees on the right and to 175 degrees on the left. The right and left forearms measure 25 3/4cm. The right and left wrists measure 15 1/2cm. The right palm measures 19 3/4cm. and the left palm measures 19cm.

DIAGNOSES:

CARPAL TUNNEL SYNDROME, BILATERALLY
DEQUEVAIN'S DISEASE
AB ERRANT ULNAR NERVE
STATUS POST RELEASE TRANSVERSE CARPAL LIGAMENT, SYNOVIAL
BIOPSY, EXPLORATION AND DECOMPRESSION OF THE ULNAR NERVE
RIGHT WRIST
STATUS POST LEFT ENDOSCOPIC CARPAL TUNNEL RELEASE
STATUS POST RIGHT CARPAL TUNNEL RELEASE AND NEUROLYSIS OF
THE MEDIAN NERVE

Aa 109

DISABILITY AND OPINION:

It is my opinion that there is demonstrable objective medical evidence of restriction of function and lessening to a material degree of working ability, and that the petitioner is disabled orthopedically to the extent of 65% of the right hand and to 45% of the left hand. No fundamental or marked improvement can be reasonably expected and the prognosis for improvement is not favorable.

It is my opinion the aforementioned complaints, findings, and diagnoses are causally related to the occupational exposure from October 1989 til the present and are permanent in nature.

Respectfully submitted,

Martin Riss, D.O.

MR7np

Aa 110

Bricktown Medical Group, P.A.

DORADO SHOPPING PLAZA
34 LANES MILL ROAD
BRICK, NEW JERSEY 08724

TELEPHONE (908) 458-0300

April 16, 1996

Frank S Salzer, Esq
PO Box 4806
Toms River, NJ 08754-4806

*subsequent Hoop
5/96
ntelbom*

Dear Mr. Salzer:

84

Respondent:
Petitioner:
Date of Accident:
Date of Accident:
Date of Examination:

State of NJ
Tami Rosales
10/89 to Present
Through 9/95
April 8, 1996

HISTORY:

The case in question is one in which Ms. Tami Rosales of Keats Avenue, Toms River, NJ was injured while working. Ms. Rosales is 32 years of age and is divorced with one child. She gives a previous medical surgical history of spurs bilateral feet, fractured right hand as a child, tonsillectomy in 1971, and left knee arthroscopy in 1989.

The alleged accident occurred during the course of her employment. Please refer to my reports dated August 1, 1991 and January 20, 1994 for injuries sustained to her hands as a result of a work effort of 1989. Since she was last seen in my office her condition has worsened.

The petitioner continued to work as a clerk typist for the State of New Jersey through September 1995. Her work effort required effort on a computer and constant use of both hands and arms. She returned to Central Jersey Hand Surgeons for continued care. Dr. Pess prescribed physical therapy and an EMG. He admitted her to Community Medical Center on October 18, 1995 where she underwent surgery described as a neurolysis of the right median nerve and right trigger thumb release, and flexor tenosynovectomy of the wrist and palm. Her post-operative care included physical therapy and follow-up.

Ms. Rosales was out of work through January 22, 1996 and returned to work on light duty. She received compensable monies for time missed from work.

Aa III

Tami Rosales
Vs County of Ocean
D/E: 4896
Page 2

SUBJECTIVE EXAMINATION:

The petitioner complains about pain in her right wrist and thumb. Her grip is lost in her right hand and thumb. Her right index finger does what it wants to do. She has pins and needles in her fingers. She has tenderness in her right arm. She wears a brace. The pain is returning to her left hand as a result of overuse. She cannot write. Her right hand gets "tight". She has a loss of strength. Her right hand turns ice cold with cold, damp, changing weather. Her scars become bright purple in winter.

She is limited in doing heavy work. Objects drop from her right hand. Her right hand twitches. After her right pinky twitches she gets a sharp pain that shoots up her right arm. Her sleeping habits are disturbed due to pain and numbness. She has to take medication to help her sleep. She cannot use her computer at work for fear of reinjury. She cannot do art work. She was very creative with her hands prior to her injuries. Her everyday activities are limited. She moved to a new home in January and still has boxes left to unpack. Playing with her child is limited. Sport playing is limited. She is very angry and depressed over her injury. These injuries have made her a different person. Air conditioning aggravates her pain.

OBJECTIVE EXAMINATION:

Examination of the petitioner reveals a well developed female complaining of pain. Cardiovascular and respiratory systems are within normal limits. The petitioner is 5 feet 8 inches tall and weighs 246 pounds. Blood pressure is 140/82.

Aa 112

Tami Rosales
Vs County of Ocean
D/E: 4/8/96
Page 3

Examination of the right wrist and palm reveals a 9 1/2cm scar. Over the anterior aspect of the right MP joint there is a scar measuring 2.3cm. There is a horizontal scar measuring 1.4cm by 1cm over the left anterior aspect and a 1cm scar over the anterior palm. Examination reveals that there is tenderness to palpation over the anterior aspects of the right and left wrists and over the right anterior thumb base. Flexion is to 20 degrees on the right and to 35 degrees on the left. Extension is to 20 degrees on the right and to 25 degrees on the left. Inversion is to 10 degrees on the right and to 25 degrees on the left. Eversion is to less than 5 degrees on the right and to 5 degrees on the left. Pronation is complete. Supination is to 165 degrees on the right and to 180 degrees on the left. Her strength is markedly diminished bilaterally. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She cannot make a fist on the right, able to on the left. She cannot flex, flair, extend, and oppose all digits on the right, able to on the left.

Flexion of the thumb at the MP joint is to 45 degrees on the right and to 70 degrees on the left. Extension of the thumb at the MP joint is to 170 degrees on the right and to 180 degrees on the left. Flexion of the thumb at the IP joint is to 45 degrees on the right and to 75 degrees on the left. Extension of the thumb at the IP joint is to 170 degrees on the right and to 180 degrees on the left.

The right forearm measures 25 1/2cm and the left forearm measures 25 3/4cm. The right and left wrists measures 15 1/2cm. The right palm measures 19 3/4cm and the left palm measures 19cm.

Aa 113

Tami Rosales
Vs County of Ocean
D/E: 4/8/96
Page 4

DIAGNOSES:

CARPAL TUNNEL SYNDROME, BILATERALLY

DEQUERVAINS DISEASE

AB ERRANT ULNAR NERVE

STATUS POST RELEASE TRANSVERSE CARPAL LIGAMENT,
SYNOVIAL BIOPSY, EXPLORATION, AND DECOMPRESSION OF
THE ULNAR NERVE, RIGHT WRIST

STATUS POST LEFT ENDOSCOPIC CARPAL TUNNEL RELEASE

STATUS POST RIGHT CARPAL TUNNEL RELEASE AND NEUROLYSIS
OF THE MEDIAL NERVE

NEUROPATHY OF RIGHT MEDIAN NERVE AND RIGHT TRIGGER
FINGER

STATUS POST NEUROLYSIS OF RIGHT MEDIAL NERVE WITH RIGHT
TRIGGER THUMB RELEASE AND FLEXOR TENOSYNOVECTOMY OF
WRIST AND PALM

AGGRAVATION, ACCELERATION, AND EXACERBATION OF
PRIOR RIGHT AND LEFT HAND INJURIES

Aa 114

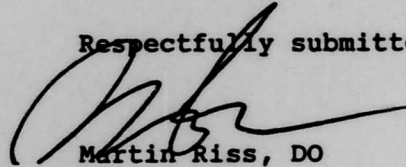
Tami Rosales
Vs State of NJ
D/E: 4/8/96
Page 5

DISABILITY AND OPINION:

It is my opinion that there is demonstrable objective medical evidence of restriction of function and lessening to a material degree of working ability and that the petitioner is overall disabled orthopedically to the extent of 100% of the total. No fundamental or marked improvement can be reasonably expected and the prognosis for improvement is not favorable.

It is my opinion that the aforementioned complaints, findings, and diagnoses are causally related to the occupational exposure of 1989 and 1995 and are permanent in nature.

Respectfully submitted,



Martin Riss, DO

MR/saws

Aa115

DORADO SHOPPING PLAZA
34 LANES MILL ROAD
BRICK, NEW JERSEY 08724
TELEPHONE (908) 458-0300

January 16, 1998

Frank S. Salzer, Esq.
PO Box 4806
Toms River, NJ 08754-4806

RS

Dear Mr. Salzer:

Respondent:
Petitioner:
Date of Accident:
Date of Examination:

State of NJ
Tami Rosales
1989 - Present
January 15, 1998

HISTORY:

The case in question is one in which Ms. Tami Rosales of 56 Gladney Avenue, Toms River, NJ was injured while working. Ms. Rosales is 34 years of age and is divorced with one child. She gives a medical history of fractured right hand as a child, tonsillectomy in 1971, and left knee arthroscopic surgery in 1989.

The alleged accident occurred during the course of her employment. Please refer to my reports dated April 16, 1996, January 20, 1994 and August 1, 1991 for pertinent information regarding the history of the accident and injuries sustained.

Since the petitioner was last seen in my office her complaints persisted. She continued to work and was exposed on an occupational basis to repetitive effort with regard to both hands, arms, shoulders, and neck. She missed work intermittently due to severe pain and numbness in her right hand.

Ms. Rosales returned to Dr. Pess who diagnosed right cubital tunnel syndrome. On August 14, 1996 the doctor performed surgery described as an anterior transposition and neurolysis, right ulnar nerve, elbow. Post-operatively she was treated with physical therapy through October or November 1997 and follow-up through the present. Surgery is recommended to her left arm. An EMG of her left upper extremity was obtained.

Aa 116

MARTIN RISS, DO

Tamy Rosales
January 16, 1998
Page 2

She also saw Dr. Tauro in early 1997 and complained of shoulder pain. He treated her with cortisone injections.

Approximately two weeks ago she states she experienced an onset of wrist pain. She continues to work. She misses intermittent days of work and works in pain.

SUBJECTIVE EXAMINATION:

The petitioner complains about pain in her right wrist and thumb. Her grip is lost in her right hand and thumb. Her right index finger does what it wants to do. She has pins and needles in her fingers. She has tenderness in her right arm. She wears a brace. She has pain in her left hand and wrist. She finds it difficult to write. Her right hand gets tight. She has a loss of strength. Her right hand turns ice cold with cold, damp, changing weather. Her scars become bright purple in winter. Numbness radiates into her right elbow and neck which creates headaches. The right side of her back goes numb and up into her mid back.

She is limited in doing heavy work. Objects drop from her right hand. Her right hand twitches. After her right pinky twitches she gets a sharp pain that shoots up into her right arm. Her sleeping habits are disturbed due to pain. She has to take medication to help her sleep. She finds it difficult to use the computer at work. She states she was advised that she had to use the computer in order to maintain her job. Playing with her child is limited. Sport playing is limited. She is very angry and depressed over her injury. These injuries have made her a different person. Air conditioning aggravates her pain.

OBJECTIVE EXAMINATION:

Examination of the petitioner reveals a well developed female complaining of pain. Cardiovascular and respiratory systems are within normal limits. The petitioner is 5 feet 8 inches tall and weighs 248 pounds.

Aa 117

MARTIN RISS, DO

Tami Rosales
January 16, 1998
Page 3

Examination of the cervical spine reveals tenderness to palpation with spasm over the right cervical paravertebral and bilateral trapezius muscles. Flexion is to 45 degrees. Extension is to 15 degrees. Sidebending is to 20 degrees bilaterally. Rotation is to 30 degrees on the right and to 35 degrees on the left. Her strength is markedly diminished on the right as compared to the left. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She is able to shrug her shoulders.

Examination of the shoulders reveals tenderness to palpation over the superior posterior aspects bilaterally. Flexion is to 145 degrees on the right and to 175 degrees on the left. Extension is to 35 degrees on the right and to 50 degrees on the left. Abduction is to 160 degrees on the right and to 180 degrees on the left. Rotation is to 100 degrees on the right and to 115 degrees on the left. Her strength is markedly diminished on the right as compared to the left. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She is able to shrug her shoulders.

Examination of the right elbow reveals a scar measuring 10 cm over the medial aspect of the elbow. Examination reveals tenderness to palpation over the medial aspects bilaterally. Flexion, extension, and pronation are complete. Supination is to 170 degrees bilaterally.

Examination of the right wrist and palm reveals a 9 ½ cm scar. Over the anterior aspect of the right MP joint reveals a scar measuring 2.3 cm. There is a horizontal scar measuring 1.4 cm anterior palm. Examination of the wrists reveals tenderness to palpation over the anterior wrists and palms bilaterally. Flexion is to 10 degrees on the right and to 25 degrees on the left. Extension is to 15 degrees on the right and to 20 degrees on the left. Inversion is to 5 degrees on the right and to 20 degrees on the left. Eversion is to less than 5 degrees on the right and to 5 degrees on the left. Pronation is complete. Supination is to 170 degrees bilaterally. Her strength is markedly diminished on the right as compared to the left. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She could not make a fist with her right hand. She is able to make a fist with her left hand. She could not flex, flair, extend, and oppose the digits of her right hand. She is able to flex, flair, extend, and oppose the digits of her left hand.

A-11B

MARTIN RISS, DO

Tami Rosales
January 16, 1998
Page 4

Flexion of the thumb reveals tenderness to palpation over the thumb. Flexion of the thumb at the MP joint is to 45 degrees on the right and to 70 degrees on the left. Extension of the thumb at the MP joint is to 170 degrees on the right and to 180 degrees on the left. Flexion of the thumb at the IP joint is to 35 degrees on the right and to 75 degrees on the left. Extension of the thumb at the IP joint is to 170 degrees on the right and to 180 degrees on the left.

The right bicep measures 36 ¼ cm and the left bicep measures 37 cm. The right and left elbows measures 27 cm. The right forearm measures 25 ½ cm and the left forearm measures 25 ¾ cm. The right and left wrists measures 15 ½ cm. The right palm measures 19 ¾ cm and the left palm measures 19 cm.

DIAGNOSES:

RIGHT CARPAL TUNNEL SYNDROME, BILATERALLY

DEQUERVAIN'S DISEASE

AB ERRANT ULNAR NERVE, RIGHT

**STATUS POST RELEASE TRANSVERSE CARPAL
LIGAMENT, SYNOVIAL BIOPSY, EXPLORATION,
AND DECOMPRESSION OF THE ULNAR NERVE,
RIGHT WRIST**

**STATUS POST LEFT ENDOSCOPIC CARPAL TUNNEL
RELEASE**

**STATUS POST RIGHT CARPAL TUNNEL RELEASE
AND NEUROLYSIS OF THE MEDIAL NERVE**

**NEUROPATHY OF RIGHT MEDIAN NERVE AND
RIGHT TRIGGER FINGER**

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MARTIN RISS, DO

Tami Rosales
January 16, 1998
Page 5

DIAGNOSES (CONT'D):

STATUS POST NEUROLYSIS OF RIGHT MEDIAL NERVE
WITH RIGHT TRIGGER THUMB RELEASE AND FLEXOR
TENOSYNOVECTOMY OF WRIST AND PALM

RIGHT CUBITAL TUNNEL SYNDROME

STATUS POST ANTERIOR TRANSPOSITION AND NEUROLYSIS
RIGHT ULNAR NERVE, ELBOW

AGGRAVATION, ACCELERATION, AND EXACERBATION OF PRIOR
RIGHT AND LEFT HAND INJURIES

DISABILITY AND OPINION:

It is my opinion that there is demonstrable objective medical evidence of restriction of function and lessening to a material degree of working ability. It is my opinion that the last two surgical procedures to the right arm and hand would increase her disability by 45% of the right arm and by 35% of the right hand with the overall disability being greater which would render her to be totally disabled. No fundamental or marked improvement can be reasonably expected and the prognosis for improvement is not favorable.

It is my opinion that the aforementioned complaints, findings, and diagnoses are causally related to the occupational exposure of 1989 to the present and are permanent in nature by causation aggravation, acceleration, and exacerbation.

Respectfully submitted,

Martin Riss, DO

MR/saws

Aa 120

Bricktown Medical Group, P.A.

DORADO SHOPPING PLAZA
34 LANES MILL ROAD
BRICK, NEW JERSEY 08724

TELEPHONE (732) 458-0300

January 10, 2000

Frank S. Salzer, Esq.
PO Box 4806
Toms River, NJ 08753

PK

Dear Frank S. Salzer, Esq.:

Respondent:

Petitioner:

Date of Accident:

Date of examination:

State of NJ

Tami Rosales

1989 - present

December 30, 1999

HISTORY:

The case in question is one in which Ms. Tami Rosales of 56 Gladney Avenue, Toms River, NJ was injured while working. Ms. Rosales is 36 years of age and is divorced with one child. She gives a medical history of right hand fracture as a child, tonsillectomy in 1971, left knee arthroscopic surgery in 1989, and surgery for right tarsal tunnel in June 1998.

The alleged accident occurred during the course of her employment. Please refer to my reports dated January 16, 1998, April 16, 1996, January 20, 1994 and August 1, 1991 for pertinent information regarding the history of the accident and injuries sustained.

Since the petitioner was last seen in my office her complaints persisted and her condition worsened. Ms. Rosales continued under the care of Dr. Pess of Central Jersey Hand. A NCS of March 2, 1999 showed slowing of conduction velocity ulnar nerve across the elbow compared to below the elbow. An NCS of April 6, 1999 was positive for right carpal tunnel syndrome and right ulnar neuropathy. Treatment received was conservative and included physical therapy and injections of Xylocaine and Celestone to her elbow and wrists. She was given an elbow strap to wear. A diagnoses of left cubital tunnel syndrome and bilateral tendinitis was made.

The petitioner last worked on November 5, 1999. She applied for disability as she is not able to use her arms or hands to work.

AA121

Martin Riss, DO

Tammy Rosales
January 10, 2000
Page 2

SUBJECTIVE EXAMINATION:

The petitioner complains that pain is present even with her normal everyday activities. It takes longer for her to do things. Her sleep is disturbed and her pain is worse at night. Since her last evaluation her symptoms have increased. She has twitches in her neck, which gives her headaches. The twitches usually occur at night and come out of the blue. Any draft aggravates her pain. She is angry and depressed because she is not able to work. She has electric shocks that radiate up and down her arms. She has loss of grip in her right hand and thumb. Her right index finger does what it wants to do. Objects drop from her right hand.

She finds it difficult to write. Her right hand gets tight. Her right hand turns ice cold during cold, damp, and changing weather. Her scars become bright purple during winter. She has numbness that radiates up into her right elbow and neck, which creates headaches. The right side of her back goes numb and the numbness extends into her mid back. She is not able to do any type of heavy work. She takes medication to help her sleep. Playing with her child is limited. She is not able to work on a computer, which was part of her job requirement. Sport playing is limited.

OBJECTIVE EXAMINATION:

Examination of the petitioner reveals a well-developed female complaining of pain. The petitioner is 5 feet 8 inches tall and weighs 248 pounds. Blood pressure is 140/82.

Examination of the cervical spine reveals tenderness to palpation with spasm over the bilateral cervical paravertebral and bilateral trapezius muscles. Flexion is to 45 degrees. Extension is to 5 degrees. Sidebending is to 15 degrees on the right and to 10 degrees on the left. Rotation is to 30 degrees bilaterally. Her strength is markedly diminished on the right as compared to the left. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She is able to shrug her shoulders.

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Martin Riss, DO

Tami Rosales
January 10, 2000
Page 3

Examination of the shoulders reveals tenderness to palpation over the superior posterior aspects bilaterally. Flexion is to 135 degrees on the right and to 170 degrees on the left. Extension is to 30 degrees on the right and to 70 degrees on the left. Abduction is to 135 degrees on the right and to 165 degrees on the left. There is an audible palpable crepitus noted on the right during abduction that is not present on the left. Rotation is to 100 degrees on the right and to 105 degrees on the left. Her strength is markedly diminished on the right as compared to the left. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She is able to shrug her shoulders.

Examination of the right elbow reveals a scar that measures 10 cm over the medial aspect of the elbow. Examination of the elbows reveals tenderness to palpation over the medial aspects bilaterally. Flexion, extension, and pronation of the elbows are complete. Supination is to 155 degrees on the right and to 160 degrees on the left.

Examination of the right wrist and palm reveals a 9-1/2 cm scar. Over the anterior aspect of the right MP joint reveals a scar that measures 2.3 cm. There is a 1.4-cm horizontal scar over the anterior palm. Examination of the wrists reveals tenderness to palpation over the anterior wrists and palms bilaterally. Flexion is to 10 degrees on the right and to 20 degrees on the left. Extension is to 10 degrees on the right and to 20 degrees on the left. Inversion is to less than 5 degrees bilaterally. Eversion is to less than 5 degrees bilaterally. Pronation is to 180 degrees bilaterally (complete). Supination is to 155 degrees on the right and to 160 degrees on the left. Her strength is markedly diminished on the right as compared to the left. She is right hand dominant. Her sensation is diminished on the right as compared to the left. She makes weak fists bilaterally. She cannot flex, flare, extend, or oppose any digits of the right hand. She is able to flex, flare, extend, or oppose the digits of her left hand.

Examination of the thumb reveals tenderness to palpation over the thumb. Flexion of the thumb at the MP joint is to 45 degrees on the right and to 70 degrees on the left. Extension of the thumb at the MP joint is to 170 degrees on the right and to 180 degrees on the left. Flexion of the thumb at the IP Joint is to 30 degrees on the right and to 75 degrees on the left. Extension of the thumb at the IP Joint is to 170 degrees on the right and to 180 degrees on the left.

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Martin Riss, DO

Tami Rosales
January 10, 2000
Page 4

The right biceps measures $36 \frac{1}{4}$ cm and the left biceps measure 37 cm. The right and left elbows measure 27 cm. The right forearm measures 25 cm and the left forearm measures $25 \frac{3}{4}$ cm. The right and left wrists measure $15 \frac{1}{2}$ cm. The right palm measures $19 \frac{3}{4}$ cm and the left palm measures 19 cm.

Examination of the left knee reveals arthroscopic scars about the periphery. Examination of the left knee reveals tenderness to palpation over the medial and anterior aspects. Flexion in the standing position is to 80 degrees on the right and to 45 degrees on the left. Extension in the sitting position is to 180 degrees bilaterally. She elicits pain upon medial and lateral compression of the left leg. Her sensation is equal and normal. Negative pivot shift test and Lachman's test bilaterally. She is able to perform toe stands. She is not able to perform heel stands. She is only able to perform a partial squat not a complete one and there is an audible palpable crepitus noted in her left knee that is not present in her right knee. There is an antalgic gait noted. She is not able to support her body weight on her left leg alone. She is able to support her body weight on her right leg alone.

Examination of the right ankle reveals a "J" Shaped scar medial aspect of the ankle that measures 9 cm. Examination of the right foot reveals tenderness to palpation over the medial aspect. Plantar flexion is to 25 degrees on the right and to 35 degrees on the left. Dorsi flexion is to 15 degrees on the right and to 20 degrees on the left. Inversion is to 15 degrees on the right and to 35 degrees on the left. Eversion is to 5 degrees on the right and to 10 degrees on the left. Her sensation is equal and normal. Her sensation is equal and normal. Pulses are good. She is able to perform toe stands. She is not able to perform heel stands. She is only able to perform a partial squat not a complete one and there is an audible palpable crepitus noted in her left knee that is not present in her right knee. There is an antalgic gait noted. She is not able to support her body weight on her left leg alone. She is able to support her body weight on her right leg alone.

The right and left knees measure $43 \frac{1}{2}$ cm. The right and left calves measure $43 \frac{1}{2}$ cm. The right and left distal legs measure $21 \frac{1}{2}$ cm. The measurement across the right and left longitudinal arch is $24 \frac{1}{4}$ cm.

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Martin Riss, DO

Tami Rosales
January 10, 2000
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DIAGNOSES:

RIGHT CARPAL TUNNEL SYNDROME, BILATERALLY

DEQUERVAIN'S DISEASE

ABERRANT ULNAR NERVE, RIGHT

STATUS POST RELEASE TRANSVERSE CARPAL LIGAMENT,
SYNOVIAL BIOPSY, EXPLORATION, AND DECOMPRESSION
OF THE ULNAR NERVE, RIGHT ✓

STATUS POST LEFT ENDOSCOPIC CARPAL TUNNEL RELEASE ✓

STATUS POST RIGHT CARPAL TUNNEL RELEASE AND
NEUROLYSIS OF THE MEDIAL NERVE ✓

NEUROPATHY OF THE RIGHT MEDIAN NERVE AND
RIGHT TRIGGER FINGER

STATUS POST NEUROLYSIS OF RIGHT MEDIAL NERVE
WITH RIGHT TRIGGER THUMB RELEASE AND FLEXOR
TENOSYNOVECTOMY OF WRIST AND PALM ✓

RIGHT CUBITAL TUNNEL SYNDROME

STATUS POST ANTERIOR TRANSPOSITION AND NEUROLYSIS
RIGHT ULNAR NERVE, ELBOW ✓

AGGRAVATION, ACCELERATION, AND EXACERBATION OF
PRIOR RIGHT AND LEFT HAND INJURIES

PERSISTENT RIGHT CARPAL TUNNEL SYNDROME

LEFT CUBITAL TUNNEL SYNDROME

LEFT ULNAR NEUROPATHY

BILATERAL TENDINITIS

STATUS POST LEFT KNEE ARTHROSCOPY ✓

STATUS POST TARSAL TUNNEL SURGERY, RIGHT ✓

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Martin Riss, DO

Tami Rosales
January 10, 2000
Page 6

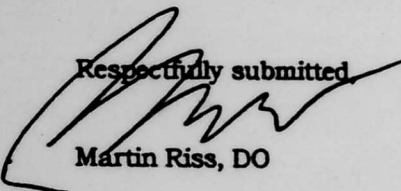
DISABILITY AND OPINION:

It is my opinion that there is demonstrable objective medical evidence of restriction of function and lessening to a material degree of working ability and that the petitioner is disabled orthopedically to the extent of 100% of the total and is totally disabled. No fundamental or marked improvement can be reasonably expected and the prognosis for improvement is not favorable.

It is my opinion that the petitioner is not fit as a working unit nor is she a fit candidate for vocational rehabilitation.

It is my opinion the aforementioned complaints, findings, and diagnoses are causally related to the occupational exposure of 1989 and to her pre-existing conditions and are permanent in nature.

Respectfully submitted


Martin Riss, DO

MR/saws

Aa126

BADR7-0779
04/05/91 06:27

MEDICAL CENTER OF OCEAN COUNTY
POINT PLEASANT/BRICK HOSPITAL (MSU\$\$\$P)

otr

ROSALES, TAMI F 27
HOSP: B MRN: 000227827 ACCT: 400329371
) V: SURGICAL BDS
MU: SURGENT, RICHARD ADM: 04/05/91
DX: CARP. TUNNEL SYND. RT

SAME DAY SURGERY RECORD
-PERMANENT CHART COPY-

CLERK: KMK
ADMIT TIME: 06:27
ADMIT TYPE: ELECTIVE
ACCOM. CODE: SEMI-PRIVATE
MODE OF ARRIVAL: WALK
ADMIT SOURCE: PHYSICIAN

NEAREST RELATIVE:
NAME: ROSALES, ALBERTO
RELATIONSHIP:
STR: 950 UTAH DR
CITY: TOMS RIVER ST: NJ
ZIP: 087539999
PHONE: 201
WORK PHONE: 201
PT SPOUSE:
ER CONTACT:
ER PHONE: 201

AS

REFERRAL
PT DOB: 11/25/63
PLACE OF BIRTH: NJ
RACE: WHITE M/S:
SS#: 135686441
RELIGION: NONE
) PREF: E

FINANCIAL CLASS:

PT ADDRESS:
STR: 950 UTAH DR
CITY: TOMS RIVER ST: NJ
ZIP: 087531507 ICIPALITY: 1507
PT PHONE: 908-2705046
RETIREMENT VILLAGE:
LOCAL ADD:

PT EMPLOYER:
NAME: TWP OF OCEAN COUNTY
PHONE: 201-9292016
PREV DISCHARGE DATE:
PRIOR HOSP:

ISOLATION CODE: NONE
ALLERGIES:

LOCAL PHONE: 201

Dr. [unclear]

4/05/91

===== PHYSICIAN'S REPORT =====

PRINCIPAL DIAGNOSIS:

324.0

*Carpal tunnel syndrome - (Right wrist)
DeQuervain's syndrome*

SECONDARY DIAGNOSIS/COMPLICATIONS:

727.14

354.2

Herbert UTAH NAME

OPERATIONS/PROCEDURES:

*Release TCC
Nervous medication
imp't + decompression Ulnar Nerve*

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[Signature]

4/5/91

ATTENDING PHYSICIAN

=====

ADMN#0080-01 MEDICAL CENTER OF OCEAN COUNTY
04/05/91 06:27 POINT PLEASANT/BRICK HOSPITAL (QBR#SP)

ROSALES, TAMI F 27
HOSP: B MR#: 000227827 ACCT#: 400829371
SERV: SURGICAL BDS
ID: SURGENT, RICHARD ADM: 04/05/91
DX: CARP.TUNNEL SYND. RT

FINANCIAL RECORD
-PERMANENT CHART COPY-

CLERK: RMC
ADMIT TIME: 06:27
ADMIT TYPE: ELECTIVE
ADM SRC: PHYSICIAN REFERRAL
PT DOB: 11/25/63
RACE: WHITE M/S:
RELIGION: NONE
LNG PREF: E
PRIOR HOSP:

GUARANTOR EMPLOYER
EMPLOYER: TWP OF OCEAN COUNTY
STREET:
CITY: TOMS RIVER ST: NJ
ZIP: 087539999
PHONE: 201
JOB TITLE: CLERK TYPIS
EMP STATUS: 1

FINANCIAL CLASS: H

GUARANTOR
NAME: ROSALES, TAMI
STREET: 950 UTAH DR
CITY: TOMS RIVER ST: NJ
IP: 087531507
GUAR DOB: 11/25/63
SS#: 135686441

ACCIDENT INFORMATION:
ACCIDENT CODE:
DATE:
HOUR:
NATURE:

ROLL UP #:

FREE TEXT:

MSP: N
PRO: N
PT BILL OF RIGHTS: Y
CHARITY LETTER GIVEN: Y
DEPOSIT REQUESTED: N

ADDRESS/PHONE
STREET: 950 UTAH DR
CITY: TOMS RIVER ST: NJ
IP: 087531507
PHONE: 908-*270504&T00 BIG

ER CONTACT:
ER PHONE: 201

DISCH DATE:

***** LEVEL 1 INSURANCE *****
TABLE CODE: 069
INSURED: ROSALES, ALBERTO
INSURED'S ID #: 1820112563
PT RELATION TO INSURED: P
GROUP NAME: MEDIGRP-SHRLN
GROUP NUMBER:

***** LEVEL 2 INSURANCE *****
TABLE CODE:
INSURED:
INSUREDS ID #:
PT RELATION TO INSURED:
GROUP NAME:
GROUP NUMBER:

***** LEVEL 3 INSURANCE *****
TABLE CODE:
INSURED:
INSUREDS ID #:
PT RELATION TO INSURED:
GROUP NAME:
GROUP NUMBER:

Aa128

THE MEDICAL CENTER OF OCEAN COUNTY

BRICK HOSPITAL X
POINT PLEASANT HOSPITAL

DISCHARGE SUMMARY

PATIENT NAME: ROSALIS, TAMMY

HOSPITAL #: 400329371

ADMITTED: 4/05/91

DISCHARGED: 4/05/91

HISTORY OF PRESENT ILLNESS: This patient underwent release of the transverse carpal ligament, neurolysis of the median nerve, exploration and decompression of the ulnar nerve as well as synovial biopsy of the right wrist. She was discharged improved in a short arm cast with a baseball type compression dressing, on a regular diet, Percocet for pain, course of elevation of the next 3 days. She is to return to the office in 10 days for suture removal. The prognosis for recovery is fair to guarded.

DISCHARGE DIAGNOSIS: 1. CARPAL TUNNEL SYNDROME, RIGHT.
2. ABERRANT ULNAR NERVE.

DICT: 4/05/91

TRANS: 4/07/91

RS :MONOC: plm

CASSETTE #: 4-2

LOG DATE: 4/06/91

RICHARD SURGENT, M.D.

Aa129

THE MEDICAL CENTER OF OCEAN COUNTY

POINT PLEASANT HOSPITAL
2121 EDGEWATER PLACE
POINT PLEASANT, N.J. 08742-2290

BRICK HOSPITAL
425 JACK MARTIN BLVD
BRICK, N.J. 08724-7791

400329371

ROSALES, TAMI FC-
SURGEON, RICHARD 04/05/9
000227327 11/25/63 27
CARP. TUNNEL SYND. RT
908-2705046

HISTORY

NAME:

ATTENDING PHYSICIAN:

DATE:

MR#

CC: Numbness + Discomfort @ Hand -

HPI: Has been Rx'd by Dr. Kohler +
w/ Rx for ETS + DeQuervain's @
Has persistent symptoms ETS w/ @
w/ numbness from 4th - Thumb
but also - 5th Digit -

Recommended outline:

*These items are required
for a complete history.

*Chief complaint:

*Present Illness:

*Past History:

*Allergies:

*Medications:

*Previous hospitalizations:

Family History:

Social History:

*Systemic Review:

*A: General

*B: H-E-E-T

*C: Respiratory

*D: Cardio-vascular

*E: Gastro-Intestinal

*F: Genito-Urinary

*G: Neurological

*H: Psychiatric

PMH: - Arth'ly @ Knee - No Serious Surg'A -
T+A - Age 22 - No Surg'A -

F.H.T: NIL

Soc Hst: Clerk - on Disability -

ROS: Drugs: NSAID -
All E

AC130

Date Dictated:

Date Transcribed:

4/5/91

MJ

THE MEDICAL CENTER OF OCEAN COUNTY

Point Pleasant Hospital
2121 Edgewater Place
Point Pleasant, NJ 08742-2290

Brick Hospital
425 Jack Martin Blvd.
Brick, N.J. 08724-7791

PHYSICAL

400329371
ROSALES, TAMI FC-H
SERGEANT, RICHARD 04/05/91
000227527 11/25/63 27 F
CARP. TUNNEL SYND. RT
909-2705946

NAME:

ATTENDING PHYSICIAN:

DATE:

MR#

Storky w/f -

HTA - NO CRT -

C&C - well

Recommended outline:

All positive & important

negative findings

must be recorded

Physical findings:

Vital Signs:

Head

Eyes

Ears

Nose

Throat

Neck

Chest

Cardiovascular

Abdomen

Genito-urinary

Skin

Orthopedic

Lymph Nodes

Neurological

Provisional Diagnosis:

Abd. Flt + soft -

EBB - + Phalen's @ in symptoms

over all 5 digits - ulnar N.

Comp. N -> Non specific response

Comp. Med N -> Reproduce of symptoms

-> All five digits -

worse over 4th -

APB - 4/5 -

Tender w/ De Quervain's apt -

Neuro - grossly w/ -

Imp; Carpal tunnel Syndrome - { @ worse

De Quervain's Syndrome

AA 131

[Signature]

Date Dictated:

Date Transcribed: 4/5/91

THE MEDICAL CENTER OF OCEAN COUNTY

BRICK HOSPITAL X
POINT PLEASANT HOSPITAL

REPORT OF OPERATION

NAME: ROSALIS, TAMMY

DATE OF OPERATION: 4/05/91

HOSPITAL #: 400329371

SURGEON: DR. SURGENT

ASSISTANT(S):

ANESTHESIOLOGIST: DR. A. SHEA

ANESTHESIA:

PREOPERATIVE DIAGNOSIS: 1. CARPAL TUNNEL SYNDROME, RULE OUT ULNAR TUNNEL SYNDROME.

POSTOPERATIVE DIAGNOSIS: 1. CARPAL TUNNEL SYNDROME WITH ABERRANT ULNAR NERVE WITH MILD SYNOVITIS OF THE CARPAL TUNNEL.

OPERATION: 1. RELEASE TRANSVERSE CARPAL LIGAMENT, SYNOVIAL BIOPSY, EXPLORATION AND DECOMPRESSION OF THE ULNAR NERVE.

FINDINGS AND PROCEDURE: After the induction of general anesthesia on the Operating Room table, a routine prep and drape was carried out in the usual manner. The limb was elevated for exsanguination and the tourniquet inflated to 250 mm of mercury pressure. A curvilinear incision was then carried out, paralleling the distal palmar crease and extending at a right angle to the palmar crease. The skin and subcutaneous tissues were then carefully divided and retracted. Because of the concern preoperatively with symptoms in the fifth digit, the incision was carried ulnarward towards the ulnar nerve to see if there was any specific abnormality. The ulnar nerve was encountered in an aberrant position which passed towards the radial side and over the distal aspect of the transverse carpal ligament, it passed directly in line with a potential release of the transverse carpal ligament. With this in mind, the ulnar nerve was then explored, mobilized and completely decompressed and retracted to the ulnar side of the incision. The transverse carpal ligament was then carefully cleared of all soft tissues and under direct vision it was divided

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THE MEDICAL CENTER OF OCEAN COUNTY

BRICK HOSPITAL X
POINT PLEASANT HOSPITAL

REPORT OF OPERATION

PATIENT NAME: ROSALIS, TAMMY

HOSPITAL #: 400329371

Page 2

over its ulnar insertion. A neurolysis of the median nerve was carried out in the usual manner. There was evidence of a mild synovitis and a synovial biopsy was done. The wound was irrigated with multiple aliquots of antibiotic solution and the skin edges were closed using inverted mattress sutures. The area was then injected with 0.25 percent Marcaine with epinephrine. A compression dressing was applied. A short arm cast was then applied with a baseball type compression dressing. The tourniquet was released and she was sent to the Recovery Room for further care. The circulation was good at the conclusion of the procedure.

Dict: 4/05/91
TRANS: 4/07/91
RS :MONOC: plm
CASSETTE #: 111-B
LOG DATE: 4/06/91

RICHARD SURGENT, M.D.

Aa 133

NAME ROSALES, TAMI
(LAST) (FIRST) (MIDDLE) PATH. ACC. NO. SB91-682
HOSP. NO. 400329371 227327 AGE 27 SEX F DATE OF SURGERY: 4/5/91
PRE-OPERATIVE DIAGNOSIS: CARPAL TUNNEL SYNDROME, RIGHT WRIST. DATE SPECIMEN RECEIVED: 4/5/91
CLINICAL HISTORY IN BRIEF (IF ENDOMETRIAL TISSUE, GIVE MENSTRUAL HISTORY AND THERAPY, IF ANY) ROOM SDS
O.P. ADDRESS

OPERATIVE PROCEDURE:

POST-OPERATIVE DIAGNOSIS: RIGHT CARPAL TUNNEL SYNDROME.

SPECIMEN (ENUMERATE):
SYNOVIUM, RIGHT WRIST.

SURGENT M.D.
SURGEON

REPORT

GROSS EXAMINATION:
THE CONTAINER IS LABELED RIGHT SYNOVIUM CARPAL TUNNEL. THE SPECIMEN CONSISTS OF A SINGLE LINEAR STRIP OF PALE GRAYISH-WHITE FIBROUS TYPE TISSUE. IT MEASURES 1.9 X .3 X .2 CM. THE ENTIRE SPECIMEN IS EMBEDDED IN A SINGLE CASSETTE.

JH

DIAGNOSIS:
FIBROUS CONNECTIVE TISSUE ADJACENT TO SYNOVIUM CONSISTENT WITH CARPAL TUNNEL SYNDROME.

4/8/91

DATE REPORTED

THE MEDICAL CENTER OF OCEAN COUNTY

POINT PLEASANT HOSPITAL
2121 EDGEWATER PLACE
PT. PLEASANT, N.J. 08742-2290

BRICK HOSPITAL
425 JACK MARTIN BLVD.
BRICK, N.J. 08724-7791

Aa134 *J-H Norton*
JAMES H. NORTON
PATHOLOGIST M.D.

SURGICAL PATHOLOGY

✓
COMMUNITY MEDICAL CENTER
ROUTE 37 WEST
TOMS RIVER, NEW JERSEY 08755

REPORT OF OPERATION

PATIENT NAME; ROSALES, TAMI

CHART #; 256944

DATE OF OPERATION; 6/3/93

PREOPERATIVE DIAGNOSIS; LEFT CARPAL TUNNEL SYNDROME

POSTOPERATIVE DIAGNOSIS; SAME

OPERATION PERFORMED; LEFT ENDOSCOPIC CARPAL TUNNEL RELEASE

SURGEON; GARY PESS, M.D.

ANESTHESIA; LOCAL 1% XYLOCAINE PLAIN PLUS IV SEDATION

ANESTHESIOLOGIST; DR. KIM

PROCEDURE; The patient was taken to the Operating Room and placed in supine position. A tourniquet was placed on the proximal arm, arm on the hand table and patient prepped and draped in sterile fashion.

Local 1% Xylocaine plain was used to infiltrate the area of the incisions. An Ace bandage was used to exsanguinate the arm and the tourniquet placed at 300 mm. mercury.

A transverse incision was made proximal to the wrist crease and extended down through the skin. Subcutaneous tissue was carefully spread. The distal ante-brachial fascia was released distally to proximally and the transverse carpal ligament identified and dissected underneath with a curved dissector. The obturator was placed in the carpal tunnel in an ulnar and subligamentous position in line with the ring finger ray and was pushed to the level of the hook of the hamate. The wrist was hyperextended and the obturator was advanced out through the stab wound in the palm. The endoscope was inserted and the transverse carpal ligament was identified along the entire length with no interposing structures. It was cleaned off with a probe. A standard endoscopic carpal tunnel release was then performed. The slotted cannula removed, and the transverse carpal ligament was seen to be completely released and felt to be completely released with the curved dissector. The tourniquet was deflated and hemostasis carefully achieved using bipolar cautery. The wound was irrigated with copious amounts of saline and the skin was closed loosely with #4-0 nylon simple and horizontal mattress sutures. Sterile dressing was applied to the wound.

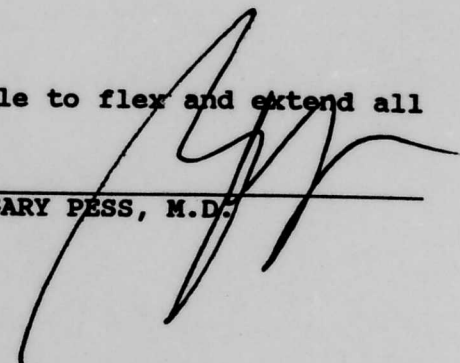
The patient tolerated the procedure well and was accompanied to the Recovery Room in satisfactory condition. All fingers were pink

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ROSALES, TAMI

PAGE 2

with good capillary refill. She was able to flex and extend all the fingers fully.



GARY PESS, M.D.

D: 06/04/93
T: 06/04/93
GP/ndw
JOB#: 6672

Aa137

COMMUNITY MEDICAL CENTER

Toms River, New Jersey

**SAME DAY SURGERY
FINAL PROGRESS NOTES
POST OPERATIVE INSTRUCTIONS**

5044 93126 0912
JONES TAMI
PESS. GART 29 F-H
08/05/93 11/29/83
335 ANTHONY AVE
TOMS RIVER NJ08753

1. KEEP DRESSING CLEAN AND DRY.

CHANGE DRESSING NO

2. CALL M.D. WITH EXCESSIVE SWELLING, PAIN NOT RELIEVED BY PAIN MEDICATION, BLEEDING, REDNESS, FEVER OR ANY OTHER COMPLICATIONS OR PROBLEMS.

3. MAY SHOWER cover with plastic bag

4. MAKE APPOINTMENT TO SEE M.D. ON 10-14 days

5. MAY RETURN TO WORK [initials] SCHOOL _____

6. RX'S GIVEN _____

7. ACTIVITY: _____ RESTRICTED X _____ DAYS

_____ NO RESTRICTION

8. DIET: _____ REGULAR: [initials]

9. OTHER: Exercise Fingers 1, 1, 1

[Signature]
Patient's Signature

[Signature]
Witness

Aa 138

[Signature]
M.D.'s Signature
8/3/93
Date


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#           #
#           #
#           #
#           #
#           #
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ROSALES TAM)                SDS  DS12
256944X93126 ADM: 06/03/93 F 29
PESS, GARY
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TEST RESULTS SUMMARY
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REPORT PERIOD: 03:45 PM 05/06/93 - 12:00 AM 06/03/93
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01:22 PM 06/03/93

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17. DISCHARGE PATIENT TODAY WHEN ALERT AND STABLE, (CMP).
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--OTHER MD'S--
CHEKOFISKY, KENNETH
DECKER, RAYMOND

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Aa 143

ADMIS-5821
05/20/93 05:34 PM

COMMUNITY MEDICAL CENTER
PAGE 001

ROSALES TAMI
256944X93126
PESS, GARY
PRESUR

F 29
ADM:06/03/93
SERV:SDS

*****1*****

PRE-ADMIT RESULTS

NORMAL RANGE

CBC WITH DIFF

SPEC'M 05/20/93 09:00 AM

(4.8-10.8)	WBC	9.3
(4.20-5.40)	RBC	4.49
(12.0-16.0)	HGB	12.7
(37.0-47.0)	HCT	37.3
(80.0-94.0)	MCV	83.0
(27.0-31.0)	MCH	28.3
(33.0-37.0)	MCHC	34.1
(130-400)	PLT CT	249
(47-77)	SEGS	71
(16-43)	LYMPHS	19
(0.5-10)	MONOS	8
(0.3-7)	EOS	2
(0.3-2)	BASOS	0
	RBC MORPH	NORMAL
	PLT APP	ADEQUATE

THO/CMM
MIL/CMM
G/DL
%
CU/UM
PG
G/DL
THO/CMM
%
%
%
%

NORMAL RANGE

CHEM-20

SPEC'M 05/20/93 09:00 AM

(8.3-10.0)	CALCIUM	9.2	MG/DL
(2.6-4.9)	PHOS	3.1	MG/DL
(1.9-8.2)	URIC	4.3	MG/DL
(127-200)	CHOL	246	MG/DL
(6.1-8.0)	T PROT	7.6	GM/DL
(3.5-4.8)	ALB	4.3	GM/DL
(0.3-1.23)	T BILI	0.5	MG/DL
(70-110)	GLUC	89	MG/DL
(9-28)	BUN	9	MG/DL
(12-45)	SGOT	16	MG/DL
(111-205)	LDH	124	U/L
(33-107)	ALK PHOS	112	U/L
(7-40)	SGPT	16	U/L
(8-69)	GGTP	18	U/L
(0.5-1.2)	CREAT	0.7	U/L
(134-145)	NA	138	MG/DL
(3.5-5.0)	K	4.6	MMOL/L
(98-108)	CL	106	MMOL/L
(23-30)	CO2	29	MMOL/L
(35-135)	TRIGLYCERIDES	187	MG/DL
(7-14)	ANION GAP	8	MEQ/L

A144
CONTINUED

RADRE-0341
05/20/93 04:00 PM

COMMUNITY MEDICAL CENT
(QAIPRR)

PAGE 1

ROSALIES TAMI
MR#: 256944X93126

F 29

RADIOLOGY RESULTS

SERV: SDS PRESUR
MD: PESS, GARY ADM: 06/03/93
DX: CARPAL TUNNEL SYNDROME

REQ#: I-139-134

ORDER: CHEST 4.01
INDICATIONS: PRE-OP

RADIOLOGIST: WM. J. GERHARDT, M.D.

EXAMINATION: CHEST

DATE OF EXAM: 5/20/93
TIME PERFORMED: 8:20

CLINICAL AND EXTRINSIC DATA: S.D.S.

INTERPRETATION:

EXAMINATION OF THE CHEST WAS MADE IN THE ERECT POSITION. PA AND LATERAL VIEWS WERE TAKEN. THE APICES OF THE LUNGS ARE CLEAR. THE LUNG MARKINGS IN THE INFRAHILAR REGIONS ARE NORMAL IN EXTENT. THE HILAR SHADOWS AND BRONCHOVASCULAR MARKINGS SHOW NO ABNORMAL THICKENING OR CALCIFICATION. THE DIAPHRAGM SHADOWS AND COSTOPHRENIC ANGLES ARE NORMAL. THE HEART IS NORMAL IN SIZE AND SHAPE.

IMPRESSION

AND/OR

RELEVANT DATA:

NORMAL CHEST.

*IN THE EVENT THE CLINICAL, SURGICAL OR PATHOLOGICAL FINDINGS ARE AT VARIANCE WITH THE RADIOLOGY REPORT, PLEASE NOTIFY THE DEPARTMENT OF RADIOLOGY.

LAST PAGE

256944X93126 0312
ROSALIES TAMI
PESS, GARY 29 F-M
SDS 06/03/93 11/25/63
335 ANTHONY AVE
TOMS RIVER NJ08753

Aa 145

nt

ADMISSION/DISCHARGE RECORD

ROSALES TAMI F 29 DS14
256944X93168 ADM:07/21/93 SDS
PESS, GARY MS:M

XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX

PT

PREV ADM NAME: RETIRE DATE: / / /
SOC SEC NO: 135-68-6441 F/C: 20
PATIENT ADDRESS: 335 ANTHONY AVE, TOMS RIVER, NJ., 08753
PHONE: 908-929-2882 BIRTHDATE: 11/25/63 RELIGION:
OCCUPATION: SPEC CIVIL PREV ADM: PREV DIS:
EMPLOYER: CTY OF OCEAN ADDRESS: PHONE: - - - -

BILL TO: ROSALES TAMI PHONE: 908-929-2882 REL'SHIP: SE
ADDRESS: 335 ANTHONY AVE, TOMS RIVER, NJ., 08753
PRIMARY INS: NJBC INSURED: ROSALES TAM R: SE
ID#: 1820112563 GROUP: 8385851 SUBS DOB:
SECOND INS: NO LVL TWO DATA AVAIL. INSURED: R:
ID#: GROUP: SUBS DOB:

EMERG. CONT: ROSALES ALBERTO PHONE: 908-929-2882 REL'SHIP: HU
ADDRESS: TOMS RIVER NJ ..

ADMIT DATE: 07/21/93 TIME: 09:49AM ADMIT TYPE: 3A CLERK: PS
ADMIT DIAGNOSIS: CARPAL TUNNEL SYNDROME

SERV: SDS REMARKS: OPG AUTO ACC: N JOB REL: N
SPOUSE SOC SEC NO: 7/21 MEDICARE REPORT: =====

BIRTHDATE:
EMPLOYED:
COVERED UNDER SPOUSE HEALTH CARE PLAN:
DATE OF ACCIDENT:
LIABILITY:

Where is the face sheet?

3540..

0443..

Aa 146

ROSALES TAMI 256944X93168 INPATIENT RECORD

PT

✓
COMMUNITY MEDICAL CENTER
99 ROUTE 37 WEST
TOMS RIVER, N.J. 08755-6423

REPORT OF OPERATION

PATIENT NAME: ROSALES, TAMI

CHART #: 256944

DATE OF PROCEDURE:

PREOPERATIVE DIAGNOSIS: RIGHT CARPAL TUNNEL SYNDROME

POSTOPERATIVE DIAGNOSIS: SAME

PROCEDURE: RIGHT CARPAL TUNNEL RELEASE; NEUROLYSIS OF MEDIAN NERVE

SURGEON: GARY PESS, M.D.

ANESTHESIA: GENERAL BY MASK

ANESTHESIOLOGIST: DR. KIM

PROCEDURE: The patient was taken to the Operating Room and placed in the supine position. A tourniquet was placed to the proximal right arm and right hand on a hand table and the patient was prepped and draped in the usual sterile manner. An esmarch was used to exsanguinate the arm and the tourniquet inflated to 280 mmHg.

An incision was made in line with the previous scar which began in the distal palm extended proximal to the wrist crease. The median nerve was picked up proximally and was released proximally to distally. There definitely appeared to be tissue in the area of the transverse carpal ligament and this was released proximally to distally. The distal end of the brachial fascia was seen to be completely released. Neurolysis was then meticulously performed along the entire length of the median nerve carefully teasing back the epineural tissue. The nerve was then seen to be completely released. The carpal tunnel was inspected, no masses or exostosis was seen or palpated.

The tourniquet was deflated. Hemostasis was carefully achieved using bipolar cautery. The wound was irrigated with copious amounts of saline and skin closed loosely with #4-0 nylon simple horizontal mattress sutures. Sterile dressing was applied to the wound along with a wrist splint with the wrist in slight extension. The patient tolerated the procedure well and was brought to the Recovery Room in satisfactory condition. All fingers were pink with good capillary refill.

D&T: 7-21-93
GP:PW/JOB#:8043


GARY PESS M.D.

Aa-147

COMMUNITY MEDICAL CENTER
Toms River, New Jersey

SAME DAY SURGERY
FINAL PROGRESS NOTES
POST OPERATIVE INSTRUCTIONS

255944x93168 DS14
ROSALES TAMI
P.E.S.S. GARY 29 F-M
SCS 07/21/93 11/25/63
335 ANTHONY AVE
TOMS RIVER NJ08753

- KEEP DRESSING CLEAN AND DRY.
CHANGE DRESSING NO
- CALL M.D. WITH EXCESSIVE SWELLING, PAIN NOT RELIEVED BY PAIN MEDICATION, BLEEDING, REDNESS, FEVER OR ANY OTHER COMPLICATIONS OR PROBLEMS.
- MAY SHOWER once with plastic bag
- MAKE APPOINTMENT TO SEE M.D. ON 10-14 days
- MAY RETURN TO WORK _____ SCHOOL _____
- RX'S GIVEN ✓
- ACTIVITY: Exercise fingers RESTRICTED X _____ DAYS
_____ NO RESTRICTION
- DIET: _____ REGULAR: _____

- OTHER: Keep hand elevated

Tami Rosales
Patient's Signature

[Signature]
M.D.'s Signature

B. M. Kowicz
Witness

7/21/93
Date

Aa 148
Approved S.C.M.R. 1/27/89

MEDRC-6290
07/22/93 09:04 PM

CORR. CITY MEDICAL CENTER
(QAFPRG) PAGE 001

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RUSALES TAMI	SDS	0314
256944X93168	ADM:	07/21/93 F 29
PESS, GARY		

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TEST RESULTS SUMMARY

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REPORT PERIOD: 10:20 AM 06/17/93 - 12:00 PM 07/21/93

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ELECTROLYTES

	NA	K	CL	CO2	ANION
LO-HI:	1134-14513.5-5.01	98-1081	23-301	7-141	
UNIT:	MMOL/LI	MMOL/LI	MMOL/LI	MMOL/LI	MEQ/LI
WED 07/07 09AM	139	4.4	100	22	13

=====

STANDARD CHEMISTRIES

	CHOL	PROT	ALB	ALK PH	LDH	SGOT	SGPT
LO-HI:	1127-20016.1-8.013.5-4.81	33-1071111-2051	12-451	7-401			
UNIT:	MG/DLI	GM/DLI	GM/DLI	U/LI	U/LI	U/LI	U/LI
WED 07/07 09AM	228	7.5	4.2	108	132	16	17

=====

	GGT	BILI	CALCIUM	PHOS	URIC	PLUC
LO-HI:	8-6910.3-1.218.3-10.012.6-4.911.9-8.21	7-1101				
UNIT:	U/LI	MG/DLI	MG/DLI	MG/DLI	MG/DLI	MG/DLI
WED 07/07 09AM	17	0.6	9.5	2.9	4.6	91

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Ac149

ROSALES TAM
256944X93168 ADM: 07/21/93 F 29
PENS. BARY

TEST RESULTS SUMMARY

REPORT PERIOD: 10:28 AM 06/17/93 - 12:00 PM 07/21/93

STANDARD CHEMISTRIES

	BUN	CREAT	TRIGLYCERIDES
LO-HI:	9-20	0.5-1.2	35-195
UNIT:	MG/DL	MG/DL	MG/DL
WED 07/07 09AM	9	0.7	187

ANALYSIS

WED 07/07 10AM	U/A MICRO LC		
	COLOR	YELLOW	
	CHARACTER	HAZY	
	SP GRAVITY	1.025	
	PH	5.0	
	NITRITE	NEGATIVE	(NEG)
	PROTEIN	NEGATIVE MG/DL	(NEG)
	GLUCOSE	NEGATIVE G/DL	(NEG)
	KETONES	NEGATIVE MG/DL	(NEG)
	UROBILIN	0.2 EU/TL	(NEG)
	BILIRUBIN	NEGATIVE +	(NEG)
	BLOOD	SMALL +	(NEG)
	LEUKOCYTE	NEGATIVE	(NEG)
	RBC	NEGATIVE /HPF	(NEG)
	WBC	5-8 /HPF	
	RENAL EPITH	NEGATIVE +	
	SQ EPITH	1+ +	
	MUCOUS	1+ +	
	BACTERIA	TRACE +	
	AMORPH. SED.	NEGATIVE +	
	CASTS	NEGATIVE /LPF	
	CRYSTALS	NEGATIVE /LPF	
	YEAST	NEGATIVE	

A2150

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ROSALIS TAM) SBS 0514
256944X93168 ADM: 07/21/93 F 29
PES9, DARY

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TEST RESULTS SUMMARY

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REPORT PERIOD: 10:23 AM 06/17/93 - 12:00 PM 07/21/93

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03:48 PM 07/21/93

16. DISCHARGE PATIENT TODAY WHEN ALERT AND STABLE, (CAP).

-----OTHER MD'S-----
CHECKOPSKY, KENNETH
DECKER, RAYMOND

Aa 152

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ROSALES TAMI
256944X93168
PESSE, GARY
PRESUR

F 29
ADM:07/21/93
SERV:SDS

PRE-ADMIT RESULTS

CBC WITH DIFF

NORMAL RANGE

SPEC'M 07/07/93 09:00 AM

(4.8-10.8)		WBC	8.4	THO/CMM
(4.20-5.40)		RBC	4.37	MIL/CMM
(12.0-16.0)		HGB	12.0	G/DL
(37.0-47.0)		HCT	36.2	%
(80.0-94.0)		MCV	82.8	CU/UM
(27.0-31.0)		MCH	27.3	PG
(33.0-37.0)		MCHC	33.0	G/DL
(130-400)		PLT CT	265	THO/CMM
(47-77)		SEGS	68	%
(16-43)		LYMPHS	22	%
(0.5-10)		MONOS	7	%
(0.3-7)		EOS	2	%
(0.3-2)		BASOS	1	%
		RBC MORPH	NORMAL	
		PLT APP	ADEQUATE	

CHEM-20

NORMAL RANGE

SPEC'M 07/07/93 09:00 AM

(8.3-10.0)		CALCIUM	9.5	MG/DL
(2.6-4.9)		PHOS	2.9	MG/DL
(1.9-8.2)		URIC	4.6	MG/DL
(127-200)		CHOL	228	MG/DL
(6.1-8.0)		T PROT	7.5	GM/DL
(3.5-4.8)		ALB	4.2	GM/DL
(0.3-1.23)		T BILI	0.6	MG/DL
(70-110)		GLUC	91	MG/DL
(9-28)		BUN	9	MG/DL
(12-45)		SGOT	16	U/L
(111-205)		LDH	132	U/L
(33-107)		ALK PHOS	108	U/L
(7-40)		SGPT	17	U/L
(8-69)		GGTP	17	U/L
(0.5-1.2)		CREAT	0.7	MG/DL
(134-145)		NA	139	MMOL/L
(3.5-5.0)		K	4.4	MMOL/L
(98-108)		CL	108	MMOL/L
(23-30)		CO2	22	MMOL/L
(35-135)		TRIGLYCERIDES	189	MG/DL
(7-14)		ANION GAP	13	MEQ/L

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A-153


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ROSALES TAM1
 256944X93168
 PESS, GARY
 PRESUR

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F 29
 ADM:07/21/93
 SERV:SDS

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PRE-ADMIT RESULTS

=====

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U/A MICRO IC , -RAND URINE

NORMAL RANGE

SPEC'M 07/07/93 10:00 AM

	COLOR	YELLOW	
	CHARACTER	HAZY	
	SP GRAVITY	1.025	
	PH	5.0	
(NEG)		NITRITE	NEGATIVE
(NEG)		PROTEIN	NEGATIVE MG/DL
(NEG)		GLUCOSE	NEGATIVE G/DL
(NEG)		KETONES	NEGATIVE MG/DL
(0.1-1.0)		UROBILIN	0.2 EU/DL
(NEG)		BILIRUBIN	NEGATIVE +
(NEG)		BLOOD	SMALL +
(NEG)		LEUKOCYTE	NEGATIVE
		RBC	NEGATIVE /HPF
		WBC	5-8 /HPF
		RENAL EPITH	NEGATIVE +
		SQ EPITH	1+ +
		MUCOUS	1+ +
		BACTERIA	TRACE +
		AMORPH. SED.	NEGATIVE +
		CASTS	NEGATIVE /LPF
		CRYSTALS	NEGATIVE /LPF
		YEAST	NEGATIVE

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LASTPAGE

Aa154

256944x93168

DS14

ROSALES TAMI

PESS, GARY

29 F-M

SCS

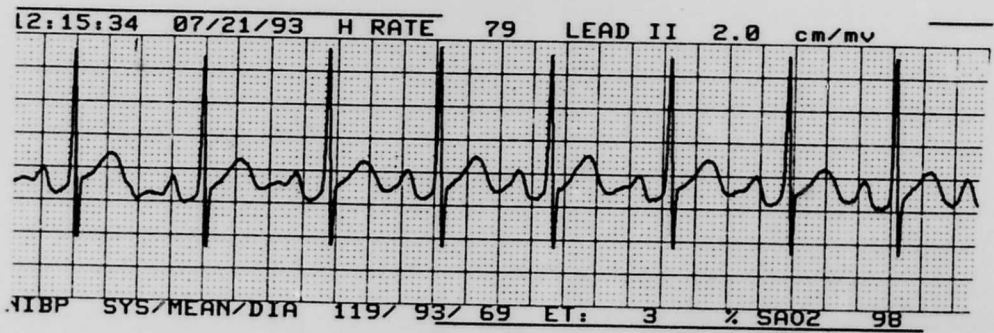
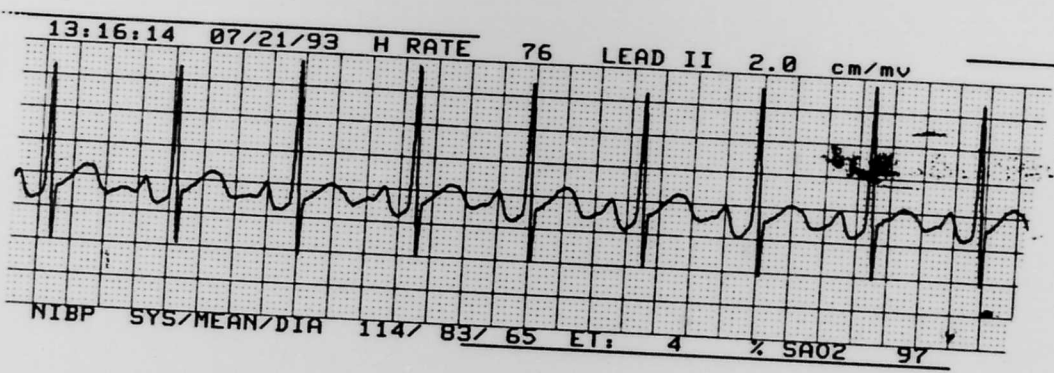
07/21/93

11/25/63

335 ANTHONY AVE

TOMS RIVER

NJ08753



Ar 155

A/2110-02T3

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002110-02T3

TAMI ROSALES, :

Petitioner-Respondent, :

Civil Action

v. :

STATE OF NEW JERSEY, :
DEPARTMENT OF THE JUDICIARY, :

Respondent-Appellant, :

v. :

THE SECOND INJURY FUND, :

Respondent-Respondent. :

FILED
APPELLATE DIVISION
JUN 09 2003
[Signature]
CLERK
RECEIVED
JUN 09 2003
SUPERIOR COURT
OF NEW JERSEY

APPENDIX - VOLUME 2

PETER C. HARVEY
ACTING ATTORNEY GENERAL OF NEW
JERSEY
Mary G. Roebling Building
P.O. Box 620
Trenton, New Jersey 08625
Attorney for Respondent-Appellant
(609) 633-7462

MICHAEL O'BRIEN
Deputy Attorney General
On the Brief

MICHAEL HAAS
Assistant Attorney General
Of Counsel

YG

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ADMISSION/DISCHARGE RECORD

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ROSALES TAMI F 31 OS07
256944P95285 ADM:10/18/95 SDS
PESS, GARY MS:D

PREV ADM NAME: SOC SEC NO:135-68-6441 F/C:20
PATIENT ADDRESS:335 ANTHONY AVE, TOMS RIVER,NJ., 08753
PHONE:908-288-1718 BIRTHDATE: 11/25/63 RELIGION:150 CATH
OCCUPATION:CLERK TYPIST PREV ADM DATE: 07/21/93
EMPLOYER: STATE OF NJ PHONE:-- -- -
ADDRESS: SPEC CIVIL TR

BILL TO:ROSALES TAMI PHONE:908-288-1718 REL'SHIP:SE
ADDRESS:335 ANTHONY AVE, TOMS RIVER,NJ., 08753
PRIMARY INS:BC PFD I INSURED:ROSALES TAM R:SE
ID#:182011563 GROUP:8385851 SUBS DOB:.
SECOND INS: NO LVL TWO DATA AVAIL. INSURED: R:
ID#: GROUP: SUBS DOB:

P11

MERG. CONT:FOX NANCY & ED PHONE:908-288-1718 REL'SHIP:PT
ADDRESS:BEEPER#206-7480
END EMERG. CONT:NA
ADMIT DATE:10/18/95 TIME:06:52AM ADMIT TYPE:3A CLERK:PS
ADMIT DIAGNOSIS:RT CARPAL TUNNEL SYNDROMR RT TRIGGER THUMB

SERV:SDS REMARKS:PATS10/17 AUTO ACC:N JOB REL:N

=====

DISCHARGE DATE: 10/18/95 PHYSICIAN'S REPORT TIME:=====

PRINCIPAL DIAGNOSIS:
*Right Median neuropathy, trigger thumb, flexa
karynoma*

OTHER DIAGNOSES:
Metal wire prolapse

URGON: PESS
PRINCIPAL PROCEDURE:
*Right median neurectomy, trigger thumb release,
flexa karynoma*

COMPLICATIONS:
0

SECTION:
0

CONDITION ON DISCHARGE

RECOVERED: _____
IMPROVED: _____
NOT TREATED: _____
SPIRED: _____
AUTOPSY: YES _____ NO _____
IRONERS CARE: _____

Aa 157

[Signature]

RELEASED AGAINST ADVICE: _____ ATTENDING PHYSICIAN _____ MD
STATED: H&P / / / CONS / / / OPER REP 10/18/95 SUMMARY *[Signature]*

727.03
727.25
354.0

82.01
04.43
8074
26055
64727
64721

**SAME DAY SURGERY
COMMUNITY MEMORIAL HOSPITAL
Toms River, New Jersey**

Tami Rosales

256944895285
 COLES TIME
 31 F-
 11/25/63
 332 J...
 332 ANTHONY AVE
 NJ08753

Chief Complaint: numbness + tingling (R) hand, tingling
 Present Illness: (R) CTS + tingling + numbness
night pain, numbness + tingling
 Complete each Entry: SIP open CTR X2. Now admitted for med. management
 Past History:

Illnesses: Epstein Bar virus, MVP
 Operations: SIP @ open CTR 1440, 1443 SIP @ endo CTR 5/53
 Injuries: _____
 Family History: ()
 Social History: _____
 Systems Review: ()
 Allergies: NKA

PHYSICAL EXAMINATION

General: W/DWN in NAD alert OK 3
 Skin: ()
 HEENT: ()
 Neck: ()
 Chest & Breasts: deferred
 Heart: R/R RML S, S2
 Lungs: clear
 Abdomen: Soft @ BS
 Genitalia: deferred
 Extremities: (+) tenderness @ phalanges 1, 2 R hand in med. NV dist. tub.
 Neurological: intact APR 4/5 - last NV intact looking (R) TH.
 Diagnosis: (R) CTS, tingling + numbness
 Procedure: (R) CTR, median neurectomy, tupper to release

Date: 10/17/64 Attending Physician: [Signature]
 Operative Report: _____

Dictated: _____
 Discharge Note: Aa158
 Date: _____ Time: _____ Signature: _____

COMMUNITY MEDICAL CENTER
99 ROUTE 37 WEST
TOMS RIVER, N.J. 08755-6423

REPORT OF OPERATION

PATIENT NAME: ROSALES, TAMI CHART: 256944

DATE OF PROCEDURE: 10/18/95

PREOPERATIVE DIAGNOSIS: 1. NEUROPATHY RIGHT MEDIAN NERVE.
2. RIGHT TRIGGER THUMB.

POSTOPERATIVE DIAGNOSIS: SAME PLUS FLEXOR TENOSYNOVITIS.

PROCEDURE: 1. NEUROLYSIS RIGHT MEDIAN NERVE.
2. RIGHT TRIGGER THUMB RELEASE.
3. FLEXOR TENOSYNOVECTOMY WRIST AND PALM.

SURGEON: DR. GARY PESS

ANESTHESIOLOGIST: DR. BRODSKY

ANESTHESIA: LOCAL 1% XYLOCAINE PLAIN PLUS IV SEDATION

PROCEDURE: The patient was taken to the Operating Room, placed in the supine position. A tourniquet was placed on the proximal right arm, right hand on hand table. The patient was prepared and draped in the sterile fashion. Local 1% Xylocaine plain was used to infiltrate the area of the incision. An Esmarch was used to exsanguinate the arm, the tourniquet inflated to 300 mmHg.

Transverse incision was made proximally through the thumb-palm crease, extended down through skin and subcutaneous tissue was carefully spread. A1 pulley was divided longitudinally and the edges excised after carefully identifying the neurovascular bundles and protecting them. Flexor pollicis longus tendon was seen to be intact. No masses were noted and the tendon was cleaned off of flexor tendosynovitis. The patient was asked to flex and extend the thumb, was able to do fully without any locking or clicking.

Incision was made in line with the previous scar but extended proximally and distally. Median nerve was picked up proximally and dissected in a proximal-distal fashion completing unroofing the entire carpal tunnel. The median nerve was seen to be scarred to the subcutaneous tissue especially on the radial side. A meticulous neurolysis of the median nerve was performed beginning proximally and ending distally in the distal palm. This neurolysis extended internally as it was carefully dissected out. Care was taken to preserve the motor branch of the median nerve and all the

continued...

Aa 159

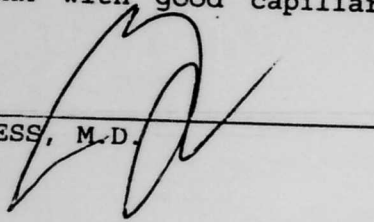
OPERATIVE REPORT
ROSALES, TAMI
#256944
PAGE 2

distal branches. At this point I was satisfied the nerve was decompressed and neurolysed as best as possible. A marked amount of flexor tenosynovitis was seen in the carpal tunnel. Each flexor tendon was carefully cleaned off. A most severe amount of flexor tenosynovitis was seen around the flexor pollicis longus tendon and this was carefully cleaned off. This was sent to Pathology.

Tourniquet was deflated. Hemostasis was carefully achieved using bipolar cautery. The wounds were irrigated with copious amounts of saline. The skin was closed with the use of #4-0 nylon simple and horizontal mattress sutures. Sterile dressing was applied along with a wrist splint with the wrist in slight extension. The patient tolerated the procedure well, was accomplished to the Recovery Room in satisfactory condition with a cut away arm elevator applied. All fingers were pink with good capillary refill.

D: 10/18/95
T: 10/20/95
GP:MOHCC/cm
JOB#: 2817

GARY PESS, M.D.



Aa160

SURGICAL PATHOLOGY REPORT

COMMUNITY MEDICAL CENTER
TOMS RIVER, NEW JERSEY 08755

Patient name: ROSALES, TAMI
DOB/Age/Sex: 11/25/63 (Age: 31) F
Patient ID No.: 256944
Hospital No.: P95285
Pt's Location: SAME DAY SURGERY
Surgeon: Gary Pess, MD
Date of Surgery: 10/18/95

SURGICAL Accession No.: S-11225-95
Date of Accession: 10/18/95

PRE-OPERATIVE DIAGNOSIS:

RIGHT CARPAL TUNNEL SYNDROME, RIGHT TRIGGER FINGER.

NATURE OF SPECIMENS:

FLEXOR TENO SYNOVIUM

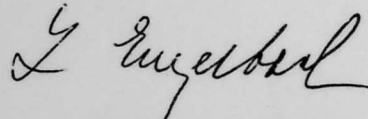
GROSS EXAMINATION:

The specimen consists of three pieces of white rubbery soft tissue which vary in size from 5 to 10 mm. The entire specimen is submitted for microscopic examination.
(LME:lld)

FINAL DIAGNOSIS:

FIBROUS TISSUE AND FIBROMUSCULAR TISSUE WITH SKELETAL MUSCLE
(CLINICALLY FLEXOR TENOSYNOVIUM).

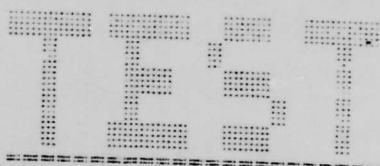
(lsf)
10/19/95



LUDMILA M ENGELBACH, MD
Pathologist

Aa 161

--END OF REPORT--



TEST RESULTS SUMMARY

ROSALES TAMI SDS D807
 256944P95285 ADM: 10/18/95 F 31
 PESS, GARY

REPORT PERIOD: 05:23 PM 10/12/95 - 12:00 AM 10/18/95

ELECTROLYTES

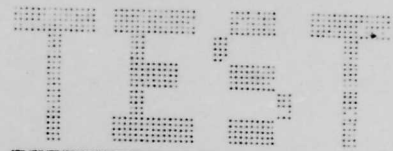
	NA	K	CL	CO2	ANION
LO-HI:	134-145	3.5-5.0	98-111	21-31	5-17
UNIT:	MMOL/L	MMOL/L	MMOL/L	MMOL/L	MEQ/L
TUE 10/17 09AM	140	4.4	107	28	9

STANDARD CHEMISTRIES

	CHOL	T	PROT	ALB	ALK	PH	LDH	SGOT	SGPT
LO-HI:	127-200	6.3-8.0	3.5-4.8	42-121	111-205		10-42	7-40	
UNIT:	MG/DL	GM/DL	GM/DL	U/L	U/L		U/L	U/L	U/L
TUE 10/17 09AM	235	6.2	4.2	91	120		15	15	

	GGTP	T BILI	CALCIUM	PHOS	URIC	GLUC
LO-HI:	8-69	0.3-1.2	8.6-10.4	2.5-4.9	1.9-8.2	70-110
UNIT:	U/L	MG/DL	MG/DL	MG/DL	MG/DL	MG/DL
TUE 10/17 09AM	15	0.8	9.5	2.9	4.6	90

Aa162



TEST RESULTS SUMMARY

ROSALES TAMI SDS D507
 256944P95285 ADM: 10/18/95 F 31
 PESS, GARY

REPORT PERIOD: 05:23 PM 10/12/95 - 12:00 AM 10/18/95

STANDARD CHEMISTRIES

	BUN	CREAT	TRIGLYCERIDES
LO-HI:	9-28	0.5-1.2	35-135
UNIT:	MG/DL	MG/DL	MG/DL
TUE 10/17 09AM	10	0.7	169

URINALYSIS

TUE 10/17 09AM MICROSCOPIC UR

RBC	5-8	HPF
WBC	NEGATIVE	HPF
RENAL EPITH	NEGATIVE	-
SQ EPITH	1+	-
MUCOUS	NEGATIVE	+
BACTERIA	NEGATIVE	-
AMORPH. SEL.	NEGATIVE	+
CASTS	NEGATIVE	HPF
CRYSTALS	NEGATIVE	HPF
YEAST	NEGATIVE	-

TUE 10/17 09AM URINALYSIS LC

COLOR	YELLOW	
CHARACTER	HAZY	
SP. GRAVITY	EQUALS 1.030	
PH	5.0	
NITRITE	NEGATIVE	(NEG)
PROTEIN	NEGATIVE	MG/DL (NEG)
GLUCOSE	NEGATIVE	MG/DL (NEG)
KETONES	NEGATIVE	MG/DL (NEG)
UROBILIN	0.2	EU/DL (0.1-1.0)
BILIRUBIN	NEGATIVE	+
BLOOD	SMALL	+

Aa163

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ROSALES TAMI
256944P95285
PCESS, GARY
PREADM

F 31
ADM:10/18/95
SERV:SDS

PRE-ADMIT RESULTS

NORMAL RANGE

CBC WITH DIFF		SPEC'M 10/17/95 09:13 AM
(4.8-10.8)	WBC	8.9 THO/CMM
(4.20-5.40)	RBC	4.61 MIL/CMM
(12.0-16.0)	HGB	13.3 G/DL
(37.0-47.0)	HCT	38.9 %
(81-99)	MCV	84.3 CU/UM
(27.0-31.0)	MCH	28.8 PG
(33.0-37.0)	MCHC	34.2 G/DL
(11.5-14.5)	RDW	13.7
(130-400)	PLT CT	278 THO/CMM
(47-77)	SEGS	68 %
(16-43)	LYMPHS	23 %
(0.5-10)	MONOS	6 %
(0.3-7)	EOS	2 %
(0.3-2)	BASOS	1 %
	RBC MORPH	NORMAL
	PLT APP	ADEQUATE

NORMAL RANGE

CHEM-20		SPEC'M 10/17/95 09:13 AM
(8.6-10.4)	CALCIUM	9.5 MG/DL
(2.5-4.9)	PHOS	2.9 MG/DL
(1.9-8.2)	URIC	4.6 MG/DL
(127-200)	CHOL	236 MG/DL
(6.3-8.0)	T PROT	8.2 GM/DL
(3.5-4.8)	ALB	4.2 GM/DL
(0.3-1.2)	T BILI	0.8 MG/DL
(70-110)	GLUC	90 MG/DL
(9-28)	BUN	10 MG/DL
(10-42)	SGOT	16 U/L
(111-205)	LDH	120 U/L
(42-121)	ALK PHOS	91 U/L
(7-40)	SGPT	15 U/L
(8-69)	GGTP	16 U/L
(0.5-1.2)	CREAT	0.7 MG/DL
(134-145)	NA	140 MMOL/L
(3.5-5.0)	K	4.4 MMOL/L
(98-111)	CL	107 MMOL/L
(21-31)	CO2	28 MMOL/L
(35-135)	TRIGLYCERIDES ...	169 MG/DL
(5-17)	ANION GAP	9 MEQ/L
	ELECTROLYTES.....	

CONTINUED

Aa 164

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#####
# # # # #
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# # # # #
# # # # #
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OSALES TAMI
 56944P95285
 ESS, GARY
 READM

F 31
 ADM:10/18/95
 SERV:SDS

PRE-ADMIT RESULTS

URINALYSIS LC , -RAND URINE

SPEC'M 10/17/95 09:13 AM

NORMAL RANGE

	:	COLOR	YELLOW	
	:	CHARACTER	HAZY	
	:	SP GRAVITY	>EQUALS 1.030	
	:	PH	5.0	
(NEG)	:	NITRITE	NEGATIVE	
(NEG)	:	PROTEIN	NEGATIVE	MG/DL
(NEG)	:	GLUCOSE	NEGATIVE	G/DL
(NEG)	:	KETONES	NEGATIVE	MG/DL
(0.1-1.0)	:	UROBILIN	0.2	EU/DL
(NEG)	:	BILIRUBIN	NEGATIVE	+
(NEG)	:	BLOOD	SMALL	+
(NEG)	:	LEUKOCYTE	NEGATIVE	

MICROSCOPIC UR

SPEC'M 10/17/95 09:13 AM

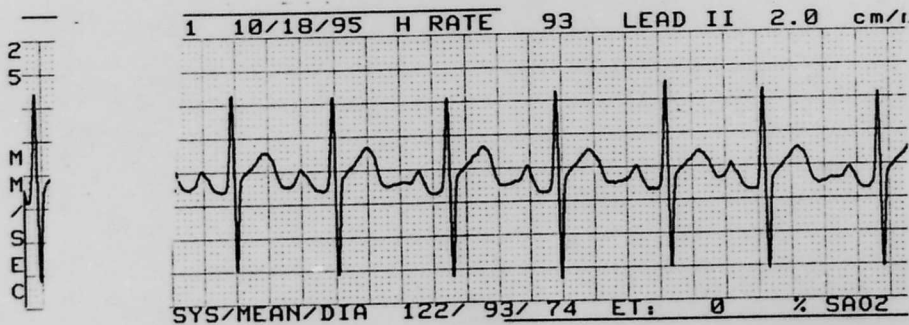
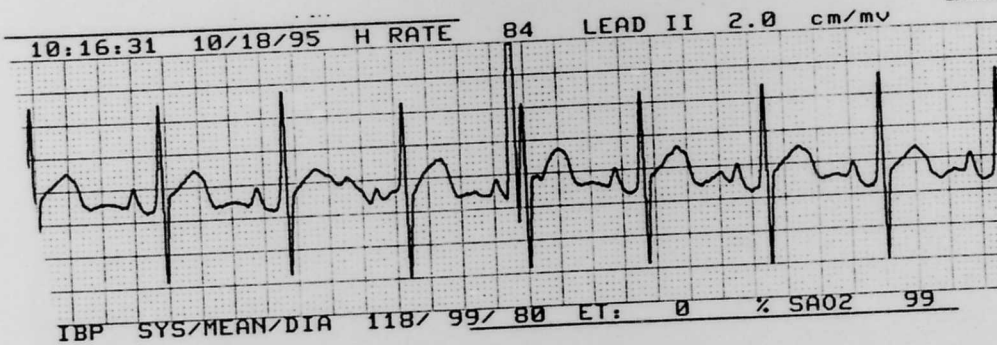
NORMAL RANGE

	:	RBC	5-8	/HPF
	:	WBC	NEGATIVE	/HPF
	:	RENAL EPITH	NEGATIVE	+
	:	SQ EPITH	1+	+
	:	MUCOUS	NEGATIVE	+
	:	BACTERIA	NEGATIVE	+
	:	AMORPH. SED.	NEGATIVE	+
	:	CASTS	NEGATIVE	/LPP
	:	CRYSTALS	NEGATIVE	/LPP
	:	YEAST	NEGATIVE	

LAST PAGE

Aa165

256944P95285 DS07
ROSALES TAMI
PESS, GARY 31 F-D
SCS 10/18/95 11/25/63
535 ANTHONY AVE
TOMS RIVER NJ08753
150 CATH



Aa166

HOSPITAL DAY SURGERY 1 Local Center **NO PAIN DAY SURGERY** 201-363-1900
 PATIENT NO. [] ADMISSION DATE [] ADMISSION TIME [] CHARGE DATE **01/14/90** ACCOM. CODE [] ROOM [] BED [] ISC [] PHONE NO. [] RELIGION [] CHURCH []
 PATIENT NAME: LAST [] FIRST [] MIDDLE [] SOCIAL SECURITY NO. [] DATE OF BIRTH [] AGE [] PLACE OF BIRTH [] RACE [] SEX []
 PERMANENT ADDRESS (CITY, STATE, ZIP) [] [] [] TOWNSHIP [] COUNTY [] STATE [] ZIP []
 CITY [] STATE [] ZIP []

TYPE OF KIN [] RELATIONSHIP [] ADDRESS (CITY, STATE, ZIP) [] [] [] TELEPHONE []
 NAME [] ADDRESS [] CITY [] STATE [] ZIP [] TELEPHONE []
 TYPE IN CASE OF EMERGENCY [] RELATIONSHIP [] TELEPHONE [] SECONDARY RELATIONSHIP [] TELEPHONE []

ATTENDING DOCTOR [] DDC NO. [] STATUS [] HOSPITAL SERVICE [] TYPE [] REF. CODE [] REF. SOURCE [] ADM CL [] READ [] DATE OF LAST ADM []
 PRIMARY [] SURGICAL [] 3

ICD-9-CM DIAGNOSIS: **RIGHT CUBITAL TUNNEL SYNDROME-ANTERIOR TRANSPOSITION NEUROLYSIS RIGHT ULNAR NERVE**

IMPROVED	A	UNIT	TRANSFER	CONSULTATIONS	DRG. NO.	OUT
RECOVERED	M	DAYS		MED -	008	12
UNIMPROVED	A		EXP.: N/A AUT. C/N/A C/A	ORTH -		
DIED			-48 -48 P/O YES/NO	SURG -		
				OBS/GYN -		
				NB/PED -		
				ENT -		
				OPHTH -		

Reimbursement Depends On Your Timely Designation Of The Following 354.2

CODE **54.2** PRINCIPAL DIAGNOSIS:
Right cubital tunnel syndrome
 SECONDARY DIAGNOSIS:
Right Cubital tunnel syndrome

DATE	PRINCIPAL PROCEDURE:
1/14/90	Anterior transposition and neurolysis cubital nerve + thenar
	SECONDARY PROCEDURE:

INDICATIONS: YES NO DOCTORS SIGNATURE **Aa167** DATE **8/14/96**

PRE-OPERATIVE DIAGNOSIS: Right cubital tunnel syndrome.
POST-OPERATIVE DIAGNOSIS: Same.
OPERATION PERFORMED: Anterior transposition and neurolysis, right ulnar nerve, elbow.
ANESTHETIC: General endotracheal anesthesia.
SURGEON: Gary Pess, M.D.
ASSISTANT:
ANESTHETIST: Juan Bermudez, M.D.

GROSS FINDINGS: (including consideration of all organs examined)

OPERATIVE PROCEDURE: (including incision, ligatures, sutures, drainage and closure)

The patient was taken to the operating room and placed on the table in supine position. A tourniquet was placed on the proximal right arm, hand on the hand table. The patient was prepped and draped in sterile fashion. General anesthesia with endotracheal intubation was successfully administered. An esmarch was used to exsanguinate the arm. The tourniquet was inflated to 280 mm Hg.

An incision was made posterior to the medial epicondyle and extended down through skin and the subcutaneous tissue was carefully spread. The ulnar nerve was picked up proximally and dissected and unroofed in a proximal to distal fashion completely decompressing the cubital tunnel. The medial intermuscular septum was removed distally to proximally for a distance of about 6 cm. A neurolysis of the ulnar nerve was performed in proximal to distal fashion. The fascia over the flexor carpi ulnaris was opened. Muscle branches to flexor carpi ulnaris were carefully preserved.

A flap was lifted over the plexor pronator mass and the ulnar nerve was transposed anteriorly about 1 cm anterior to the medial epicondyle. The flap which had been raised was then sutured into the subcutaneous tissue with 4-0 Ethibond figure-of-eight sutures and the nerve was checked. The nerve moved freely proximally and distally without any kinking of the nerve.

NAME: ROSALES, TAMI

HOSPITAL NO.:

Operation: 8/14/96

Dictation: 8/14/96

Transcription: 8/15/96

KIMBALL MEDICAL CENTER
600 River Avenue
Lakewood, NJ 08701

Addressograph Use Only

REPORT OF OPERATION

W:\WP10-KMC\ROSA-T.HR-5006

Page 1

CHART COPY

Aa 169

The tourniquet was deflated and hemostasis carefully achieved using bipolar cautery. The wound was irrigated with copious amounts of saline. The skin was closed loosely with 4-0 vicryl subcutaneous buried sutures and 4-0 nylon simple and horizontal mattress sutures for skin. A sterile bulky dressing was applied along with three ABD's, padding and Kling. A Zimmer cut-away sling was applied.

The patient tolerated the procedure well, was extubated in the operating room and was accompanied to the recovery room in satisfactory condition.

Signed _____

GARY PESS, M.D.

NAME: ROSALES, TAMI

HOSPITAL NO.:

Operation: 8/14/96

Dictation: 8/14/96

Transcription: 8/15/96

KIMBALL MEDICAL CENTER
600 River Avenue
Lakewood, NJ 08701

Addressograph Use Only

REPORT OF OPERATION

W:\WP\O-KMC\ROSA-T.HR-5006

Page 2

Aa170

CLART COPY

COMMUNITY/KIMBALL HealthCare System
 600 River Avenue Lakewood, NJ 08701
 DAILY REPORT

Patient name: ROSALES, TAMI

MR#: 500410 Room: -

Location: SAME DAY SURGERY

pt#: 52810769

Adm.date: 08/14/96 Surg.date:

Adm. Dr.: PESS-EATONTOWN, GARY

DOB: 11/25/1963 Age: 32 Sex: F

Order Id : 20070293

FINAL

Date&Time Ordered: 08/07/96 11:36

PRIORITY: ROUTINE

Ord. Dr.: PESS-EATONTOWN, GARY

Hematology

TEST-NAME	ABN.	RESULT	REFERENCE	UNITS
COLLECTED: 08/07/96 12:08				
<u>Complete Blood Count</u>				
WBC		*8.3	4.0-10.5	1000/uL
RBC		*4.32	4.20-5.40	million/uL
HGB		*12.5	12.5-16.0	g/dL
HCT		*37.4	37.0-47.0	%
MCV		*86.5	78.0-100.0	fL
MCH		*28.8	27.0-31.0	pg
MCHC		*33.3	32.0-36.0	g/dL
RDW	H	*14.9	11.5-14.0	%
PLATELETS		*267	130-400	1000/uL
MPV		*8.8	7.4-10.4	fL
LYMPHOCYTE		*25.2	21.0-51.0	%
MONOCYTE		*8.6	2.0-9.0	%
NEUTROPHIL		*63.0	42.0-75.0	%
EOSINOPHIL		*2.3	0.0-10.0	%
BASOPHIL		*0.9	0.0-1.0	%
ABSOLUTE NEUTROPHIL		*5.2	1.5-6.6	1000/uL
ABSOLUTE LYMPHOCYTE		*2.1	1.5-3.5	1000/uL
ABSOLUTE MONOCYTE	H	*0.7	0.1-0.6	1000/uL
ABSOLUTE EOSINOPHIL		*0.2	0.0-0.7	1000/uL
ABSOLUTE BASOPHIL		*0.1	0.0-0.2	1000/uL

* - new results Key: L-Low, H-High, AB-Abnormal, C-Critical, T-Toxic

Patient name: ROSALES, TAMI

MR#: 500410

Room: -

Aa 171

COMMUNITY/KIMBALL HealthCare System
600 River Avenue Lakewood, NJ 08701
DAILY REPORT

Patient name: ROSALES, TAMI
Location: SAME DAY SURGERY
Adm.date: 08/14/96 Surg.date:

MR#: 500410 Room: -
pt#: 52810769
Adm. Dr.: PESS-EATONTOWN, GARY
DOB: 11/25/1963 Age: 32 Sex: F

Order Id : 20070293
Date&Time Ordered: 08/07/96 11:36
Ord. Dr.: PESS-EATONTOWN, GARY

FINAL
PRIORITY: ROUTINE

Chemistry

TEST-NAME	ABN.	RESULT	REFERENCE	UNITS
COLLECTED: 08/07/96 12:08				
<u>Pregnancy Testing</u>				
PREGNANCY (SERUM) QUAL		*NEGATIVE		

* - new results Key: L-Low, H-High, AB-Abnormal, C-Critical, T-Toxic

Patient name: ROSALES, TAMI MR#: 500410 Room: -

Ac172

Shore Neurology, P.A.

ADULT NEUROLOGY
E.G. EMG, EVOKED POTENTIALS &
POLYSOMNOGRAPHYGERALD J. FERENCZ, MD.
PANDURANG R. MISKIN, M.D.
SANDRA L. ESCANDON, M.D.
LANE M. SANDLER, D.O.
ROCCO J. DI PAOLA, M.D.REPLY TO:
442 COMMONS, 2ND FLOOR
TOMB RIVER, NJ 08755
732-240-7877
FAX-732-240-32142911 ROUTE 88 SUITE 3
POINT PLEASANT, N.J. 08742
732-295-1400
FAX-732-295-6625

P13

March 2, 1999

RE: Tami Rosales

AGE:

Referring Physician: Gary M. Pess, M.D.

An EMG and nerve conduction studies of the left upper extremity were performed on Tami Rosales on March 2, 1999. The results are as follows:

NERVE CONDUCTION STUDIES

Nerve	Stimulation Site	Recording Site	Latency (msec)	Amplitude	Velocity (M/sec)
LEFT UPPER					
Median Nerve (motor)	Wrist	APB	3.56	2.85	69
	Elbow	APB	6.89	2.43	
	Index Finger	Wrist	2.50	25.07	
Ulnar Nerve (motor)	Wrist	ADQ	2.25	8.94	75 Below Elbow
	Below Elbow	ADQ	4.78	7.64	55 Across Elbow
	Above Elbow	DQ	7.03	7.63	
	Little Finger	Wrist	2.56	16.00	

ELECTROMYOGRAM

Muscle	Positive Wave	Fibs	Fascs	Motor Unit Potential
LEFT UPPER				
Abductor Pollicis Brevis	0	0	0	Normal
Abductor Digiti Quinti	0	0	0	Normal
First Dorsal Interosseous	0	0	0	Normal

-continued-

Ac 173

RE: Tami Rosales

Page -2-

3/2/99

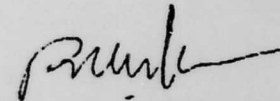
Muscle	Positive Wave	Fibs	Fuscs.	Motor Unit Potential
Flexor Carpi Ulnaris	0	0	0	Normal
Extensor Digitorum Communis	0	0	0	Normal
Biceps	0	0	0	Normal
Triceps	0	0	0	Normal
Deltoid	0	0	0	Normal

SUMMARY:

The distal motor latency of the left median and left ulnar nerve is normal. The motor nerve conduction velocity of the left median and left ulnar nerve is normal. However, there is decrement of the motor nerve conduction velocity of the left ulnar nerve across the elbow in comparison with the below the elbow segment. The distal sensory latency of the left median and left ulnar nerve is normal. The needle electrode examination revealed no abnormalities.

IMPRESSION:

The abnormality in this study is indicative of left ulnar neuropathy at the elbow site.



PANDURANG R. MISKIN, M.D.

/mda

Aa174

Shore Neurology, P.A.

ADULT NEUROLOGY
E.G. EMG, EVOKED POTENTIALS &
POLYSOMNOGRAPHY

GERALD J. FERENCZ, MD.
PANDURANG R. MISKIN, M.D.
SANDRA L. ESCANDON, M.D.
LANE M. SANDLER, D.O.
ROCCO J. DiPAOLA, M.D.

PH

REPLY TO:
442 COMMONS WAY BLDG.D
TOMS RIVER, NJ JERSEY 08755
732-249-1787
FAX-732-249-3114

2911 ROUTE 4, SUITE 3
POINT PLEASANT N.J. 08742
732-299-1140
FAX-732-299-6625

April 6, 1999

AGE:

RE: Tami Rosales

Referring Physician: Gary M. Pess, M.D.

An EMG and nerve conduction studies of the right upper extremity were performed on Tami Rosales on April 6, 1999. The results are as follows:

NERVE CONDUCTION STUDIES

Nerve	Stimulation Site	Recording Site	Latency (msec)	Amplitude	Velocity (M/sec)
RIGHT UPPER					
Median Nerve (motor)	Wrist	APB	5.77	3.66	52.5
	Elbow	APB	10.17	2.58	
	Index Finger	Wrist	2.59	35.94	
Ulnar Nerve (motor)	Wrist	ADQ	1.64	8.74	59.6 Below elbow
	Below Elbow	ADQ	4.83	5.46	68.5 Across elbow
	Above Elbow	ADQ	6.84	7.19	
	Little Finger	Wrist	2.41	16.75	

ELECTROMYOGRAM

Muscle	Positive Wave	Fibs	Fascs.	Motor Unit Potential
RIGHT UPPER				
Abductor Pollicis Brevis	0	0	0	Within normal limits
Abductor Digiti Quinti	0	0	0	"
First Dorsal Interosseous	0	0	0	"

-continued-

A2175-

Tami Rosales

Page -2-

4/6/99

Muscle	Positive Wave	Fibs	Fasc.	Motor Unit Potential
Flexor Carpi Ulnaris	0	0	0	Within normal limits
Extensor Digitorum Communis	0	0	0	
Biceps	0	0	0	
Triceps	0	0	0	
Deltoid	0	0	0	

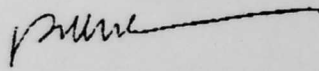
SUMMARY:

The distal motor latency of the right median nerve is prolonged, but that of the right ulnar nerve is normal. The motor nerve conduction velocity of the right median and right ulnar nerve is normal. There is no decrement of motor nerve conduction velocity of the right ulnar nerve across the elbow. The distal sensory latency of the right median and right ulnar nerve is normal.

The needle electrode examination revealed no abnormalities.

IMPRESSION:

The abnormalities in this study are indicative of a right median nerve disorder at the wrist, like in carpal tunnel syndrome. In comparison with study from June 1995, there is mild worsening of the carpal tunnel syndrome and improvement in the right ulnar neuropathy.


PANDURANG R. MISKIN, M.D.

/mda

A-176

Peter M. Mezzacappa, M.D. Neuroradiologist
Carlo L. Rondina, M.D.



Howard Rosenstein, M.D.
Robert L. Lapidus, M.D.

EST. 1973

ASSOCIATES, P.A.

19 MULE ROAD, TOMS RIVER, NJ 08755 (732)240-1400 (732)341-3588 FAX

NAME: ROSALES, TAMI M.

PHONE #: 288-1718

REFERRED BY: DR. MICHAEL DI BELLA DOB: 11/25/63 X-RAY #: 000076

EXAMINATION: RIGHT SHOULDER DATE: 7/1/99

Dear Dr. DiBella:

The findings on the above-named patient are as follows:

RIGHT SHOULDER:

Views of the right shoulder in internal and external rotation reveal no fracture or dislocation. Some hypertrophic bony changes are seen about the greater tuberosity. This may represent calcific tendinitis.

CONCLUSION: POSSIBLE CALCIFIC TENDINITIS OF THE GREATER TUBEROSITY.

Thank you for asking us to participate in the care of this patient.

Sincerely,

PETER M. MEZZACAPPA, M.D.

PMM/ck
dd: 7/1/99
dt: 7/2/99

Ac 177

Peter M. Mezzacappa, M.D. *Neuroradiologist*
Carlo L. Rondina, M.D.

X-RAY

Howard Rosenstein, M.D.
Robert L. Lapidus, M.D.

EST. 1973

ASSOCIATES, P.A.

19 MULE ROAD, TOMS RIVER, NJ 08755 (732)240-1400 (732)341-3588 FAX

NAME: ROSALES, TAMI M.

PHONE #: 288-1718

REFERRED BY: DR. MICHAEL DI BELLA DOB: 11/25/63 X-RAY #: 000076

EXAMINATION: MRF CERVICAL SPINE

DATE: 7/8/99

Dear Dr. DiBella:

The findings on the above-named patient are as follows:

Sagittal T1 and gradient echo images and T1 and gradient echo axial images angled through the disc spaces from C3 through T1 were obtained.

FINDINGS: Marrow signal within the cervical vertebral bodies is within normal limits.

The cervical discs appear intact. No HNP is identified.

There is no evidence of spinal stenosis.

Cervical cord displays no intrinsic signal abnormalities. Cervicomedullary junction appears normal.

IMPRESSION: NORMAL MAGNETIC RESONANCE IMAGING OF THE CERVICAL SPINE.

Thank you for asking us to participate in the care of your patient.

Sincerely,

RL
ROBERT L. LAPIDUS, M.D.

RLL/ck

dd: 7/8/99

dt: 7/9/99

OK
RL

FOV 7/15

CT ■ Magnetic Resonance Imaging ■ Ultrasound with Doppler ■ Mammography ■ X-Ray ■ Fluoroscopy ■ Nuclear Medicine

Aa 178

Dr Gary Fess
Ocular Injury Board

ROSALES, TAMI
10/13/98

She returns today and continues to have problems with both hands, right carpal tunnel syndrome, bilateral tendinitis, left ulnar nerve at the elbow and now complains of pain at the base of her right thumb.

She has pinpoint tenderness over the thumb basal joint with increased pain with manipulation of the joint. Grind test is negative, there is no crepitus.

At this point I am going to give her a short opponens splint to wear. I have also recommended that she reduce her work to five hours a day. I will see her back for follow-up and re-evaluation as needed.

GMP:PTI

P17

ROSALES, TAMI
11/3/98

She returns today and says she noticed a golf ball size swelling on the palmar radial aspect of the right wrist which was purplish in color but appears to be resolving nicely now. She did have some pain in the area.

Today's exam reveals a little ecchymosis in that area, slight swelling, no discrete mass, neurovascular exam unchanged.

She will continue with warm soaks. I will see her back for follow-up and re-evaluation as needed.

GMP:PTI

MORALES, TAMI
2/16/99

She returns today and complains of numbness and tingling in the left ulnar nerve distribution. She says she gets twitching of the little finger and electric shocks and numbness shooting up and down the finger. She says it has been getting worse recently.

Examination of the left hand reveals weakness of the ulnar innervated intrinsic and decreased sensation in the ulnar nerve distribution. Flexor and extensor tendon function are otherwise intact. Radial pulse is strong and all fingers are pink with good capillary refill. There is mild tenderness over the medial and lateral epicondyles.

At this point I am going to send her for electrodiagnostic studies to evaluate the left ulnar nerve across the elbow and wrist. She will return to see me after that is done.

GMP:PTI

A-179

ROSALES, TAMI
3/9/99

She returns today for follow-up and re-evaluation. She had electrodiagnostic studies done by Dr. Miskin and his interpretation was left cubital tunnel syndrome. He notes that there was slowing of conduction velocity across the elbow compared to below the elbow but I do not see the numbers on his report.

I am going to give him a call to see if we can identify what the numbers are to determine the severity.

She is also having a lot of pain and a shooting pain in her right hand.

GMP:PTI

Aa180

TT T/

ROSALES, TAMI
6/22/99

She returns today and complains of pain shooting into her middle finger, tenderness over the radial tunnel.

I will have her continue with therapy, re-evaluate her in six weeks for follow-up.

GMP:PTI

ROSALES, TAMI
9/14/99

She returns complaining of a short pain on the dorsum of her left hand at the junction of the base between the ring and little finger metacarpals.

There is marked hypersensitivity in that area. No mass is palpated. Flexor and extensor function is unchanged, neurovascular exam is intact.

I injected the area with .75 cc 1% Xylocaine plain and .75 cc Celestone.

Return in four weeks.

GMP:PTI

Aa181

10418

800-664-2583

135682441

OT.
Heathsouth

5/3-

AMO-1567981

3 visits.

288-1718

HMO

240-4522

State of New Jersey
PRESCRIPTION BLANK

CENTRAL JERSEY HAND SURGERY
GARY M. PESS, M.D.
ORTHOPEDIC HAND SURGERY
664 COMMON WAY
TOMS RIVER, NJ 08755
732-286-9000 FAX: 732-240-0036

DEA # BP0749335

BATCH # TRI980130100101784-7

LIC # MA048339

SERIAL #

IF PRESCRIPTION IS WRITTEN AT ALTERNATE PRACTICE SITE, CHECK HERE
AND PRINT ALTERNATE ADDRESS AND TELEPHONE NUMBER ON REVERSE SIDE

PATIENT Thom Morales DOB _____

ADDRESS 9/27/85

Rx

Rx - (C) Cervical lymphadenopathy
Neckal tendon
Syndrome

Rx - Steroid injections
fluido Rx 2x/week 4 weeks

SUBSTITUTION PERMISSIBLE DO NOT SUBSTITUTE
DO NOT REFILL _____ SIGNATURE OF PRESCRIBER _____
REFILL _____ TIMES _____

Use separate form for each controlled substance prescription
THEFT, UNAUTHORIZED POSSESSION AND/OR USE OF THIS FORM INCLUDING ALTERATIONS OR FORGERY, ARE CRIMES PUNISHABLE BY LAW

Aa182

State of New Jersey
PRESCRIPTION BLANK

CENTRAL JERSEY HAND SURGERY
GARY M. PESS, M.D.
ORTHOPEDIC HAND SURGERY
664 COMMON WAY
TOMS RIVER, NJ 08755
732-286-9000 FAX: 732-240-0036

LIC # MA048339
SERIAL # _____

DEA # BP0749335
BATCH # TRI980130100101784-7

IF PRESCRIPTION IS WRITTEN AT ALTERNATE PRACTICE SITE, CHECK HERE
AND PRINT ALTERNATE ADDRESS AND TELEPHONE NUMBER ON REVERSE SIDE

PATIENT Tami Rosales D.O.B. _____
ADDRESS _____ 2/16 / 95
DATE _____

Rx

Rx - R/O @ Cubital
tunnel syndrome

Rx - @ ulnar N/A cross
elbow + wrist + ERB

SUBSTITUTION PERMISSIBLE _____ DO NOT SUBSTITUTE _____
DO NOT REFILL _____
REFILL _____ TIMES
SIGNATURE OF PRESCRIBER _____

Use separate form for each controlled substance prescription
THEFT, UNAUTHORIZED POSSESSION AND/OR USE OF THIS FORM INCLUDING ALTERATIONS OR FORGERY, ARE CRIMES PUNISHABLE BY LAW

Aa 183

MEDICAL EXAMINATION BY PERSONAL OR TREATING PHYSICIAN

This form must be filed in support of an Application for Disability Retirement and is restricted to the confidential use of the retirement system.

PART ONE — APPLICANT (COMPLETE PART ONE BEFORE PRESENTING THIS FORM TO THE PHYSICIAN.)

Name ROSALLES, TAMI M. Date of Birth NOVEMBER 25, 1963
Last, First, Middle Initial Month, Day, Year

Social Security Number 135-68-6441 Job Title JUDICIARY CLERK

PART TWO — PHYSICIAN (Please type or print clearly)

1. History of the illness or injury causing the disability and any other pertinent past or present history:

Numbness + tingling + swelling No feeling in hand or arm.

2. Positive physical findings:

Carpel Tunnel both hands

P/8

3. Significant laboratory, cardiographic, x-ray or other diagnostic data: (If available, please attach copies of narrative reports only. No films please).

EMG's /

4. Diagnosis:

*lateral epicondylitis ~~both~~ right + left
trigger finger (R) thumb
tendonitis both arms*

Aa 184

5. Is the applicant totally and permanently disabled and no longer able to perform his or her job duties:

Yes No

If Yes, explain in what way the applicant's symptoms or physical findings prevent him or her from working:

*Unable to perform duties due to pain in wrist + elbow.
Unable to lift over 5 lbs.
(R arm has no use.)*

6. a) Is the applicant's disability likely to be stable or progressive? Stable Progressive

b) If progressive, is death imminent? Yes No

c) Is there a possibility that the applicant might improve to a degree to perform the applicant's duties?

Yes No

7. Is the applicant permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of the applicant's regular assigned duties?

Yes No

If yes, explain the causal relationship:

Occupational exposure due to repetitive motion.

Physician's Name: GARY LESS Degree: MD

Address: 664 Common Way TOMS RIVER, NJ 08753.

Phone: (92) 286-9000

NJ License Number: MA48339

Gary M. Less M.D.
Signature of Physician

10/5/99
Date

A2185

Patient's Name Tami Rosales DOB 11.25.63 MR# _____

PROGRESS NOTES

Date 3/2/98 Wt 256 Temp 99.3 BP 110/84

Age 34
NKA

Diarrhea & Vomiting,
Nausea, headache
Abdominal & low back
pain on & off. Started
today
Also here to discuss blood studies
& Dorsal spine X-Ray
M.Ed. P.

No hx of eating out - Fri had turkey/
stuffing however dad
had it too

Px: HSSNT - ms @ / moist membranes.
pharynx @ adenopathy
Heart - Pns @
Lungs - Clx @
Abd - soft, NT @ hyperactive BS.

APV Gastroenteritis - ↑ fluids
Great diet.
Compazine 12.5 mg TID PRN.
② Anterolthrite - moist BW

M. Ed. P.

3/2/98 Lyme titer neg
5/2/98 HLA milli

3995. Message left to call for lab results M.M.L. -
- J.R. Pt advised of normal Lyme test M.M.L.

Ac 187

COMMUNITY MEDICAL ASSOCIATES, P.A.

FORM 0005

Patient's Name

Tami Rosales

DOB 11-25-63

MR#

PROGRESS NOTES NKA

Date 3-31-98

124/180

P74

97 98

In Med

34y was taking Phex-Phex 40 palpitations - also 40 pelvic pain, low back pain. "lumpy sandy" dead in cold - sweaters

no change in any distance

clo still 3 days ago 260 pain (back pain)

GenExhills @dinner / strained wine

bristles and found "sand". palpitations

last week (4) Sch. Etidrigburis /

(L) sterno cost for pain after riding horses

all well

127 cv PLEUM 064.

(1) costo stern joint (L).

P. CRAB/L

also cause / mild supra-pubic tend

Crack Crk @ Exhills

cut cocaine

1. p (1) costochondritis (riding horses)

(2) palpitations / hx MVP / pen for me.

(3) lumbicitia / riding horses

(4) UTI

plan: (1) MVP (no paracetamol all stress)

(2) echo - valves

(3) MUC. obid 30mg #6 BID / 1997 pills

(4) 3-4 April @ 9° w/ vit x 2-3 days

for costochondritis

(5) sub/voel clusterin 5000.

[Signature]

Aa 188

COMMUNITY MEDICAL ASSOCIATES, P.A.

FORM 0005

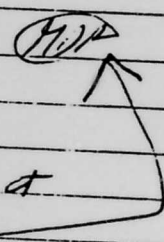
Patient's Name: Tammi Rosales DOB 11-25-63 MR# _____

PROGRESS NOTES

Date 4/18/98 273 BP 157/90 APT 978 NKA Meds Ø
34yr Follow-up

IVP normal

pt! 24hr urine CA/PSY-
 UNACED
 CBC/Chem
 Ur WCC



4/26 Ø data from KIMBLE returned
Ø pt needs urine CA + colony of
Ø was 24hr urine and?

MIA

6-22-98 WT 267 BP 138/78 T 97.8

migraine headaches - nausea vomiting
 S -
 T -
 E -
 I -
 P -

Zomy drug 1 mg 10 10
also my use All-ocet

7/17/98

FOR <u>DR. B.</u> DATE <u>7/17</u> TIME <u>9:55</u> (A.M./P.M.)	
NAME <u>Tammy Rosales</u>	
PHONE <input type="checkbox"/> HOME <u>288-1718</u>	<input type="checkbox"/> BUSINESS
AREA CODE _____ NUMBER _____ EXTENSION _____	
MESSAGE <u>Can you call in for Zomy - Zomyg of what Grand union</u>	
<input type="checkbox"/> SIGNED <u>(B)</u>	<input type="checkbox"/> RETURNED YOUR CALL
<u>929-0606</u>	<input type="checkbox"/> PLEASED TO WILL CALL AGAIN
	<input type="checkbox"/> CAME TO SEE YOU WANTS TO SEE YOU

Pharmacy called
2 1:00
Answer

Aa 189

COMMUNITY MEDICAL ASSOCIATES, P.A.

FORM 0005

patient's name Tarumi Rosales DOB 11/25/63 MR# _____

PROGRESS NOTES

Date 8/5/98 wt 271 BP 124/80 T 98.4 N/A Meds Ø

34yr Demand opinion on first surgery (fever)

5 - scar line across @ foot is coming for pain & affects walking
P - agree to need to have a first one

Ø wt reduced
→ 10mm 15yr # 30 no edema

9/17/98 wt 170 BP 110/70 T 97.4 N/A Meds Ø
34yr C/O cough & nasal congestion (green).
- hot flashes since Friday. Ø fever

Ø ⊕ sinus pressure
Tm's OK x 2
Nose = congested
A:NT

A/P. simvastatin - Lipid 500mg BID
Claritin D(12) BID
Nasonex spray.

JRhos

Aa 190

COMMUNITY MEDICAL ASSOCIATES, P.A.

Patient's Name Losales Tami DOB 11-25-63 MR# N1510

PROGRESS NOTES

Date 9-22-98 57 lbs T-97.4 B/P - 120/80 P-60
 c/o - severe headaches - forehead tender to touch. Clariton D
Masena qday

o tend to forehead but there seems to be
 a trigger or vi here last 2 nodent of
 pain @ mid ear

Ext exam etc ok, leg clear

prescription for
 Clariton D

MS R

9/23/98 PE c/o - severe pain
 o PND nap
 o Horning pain @ eye all the way back
 Pain severe

Re: Darvocet - N-100 1-2 tabs q6^h prn. (#40)
 Cont. antibiotics / clariton-D

9/25/98 Re: CT scan of head / sinuses

9-29-98 Pharmacy called & come
 10/5/98 it's done

A-191

COMMUNITY MEDICAL ASSOCIATES, P.A.

Patient's Name Taru Rosales DOB 11-25-63 MR# _____

PROGRESS NOTES

Date <u>10/27/98</u>	BP <u>114/72</u>	98.4	URA	Thods <u>Clavicle</u>
Plu (L) eye referral in Koster <u>Master</u>				
I was told in ER that vessel in same as pub				
2/9/99	B/p	126/80		K10P
40 (L) knee pain + several months				
meds used + had physical exam				
first admission by the law				
1) MRI knee				
2) P.E. + exam				
750 bed				
3) Leg				
K10P				
Refers to Mr per				
2/18/99	MRI confirms minimal joint			
collateral ligament tear				
plu/G.O.R. + no other				
(2) bring MRI films to clinic				
2/16/99	my knee 11:30 am			
2/16/99	4 inches of swelling			

Aa192

Patient's Name Tami Rowles DOB _____

OFFICE VISITS

Date	Wt.	B.P.	P	T	Progress	Medications
2/12/99	175	124/76			40 mg Diazepam 10-11 AM & 10-11 PM 10-11 PM Lorazepam - improved. → now 10-11 PM. Lorazepam - none not involved. Room open. N in position during diagnosis in. 3/3 x 4-400 used. Pt. HINT - TMS @ / pharynx dr Cadenopathy @ now present	No Meds
					Heart - Reg 5 mg Lungs - like wife. Nerve - E-Romberg CRTT - all intact.	
					HP (1) Valal body contact - antiepilept 25 mg TID #50 (2) MIP - large central at 60 mg 1 qd #60 349-805	
					Re. J. Fr. Allerga - 1 BID #30	

FOR DOCTOR		DATE	TIME	AM	PM
PATIENT		7/19/99			
Tami Rowles					
PATIENT TEL		PHARMACY TEL			
929-2017					
MEDICATION / PRESCRIPTION					
MESSAGE					
pt still dizzy The med. I've prescribed not helping at all.					
<input type="checkbox"/> Returned Your Call <input type="checkbox"/> Will Call Again <input type="checkbox"/> Please Call <input type="checkbox"/> REFILL <input type="checkbox"/> URGENT					



Please see full Prescribing Information for Prozac on last pages.

Ac 194

ALPHA MEDICAL SERVICES

SIDE

SILVERTON

NAME Rosales Tami AGE _____ PHONE _____

DOS 6-7-99 CC: FOV Dizziness

T _____ P 70 R _____ B/P 130/70 HGT _____ WGT 280 EYES R _____ L _____

HPI Mood swings dizziness

ROS (1 or 2) / PMH Hyperglycemia x 2 wks. Stress
Recently had hypoglycemia

SII: SMOKE _____ ETOH _____ MEDS-MED SHEET OR NONE _____

PE: HEENT _____ Chromium picolinate 200 mg 1x
In CSH diet

NECK/LYMPH _____

CHEST/HEART/LUNGS _____

ABD/GU _____

EXT/NEURO _____

ENDOCRINE/NEURO _____

PLAN-TODAY: COMP PANEL ARTH PANEL PROST PANEL IRON PANEL CBC SMA
LIPID THYROID STREP UA C/S MICRAL
EKG PFT BRONCHO CXR H/T W/P ORTHO: SUPPLIES

IMP: (1) hypoglycemia (2) _____ (3) _____ (4) _____

RTG: M/D H/P OV FOV COMP PANEL ARTH PANEL PROST PANEL IRON PANEL
CBC SMA LIPID THYROID STREP UA C/S MICRAL EKG PFT
HOLTER ECHO, VASCULAR CXR MAMMO

REMARKS:

FOV 7/7

M/D

Aa195

ALPHA MEDICAL SERVICES

SIDE

SILVERTON

NAME Tami Rosales AGE _____ PHONE _____

DOS 10/24/99 CC: 90 pm Rt arm to shoulder, neck

T _____ P 72 R _____ B/P 118/74 HGT _____ WGT 274 1/4 EYES R _____ L _____

HPI _____

ROS (1 or 2)/PMH _____

SII: SMOKE _____ ETOH _____ MEDS-MED SHEET OR NONE _____

PE: HEENT _____

NECK/LYMPH _____ CHEST/HEART/LUNGS _____ R) stroke w/ct
1cc metoprolol & xla

ABD/GU _____ EXT/NEURO _____ Relmex 1gr/24u
CT scan neck
x-ray @ stroke

ENDOCRINE/NEURO _____

PLAN-TODAY: COMP PANEL ARTH PANEL PROST PANEL IRON PANEL CBC SMA
LIPID THYROID STREP UA C/S MICRAL
EKG PFT BRONCHO CXR H/T W/P ORTHO SUPPLIES

IMP: (1) Burns (2) Myocardial infarction (3) _____ (4) _____

RTG: W/ct H/P OV FOV COMP PANEL ARTH PANEL PROST PANEL IRON PANEL
CBC SMA LIPID THYROID STREP UA C/S MICRAL EKG PFT
HOLTER ECHO, VASCULAR CXR MAMMO

REMARKS: _____

Aa 197 PC

ALPHA MEDICAL SERVICES

SIDEC

SILVERTON

NAME Tami Rosales AGE _____ PHONE 289-1711
 DOS 7/15/99 CC: revised MRI - still 90% bone mass hurting
esp at wrist ↓ mobility
 T _____ P _____ R _____ D/P 131/80 HGT _____ WGT 274 EYES R _____ L _____
 HPI _____

ROS (1 or 2)/PMH

SII: SMOKE _____ ETOH _____ MEDS-MED SHEET OR NONI _____
 PE: HEENT _____

pk VIUXX 12.5mg bid

NECK/LYMPH _____
 CHEST/HEART/LUNGS _____
 ABD/GU _____

EXT/NEURO

ENDOCRINE/NEURO

PLAN-TODAY: COMP PANEL ARTH PANEL PROST PANEL IRON PANEL CBC SMA
 LIPID THYROID STREP UA C/S MICRAL
 EKG PFT BRONCHIO CXR H/T W/P ORTHO SUPPLIES

IMP: (1) Cayrol tunnel (2) meds (3) _____ (4) _____
pin

RTO: H/P OV FOV COMP PANEL ARTH PANEL PROST PANEL IRON PANEL
 CBC SMA LIPID THYROID STREP UA C/S MICRAL EKG PFT
 HOLTER ECHO VASCULAR CXR MAMMO

REMARKS: see paraffin was R @ home
Ac 198 2/18/99 6/17/99 1055

SILVERTON

NAME Jay Rosales AGE 36 PHONE 288-1715

DOS 8/12/99 CC: FOV - W pnts Chispraton referral

S/P - Uterine fibroids - neck + back pain

T P 76 R D/P 12/82 HGT WT 276 EYES R L

HPI
ROS (1 or 2)/PMH

SII: SMOKE ETOH MEDS-MED SHEET OR NONE

PE: HEENT Albex 1/2 hr

NECK/LYMPH
CHEST/HEART/LUNGS

ABD/GU

EXT/NEURO

ENDOCRINE/NEURO

PLAN-TODAY: COMP PANEL ARTH PANEL PROST PANEL IRON PANEL CBC SMA
LIPID THYROID STREP UA C/S MICRAL
EKG PFT DRONCHO CXR H/T W/P ORTHO SUPPLIES

IMP: (1) RBC count (2) (3) (4)

RTG: H/P OV FOV COMP PANEL ARTH PANEL PROST PANEL IRON PANEL
CBC SMA LIPID THYROID STREP UA C/S MICRAL EKG PFT
HOLTER ECHO VASCULAR CXR MAMMO

REMARKS: Chispraton referral (P)

A-199

SILVERTON

NAME Rosales, Tomi AGE 36 PHONE 288-1713

DOS 11/22/99 CC: Nasal congestion since yesterday +

pain (C) ear (C) side teeth + face.
T 970 P 80 R 20 B/P 140/82 HGT 182 WGT 182 EYES R L

HPI hx: MVP + felt pains in chest. X

few hours resolved spontaneously

ROS (1 or 2) / PMH no SOB, palp D 2/24 (took Pralidofed 30mg
earlier before ran)

SII: SMOKE ETOH MEDS-MED CHEST OR NONE

PE: HEENT

NECK/LYMPH (+) Swollen nodes

CHEST/HEART/LUNGS LOV 0/1h later than Rouse
Clear AOP

ABD/GU

EXT/NEURO

ENDOCRINE/NEURO

PLAN-TODAY: COMP PANEL ARTH PANEL PROST PANEL IRON PANEL CBC SMA

LIPID THYROID STREP UA C/S MICRAL

EKG PFT BRONCHO CXR H/T W/P ORTHO: SUPPLIES

2 MP Sept Hemoglobin, nose

IMP: (1) Swollen (2) MVP (3) (no sexual act)

Next week

RT/O: H/P (OV) FOV COMP PANEL ARTH PANEL PROST PANEL IRON PANEL

CBC SMA LIPID THYROID STREP UA C/S MICRAL EKG PFT

HOLTER ECHO, VASCULAR CXR MAMMO

- No Pseudoef Series

- Guafenesin 600 B2P #30

REMARKS: - Ahusul 875 B2P #20

Ac 200

JERSEY SHORE NEUROLOGY ASSOCIATES, P.A.

RICHARD S. RHEE, M.D.,* F.A.A.N.
PAUL J. GILSON, M.D.
RICHARD I. SULTAN, D.O.
JOHN E. FITZPATRICK, M.D.*
REKHA RAO, M.D.*

BOARD CERTIFIED IN
* NEUROLOGY (ABPN)
* EEG (ABEN)
* EMG (ABEM)
* ULTRASOUND (ASN)

NEUROLOGY (ADULTS & CHILDREN) · EEG · EMG · EP · NEUROSONOLOGY · ELECTRO-ACUPUNCTURE

January 19, 2001

Anna DeDona, D.O.
1989 State Highway 88
Brick, New Jersey 08723

Re: Tami Rosales

Dear Anna:

The above-named patient is a 37 year old woman evaluated for twitches. She said this has been going on and off for years. However, recently it has been worse, especially over the last month to month and a half. There are times when her head is moving side to side, sometimes she will draw her left shoulder up. It doesn't affect her thinking or speech. Her head moves violently enough to cause her to feel headache. There is no family history of movement disorder. She does note when the pain is severe she may make a grunting sound. Family history is negative for Tourette's or any movement disorder, though she does note her 8 year old son has some types of sounds

Past medical history: Multiple nerve entrapments involving carpal tunnel and ulnar nerve on the right. No kidney, liver, endocrine, blood dyscrasia. No operations other than the surgeries for the ankle, wrist and elbow.

Family history: Mother's and father's health unremarkable. Father has some mild emphysema. She is an only child. She has an 8 year old son, is divorced. She is on disability related to her peripheral nerve entrapments. She had worked with computers at the courthouse.

Social history: Rare drink, nonsmoker.

Allergies: None.

Medications: None.

Blood pressure 126/70. Speech clear and fluent. Pupils, discs, eye movements, facial expression, tongue, palate, motor,

Aa 201

REPLY TO
1900 CORLIES AVE.
NEPTUNE, NJ 07753
PH: 732-775-2400

OCEAN MEDICAL PARK
222 JACK MARTIN BLVD.
BRICK, NJ 08723
PH: 732-840-4666

Handwritten notes and signatures:
A 201
New Pt. APP
Dr. Miskin

Anna DeDonna, D.O.

January 19, 2001

Page 2

Re: Tami Rosales

coordination, plantar response and Romberg are normal. Several times there is a contracture of the orbicularis oris, platysma muscles, shoulder shrugging on the right. There is no dysmetria on finger-nose or heel-shin testing, able to hop on either foot symmetrically. No cogwheeling or adventitious movements, no hemiballistic or choreiform movements of the extremities noted.

Impression: Tic, nonfocal neurologic exam.

Recommendation: Check serum copper as well as ceruloplasmin level, TSH, T4, ANA. Any blood work you have obtained I would like to review. Will also obtain EEG. Consider MRI of the brain with attention basal ganglia pending workup. Will start her on Remeron 15 mg one-half tab at night. In a week's time, if she is not too sedated and there is no change in the tremor, she can increase it to one-half twice a day. I would like her to call me in about a week's time to see how she is doing in the interim.

I thank you in advance.

Very truly yours,

Paul J. Gilson, M.D.

PJG:PTI

Aa 202

Bricktown Medical Group, P.C.A.

DORADO SHOPPING PLAZA
34 LANES MILL ROAD
BRICK NEW JERSEY 08724
TELEPHONE (732) 453-0300

9-21 EV
7/16/01

- 1964 MARTIN RISS, DO
- 1968 Undergraduate Education
B.S. Brooklyn College, Brooklyn, NY
- 1968-1972 Medical Education
Kansas City College of Osteopathic Medicine
Kansas City, MO
- 1972-1973 Rotating Internship
(Medicine, Surgery, Orthopedics, etc.)
Columbus, Ohio
- June 1973 Licensd, State of New Jersey
- 1973 Began General Practice in New Jersey
- 1975 Opened my office for family practice at the
Bricktown Medical Group, Brick, New Jersey
- 1981 Board Certified Family Practice
- 1986 Board Certified Geriatrics
- 1997 Member American Academy of Disability Physicians

In addition, I am the Doctor for many local businesses and the Bricktown Board of Education. I do their pre employment examinations.

I also treat traumatically injured employees for various companies. Since, 1975, I have been involved in performing exams for attorneys for the purpose of determining degree of disability for workmans compensation injuries. I currently perform about 1000 of these a year.

I have done many examinations for the Division of Vocational Rehabilitation to determine capabilities to resume employment and what additional testing or treatment can be offered.

I have testified in both New Jersey Workmans Compensation Courts and Superior Court on numerous occasions.

Aa 203

SOUTH JERSEY PHYSICIAN ASSOCIATES, P.A.
327 Haddon Avenue
Westmont, NJ 08108

A. Gregory McClure, M.D., CIME, Medical Director
Harold Herman, M.D.
Vijay K. Paharia, M.D.

H. Edward LaVoice, M.D., CIME
Anton P. Kemps, M.D.
Jeffrey R. Chorney, M.D.

October 11, 1996

Ms. Dorthea Simmons
State of New Jersey
Bureau of Risk Management
CN-620
Trenton, New Jersey 08625-0620

RE: Tami M. Rosales
FILE: 95-034926
ATTY: Curry & Salzer
INSD: State of New Jersey

Dear Ms. Simmons:

At your request, an examination was made of Ms. Tami M. Rosales of 335 Anthony Avenue, Toms River, New Jersey, 08753, which took place at 9 Hospital Drive, Toms River, New Jersey, 08753, on October 9, 1996 at 2:00 p.m., and the following is the report on that examination.

PAST MEDICAL HISTORY: Patient relates a history of having a fracture of the right upper extremity - age 5; tonsillectomy and adenoidectomy; "bone spurs removed from both heels"; seasonal allergies. Patient states no known drug allergies and no previous left arm injury.

WORK HISTORY: State of New Jersey - January of 1995 to September of 1995 - clerk typist; Ocean County - 1989 to January of 1995 - clerk typist.

HISTORY OF ACCIDENT: Ms. Tami M. Rosales states that she was employed by the State of New Jersey as a clerk typist. She relates that during the course of her employment with the County of Ocean as a clerk typist until January of 1995, and then as a clerk typist for the State of New Jersey from January of 1995 until September of 1995, she was required to use both upper extremities to perform computer entry, filing and typing for prolonged periods of time. In 1990, she relates that she initially noted right upper extremity pain. She alleges injury to her bilateral upper extremities.

New Jersey Offices: **WESTMONT**, Atlantic City, Northfield, Toms River, Trenton, Vineland
(609) 869-0009
FAX: (609) 869-0008

Aa 204

October 11, 1996

She was initially examined by Dr. Surgent, Hand/Orthopedic Surgeon, in 1990. Exercises were advised. Medication was prescribed. X-rays of the right hand were done. In the summer of 1991, Dr. Surgent performed right carpal tunnel release at Brick Hospital. She was treated with medications and released the same date.

She returned to Dr. Surgent for follow-up. She attended a course of physical therapy for the right hand. She states that "within that year" she stopped treating with Dr. Surgent. She states that she had returned to work three to four (3-4) months after her surgery to Ocean County as a clerk typist.

She delivered a baby in 1992. she states that she developed increased pain with working and "the only time I didn't have pain was when I was out of work for seven (7) months because of my pregnancy."

She presented to her family physician, Dr. DiBella, who prescribed medications. She may have attended physical therapy for a period of time.

She was examined by Dr. Pess in 1992. She attended another course of physical therapy. To make a long story short, Dr. Pess performed left carpal tunnel release in the summer of 1994, a right carpal tunnel release in August of 1994 at Community Medical Center. She states that EMG, prior to her carpal tunnel releases, was determined to be abnormal. The EMGs were repeated before each surgery. She states that her right wrist was injected on one occasion "which helped for a week or so." In October of 1995, Dr. Pess performed repeat carpal tunnel release and right trigger thumb release at Community Medical Center. She continued treating with Dr. Pess and in August of 1996, Dr. Pess "unpinched the nerves in my right elbow and reconstructed them." This was accomplished at Kimball Medical Center. She states that after this last surgery, she attended physical therapy two (2) times a week until the present at the doctor's office. Physical therapy consists of exercises and massage to the right arm.

The patient states that "last year, I had therapy for both of my hands." She states that she developed left wrist symptoms in 1994.

Patient states her case against Ocean County was settled in July of 1995. She began working for the State of New Jersey in January of 1995.

Patient states that from January of 1995, she has lost five (5) months out of work as the result of her occupational injury. She stopped working August 9, 1996 "because of my surgery."

A-205

PRESENT COMPLAINTS: Right Hand/Arm: Complains of twitching; "always cold"; pain in the right hand radiates to the right elbow, occasionally to the right shoulder; complains of tingling/numbness of the right forearm and hand; weakness of the right hand.

Left Hand/Arm: Pain with prolonged use; tingling of the left hand radiating to the elbow; decreased symptoms since she has been out of work. Increased pain in both upper extremities with use of computer and with typing.

Patient states she takes no medications.

Patient is right side dominant.

PHYSICAL EXAMINATION:

SEX:	Female	HEIGHT:	5'8"
AGE:	32	WEIGHT:	242 lbs.
MARITAL STATUS:	Divorced	BLOOD PRESSURE:	130/90
OCCUPATION:	Clerk Typist	PULSE:	74

GENERAL APPEARANCE: The patient is a generally well-developed and well-nourished female in no acute distress who appears her stated age. She is overweight. She is pleasant and cooperative and I note that her hair is neatly coiffed. I also note a somewhat distinctive mannerism or tic in which her shoulders and upper extremities twitch and jump periodically during the examination, first one arm, then the other.

HEAD: Normocephalic.

MOUTH: She has no TMJ complaints.

CHEST: The lungs are clear to auscultation.

HEART: Regular sinus rhythm.

ABDOMEN: Deferred, other than to note considerable flank heaviness.

UPPER EXTREMITIES: Inspection of the upper extremities reveals no obvious muscle wasting, no coolness or change in sweat pattern at either arm or hand and no apparent reflex sympathetic dystrophy. She has, at the base of the left palm and left wrist, two (2) small, almost imperceptible arthroscopic scars. She has, at the base of the right palm, a three and one-half (3½") inch curved, thickened, indented and fixed surgical scar from a carpal tunnel release x2, apparently combined with lysis of the median nerve and release of the ulnar nerve at Guyoun's canal. She also has a short, transverse, three-quarter (¾") inch pale scar which is soft and supple at the base of the right thumb.

She does complain of soreness and tenderness at this right wrist scar, but there is no nodularity, no neuroma formation. I find

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October 11, 1996

no diffuse soft tissue swelling or increased temperature and no associated synovitis at the right wrist.

She has a curved, pinkish, four (4") inch surgical scar at the posterior medial right elbow where she had ulnar nerve transposition just four (4) weeks ago. This area remains very sensitive and she complains of tenderness and seems to have residual allodynia with local complaints on Tinel's sign. She complains that the right ulnar forearm remains numb and she also complains of diminished sensation at the tip of the right thumb with slightly altered sensation about the remaining right fingers.

She flexes this right elbow from a few degrees to one hundred thirty (130°) degrees. She supinates seventy-five (75°) degrees and pronates ninety (90°) degrees. She flexes the left elbow from zero to one hundred thirty (0-130°) degrees or just slightly more with supination and pronation the same as the right.

At each wrist, she dorsiflexes forty-five (45°) degrees and palmar flexes fifty (50°) degrees. She radial deviates fifteen (15°) degrees and ulnar deviates fifteen (15°) degrees. She displays slightly greater range of motion by a few degrees on the left, compared to the right.

Passively, she has a full range of motion of the fingers bilaterally. She tends to sit or talk with the right hand fingers curled slightly in flexion posturing. Also, when bringing the fingers into the palm, on the right, the right first finger lags behind such that she makes a fist with the 2nd through 4th fingers of this right hand.

Deep tendon reflexes are diminished on the right and normal on the left and she is clearly guarding and offering resistance about the right elbow. No intrinsic atrophy is noted at this right hand, but she offers a much weaker grip on the right compared to the left and, in fact, offers an excellent grip on the left. She is right hand dominant and the right forearm measures ten and one-half (10 1/2") inches and the left forearm ten and five-eighths (10 5/8") inches in circumference. The right elbow is ten and three-quarter (10 3/4") inches and the left elbow is ten and five-eighths (10 5/8") inches. The right upper arm is thirteen and three-quarter (13 3/4") inches and the left upper arm is thirteen and seven-eighths (13 7/8") inches. Tinel's sign is negative at the elbow or wrist for neurogenic complaints. Finkelstein's test is negative bilaterally. Carpal compression is negative. With Phalen's maneuver, and with a reverse Phalen's, she complains of tingling at this right hand in about twenty (20) seconds. Once again, there is a good radial pulse bilaterally and no indication of trophic changes or sympathetic dystrophy.

Ac 207

MUSCULOSKELETAL SYSTEM:

CERVICAL SPINE: Inspection of the cervical spine reveals considerable adipose deposition posteriorly. She has a characteristic dowager's configuration. She extends twenty (20°) degrees and forward flexes twenty-five (25°) degrees. She left and right laterally rotates forty (40°) degrees and she has minimal complaints at this time. There is no palpable spasm or tightening or crepitus. The upper extremities have been described.

SHOULDERS: Inspection of the shoulders reveals no atrophy or abnormal posturing. She has no complaint of point tenderness. There is no palpable muscle spasm or crepitus.

She does, however, restrict motion at this right shoulder compared to the left. She raises the right shoulder only to the horizontal. She abducts and forward flexes ninety (90°) degrees on the right. She externally rotates twenty (20°) degrees and internally rotates twenty (20°) degrees and complains of soreness and is guarding. On the left, she externally rotates thirty (30°) degrees and internally rotates fifty (50°) degrees with no guarding and no complaints.

DORSAL SPINE: At the dorsal spine, note is made of considerable flank heaviness. She has no complaints with forward flexion, no tilt or list and no associated muscle spasm or tightening.

NEUROLOGIC: She complains of diminished sensation at the ulnar right forearm and tip of the right thumb which is a proximal ulnar and distal median nerve distribution. There is no intrinsic atrophy - no thenar or hypothenar atrophy, although there may be mild residual ulnar deficient posturing on the right.

Provocative maneuvers at the carpal tunnel, and cubital tunnel for that matter, are negative for the reproduction of neurogenic complaints. She is diffusely sore and tender with hypersensitivity or hyperpathia and allodynia about the right elbow where she was recently operated on. There is no indication, however, of a reflex sympathetic dystrophy.

Aa 208

October 11, 1996

IMPRESSIONS: It would appear that she alleges injuries to both upper extremities and to her neck as a result of her exposure at the computer keyboard from 1989 to January of 1995 with Ocean County and from January of 1995 to the present with the State of New Jersey. She states, however, that this transition represents maintenance of the same job in the same office, actually holding the same seat at the same desk and her department was simply transferred from the County to the State. She indicates that she developed right upper extremity complaints doing computer entry, filing and typing back in 1990. She saw Dr. Surgent, Orthopedist and Hand Surgeon, and she states she had exercises and medication and in the summer of 1991, after an EMG, underwent a right carpal tunnel release. Apparently, the patient also had a right deQuervain's tenosynovitis at the base of the thumb, but no surgical intervention was undertaken.

She further states that she had physical therapy to the right hand and returned to work about 3 months after surgery as a clerk typist. She went on to have a baby in 1992 and then returned to work and once again, had increasing pain in both hands. She saw her family physician and was referred to Dr. Pess who is an Orthopedic Hand Specialist and she had a second course of physical therapy. She states now that she remained employed in the same capacity and her left hand complaints kept worsening so that in August of 1994, at the Community Medical Center, she had a left carpal tunnel release and then another right carpal tunnel release. It was also noted, apparently, that the patient had a deQuervain's tenosynovitis on the left which also required no surgery.

She had physical therapy and returned to work and she goes on to state that the right wrist was acting up again and in June of 1995, under the care of Dr. Pess, she had an EMG of the right upper extremity. This showed, once again, a right carpal tunnel syndrome, however, the study was normal for the left median and bilateral ulnar nerves.

In October of 1995, she underwent a repeat right carpal tunnel release and at this time, a right trigger thumb release. She further indicates that she returned to work in essentially the same capacity, but her right elbow was bothering her off and on, as she puts it. She remained under the care of Dr. Pess and very recently, on August 14, 1996, at the right elbow underwent a cubital tunnel release and apparently also anterior transposition of the ulnar nerve. She remains out of work following that surgery. Basically, she has had physical therapy from October of 1995 to October of 1996. She does state that the recent surgery at the right elbow was helpful. It took away most of the numbness along the ulnar border of the right arm and right hand, but she states she still gets pins and needles and tingling on the right and she indicates a median nerve distribution.

Aa 209

October 11, 1996

She has been told to return to work at the end of December of 1996, which is another ten (10) weeks, but I think she should plan to return sooner.

On examination at this time, the patient's surgical sites are all well healed with some residual indented and retracted scarring at the right wrist. The scar at the posterior medial right elbow looks like it is healing nicely and she should not experience significant retraction and she retains just about a full range of motion at this right elbow. She has no inflammation or infection and has just local tenderness with Tinel's sign.

I note her residual flexion posturing of this right hand. She needs to continue physical therapy to maintain and improve flexor/extensor function in these right fingers, to reduce swelling and to desensitize the operative site. Otherwise, no further surgery appears to be indicated and with respect to her right shoulder, I would expect a medical plateau in another four to six (4-6) weeks which would put her at the end of November and not the end of December as she has related.

I note that the patient settled her Worker's Compensation case for Ocean County, New Jersey apparently in 1995, covering her occupational exposure up to January of 1995. Once again, she had a carpal tunnel release x2 or 3 and a decompression of the ulnar nerve and neurolysis of the median nerve along with a diagnosis of deQuervain's tenosynovitis, but no surgery. This was on the right and on the left, she had surgery to the left carpal tunnel once and that hand has done reasonably well since. She did have ongoing complaints, however, some ongoing weakness and numbness diffusely about the right as she does still, to this day.

I note once again that electrodiagnostic studies on June 27, 1995 were indicative of right sided median nerve disorder such as carpal tunnel syndrome and no ulnar nerve involvement was noted in either arm.

The patient states that she still gets carpal tunnel symptoms, still gets pins and needles and tingling about this right hand.

She is still on physical therapy following the relatively recent ulnar nerve decompression and transposition. I would appreciate the opportunity to review the operative report by Dr. Pess from August of 1996. Also, if available, the operative report at this right wrist and right thumb from October of 1995 would be helpful. In the meantime, I think she has about four to six (4-6) weeks of physical therapy and noting these two (2) surgical procedures on the right, I would anticipate some additional permanency with respect to the right arm, right hand.

Aa 210

Tami M. Rosales

-8-

October 11, 1996

Thank you once again for the privilege of examining this patient.

Very truly yours,

A. Gregory McClure
A. Gregory McClure, M.D. *mer*

AGM/mer

Aa 211

SOUTH JERSEY PHYSICIAN ASSOCIATES, P.A.
327 Haddon Avenue
Westmont, NJ 08108

A. Gregory McClure, M.D., CIME, Medical Director
Harold Herman, M.D.
Vijay K. Paharia, M.D.

H. Edward LaVoice, M.D., CIME
Anton P. Kemps, M.D.
Jeffrey R. Chorney, M.D.

May 27, 1997

Adrienne Beard, Esquire
Deputy Attorney General
State of New Jersey
25 Market Street
CN 620
Trenton, NJ 08625-0

RE: TAMI M. ROSALES
FILE: 95-034926
INSD: State of New Jersey
ATTY: Curry & Salzer

Dear Ms. Beard:

I have received additional medical records on Ms. Tami Rosales. I note now that in August 1996 she had the diagnosis of right cubital tunnel syndrome. She underwent neurolysis and anterior transposition of this right ulnar nerve at the elbow. This was under the care of Dr. Pess at the Kimball Medical Center.

As was previously noted in the report from October 1996, the patient had also undergone a carpal tunnel release and trigger thumb release.

Based on review of the medical history as received, operative reports reviewed and prior examination, I would offer a seven and one-half percent (7-1/2%) partial permanent disability referable to the right arm with this figure to comprise her surgery at the right elbow in 1996 as well as her surgery at the right hand (right wrist and right thumb) in 1995.

Thank you once again for the privilege of examining this patient.

Very truly yours,

A. Gregory McClure / czp
A. Gregory McClure, M.D.

AGM:czp

New Jersey Offices: WESTMONT, Atlantic City, Northfield, Toms River, Trenton, Vineland

(609) 869-0009
FAX: (609) 869-0008

Ad 212

JUN 02 1997

JUN 09 1997

SOUTH JERSEY PHYSICIAN ASSOCIATES, P.A.

327 HADDON AVENUE WESTMONT, NJ 08108

A.Gregory McClure, M.D., Medical Director**
H. Edward Lavoice, M.D.**

Harold Herman, M.D.
Anton Kemps, M.D.
Vijay K. Palaria, M.D.

**Certified Independent Medical Examiner

September 28, 1999

Ms. Barbara Heft
State of New Jersey
Bureau of Risk Management
CN 620
Trenton, NJ 08625-0620

RE: TAMI ROSALES
FILE: 95-034926 / 95-0009763
INSD: State of New Jersey/Trial
Court Support
ATTY: Curry & Salzer

Dear Ms. Heft:

At your request, a reexamination was made of Ms. Tami Rosales of 335 Anthony Avenue, Toms River, NJ 08753, which took place at 9 Hospital Drive, Toms River, NJ, on September 22, 1999 at 11:30 a.m., and the following is the report on that examination.

PAST MEDICAL HISTORY: Right upper extremity fracture - age 5; Tonsillectomy and adenoidectomy; Removal of bone spurs - bilateral heels; Seasonal allergies; Right hand (right carpal tunnel release 1998 - no claim filed to date - "my attorney hasn't done anything with this yet".)

The patient's family physician is Dr. DeBella of Toms River, NJ.

PAST WORK HISTORY: The patient has been employed as a Clerk Typist for the State of New Jersey/Trial Court Support.

HISTORY OF ACCIDENT: As per my last report of October 9, 1996 Ms. Tami Rosales continues to allege injury to both upper extremities as the result of her job duties from January 1995 through September 1995. (Please see my previous report - the history is well documented.) She states her case has partially settled and is opened.

LOCATIONS: WESTMONT, ATLANTIC CITY, TOMS RIVER, TRENTON AND VINELAND

PHONE: (609) 869-0009

FAX: (609) 869-0008

Aa 213

September 28, 1999

She states that since the time of my last report, she continues to treat with a Hand Surgeon, Dr. Pess. She states that treatment consists of numerous steroid injections to the wrists, hands and elbows, none of which afford any relief. She states that medications have been prescribed for pain and numerous EMG studies have been performed, the last in the spring of 1999. She states that "it showed that I still have pinched nerves in both arms and carpal tunnel in my left arm and the right hand is worse than my left. She states that an MRI of the cervical spine revealed two (2) pinched nerves.

She adds, "I have pinched nerves in my neck and tendinitis in my shoulder". She states she was treated by Dr. Tauro, Orthopedic Surgeon, in the early part of 1997 for right shoulder pain, however, she is unable to recall the treatment rendered by Dr. Tauro.

She states that two (2) weeks ago she presented to a chiropractor on the advise of her Family Physician, Dr. DeBella. She presents to the chiropractor two to three (2-3) times per week for chiropractic adjustments to the neck.

She continues to treat with Dr. Pess.

The patient states that, "I lose time all the time" due to her complaints. She continues to work for the same employer in the same capacity, no light-duty.

PRESENT COMPLAINTS: 1) Right Upper Extremity - The patient complains of constant numbness and pain from my neck down to my fingers.
2) Left Upper Extremity - The patient complains of pain from the elbow to the fingers with tingling and pain in the hand. She complains of weakness of both upper extremities.
3) Neck - The patient complains of tightness and twitching and numbness and burning pain in the neck.
4) Right Shoulder - The patient complains of pain.

She has difficulty with all activities.

She denies taking medication for relief of her complaints. She denies using braces or supports.

The patient is right-hand dominant.

PHYSICAL EXAMINATION:

SEX:	Female	HEIGHT:	5'8"
AGE:	35 yrs.	WEIGHT:	242 lbs.
MARITAL STATUS:		BLOOD PRESSURE:	130/88
OCCUPATION:	Clerk Typist	PULSE:	76

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GENERAL APPEARANCE: The patient is a well-developed and well-nourished female in no acute distress, appearing her stated age or even somewhat younger. She is, however, overweight for her height or frame. She is also a most pleasant and cooperative woman. She is much more relaxed than she was at the time of her prior examination. I find no abrupt or halting maneuvers or movements.

HEAD: Normocephalic.

MOUTH: She offers no TMJ complaints.

CHEST: The lungs are clear to auscultation.

HEART: Regular sinus rhythm.

ABDOMEN: Deferred, other than to note the presence of significant flank heaviness and abdominal protrusion.

UPPER EXTREMITIES: Inspection of the upper extremities reveals the previously described scarring. She has had no additional surgery. She continues to present with a linear, but irregular angulated and somewhat retracted surgical scar at the volar right wrist from a carpal tunnel release and revision. She has a thin, transverse barely visible scar at the base of the right thumb. She has two (2) faint endoscopic scars at the volar left wrist. She has the previously described gently curved, linear, well-healed scar at the posterior right elbow. No neuroma formation is noted and in fact this scar at the right elbow is now basically nontender and Tinel's sign is negative at the cubital tunnel. Tinel's is also negative at the left cubital tunnel. She has a full range of motion of the elbows. No olecranon bursitis is noted.

She does, however, complain of sensitivity along the lateral aspect of the right upper arm and dorsal aspect of the right forearm. She complains of a shock like sensation with gentle stroking or gentle palpation. Once again, there is no localized soft tissue change - I find no edema or discoloration or scarring. There is no distal swelling, no trophic change and no nail changes.

At the right wrist and left wrist she states she has had recent dorsal injections. She complains of soreness especially with palmar flexion, but she refers that complaint of soreness once again to the upper arm. On the right she dorsiflexes forty degrees (40°) and palmar flexes thirty-five degrees (35°). She radial and ulnar deviates fifteen degrees (15°) and complains of a shock like sensation with radial and ulnar deviation. There is no crepitus or instability, no synovitis.

The left wrist she dorsiflexes sixty degrees (60°) and palmar flexes thirty-five degrees (35°). She radial deviates fifteen degrees (15°) and ulnar deviates fifteen degrees (15°).

She has a full range of motion of the left fingers and on making a fist brings the fingers all the way to the palm. She reduces flexion

Aa 215

on the right with a three-quarter inch (3/4") palm to palm distance when making a fist. Her fingernails are quite short, but trimmed. She complains of localized tenderness at the dorsal left wrist and appears to have a mild flare reaction from a recent steroid injection in the past week or so.

Deep tendon reflexes are present and normal and equal bilaterally with the patient complaining of diminished sensation about the right hand in a glove-like distribution. There is no thenar or hypothenar atrophy.

She is right-hand dominant and each forearm measures out at ten and three-quarter inches (10-3/4") in circumference. The right upper arm is fourteen and one-half inches (14-1/2"), the left upper arm fourteen and one-quarter inches (14-1/4"). Once again, she offers a weaker grip on the right. Tinel's sign and carpal compression are negative. With Phalen's maneuver she does complain of pins and needles about the right hand, but does so at ten (10) seconds. Finkelstein's is negative. The overhead hyperabduction is equivocal since she states that she has the pins and needles and occasional twitching of the pinky anytime she moves this right wrist. Tinel's is negative at the brachial plexus and a gentle BPTT or brachial plexus traction test is negative.

MUSCULOSKELETAL SYSTEM:

Cervical: At the cervical spine she is noted to have a somewhat heavysset neck. She has increased adipose tissue at the posterior base. She extends twenty degrees (20°) and forward flexes twenty-five degrees (25°). She left and right laterally rotates thirty-five degrees (35°) and complains of soreness at the posterior base in the midline at T1. There is no torticollis or other abnormal posturing. She has no radicular complaints. She has no long tract signs. The upper extremities have been described under "Upper Extremities".

Shoulders: At the shoulder level she is noted to be somewhat heavysset through the shoulder girdle but symmetric with no atrophy and no winging of the scapula. There is no nodularity, no trigger points or tender points.

She restricts slightly on the right compared to the left and complains of discomfort into the right upper arm.

At this right shoulder she abducts approximately one hundred and thirty degrees (130°) and forward flexes one hundred and forty degrees (140°). She internally rotates forty degrees (40°). I find no localized spasm or crepitus.

Ac 216

At the left shoulder she abducts approximately one hundred and forty degrees (140°) and forward flexes one hundred and fifty degrees (150°) and internally rotates fifty degrees (50°) with no complaints.

NEUROLOGIC: Reflexes are symmetric. She offers sensory complaints about the right hand in a glove-like distribution. No peripheral nerve entrapment is demonstrated at the cubital tunnel or radial tunnel. There is no tremor or neuroma formation or reflex sympathetic dystrophy. She does have residual complaints with Phalen's maneuver in a somewhat atypical pattern on the right much more than the left. No proximal radiculopathy or plexopathy is identified on examination at this time.

Aa 217

September 28, 1999

IMPRESSIONS: From the history given me by Ms. Tami Rosales, and from physical examination of this woman, it would appear that she continues to allege an injury to both upper extremities - both arms and hands - as a result of her occupational duties in 1995. She does continue her employment with the State of New Jersey as a Clerk Typist.

She was previously examined and evaluated in October 1996. I noted at that time that she had been under the care of Dr. Sargent. She had electrodiagnostic studies in 1991 and a right carpal tunnel release in 1991. She subsequently had left carpal tunnel release in 1994 and a revision of the right carpal tunnel release with a right trigger thumb release all under the care of Dr. Pess. She was diagnosed at that time with a deQuervain's tenosynovitis of the left wrist, but had no surgery.

In June 1995 electrodiagnostic studies had revealed a residual right carpal tunnel syndrome and it was with this EMG in mind that she underwent a repeat right carpal tunnel release which was 1995, not 1994.

I also note that in August 1996 she had a right cubital tunnel release. I note the operative report showing that she had both neurolysis and anterior transposition of this right ulnar nerve at the elbow. This was once again under the care of Dr. Pess.

She then states that she had follow-up electrodiagnostic studies in the spring of 1999. She was told that there was a residual carpal tunnel syndrome at both the right and left wrists. She states she had discomfort in this right shoulder in early 1997 and saw Dr. Tauro in this office. She thinks the right shoulder may have been injected, but she does not recall and she is not alleging any right shoulder complaints at this time, although she does present with some right shoulder restrictions on examination.

She also indicates that she occasionally experiences discomfort just at the posterior base of the neck when she is sitting at her desk for a prolonged period of time. She states that she was told there was a pinched nerve in the neck apparently diagnosed on her EMG in 1999. She also states that she sees a chiropractor for her neck complaints for adjustments. She continues to lose time intermittently but remains employed with the same employer and in the same capacity.

She is right-hand dominant and on examination at this time I find no neurogenic or disuse atrophy. I find no isolated neuroma formation or reflex sympathetic dystrophy or a tremor. Her surgical sites remain unchanged, well-healed and she has had no new or additional surgery.

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She has a full range of motion at the right elbow, restricting at each wrist especially with palmar flexion. She refers complaints more to the upper arm even with wrist motion.

She restricts flexion of the right fingers and, therefore offers a weaker grip on the right compared to the left even though she is right-hand dominant. She does not bring the fingers of the right hand to the palm when making a fist. Once again, there are no trophic changes and provocative maneuvers are negative for residual nerve entrapment at the ulnar and radial nerves with Phalen's maneuver equivocal on the right. No cervical radiculopathy is demonstrated on this examination and no plexopathy.

Based on review of the medical history as received and current examination, this patient continues to present with a history of right ulnar nerve entrapment at the elbow and bilateral median nerve entrapment with carpal tunnel syndrome. She has had surgery at the right elbow and surgery at each wrist (twice for the right carpal tunnel syndrome). She has had a right trigger thumb release. I would continue to offer a seven and one-half percent (7-1/2%) partial permanent disability referable to the right arm. I would offer a separate ten percent (10%) partial permanent disability referable to the right hand and a separate five percent (5%) partial permanent disability referable to the left hand. I would, of course, be pleased to review any recent electrodiagnostic studies to which she refers.

Thank you for the privilege of examining this patient.

Very truly yours,

A Gregory McClure/Dr
A. Gregory McClure, M.D.

AGM:dll
Dic/npr

gm

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ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1977

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 29, 1994

The Assembly State Government Committee reports favorably and with committee amendments Assembly, No. 1977.

This bill revises the offset against pension benefits payable to an accidental disability retiree under the Teachers' Pension and Annuity Fund (TPAF), the Public Employees' Retirement System (PERS), the Police and Firemen's Retirement System (PFRS), or the State Police Retirement System (SPRS) of any workers' compensation benefits payable to the retiree.

Under current provisions of the pension laws, when an active member of TPAF, PERS, PFRS or SPRS who is receiving periodic workers' compensation benefits retires on an accidental or ordinary disability retirement allowance, the individual's monthly pension payments are reduced to reflect the receipt of the workers' compensation award. The amount of the reduction is not, however, equal to the amount of the compensation benefits actually received during the month. Instead, the amount of the reduction is computed on the basis of the "actuarial equivalent" of the workers' compensation award as though the latter were to be paid as an annuity; accordingly, the reduction is continued for the duration of the retiree's lifetime, even though installment payments of the workers' compensation award may have been completed prior to the retiree's death. (A similar system of actuarially-based reduction governs the offset applicable to a person who qualifies for a workers' compensation award after taking disability retirement.) The effect of this actuarial method of assessing the workers' compensation offset can be that the amount of the permanent reduction in the retirement allowance exceeds the amount of the workers' compensation benefits received.

Under this bill, the accidental disability retiree's pension is to be reduced dollar-for-dollar by the full amount of the retiree's workers' compensation benefits received, but only for so long as the periodic benefits are paid. After the last installment payment of the workers' compensation has been made, the retiree's retirement benefit is to be restored to the amount to which the retiree was entitled prior to the reduction.

The bill also provides that the reduction shall not affect the retiree's pension adjustment (COLA) benefits or survivor benefits that may be payable on the death of the retiree.

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COMMITTEE AMENDMENTS

The committee amended the legislation to extend its coverage to the State Police Retirement System and to exclude the offset of workers' compensation periodic benefits from an ordinary disability retirement allowance. In addition, the amendments deleted from the legislation language providing that (1) the reduction shall be applicable only if the basis for the receipt of the workers' compensation benefits is the same as that for the receipt of the disability retirement allowance; (2) retirants who, on the date on which the bill takes effect as law, are receiving a reduction in their retirement allowances because of the receipt of benefits will have them readjusted to reflect the dollar-for-dollar reduction and, upon termination of the benefits, will have their retirement allowances readjusted to the full amount to which they were entitled prior to the reduction; (3) retirants and beneficiaries who, on that effective date, are receiving reduced retirement allowances because of previous receipt of periodic workers' compensation benefits will have their retirement allowances readjusted to the full amount to which they were entitled before the reduction; and (4) retirants and beneficiaries who, on the effective date, are receiving pension adjustment benefits based upon retirement allowances reduced due to receipt of periodic workers' compensation benefits shall receive pension adjustment benefits based upon the amount of the full retirement allowances to which they were entitled prior to the reduction.

For consistency with court decisions and the pension systems' offset provisions, the amendments delete from the workers' compensation law a sentence which prohibits altogether the receipt of workers' compensation benefits by a retirant receiving a disability retirement allowance.

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ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1977

STATE OF NEW JERSEY

DATED: DECEMBER 8, 1994

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1977(1R).

Assembly Bill No. 1977 (1R) revises the offset against pension benefits payable to an accidental disability retirant under the Teachers' Pension and Annuity Fund (TPAF), the Public Employees' Retirement System (PERS), the Police and Firemen's Retirement System (PFRS), or the State Police Retirement System (SPRS) of any workers' compensation benefits payable to the retirant.

Under current provisions, when an active member is receiving periodic workers' compensation benefits retires on an accidental or ordinary disability retirement allowance, the member's monthly pension payments are reduced to reflect the receipt of the workers' compensation award. The amount of the reduction is not, however, equal to the amount of the compensation benefits received. Instead, the reduction is computed on the basis of the "actuarial equivalent" of the workers' compensation award as though the latter were to be paid as an annuity; accordingly, the reduction is continued for the duration of the retirant's lifetime, even though installment payments of the workers' compensation award may have been completed prior to the retirant's death. (A similar system of actuarially-based reduction governs the offset applicable to a person who qualifies for a workers' compensation award after taking disability retirement.) The effect of this actuarial method of offset can be that the amount of the permanent reduction in the retirement allowance exceeds the amount of the workers' compensation benefits received.

Under this bill, the member's pension is to be reduced dollar-for-dollar by the full amount of the retirant's workers' compensation benefits received, but only for so long as the periodic benefits are paid. After the last installment payment of the workers' compensation, the retirant's retirement benefit is to be restored to the amount to which the retirant was entitled prior to the reduction.

The bill also provides that the reduction shall not affect the retirant's pension adjustment (COLA) benefits or survivor benefits that may be payable on the death of the retirant.

FISCAL IMPACT:

The Division of Pensions and Benefits adopted new regulations, N.J.A.C.17:1-4.32, effective August 15, 1994, implementing the changes contained in this bill. Further, there should be no financial impact on the various pension systems. The provisions of the bill and the administrative code do not affect the present value of a retiree's lifetime pension benefit.

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COMMITTEE AMENDMENTS

The committee amended the legislation to extend its coverage to the State Police Retirement System and to exclude the offset of workers' compensation periodic benefits from an ordinary disability retirement allowance. In addition, the amendments deleted from the legislation language providing that (1) the reduction shall be applicable only if the basis for the receipt of the workers' compensation benefits is the same as that for the receipt of the disability retirement allowance; (2) retirants who, on the date on which the bill takes effect as law, are receiving a reduction in their retirement allowances because of the receipt of benefits will have them readjusted to reflect the dollar-for-dollar reduction and, upon termination of the benefits, will have their retirement allowances readjusted to the full amount to which they were entitled prior to the reduction; (3) retirants and beneficiaries who, on that effective date, are receiving reduced retirement allowances because of previous receipt of periodic workers' compensation benefits will have their retirement allowances readjusted to the full amount to which they were entitled before the reduction; and (4) retirants and beneficiaries who, on the effective date, are receiving pension adjustment benefits based upon retirement allowances reduced due to receipt of periodic workers' compensation benefits shall receive pension adjustment benefits based upon the amount of the full retirement allowances to which they were entitled prior to the reduction.

For consistency with court decisions and the pension systems' offset provisions, the amendments delete from the workers' compensation law a sentence which prohibits altogether the receipt of workers' compensation benefits by a retirant receiving a disability retirement allowance.

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SENATE STATE MANAGEMENT, INVESTMENTS AND
FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1977

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1995

The Senate State Management, Investments and Financial Institutions Committee reports favorably Assembly Bill No. 1977 (1R).

This bill revises the offset of any workers' compensation benefits payable to an accidental disability retirant against pension benefits payable to that retirant under the Teachers' Pension and Annuity Fund (TPAF), the Public Employees' Retirement System (PERS), the Police and Firemen's Retirement System (PFRS), or the State Police Retirement System (SPRS).

Under current provisions of the pension laws, when an active member of TPAF, PERS, PFRS or SPRS who is receiving periodic workers' compensation benefits retires on an accidental disability retirement allowance, the individual's monthly pension payments are reduced to reflect the receipt of the workers' compensation award. The amount of the reduction is not, however, equal to the amount of the compensation benefits actually received during the month. Instead, the amount of the reduction is computed on the basis of the "actuarial equivalent" of the workers' compensation award as though the latter were to be paid as an annuity; accordingly, the reduction is continued for the duration of the retirant's lifetime, even though installment payments of the workers' compensation award may have been completed prior to the retirant's death. The effect of this actuarial method of assessing the workers' compensation offset can be that the amount of the permanent reduction in the retirement allowance exceeds the amount of the workers' compensation benefits received.

Under this bill, the accidental disability retirant's pension is to be reduced dollar-for-dollar by the full amount of the retirant's workers' compensation benefits received, but only for so long as the periodic benefits are paid. After the last installment payment of the workers' compensation has been made, the retirant's retirement benefit is to be restored to the amount to which the retirant was entitled prior to the reduction.

The bill also provides that the reduction shall not affect the retirant's pension adjustment (COLA) benefits or survivor benefits that may be payable on the death of the retirant.

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LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]
ASSEMBLY, No. 1977

STATE OF NEW JERSEY

DATED: December 28, 1994

Assembly Bill No. 1977 (1R) of 1994 revises the offset against pension benefits payable to an accidental disability retiree under the Teachers' Pension and Annuity Fund (TPAF), the Public Employees' Retirement System (PERS), the Police and Firemen's Retirement System (PFRS) and the State Police Retirement System (SPRS) of any workers' compensation benefits payable to the retiree.

Under current law, when an active member of TPAF, PERS, PFRS or SPRS who is receiving periodic workers' compensation benefits retires on an accidental or ordinary disability retirement allowance, the individual's monthly pension payments are reduced to reflect the receipt of the workers' compensation award. The amount of the reduction is not, however, equal to the amount of the workers' compensation benefits actually received during the month. Instead, the amount of the reduction is computed on the basis of the "actuarial equivalent" of the workers' compensation award as though the latter were paid as an annuity; accordingly, the reduction is continued for the duration of the retiree's lifetime, even though installment payments of the workers' compensation award may have been completed prior to the retiree's death. (A similar system of actuarial-based reduction governs the offset applicable to a person who qualifies for a workers' compensation award after taking disability retirement.) The effect of this actuarial method of assessing the workers' compensation offset can be that the amount of the permanent reduction in the retirement allowance exceeds the amount of the workers' compensation benefits received.

Under this bill, the accidental disability retiree's pension is to be reduced dollar-for-dollar by the full amount of the retiree's workers' compensation benefits received, but only for so long as the periodic benefits are paid. After the last installment payment of the workers' compensation has been made, the retiree's retirement benefit is to be restored to the amount to which the retiree was entitled prior to the reduction.

The bill also provides that the reduction shall not affect the retiree's pension adjustment (COLA) benefits or survivor benefits that may be payable on the death of the retiree.

The Office of Legislative Services (OLS) notes that the Division of Pensions and Benefits recently adopted N.J.A.C. 17:1-4.32, effective August 15, 1994, implementing the changes contained in this bill. Therefore enactment of this bill would have no impact except to make the changes statutory.

The OLS further notes that there should be no financial impact on the various retirement systems. The provisions of this bill (and the administrative code) do not affect the present value of a retiree's lifetime pension benefit. The only impact is on the

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retiree's benefit schedule. Previously, the retiree received a slightly reduced pension for life. Retirees now receive a larger reduction but only while collecting workers' compensation benefits.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

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COMMITTEE AMENDMENTS

The committee amended the legislation to extend its coverage to the State Police Retirement System and to exclude the offset of workers' compensation periodic benefits from an ordinary disability retirement allowance. In addition, the amendments deleted from the legislation language providing that (1) the reduction shall be applicable only if the basis for the receipt of the workers' compensation benefits is the same as that for the receipt of the disability retirement allowance; (2) retirants who, on the date on which the bill takes effect as law, are receiving a reduction in their retirement allowances because of the receipt of benefits will have them readjusted to reflect the dollar-for-dollar reduction and, upon termination of the benefits, will have their retirement allowances readjusted to the full amount to which they were entitled prior to the reduction; (3) retirants and beneficiaries who, on that effective date, are receiving reduced retirement allowances because of previous receipt of periodic workers' compensation benefits will have their retirement allowances readjusted to the full amount to which they were entitled before the reduction; and (4) retirants and beneficiaries who, on the effective date, are receiving pension adjustment benefits based upon retirement allowances reduced due to receipt of periodic workers' compensation benefits shall receive pension adjustment benefits based upon the amount of the full retirement allowances to which they were entitled prior to the reduction.

For consistency with court decisions and the pension systems' offset provisions, the amendments delete from the workers' compensation law a sentence which prohibits altogether the receipt of workers' compensation benefits by a retirant receiving a disability retirement allowance.

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34:15-43

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Workers compensation--emergency
management services)

NJSA: 34:15-43

LAWS OF: 1995

CHAPTER: 383

BILL NO: S180

SPONSOR(S): Kyrillos

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Labor

SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: January 4, 1996

SENATE: February 9, 1995

DATE OF APPROVAL: January 10, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping--attached:

"Workers Compensation bill sent to governor," 1-5-96, Atlantic City Press.

KBP:pp

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P.L.1995, CHAPTER 383, approved January 10, 1996
1994 Senate No. 180 (First Reprint)

AN ACT to provide workers' compensation coverage for emergency management volunteers and amending R.S.34:15-43, R.S.34:15-74, R.S.34:15-75, R.S.34:15-76, N.J.S.59:1-3, and P.L.1952, c.12.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.34:15-43 is amended to read as follows:

34:15-43. Every officer, appointed or elected, and every employee of the State, county, municipality or any board or commission, or any other governing body, including boards of education, and governing bodies of service districts, individuals who are under the general supervision of the Palisades Interstate Park Commission and who work in that part of the Palisades Interstate Park which is located in this State, and also each and every member of a volunteer fire company doing public fire duty and also each and every active volunteer, first aid or rescue squad worker, including each and every authorized worker who is not a member of the volunteer fire company within which the first aid or rescue squad may have been created, doing public first aid or rescue duty under the control or supervision of any commission, council, or any other governing body of any municipality, any board of fire commissioners of such municipality or of any fire district within the State, or of the board of managers of any State institution, every county fire marshal and assistant county fire marshal [and], every special, reserve or auxiliary policeman doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality and every emergency management volunteer doing emergency management service for the State, who may be injured in line of duty shall be compensated under and by virtue of the provisions of this article and article 2 of this chapter (R.S.34:15-7 et seq.). No former employee who has been retired on pension by reason of injury or disability shall be entitled under this section to compensation for such injury or disability; provided, however, that such employee, despite retirement, shall, nevertheless, be entitled to the medical, surgical and other treatment and hospital services as set forth in R.S.34:15-15.

Benefits available under this section to emergency management volunteers shall not be paid to any claimant who has another single source of injury or death benefits that provides the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Senate floor amendments adopted June 13, 1994.

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claimant with an amount of compensation that exceeds the compensation available to the claimant under R.S.34:15-1 et seq.

As used in this section, the terms "doing public fire duty" and "who may be injured in line of duty," as applied to members of volunteer fire companies, county fire marshals or assistant county fire marshals, and the term "doing public first aid or rescue duty," as applied to active volunteer first aid or rescue squad workers, shall be deemed to include participation in any authorized construction, installation, alteration, maintenance or repair work upon the premises, apparatus or other equipment owned or used by the fire company or the first aid or rescue squad, participant in any authorized public drill, showing, exhibition, fund raising activity or parade, and to include also the rendering of assistance in case of fire and, when authorized, in connection with other events affecting the public health or safety, in any political subdivision or territory of another [State] state of the United States or on property ceded to the federal government while such assistance is being rendered and while going to and returning from the place in which it is rendered.

Also, as used in this section, "doing public police duty" and "who may be injured in line of duty" as applied to special, reserve or auxiliary policemen, shall be deemed to include participation in any authorized public drill, showing, exhibition or parade, and to include also the rendering of assistance in connection with other events affecting the public health or safety in the municipality, and also, when authorized, in connection with any such events in any political subdivision or territory of this or any other [State] state of the United States or on property ceded to the federal government while such assistance is being rendered and while going to and returning from the place in which it is rendered.

As used in this section, the terms "doing emergency management service" and "who may be injured in the line of duty" as applied to emergency management volunteers mean participation in any activities authorized ¹[in accordance with regulations and orders of the State Director of Emergency Management pursuant to Executive Order No. 101 of 1980 or the principal emergency management officer of the State as designated by the Governor through executive order] pursuant to P.L. 1942, c. 251 (C.App. A:9-33 et seq.)¹, except that the terms shall not include activities engaged in by a member of an emergency management agency of the United States Government or of another state, whether pursuant to a mutual aid compact or otherwise.

Every member of a volunteer fire company shall be deemed to be doing public fire duty under the control or supervision of any such commission, council, governing body, board of fire commissioners or fire district or board of managers of any State institution within the meaning of this section, if such control or supervision is provided for by statute or by rule or regulation of the board of managers or the superintendent of such State institution, or if the fire company of which he is a member receives contributions from, or a substantial part of its expenses or equipment are paid for by, the municipality, or board of fire

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commissioners of the fire district or if such fire company has been or hereafter shall be designated by ordinance as the fire department of the municipality.

Every active volunteer, first aid or rescue squad worker, including every authorized worker who is not a member of the volunteer fire company within which the first aid or rescue squad may have been created, shall be deemed to be doing public first aid or rescue duty under the control or supervision of any such commission, council, governing body, board of fire commissioners or fire district within the meaning of this section if such control or supervision is provided for by statute, or if the first aid or rescue squad of which he is a member or authorized worker receives or is eligible to receive contributions from, or a substantial part of its expenses or equipment are paid for by, the municipality, or board of fire commissioners of the fire district, or if such first aid or rescue squad has been or hereafter shall be designated by ordinance as the first aid or rescue squad of the municipality.

As used in this section and in [section] R.S.34:15-74 [of this chapter], the term "authorized worker" shall mean and include, in addition to an active volunteer fireman and an active volunteer first aid or rescue squad worker, any person performing any public fire duty or public first aid or rescue squad duty, as the same are defined in this section, at the request of the chief or acting chief of a fire company or the president or person in charge of a first aid or rescue squad for the time being.

Nothing herein contained shall be construed as affecting or changing in any way the provisions of any statute providing for sick, disability, vacation or other leave for public employees or any provision of any retirement or pension fund provided by law.

(cf: P.L.1987, c.259, s.3)

2. R.S.35:15-74 is amended to read as follows:

34:15-74. Except as otherwise provided in this section, the governing body of every municipality and the committee of every fire district shall provide compensation insurance for special, reserve or auxiliary policemen doing volunteer public police duty, for volunteer firemen doing public fire duty and volunteer first aid and emergency squad workers doing public first aid and rescue duty under the control or supervision of any commission, council or other governing body of the municipality or any board of fire commissioners of such municipality or of any fire district, and the board of chosen freeholders shall provide compensation insurance for county fire marshals and assistant county fire marshals, within the meaning of [section] R.S.34:15-43 [of this chapter]. Such insurance shall provide compensation for every special, reserve or auxiliary policeman, and for every such fireman or authorized first aid or rescue squad worker or county fire marshal or assistant county fire marshal who shall be a member of any first aid or rescue squad created within the fire company of which he is a member or authorized first aid or rescue squad worker, or composed of members and authorized first aid or rescue squad workers of different fire companies in the same municipality for injuries received while acting in response to any call made upon such squad, for first aid or rescue work, whether such call be made because of a fire or otherwise.

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The provisions of this section shall not require the governing body of any municipality or the committee of any fire district which contributes to the support of a volunteer fire company or volunteer first aid or rescue squad serving said municipality or district but located, or its headquarters maintained, without said municipality or district to provide compensation insurance for the members of said company or squad who are covered by compensation insurance carried by the municipality or district within which said company or squad is located, or its headquarters maintained, whenever evidence of such insurance coverage is supplied to or otherwise obtained by said governing body or committee, nor shall the provisions of this section require the governing body of any municipality or the committee of any fire district to provide compensation insurance whenever evidence that a fire company has obtained its own insurance coverage is provided to the governing body or committee.

Except as otherwise provided by this section, the governing body of a municipality or county shall provide compensation insurance for each emergency management volunteer registered with and doing emergency management service on behalf of that municipality or county ¹[in accordance with regulations and orders of the State Director of Emergency Management] pursuant to P.L.1942, c.251 (C.App. A:9-33 et seq.)¹, unless the governing body provides workers' compensation coverage for each emergency management volunteer and has evidence of such coverage or the governing body has received or obtained proof that workers' compensation insurance coverage for each emergency management volunteer is provided by an emergency management council.

The provisions of this section shall not require the governing body of a municipality to pay for compensation insurance or make reimbursement of any portion of the expense of medical, surgical or hospital treatment for an emergency management volunteer, if that insurance or reimbursement is being furnished by the United States Government or any agent thereof.

(cf: P.L.1978, c.145, s.2)

3. R.S.34:15-75 is amended to read as follows:

34:15-75. Compensation for injury and death, either or both, of any volunteer fireman, county fire marshal, assistant county fire marshal, volunteer first aid or rescue squad worker, volunteer driver of any municipally-owned or operated ambulance, [or of any] forest fire warden or forest fire fighter employed by the State of New Jersey, [or of any] member of a board of education, [or of any] special reserve or auxiliary policeman doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, or emergency management volunteer doing emergency management service, shall be based upon a weekly salary or compensation conclusively presumed to be received by such person in an amount sufficient to entitle him, or, in the event of his death, his dependents, to receive the maximum compensation by this chapter authorized.

(cf: P.L.1978, c.145, s.3)

4. N.J.S.59:1-3 is amended to read as follows:

59:1-3. Definitions. As used in this subtitle:

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"Employee" includes an officer, employee, or servant, whether or not compensated or part-time, who is authorized to perform any act or service; provided, however, that the term does not include an independent contractor.

"Employment" includes office; position; employment; or service, under the supervision of the Palisades Interstate Park Commission, in a volunteer program in that part of the Palisades Interstate Park located in New Jersey, or as an emergency management volunteer.

"Enactment" includes a constitutional provision, statute, executive order, ordinance, resolution or regulation.

"Injury" means death, injury to a person, damage to or loss of property or any other injury that a person may suffer that would be actionable if inflicted by a private person.

"Law" includes enactments and also the decisional law applicable within this State as determined and declared from time to time by the courts of this State and of the United States.

"Public employee" means an employee of a public entity and includes a person participating, under the supervision of the Palisades Interstate Park Commission, in a volunteer program in that part of the Palisades Interstate Park located in New Jersey.

"Public entity" includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State.

"State" shall mean the State and any office, department, division, bureau, board, commission or agency of the State, but shall not include any such entity which is statutorily authorized, to sue and be sued. "State" also means the Palisades Interstate Park Commission, but only with respect to employees, property and activities within the State of New Jersey.

"Statute" means an act adopted by the Legislature of this State or by the Congress of the United States.

(cf: P.L.1987, c.259, s.5)

5. R.S.34:15-76 is amended to read as follows:

34:15-76. All payments of compensation to volunteer firemen, county fire marshals, assistant county fire marshals, volunteer first aid or rescue squad workers, volunteer drivers of any municipally-owned or operated ambulance, [or] special, reserve or auxiliary [policeman] policemen doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, or emergency management volunteers doing emergency management service, shall be governed by and be subject to the provisions of this chapter. The premiums therefor shall be paid from the tax levy, and the insurance shall protect such persons from loss by reason of injury or death suffered while engaged in the performance of duty.

(cf: P.L.1978, c.145, s.4)

6. Section 2 of P.L.1952, c.12 (C.App. A:9-57.2) is amended to read as follows:

2. Benefits, as provided in this act, shall be furnished to a civil defense volunteer for injury, as defined herein, arising before the effective date of P.L. , c. (pending before the Legislature as this bill), either within or without this State, provided[.];

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(a) The injury is proximately caused by authorized civil defense service, and

(b) The injury is not caused by the gross negligence or intoxication of the injured civil defense volunteer, and

(c) The injury is not intentionally self-inflicted and is not due to willful exposure to radiation or to noxious gases or to germ warfare, and

(d) Medical treatment or hospital care is undergone by the civil defense volunteer because of the injury within 30 days of the date of injury, where objective symptoms are immediate, or within five months after the date when the civil defense volunteer shall have ceased to be subject to exposure to radiation or to noxious gases or to germ warfare, if the treatment or hospital care is required because of such exposure which did not produce objective symptoms immediately. This subsection shall not apply if death occurs immediately.

Claims for disability, death, medical and hospital benefits for civil defense volunteers, all of whom have been renamed "emergency management volunteers" by Executive Order No. 101 of 1980, which arise on or after the effective date of P.L. , c. (pending before the Legislature as this bill), shall be filed with and determined by the Division of Workers' Compensation in the Department of Labor in accordance with the provisions of articles 1, 2, 3, and 4 of chapter 15 of Title 34 of the Revised Statutes.

(cf: P.L.1952, c.12, s.2)

7. Section 15 of P.L.1952, c.12 (C.App. A:9-57.15) is amended to read as follows:

15. There is hereby created a fund which shall be known as the special fund for civil defense volunteers to provide for the payment of weekly benefits for total disability, expenses of medical and hospital care and death benefits under this act and the expenses of administration. Such fund shall consist of any moneys appropriated therefor or credited thereto including any financial contributions received from the United States Government for such purposes. The State Treasurer shall be the custodian of this special fund. The State Treasurer may deposit any portion of the fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of State funds by him. Interest earned by such portion of the fund deposited by the State Treasurer shall be collected by him and placed to the credit of the fund.

Any moneys remaining in the fund after satisfaction of each of the claims for injuries occurring before the effective date of P.L. , c. (pending before the Legislature as this bill) and payable under this section shall be deposited in the General Fund.

(cf: P.L.1952, c.12, s.15)

8. Section 16 of P.L.1952, c.12 (C.App. A:9-57.16) is amended to read as follows:

16. Funds credited to the special fund for the purposes of this act may be used to effect insurance or reinsurance with the war damage corporation or with any other authority or instrumentality, public or private, or otherwise to distribute the liability for benefits payable to those civil defense volunteers

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whose benefits, in accordance with P.L. , c. (pending before the Legislature as this bill), are payable from the special fund.

(cf: P.L.1952, c.12, s.16)

9. Section 17 of P.L.1952, c.12 (C.App. A:9-57.17) is amended to read as follows:

17. The special fund for civil defense volunteers created by this act shall be the sole and exclusive source for the payment of benefits provided by this act for civil defense volunteers who were injured before the effective date of P.L. , c. (pending before the Legislature as this bill).

(cf: P.L.1952, c.12, s.17)

10. This act shall take effect 30 days after enactment.

Provides workers' compensation coverage for emergency management volunteers.

Aa 235

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 180

STATE OF NEW JERSEY

DATED: MAY 12, 1994

The Senate Commerce Committee reports favorably Senate, No. 180.

This bill extends the coverage of the workers' compensation law, R.S.34:15-1 et seq., and the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., to emergency management volunteers who provide emergency management services to public entities.

The workers' compensation coverage provided under the bill applies to any emergency management volunteer doing emergency management service as authorized by a local emergency management council in accordance with regulations and orders of the principal emergency management officer of the State, but not including activities engaged in by a member of an emergency management agency of the federal government or another state.

To provide coverage under the workers' compensation law for emergency management volunteers, the bill requires the local governmental entity which authorizes the volunteer's activity to provide workers' compensation insurance to the emergency management volunteer.

The bill provides that these emergency management volunteers will be entitled to the maximum level of compensation authorized by the workers' compensation law. In addition, the bill provides that benefits shall not be paid to any claimant who has another single source of injury or death benefits that provides the claimant with an amount of compensation that exceeds the compensation available to the claimant under the workers' compensation law.

The bill provides that all injury or death claims made by emergency management volunteers for injuries arising after its effective date will be covered under the workers' compensation law, instead of being covered by the special fund for civil defense volunteers which will be phased out, and the remaining moneys in the special fund will be transferred to the General Fund.

Finally, the bill brings these emergency management volunteers under the provisions of the "New Jersey Tort Claims Act." This will limit the liability of these volunteers during their period of voluntary service to the liability established for regular services performed by an employee of a public entity covered by the "New Jersey Tort Claims Act."

This bill was pre-filed for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

Ac 236

STATEMENT TO SENATE FLOOR AMENDMENT

STATEMENT

These Senate amendments provide that emergency management volunteers, who are to be provided workers' compensation coverage under the bill, are those persons participating in activities authorized by P.L. 1942, c. 251 (C.App. A:9-33 et seq.) rather than authorized in accordance with regulations and orders of the State Director of Emergency Management pursuant to Executive Order No. 101 of 1980. P.L. 1942, c. 251 (C.App. A:9-33 et seq.) is a law that authorizes the Governor to adopt emergency rules and regulations to deal with disaster situations.

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LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]

SENATE, No. 180

STATE OF NEW JERSEY

DATED: July 12, 1994

Senate Bill No. 180 (1R) of 1994 extends the coverage of the State's workers' compensation law, R.S.34:15-1 et seq., and the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., to emergency management volunteers who provide emergency management services to public entities.

The workers' compensation coverage provided under the bill applies to any emergency management volunteer doing emergency management service pursuant to P.L. 1942, c.251, the law that authorizes the Governor to adopt emergency rules and regulations to deal with disaster situations. The bill requires the local governmental entity which authorizes the volunteer's activity to pay for and provide this coverage.

The bill also provides that emergency management volunteers be entitled to the maximum level of compensation authorized by the workers' compensation law. However, such benefits would not be paid to any claimant who has another single source of injury or death benefits that pays more than is provided under the workers' compensation law.

The Office of Legislative Services estimates that the bill's enactment would result in higher workers' compensation premium costs for municipalities and counties who are not self-insured for this type of coverage. Since these cost increases would vary from municipality to municipality due to disparities in premium rates and other factors unique to each jurisdiction, an average estimate of such increases cannot be readily calculated. With respect to self-insured jurisdictions, any increase in benefits payments would be directly related to the frequency and type of emergency incidence that may occur, the number of volunteers involved, and the number of volunteers who have alternate sources of injury coverage that would supercede workers' compensation coverage under the bill.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

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ASSEMBLY LABOR, BUSINESS AND
INDUSTRY COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 180

STATE OF NEW JERSEY

DATED: MAY 8, 1995

The Assembly Labor, Business and Industry Committee reports favorably Senate Bill No. 180 [1R].

This bill extends the coverage of the workers' compensation law, R.S.34:15-1 et seq., and the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., to emergency management volunteers who provide emergency management services to public entities.

The workers' compensation coverage provided under the bill applies to any emergency management volunteer doing emergency management service as authorized by a local emergency management council in accordance with regulations and orders of the principal emergency management officer of the State, but not including activities engaged in by a member of an emergency management agency of the federal government or another state.

To provide coverage under the workers' compensation law for emergency management volunteers, the bill requires the local governmental entity which authorizes the volunteer's activity to provide workers' compensation insurance to the emergency management volunteer.

The bill provides that these emergency management volunteers will be entitled to the maximum level of compensation authorized by the workers' compensation law. In addition, the bill provides that benefits shall not be paid to any claimant who has another single source of injury or death benefits that provides the claimant with an amount of compensation that exceeds the compensation available to the claimant under the workers' compensation law.

The bill provides that all injury or death claims made by emergency management volunteers for injuries arising after its effective date will be covered under the workers' compensation law, instead of being covered by the special fund for civil defense volunteers which will be phased out, and the remaining moneys in the special fund will be transferred to the General Fund.

Finally, the bill brings these emergency management volunteers under the provisions of the "New Jersey Tort Claims Act." This will limit the liability of these volunteers during their period of voluntary service to the liability established for regular services performed by an employee of a public entity covered by the "New Jersey Tort Claims Act."

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SPONSOR'S STATEMENT

STATEMENT

This bill extends the coverage of the workers' compensation law, R.S.34:15-1 et seq., and the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., to emergency management volunteers who provide emergency management services to public entities.

The workers' compensation coverage provided under the bill applies to any emergency management volunteer doing emergency management service as authorized by a local emergency management council in accordance with regulations and orders of the principal emergency management officer of the State, but not including activities engaged in by a member of an emergency management agency of the federal government or another state.

To provide coverage under the workers' compensation law for emergency management volunteers, the bill requires the local governmental entity which authorizes the volunteer's activity to provide workers' compensation insurance to the emergency management volunteer.

The bill provides that these emergency management volunteers will be entitled to the maximum level of compensation authorized by the workers' compensation law. In addition, the bill provides that benefits shall not be paid to any claimant who has another single source of injury or death benefits that provides the claimant with an amount of compensation that exceeds the compensation available to the claimant under the workers' compensation law.

The bill provides that all injury or death claims made by emergency management volunteers for injuries arising after its effective date will be covered under the workers' compensation law, instead of being covered by the special fund for civil defense volunteers which will be phased out, and the remaining moneys in the special fund will be transferred to the General Fund.

Finally, the bill brings these emergency management volunteers under the provisions of the "New Jersey Tort Claims Act." This will limit the liability of these volunteers during their period of voluntary service to the liability established for regular services performed by an employee of a public entity covered by the "New Jersey Tort Claims Act."

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LEGISLATIVE COUNSEL
STATE HOUSE ANNEX

TO: Deborah T. Poritz
Attorney General

FROM: Albert Porroni
Legislative Counsel

DATE: FEB 08 1996

SUBJECT: P.L.1995, c.383
(1994 S.180 (1R))
RECONCILIATION OF CONFLICTING AMENDMENTS
AND TO CORRECT TECHNICAL ERRORS

Pursuant to R.S.1:3-1, as amended, we hereby direct that the corrections set forth on the attached pages be made in preparing P.L.1995, c.383 for printing in the Pamphlet Laws.

These corrections are being made in order to incorporate inadvertently omitted provisions of R.S.34:15-43 and N.J.S.59:1-3 as amended by P.L.1995, c.369, s.5 and P.L.1994, c.58, s.64, respectively, and to correct technical errors.

By: Albert Porroni
Albert Porroni
Legislative Counsel

I Concur:

Deborah T. Poritz
Deborah T. Poritz
Attorney General

Dated: 2-14-96

cy
Attachment

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P.L.1995, c.383
(1994 S.180 (1R))
CORRECTIONS

<u>PAGE</u>	<u>SECTION</u>	<u>ALLOCATION</u>	<u>LINE</u>
1	1	R.S.34:15-43	33-39
3	2	R.S.34:15-74	32
4	3	R.S.34:15-75	48
5	4	N.J.S.59:1-3	21 24

Ac 242

P.L.1995, CHAPTER 383, approved January 10, 1996
1994 Senate No. 180 (First Reprint)

1 AN ACT to provide workers' compensation coverage for
2 emergency management volunteers and amending R.S.34:15-43,
3 R.S.34:15-74, R.S.34:15-75, R.S.34:15-76, N.J.S.59:1-3, and
4 P.L.1952, c.12.

5
6 BE IT ENACTED by the Senate and General Assembly of the
7 State of New Jersey:

8 1. R.S.34:15-43 is amended to read as follows:

Compensation
for injury
in line of
duty.

Reconcile
1995/36915

9 34:15-43. Every officer, appointed or elected, and every
10 employee of the State, county, municipality or any board or
11 commission, or any other governing body, including boards of
12 education, and governing bodies of service districts, individuals
13 who are under the general supervision of the Palisades Interstate
14 Park Commission and who work in that part of the Palisades
15 Interstate Park which is located in this State, and also each and
16 every member of a volunteer fire company doing public fire duty
17 and also each and every active volunteer, first aid or rescue
18 squad worker, including each and every authorized worker who is
19 not a member of the volunteer fire company within which the
20 first aid or rescue squad may have been created, doing public
21 first aid or rescue duty under the control or supervision of any
22 commission, council, or any other governing body of any
23 municipality, any board of fire commissioners of such
24 municipality or of any fire district within the State, or of the
25 board of managers of any State institution, every county fire
26 marshal and assistant county fire marshal ~~and~~, every special,
27 reserve or auxiliary policeman doing volunteer public police duty
28 under the control or supervision of any commission, council or
29 any other governing body of any municipality and every
30 emergency management volunteer doing emergency management
31 service for the State, who may be injured in line of duty shall be
32 compensated under and by virtue of the provisions of this article
33 and article 2 of this chapter (R.S.34:15-7 et seq.). ~~No former~~
34 ~~employee who has been retired on pension by reason of injury or~~
35 ~~disability shall be entitled under this section to compensation for~~
36 ~~such injury or disability; provided, however, that such employee,~~
37 ~~despite retirement, shall, nevertheless, be entitled to the~~
38 ~~medical, surgical and other treatment and hospital services set~~
39 ~~forth in R.S.34:15-15.~~

40 Benefits available under this section to emergency
41 management volunteers shall not be paid to any claimant who has
42 another single source of injury or death benefits that provides the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Senate floor amendments adopted June 13, 1994.

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1 commissioners of the fire district or if such fire company has
2 been or hereafter shall be designated by ordinance as the fire
3 department of the municipality.

4 Every active volunteer, first aid or rescue squad worker,
5 including every authorized worker who is not a member of the
6 volunteer fire company within which the first aid or rescue squad
7 may have been created, shall be deemed to be doing public first
8 aid or rescue duty under the control or supervision of any such
9 commission, council, governing body, board of fire commissioners
10 or fire district within the meaning of this section if such control
11 or supervision is provided for by statute, or if the first aid or
12 rescue squad of which he is a member or authorized worker
13 receives or is eligible to receive contributions from, or a
14 substantial part of its expenses or equipment are paid for by, the
15 municipality, or board of fire commissioners of the fire district,
16 or if such first aid or rescue squad has been or hereafter shall be
17 designated by ordinance as the first aid or rescue squad of the
18 municipality.

19 As used in this section and in ~~section~~ R.S.34:15-74 ~~for this~~
20 ~~chapter~~, the term "authorized worker" shall mean and include, in
21 addition to an active volunteer fireman and an active volunteer
22 first aid or rescue squad worker, any person performing any
23 public fire duty or public first aid or rescue squad duty, as the
24 same are defined in this section, at the request of the chief or
25 acting chief of a fire company or the president or person in
26 charge of a first aid or rescue squad for the time being.

27 Nothing herein contained shall be construed as affecting or
28 changing in any way the provisions of any statute providing for
29 sick, disability, vacation or other leave for public employees or
30 any provision of any retirement or pension fund provided by law.
31 (cf. P.L.1987, c.299, s.3)

32 2. R.S.34:15-74 is amended to read as follows:

*Compensation
insurance
provided
for certain
volunteers
by
municipality
or
county.*

33 34:15-74. Except as otherwise provided in this section, the
34 governing body of every municipality and the committee of every
35 fire district shall provide compensation insurance for special,
36 reserve or auxiliary policemen doing volunteer public police duty,
37 for volunteer firemen doing public fire duty and volunteer first
38 aid and emergency squad workers doing public first aid and rescue
39 duty under the control or supervision of any commission, council
40 or other governing body of the municipality or any board of fire
41 commissioners of such municipality or of any fire district, and
42 the board of chosen freeholders shall provide compensation
43 insurance for county fire marshals and assistant county fire
44 marshals, within the meaning of ~~section~~ R.S.34:15-43 ~~for this~~
45 ~~chapter~~. Such insurance shall provide compensation for every
46 special, reserve or auxiliary policeman, and for every such
47 fireman or authorized first aid or rescue squad worker or county
48 fire marshal or assistant county fire marshal who shall be a
49 member of any first aid or rescue squad created within the fire
50 company of which he is a member or authorized first aid or
51 rescue squad worker, or composed of members and authorized
52 first aid or rescue squad workers of different fire companies in
53 the same municipality for injuries received while acting in
54 response to any call made upon such squad, for first aid or rescue
55 work, whether such call be made because of a fire or otherwise.

14

Ac 244

1 The provisions of this section shall not require the governing
 2 body of any municipality or the committee of any fire district
 3 which contributes to the support of a volunteer fire company or
 4 volunteer first aid or rescue squad serving said municipality or
 5 district but located, or its headquarters maintained, without said
 6 municipality or district to provide compensation insurance for the
 7 members of said company or squad who are covered by
 8 compensation insurance carried by the municipality or district
 9 within which said company or squad is located, or its
 10 headquarters maintained, whenever evidence of such insurance
 11 coverage is supplied to or otherwise obtained by said governing
 12 body or committee, nor shall the provisions of this section require
 13 the governing body of any municipality or the committee of any
 14 fire district to provide compensation insurance whenever
 15 evidence that a fire company has obtained its own insurance
 16 coverage is provided to the governing body or committee.

17 Except as otherwise provided by this section, the governing
 18 body of a municipality or county shall provide compensation
 19 insurance for each emergency management volunteer registered
 20 with and doing emergency management service on behalf of that
 21 municipality or county ~~in accordance with regulations and~~
 22 ~~orders of the State Director of Emergency Management~~ pursuant
 23 to P.L.1942, c.251 (C.App. A:9-33 et seq.), unless the governing
 24 body provides workers' compensation coverage for each
 25 emergency management volunteer and has evidence of such
 26 coverage or the governing body has received or obtained proof
 27 that workers' compensation insurance coverage for each
 28 emergency management volunteer is provided by an emergency
 29 management council.

30 The provisions of this section shall not require the governing
 31 body of a municipality to pay for compensation insurance or make
 32 reimbursement of any portion of the expense of medical, surgical
 33 or hospital treatment for an emergency management volunteer, if
 34 that insurance or reimbursement is being furnished by the United
 35 States Government or any agent thereof.

36 ~~(cf. P.L.1978, c.145, s.2)~~

37 3. R.S.34:15-75 is amended to read as follows:

*compensation
for injury,
death
provided
for certain
volunteers.*

38 34:15-75. Compensation for injury and death, either or both,
 39 of any volunteer fireman, county fire marshal, assistant county
 40 fire marshal, volunteer first aid or rescue squad worker,
 41 volunteer driver of any municipally-owned or operated
 42 ambulance, ~~forest fire warden~~ forest fire warden or forest fire fighter
 43 employed by the State of New Jersey, ~~member of a~~ member of a
 44 board of education, ~~special reserve or auxiliary~~ special reserve or auxiliary
 45 policeman doing volunteer public police duty under the control or
 46 supervision of any commission, council or any other governing
 47 body of any municipality, or emergency management volunteer
 48 doing emergency management service, shall be based upon a
 49 weekly salary or compensation conclusively presumed to be
 50 received by such person in an amount sufficient to entitle him,
 51 or, in the event of his death, his dependents, to receive the
 52 maximum compensation by this chapter authorized.

53 ~~(cf. P.L.1978, c.145, s.3)~~

54 4. N.J.S.59:1-3 is amended to read as follows:

definitions.

55 59:1-3. Definitions. As used in this subtitle:

*Reconcile
1994/5/64*

Ac 245

1 "Employee" includes an officer, employee, or servant, whether
2 or not compensated or part-time, who is authorized to perform
3 any act or service; provided, however, that the term does not
4 include an independent contractor.

5 "Employment" includes office; position; employment; or
6 service, under the supervision of the Palisades Interstate Park
7 Commission, in a volunteer program in that part of the Palisades
8 Interstate Park located in New Jersey, or as an emergency
9 management volunteer.

10 "Enactment" includes a constitutional provision, statute,
11 executive order, ordinance, resolution or regulation.

12 "Injury" means death, injury to a person, damage to or loss of
13 property or any other injury that a person may suffer that would
14 be actionable if inflicted by a private person.

15 "Law" includes enactments and also the decisional law
16 applicable within this State as determined and declared from
17 time to time by the courts of this State and of the United States.

18 "Public employee" means an employee of a public entity and
19 includes a person participating, under the supervision of the
20 Palisades Interstate Park Commission, in a volunteer program in
21 that part of the Palisades Interstate Park located in New Jersey.

22 "Public entity" includes the State, and any county,
23 municipality, district, public authority, public agency, and any
24 other political subdivision or public body in the State.

25 "State" shall mean the State and any office, department,
26 division, bureau, board, commission or agency of the State, but
27 shall not include any such entity which is statutorily authorized,
28 to sue and be sued. "State" also means the Palisades Interstate
29 Park Commission, but only with respect to employees, property
30 and activities within the State of New Jersey.

31 "Statute" means an act adopted by the Legislature of this
32 State or by the Congress of the United States.

33 ~~(cf. P.L. 1987, c. 250, s. 5)~~

34 5. R.S.34:15-76 is amended to read as follows:

35 34:15-76. All payments of compensation to volunteer firemen,
36 county fire marshals, assistant county fire marshals, volunteer
37 first aid or rescue squad workers, volunteer drivers of any
38 municipally-owned or operated ambulance, ~~for~~ special, reserve
39 or auxiliary ~~policemen~~ policemen doing volunteer public police
40 duty under the control or supervision of any commission, council
41 or any other governing body of any municipality, or emergency
42 management volunteers doing emergency management service,
43 shall be governed by and be subject to the provisions of this
44 chapter. The premiums therefor shall be paid from the tax levy,
45 and the insurance shall protect such persons from loss by reason
46 of injury or death suffered while engaged in the performance of
47 duty.

48 ~~(cf. P.L. 1978, c. 146, s. 4)~~

49 6. Section 2 of P.L. 1952, c. 12 (C.App. A:9-57.2) is amended to
50 read as follows:

51 2. Benefits, as provided in this act, shall be furnished to a civil
52 defense volunteer for injury, as defined herein, arising before the
53 effective date of P.L. 1945, c. 334 ~~pending before the Legislature, as~~
54 ~~this bill~~, either within or without this State, providedN:

55 "Public entity" does not include any independent contractors or other
individuals, agencies, or entities not established in or employed by the
Office of the Public Defender designated to provide protection and
advocacy services to indigent mental hospital admittees or persons
with a developmental disability as the term is defined in section 3 of
P.L. 1977, c. 82 (C. 30:6D-3)

and any person retained by the public defender to serve as an
arbitrator, mediator, or in such similar capacity. "Public employee"
does not include any independent contractors or other individuals,
agencies, or entities not established in or employed by the Office of
the Public Defender designated to provide protection and advocacy
services to indigent mental hospital admittees or persons with a
developmental disability as the term is defined in section 3 of
P.L. 1977, c. 82 (C. 30:6D-3).

Payments
to certain
volunteers

App.
A: 9-57.2
Benefits
to civil
defense
volunteers

Aa246

[First Reprint]

ASSEMBLY, No. 2302

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED JULY 27, 1998

Sponsored by:

Assemblyman NICHOLAS ASSELTA
District 1 (Cape May, Atlantic and Cumberland)
Assemblyman JOHN C. GIBSON
District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

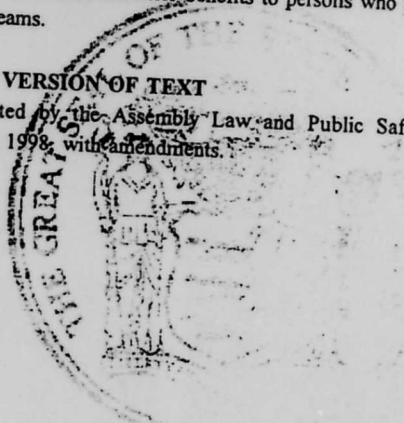
Assemblyman Holzapfel, Assemblywoman Heck, Assemblymen Cottrell,
Kelly, Malone, LeFevre, Senators Cafiero and Matheussen

SYNOPSIS

Provides immunities and other benefits to persons who participate in search and rescue teams.

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on
December 3, 1998, with amendments.



(Sponsorship Updated As Of: 7/2/1999)

Aa 247

1 AN ACT concerning certain police, fire and emergency services
2 '[and]' supplementing Title 40A of the New Jersey Statutes
3 'and amending R.S.34:15-43'.
4

5 BE IT ENACTED by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Whenever a law enforcement officer, firefighter, emergency
9 medical technician or paramedic employed by a municipality, county,
10 fire district or the State '[is appointed to or training for appointment
11 to] participates in' a State, county, municipal or regional '[urban]
12 search and rescue task force or team, and that law enforcement officer,
13 firefighter, emergency medical technician or paramedic suffers injury
14 or death '[in the performance of his duties]as a result of his
15 participation in such search and rescue task force or team', he or his
16 designee or legal representative shall be entitled to the salary, pension
17 rights, worker's compensation, or other benefits as would have
18 accrued if the injury or death had occurred in the performance of
19 duties in the territorial jurisdiction in which '[the duties were normally
20 performed] he is employed.

21 As used in this section, "participate" and "participation" shall
22 include taking part in meetings, training sessions, emergency drills,
23 emergency responses and such other similar activities of a search and
24 rescue task force or team whether as an employment duty of the
25 territorial jurisdiction of employment or as a volunteer, and shall
26 include travel to and from such activities'.

27 In addition, such officer, firefighter, emergency medical technician
28 or paramedic shall have the same powers, authority and immunities as
29 law enforcement officers, firefighters, emergency medical technicians
30 and paramedics, as the case may be, in the municipality in which the
31 assistance is being rendered.
32

33 '2. R.S.34:15-43 is amended to read as follows:
34 34:15-43. Every officer, appointed or elected, and every employee
35 of the State, county, municipality or any board or commission, or any
36 other governing body, including boards of education, and governing
37 bodies of service districts, individuals who are under the general
38 supervision of the Palisades Interstate Park Commission and who work
39 in that part of the Palisades Interstate Park which is located in this
40 State, and also each and every member of a volunteer fire company
41 doing public fire duty and also each and every active volunteer, first

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
' Assembly ALP committee amendments adopted December 3, 1998.

Aa 248

1 aid or rescue squad worker, including each and every authorized
2 worker who is not a member of the volunteer fire company within
3 which the first aid or rescue squad may have been created, doing
4 public first aid or rescue duty under the control or supervision of any
5 commission, council, or any other governing body of any municipality,
6 any board of fire commissioners of such municipality or of any fire
7 district within the State, or of the board of managers of any State
8 institution, every county fire marshal and assistant county fire marshal,
9 every special, reserve or auxiliary policeman doing volunteer public
10 police duty under the control or supervision of any commission,
11 council or any other governing body of any municipality, every
12 emergency management volunteer doing emergency management
13 service for the State and any person doing volunteer work for the
14 Division of Parks and Forestry, the Division of Fish, Game and
15 Wildlife, the New Jersey Natural Lands Trust or the New Jersey
16 Historic Trust, as authorized by the Commissioner of Environmental
17 Protection, who may be injured in line of duty shall be compensated
18 under and by virtue of the provisions of this article and article 2 of this
19 chapter (R.S.34:15-7 et seq.). No former employee who has been
20 retired on pension by reason of injury or disability shall be entitled
21 under this section to compensation for such injury or disability;
22 provided, however, that such employee, despite retirement, shall,
23 nevertheless, be entitled to the medical, surgical and other treatment
24 and hospital services as set forth in R.S.34:15-15.

25 Benefits available under this section to emergency management
26 volunteers and volunteers participating in activities of the Division of
27 Parks and Forestry, the Division of Fish, Game and Wildlife, the New
28 Jersey Natural Lands Trust or the New Jersey Historic Trust, shall not
29 be paid to any claimant who has another single source of injury or
30 death benefits that provides the claimant with an amount of
31 compensation that exceeds the compensation available to the claimant
32 under R.S.34:15-1 et seq.

33 As used in this section, the terms "doing public fire duty" and "who
34 may be injured in line of duty," as applied to members of volunteer fire
35 companies, county fire marshals or assistant county fire marshals, and
36 the term "doing public first aid or rescue duty," as applied to active
37 volunteer first aid or rescue squad workers, shall be deemed to include
38 participation in any authorized construction, installation, alteration,
39 maintenance or repair work upon the premises, apparatus or other
40 equipment owned or used by the fire company or the first aid or rescue
41 squad, participation in any State, county, municipal or regional search
42 and rescue task force or team. participation in any authorized public
43 drill, showing, exhibition, fund raising activity or parade, and to
44 include also the rendering of assistance in case of fire and, when
45 authorized, in connection with other events affecting the public health
46 or safety, in any political subdivision or territory of another state of

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1 the United States or on property ceded to the federal government
2 while such assistance is being rendered and while going to and
3 returning from the place in which it is rendered.

4 Also, as used in this section, "doing public police duty" and "who
5 may be injured in line of duty" as applied to special, reserve or
6 auxiliary policemen, shall be deemed to include participation in any
7 authorized public drill, showing, exhibition or parade, and to include
8 also the rendering of assistance in connection with other events
9 affecting the public health or safety in the municipality, and also, when
10 authorized, in connection with any such events in any political
11 subdivision or territory of this or any other state of the United States
12 or on property ceded to the federal government while such assistance
13 is being rendered and while going to and returning from the place in
14 which it is rendered.

15 As used in this section, the terms "doing emergency management
16 service" and "who may be injured in the line of duty" as applied to
17 emergency management volunteers mean participation in any activities
18 authorized pursuant to P.L.1942, c.251 (C.App. A:9-33 et seq.),
19 including participation in any State, county, municipal or regional
20 search and rescue task force or team, except that the terms shall not
21 include activities engaged in by a member of an emergency
22 management agency of the United States Government or of another
23 state, whether pursuant to a mutual aid compact or otherwise.

24 Every member of a volunteer fire company shall be deemed to be
25 doing public fire duty under the control or supervision of any such
26 commission, council, governing body, board of fire commissioners or
27 fire district or board of managers of any State institution within the
28 meaning of this section, if such control or supervision is provided for
29 by statute or by rule or regulation of the board of managers or the
30 superintendent of such State institution, or if the fire company of
31 which he is a member receives contributions from, or a substantial part
32 of its expenses or equipment are paid for by, the municipality, or board
33 of fire commissioners of the fire district or if such fire company has
34 been or hereafter shall be designated by ordinance as the fire
35 department of the municipality.

36 Every active volunteer, first aid or rescue squad worker, including
37 every authorized worker who is not a member of the volunteer fire
38 company within which the first aid or rescue squad may have been
39 created, shall be deemed to be doing public first aid or rescue duty
40 under the control or supervision of any such commission, council,
41 governing body, board of fire commissioners or fire district within the
42 meaning of this section if such control or supervision is provided for
43 by statute, or if the first aid or rescue squad of which he is a member
44 or authorized worker receives or is eligible to receive contributions
45 from, or a substantial part of its expenses or equipment are paid for by,
46 the municipality, or board of fire commissioners of the fire district, or

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1 if such first aid or rescue squad has been or hereafter shall be
2 designated by ordinance as the first aid or rescue squad of the
3 municipality.

4 As used in this section and in R.S.34:15-74, the term "authorized
5 worker" shall mean and include, in addition to an active volunteer
6 fireman and an active volunteer first aid or rescue squad worker, any
7 person performing any public fire duty or public first aid or rescue
8 squad duty, as the same are defined in this section, at the request of
9 the chief or acting chief of a fire company or the president or person
10 in charge of a first aid or rescue squad for the time being.

11 Nothing herein contained shall be construed as affecting or changing
12 in any way the provisions of any statute providing for sick, disability,
13 vacation or other leave for public employees or any provision of any
14 retirement or pension fund provided by law.¹

15 (cf: P.L.1997, c.199, s.2)

16
17 ¹[2.]₂¹ This act shall take effect immediately.

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ASSEMBLY, No. 2302

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED JULY 27, 1998

Sponsored by:

Assemblyman NICHOLAS ASSELTA
District 1 (Cape May, Atlantic and Cumberland)
Assemblyman JOHN C. GIBSON
District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

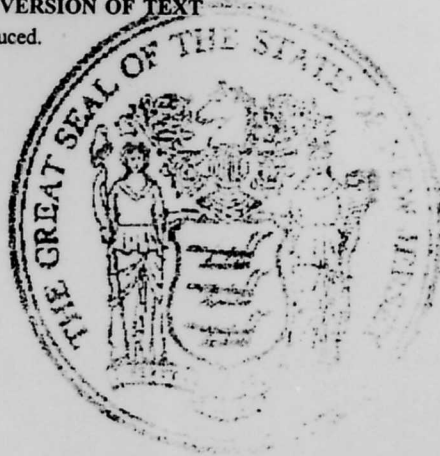
Assemblyman Holzapfel, Assemblywoman Heck, Assemblymen Cottrell,
Kelly, Malone and LeFevre

SYNOPSIS

Provides immunities and other benefits to persons who participate in urban search and rescue teams.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/15/1998)

Aa 252

1 AN ACT concerning certain police, fire and emergency services and
2 supplementing Title 40A of the New Jersey Statutes.

3
4 BE IT ENACTED by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Whenever a law enforcement officer, firefighter, emergency
8 medical technician or paramedic employed by a municipality, county,
9 fire district or the State is appointed to or training for appointment to
10 a State, county, municipal or regional urban search and rescue task
11 force or team, and that law enforcement officer, firefighter, emergency
12 medical technician or paramedic suffers injury or death in the
13 performance of his duties, he or his designee or legal representative
14 shall be entitled to the salary, pension rights, worker's compensation,
15 or other benefits as would have accrued if the injury or death had
16 occurred in the performance of duties in the territorial jurisdiction in
17 which the duties were normally performed.

18 In addition, such officer, firefighter, emergency medical technician
19 or paramedic shall have the same powers, authority and immunities as
20 law enforcement officers, firefighters, emergency medical technicians
21 and paramedics, as the case may be, in the municipality in which the
22 assistance is being rendered.

23
24 2. This act shall take effect immediately.

25
26
27 STATEMENT

28
29 Under the provisions of this bill, State and local law enforcement
30 officers, firefighters, emergency medical technicians and paramedics
31 who are appointed to or training for appointment to a State, county,
32 municipal or regional urban search and rescue task force or team and
33 who are injured or killed in the performance of their duties would be
34 entitled to the same salary, pension rights and other benefits as if the
35 injury or death had occurred in the jurisdiction where that person is
36 normally employed. The bill also provides the officer, firefighter,
37 emergency medical technician or paramedic with the same powers,
38 authority and immunities as law enforcement officers, firefighters,
39 emergency medical technicians and paramedics in the municipality
40 where the assistance is being rendered. Similar task forces or teams
41 organized by the federal government are composed of multi-agency
42 personnel who respond to disasters such as Hurricane Andrew and the
43 Oklahoma City bombing.

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ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2302

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 3, 1998

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2302.

Under the provisions of Assembly Bill No. 2302, as amended and released by the committee, State and local law enforcement officers, firefighters, emergency medical technicians and paramedics who are participating in a State, county, municipal or regional search and rescue task force or team and who are injured or killed in association with participation in that search and rescue task force or team are entitled to the same salary, pension rights and other benefits as if the injury or death had occurred in the jurisdiction where those persons are normally employed. The amended bill defines "participate" and "participation" to include taking part in meetings, training sessions, emergency drills, emergency responses and such other similar activities of a search and rescue task force or team whether as an employment duty of the territorial jurisdiction of employment or as a volunteer, including travel to and from such activities.

The bill also provides the officer, firefighter, emergency medical technician or paramedic with the same powers, authority and immunities as law enforcement officers, firefighters, emergency medical technicians and paramedics in the municipality where the assistance is being rendered.

The committee amendments define "participate" and "participation." The amendments also amend R.S.34:15-43 of the Workers' Compensation Statute to include participation in a search and rescue task force or team. Other committee amendments are clarifying and technical in nature.

It is the committee's understanding that similar task forces or teams organized by the federal government are composed of multi-agency personnel who respond to disasters such as Hurricane Andrew and the Oklahoma City bombing.

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13:8C-1 to 13:8C-42
LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

LAWS OF: 1999 CHAPTER: 152
NJSA: 13:8C-1 to 13:8C-42 ("Garden State Preservation Act")
BILL NO: S9 (Substituted for A1000000- 2nd Reprint)
SPONSOR(S): DiFrancesco & McNamara
DATE INTRODUCED: May 10, 1999
COMMITTEE: ASSEMBLY: —
SENATE: Environment
AMENDED DURING PASSAGE: Yes
DATE OF PASSAGE: ASSEMBLY: June 24, 1999
SENATE: June 21, 1999
DATE OF APPROVAL: June 30, 1999

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: 1st Reprint
(Amendments during passage denoted by superscript numbers)

S9

SPONSORS STATEMENT: (Begins on page 56 of original bill) Yes
COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: Yes

A100000

SPONSORS STATEMENT: (Begins on page 56 of original bill) Yes
Bill and Sponsors Statement identical to S9
COMMITTEE STATEMENT: ASSEMBLY: Yes 5-20-99
Identical to Senate Statement for A3014
Yes 6-21-99
SENATE: No
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: Yes

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(continued)

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VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 633-2111 or blupp@njstatelib.org

REPORTS:

No

HEARINGS:

Yes

974.90 New Jersey. Legislature. Senate. Environment Committee and P252 Senate. Economic Growth, Agriculture and Tourism Committee. 1999 Public hearing on Senate Bill No. 9 (The "Garden State Preservation Trust Act,") held 5-27-99. Trenton, 1999.

NEWSPAPER ARTICLES:

Yes

"Open-space campaign begins," 7-1-99, Philadelphia Inquirer, p. B1.
"Whitman signs sweeping land preservation law," 7-1-99, Home News Tribune, p. A3.
"Whitman oks \$1B to save open space," 7-1-99, Bridgewater Courier News, p. A3

KBP:pp
3-15-00

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1 of a junior firemen's auxiliary established pursuant to N.J.S.40A:14-95;
2 employees, of the age of 18 years or under, employed in summer
3 camps operated by the Boy Scouts of America, the Girl Scouts of
4 America, the Knights of Columbus, the Young Men's Christian
5 Association, the Young Women's Christian Association, the Young
6 Men's Hebrew Association, or any domestic corporation organized
7 solely for religious or charitable purposes; student-learners employed
8 in a cooperative vocational education program approved by the State
9 Board of Education; persons, 18 years of age or younger,
10 participating, under the supervision of the Palisades Interstate Park
11 Commission, in volunteer programs in that part of the Palisades
12 Interstate Park located in New Jersey; or persons, 18 years of age or
13 younger, doing volunteer work for the Division of Parks and Forestry,
14 the Division of Fish, Game and Wildlife, or the New Jersey Natural
15 Lands Trust [or the New Jersey Historic Trust], as authorized by the
16 Commissioner of Environmental Protection or for the New Jersey
17 Historic Trust .
18 (cf: P.L.1997, c.199, s.1)

19
20 '[50.] 51.' R.S.34:15-43 is amended to read as follows:
21 34:15-43. Every officer, appointed or elected, and every employee
22 of the State, county, municipality or any board or commission, or any
23 other governing body, including boards of education, and governing
24 bodies of service districts, individuals who are under the general
25 supervision of the Palisades Interstate Park Commission and who work
26 in that part of the Palisades Interstate Park which is located in this
27 State, and also each and every member of a volunteer fire company
28 doing public fire duty and also each and every active volunteer, first
29 aid or rescue squad worker, including each and every authorized
30 worker who is not a member of the volunteer fire company within
31 which the first aid or rescue squad may have been created, doing
32 public first aid or rescue duty under the control or supervision of any
33 commission, council, or any other governing body of any municipality,
34 any board of fire commissioners of such municipality or of any fire
35 district within the State, or of the board of managers of any State
36 institution, every county fire marshal and assistant county fire marshal,
37 every special, reserve or auxiliary policeman doing volunteer public
38 police duty under the control or supervision of any commission,
39 council or any other governing body of any municipality, every
40 emergency management volunteer doing emergency management
41 service for the State and any person doing volunteer work for the
42 Division of Parks and Forestry, the Division of Fish, Game and
43 Wildlife, or the New Jersey Natural Lands Trust [or the New Jersey
44 Historic Trust], as authorized by the Commissioner of Environmental
45 Protection, or for the New Jersey Historic Trust, who may be injured
46 in line of duty shall be compensated under and by virtue of the

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1 provisions of this article and article 2 of this chapter (R.S.34:15-7 et
2 seq.). No former employee who has been retired on pension by reason
3 of injury or disability shall be entitled under this section to
4 compensation for such injury or disability; provided, however, that
5 such employee, despite retirement, shall, nevertheless, be entitled to
6 the medical, surgical and other treatment and hospital services as set
7 forth in R.S.34:15-15.

8 Benefits available under this section to emergency management
9 volunteers and volunteers participating in activities of the Division of
10 Parks and Forestry, the Division of Fish, Game and Wildlife, the New
11 Jersey Natural Lands Trust or the New Jersey Historic Trust, shall not
12 be paid to any claimant who has another single source of injury or
13 death benefits that provides the claimant with an amount of
14 compensation that exceeds the compensation available to the claimant
15 under R.S.34:15-1 et seq.

16 As used in this section, the terms "doing public fire duty" and "who
17 may be injured in line of duty," as applied to members of volunteer fire
18 companies, county fire marshals or assistant county fire marshals, and
19 the term "doing public first aid or rescue duty," as applied to active
20 volunteer first aid or rescue squad workers, shall be deemed to include
21 participation in any authorized construction, installation, alteration,
22 maintenance or repair work upon the premises, apparatus or other
23 equipment owned or used by the fire company or the first aid or rescue
24 squad, participation in any authorized public drill, showing, exhibition,
25 fund raising activity or parade, and to include also the rendering of
26 assistance in case of fire and, when authorized, in connection with
27 other events affecting the public health or safety, in any political
28 subdivision or territory of another state of the United States or on
29 property ceded to the federal government while such assistance is
30 being rendered and while going to and returning from the place in
31 which it is rendered.

32 Also, as used in this section, "doing public police duty" and "who
33 may be injured in line of duty" as applied to special, reserve or
34 auxiliary policemen, shall be deemed to include participation in any
35 authorized public drill, showing, exhibition or parade, and to include
36 also the rendering of assistance in connection with other events
37 affecting the public health or safety in the municipality, and also, when
38 authorized, in connection with any such events in any political
39 subdivision or territory of this or any other state of the United States
40 or on property ceded to the federal government while such assistance
41 is being rendered and while going to and returning from the place in
42 which it is rendered.

43 As used in this section, the terms "doing emergency management
44 service" and "who may be injured in the line of duty" as applied to
45 emergency management volunteers mean participation in any activities
46 authorized pursuant to P.L.1942, c.251 (C.App. A:9-33 et seq.).

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ASSEMBLY LABOR COMMITTEE

STATEMENT TO

SENATE, No. 128

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1996

The Assembly Labor Committee reports favorably Senate Bill No. 128.

This bill extends the coverage of the workers' compensation law, R.S.34:15-1 et seq., to any volunteer doing work for the Division of Parks and Forestry, the Division of Fish, Game and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust in activities authorized by the Commissioner of Environmental Protection.

The bill provides that these volunteers will be entitled to the maximum level of compensation authorized by the workers' compensation law. In addition, the bill provides that benefits shall not be paid to any claimant who has another single source of injury or death benefits that provides the claimant with an amount of compensation that exceeds the compensation available to the claimant under the workers' compensation law.

The bill also extends the coverage of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., to these volunteers. This will limit the liability of these volunteers during their period of voluntary service to the liability established for regular service of public employees covered by the "New Jersey Tort Claims Act."

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FISCAL NOTE TO
SENATE, No. 128
STATE OF NEW JERSEY

DATED: NOVEMBER 21, 1996

Senate Bill No. 128 of 1996 extends coverage of the workers' compensation law, R.S.34:15-1 et seq., to any volunteer doing work for the Division of Parks and Forestry, the Division of Fish, Game and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust in activities authorized by the Commissioner of Environmental Protection.

In addition, the bill also extends coverage of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., to these volunteers. This provision will limit the liability of the volunteers during the period of voluntary service to the liability established for regular service of public employees covered by the "New Jersey Tort Claims Act."

The Department of Labor indicates that implementation of this bill will have no fiscal impact on its operating budget, as the anticipated increase in the workers' compensation client base is expected to be minimal.

The Office of Legislative Services (OLS) concurs with the Department of Labor regarding the bill's administrative costs. However, with respect to the State's obligation to provide workers' compensation benefits under the bill, the OLS cannot project the State's benefit costs, as there is no workers' compensation claims experience available for this class of workers. The Division of Risk Management, Department of Treasury, could not project benefit costs for the same reason. As a self-insured entity, however, the cost to the State of providing benefits will be a direct function of its claims.

The OLS notes that in 1995 there were some 6,137 volunteers registered with the Department of Environmental Protection, including some 4,137 volunteers with the Division of Parks and Forestry, 1,800 volunteers with the Division of Fish, Game and Wildlife, and 200 volunteers with the Natural Lands Trust. (There are currently no volunteers registered with the New Jersey Historic Trust.) These volunteers provide a wide range of services to the State of varying degrees of risk, from the construction and maintenance of trails, buildings and exhibits to water monitoring, stream clean-up, wildlife management, and historical research.

This fiscal note has been prepared pursuant to P.L.1980, c.67.

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ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 128

STATE OF NEW JERSEY

DATED: MARCH 20, 1997

The Assembly Appropriations Committee reports favorably Senate Bill No. 128.

Senate Bill No. 128 extends the coverage of the workers' compensation law, R.S.34:15-1 et seq., to any volunteer doing work for the Division of Parks and Forestry, the Division of Fish, Game and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust in activities authorized by the Commissioner of Environmental Protection.

The bill entitles these volunteers to the maximum level of compensation authorized by the workers' compensation law. However, the bill disallows benefits to a claimant who has another single source of injury or death benefits that provides the claimant with compensation that exceeds the compensation available to the claimant under the workers' compensation law.

The bill also extends the coverage of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., to these volunteers, to limit the liability of these volunteers during their period of voluntary service to the liability established for regular service of public employees covered by the "New Jersey Tort Claims Act."

FISCAL IMPACT:

The Department of Labor indicates that the bill will have no fiscal impact on its administrative costs, as the anticipated increase in the workers' compensation client base is expected to be minimal.

However, the State's benefit costs cannot be predicted, as there is no workers' compensation claims experience available for this class of workers. The cost to the State of providing benefits will be a direct function of claims. The Office of Legislative Services has noted that in 1995 there were some 6,137 volunteers registered with the Department of Environmental Protection, including some 4,137 volunteers with the Division of Parks and Forestry, 1,800 volunteers with the Division of Fish, Game and Wildlife, and 200 volunteers with the Natural Lands Trust, providing a wide range of services to the State of varying degrees of risk.

Aa 261

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 128

STATE OF NEW JERSEY

DATED: JANUARY 18, 1996

The Senate Commerce Committee reports favorably Senate, No. 128.

This bill extends the coverage of the workers' compensation law, R.S.34:15-1 et seq., to any volunteer doing work for the Division of Parks and Forestry, the Division of Fish, Game and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust in activities authorized by the Commissioner of Environmental Protection.

The bill provides that these volunteers will be entitled to the maximum level of compensation authorized by the workers' compensation law. In addition, the bill provides that benefits shall not be paid to any claimant who has another single source of injury or death benefits that provides the claimant with an amount of compensation that exceeds the compensation available to the claimant under the workers' compensation law.

The bill also extends the coverage of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., to these volunteers. This will limit the liability of these volunteers during their period of voluntary service to the liability established for regular service of public employees covered by the "New Jersey Tort Claims Act."

This bill was pre-filed for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

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1 Environmental Protection: and any person retained by the public
2 defender to serve as an arbitrator, mediator, or in such similar
3 capacity. "Public employee" does not include any independent
4 contractors or other individuals, agencies, or entities not established
5 in or employed by the Office of the Public Defender designated to
6 provide protection and advocacy services to indigent mental hospital
7 admittees or persons with a developmental disability as the term is
8 defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

9 "Public entity" includes the State, and any county, municipality,
10 district, public authority, public agency, and any other political
11 subdivision or public body in the State. "Public entity" does not
12 include any independent contractors or other individuals, agencies, or
13 entities not established in or employed by the Office of the Public
14 Defender designated to provide protection and advocacy services to
15 indigent mental hospital admittees or persons with a developmental
16 disability as the term is defined in section 3 of P.L.1977, c.82
17 (C.30:6D-3).

18 "State" shall mean the State and any office, department, division,
19 bureau, board, commission or agency of the State, but shall not
20 include any such entity which is statutorily authorized to sue and be
21 sued. "State" also means the Palisades Interstate Park Commission,
22 but only with respect to employees, property and activities within the
23 State of New Jersey.

24 "Statute" means an act adopted by the Legislature of this State or
25 by the Congress of the United States.
26 (cf: P.L.1994, c.58, s.64)

27
28 5. This act shall take effect on the 30th day following enactment.
29
30

31 STATEMENT

32
33 This bill extends the coverage of the workers' compensation law,
34 R.S.34:15-1 et seq., to any volunteer doing work for the Division of
35 Parks and Forestry, the Division of Fish, Game and Wildlife, the New
36 Jersey Natural Lands Trust or the New Jersey Historic Trust in
37 activities authorized by the Commissioner of Environmental
38 Protection.

39 The bill provides that these volunteers will be entitled to the
40 maximum level of compensation authorized by the workers'
41 compensation law. In addition, the bill provides that benefits shall not
42 be paid to any claimant who has another single source of injury or
43 death benefits that provides the claimant with an amount of
44 compensation that exceeds the compensation available to the claimant
45 under the workers' compensation law.

46 The bill also extends the coverage of the "New Jersey Tort Claims

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1 Act," N.J.S.59:1-1 et seq., to these volunteers. This will limit the
2 liability of these volunteers during their period of voluntary service to
3 the liability established for regular service of public employees covered
4 by the "New Jersey Tort Claims Act."

5

6

7

8

9 Provides workers' compensation coverage for certain DEP volunteers.

Aa 264

P.L. 1997, CHAPTER 199, approved August 14, 1997
Senate, No. 128

1 AN ACT providing workers' compensation for certain volunteers and
2 amending R.S.34:15-10, R.S.34:15-43, R.S.34:15-75 and
3 N.J.S.59:1-3.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. R.S.34:15-10 is amended to read as follows:

9 34:15-10. In the employment of minors, this article shall be
10 presumed to apply unless the notice be given by or to the parent or
11 guardian of the minor. If the injured employee at the time of the
12 accident or compensable occupational disease is a minor under 14
13 years of age employed in violation of the labor law or a minor between
14 14 and 18 years of age employed, permitted or suffered to work
15 without an employment certificate or special permit if required by law
16 or at an occupation prohibited at the minor's age by law, a
17 compensation or death benefit shall be payable to the employee or his
18 dependents which shall be double the amount payable under the
19 schedules provided in R.S.34:15-12 and R.S.34:15-13.

20 The possession of such duly issued employment certificate shall be
21 conclusive evidence for an employer that the minor has reached the
22 age certified to therein and no extra compensation shall be payable to
23 any minor engaged in an employment allowed by the law for the age
24 and sex certified to in such certificate. If the certificate presented by
25 the employee as one issued to that person shall have been really issued
26 to another child and the real age of the employee shall be such that
27 employment in any capacity or in the particular capacity the employee
28 was employed by the employer was prohibited and if the employer
29 shall show to the satisfaction of the Division of Workers'
30 Compensation that the employer accepted the certificate in good faith
31 as having been issued to the employee and could not have, despite
32 reasonable diligence, discovered the fraud, in such event no extra
33 compensation shall be paid to the employee illegally employed.

34 The employer alone and not the insurance carrier shall be liable for

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not
enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

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1 the extra compensation or death benefit which is over and above the
2 amount of the compensation or death benefit provided under
3 R.S.34:15-12 or R.S.34:15-13. Any provision in an insurance policy
4 undertaking to relieve an employer from the liability for the extra
5 compensation or extra death benefit shall be void.

6 Nothing in this chapter contained shall deprive an infant under the
7 age of 18 years of the right or rights now existing to recover damages
8 in a common law or other appropriate action or proceeding for injuries
9 received by reason of the negligence of his or her master.

10 Nothing in this section regarding the payment of a compensation or
11 death benefit in double the amount payable under the schedules
12 provided in R.S.34:15-12 and R.S.34:15-13 shall apply to: members
13 of a junior firemen's auxiliary established pursuant to [P.L.1968, c.309
14 (C.40:47-30.6 et seq.)] ~~N.J.S.40A:14-95~~; employees, of the age of 18
15 years or under, employed in summer camps operated by the Boy
16 Scouts of America, the Girl Scouts of America, the Knights of
17 Columbus, the Young Men's Christian Association, the Young
18 Women's Christian Association, the Young Men's Hebrew Association,
19 or any domestic corporation organized solely for religious or
20 charitable purposes; student-learners employed in a cooperative
21 vocational education program approved by the State Board of
22 Education; [or] persons, 18 years of age or younger, participating,
23 under the supervision of the Palisades Interstate Park Commission, in
24 volunteer programs in that part of the Palisades Interstate Park located
25 in New Jersey, or persons, 18 years of age or younger, doing volunteer
26 work for the Division of Parks and Forestry, the Division of Fish,
27 Game and Wildlife, the New Jersey Natural Lands Trust or the New
28 Jersey Historic Trust, as authorized by the Commissioner of
29 Environmental Protection.
30 (cf. P.L.1987, c.259, s 2)

31
32 2. R.S.34:15-43 is amended to read as follows:
33 34:15-43. Every officer, appointed or elected, and every employee
34 of the State, county, municipality or any board or commission, or any
35 other governing body, including boards of education, and governing
36 bodies of service districts, individuals who are under the general
37 supervision of the Palisades Interstate Park Commission and who work
38 in that part of the Palisades Interstate Park which is located in this
39 State, and also each and every member of a volunteer fire company
40 doing public fire duty and also each and every active volunteer, first
41 aid or rescue squad worker, including each and every authorized
42 worker who is not a member of the volunteer fire company within
43 which the first aid or rescue squad may have been created, doing
44 public first aid or rescue duty under the control or supervision of any
45 commission, council, or any other governing body of any municipality,
46 any board of fire commissioners of such municipality or of any fire

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1 district within the State, or of the board of managers of any State
2 institution, every county fire marshal and assistant county fire marshal,
3 every special, reserve or auxiliary policeman doing volunteer public
4 police duty under the control or supervision of any commission,
5 council or any other governing body of any municipality [and] every
6 emergency management volunteer doing emergency management
7 service for the State and any person doing volunteer work for the
8 Division of Parks and Forestry, the Division of Fish, Game and
9 Wildlife, the New Jersey Natural Lands Trust or the New Jersey
10 Historic Trust, as authorized by the Commissioner of Environmental
11 Protection, who may be injured in line of duty shall be compensated
12 under and by virtue of the provisions of this article and article 2 of this
13 chapter (R.S.34:15-7 et seq.). No former employee who has been
14 retired on pension by reason of injury or disability shall be entitled
15 under this section to compensation for such injury or disability;
16 provided, however, that such employee, despite retirement, shall,
17 nevertheless, be entitled to the medical, surgical and other treatment
18 and hospital services as set forth in R.S.34:15-15.

19 Benefits available under this section to emergency management
20 volunteers and volunteers participating in activities of the Division of
21 Parks and Forestry, the Division of Fish, Game and Wildlife, the New
22 Jersey Natural Lands Trust or the New Jersey Historic Trust, shall not
23 be paid to any claimant who has another single source of injury or
24 death benefits that provides the claimant with an amount of
25 compensation that exceeds the compensation available to the claimant
26 under R.S.34:15-1 et seq.

27 As used in this section, the terms "doing public fire duty" and "who
28 may be injured in line of duty," as applied to members of volunteer fire
29 companies, county fire marshals or assistant county fire marshals, and
30 the term "doing public first aid or rescue duty," as applied to active
31 volunteer first aid or rescue squad workers, shall be deemed to include
32 participation in any authorized construction, installation, alteration,
33 maintenance or repair work upon the premises, apparatus or other
34 equipment owned or used by the fire company or the first aid or rescue
35 squad, participation in any authorized public drill, showing, exhibition,
36 fund raising activity or parade, and to include also the rendering of
37 assistance in case of fire and, when authorized, in connection with
38 other events affecting the public health or safety, in any political
39 subdivision or territory of another state of the United States or on
40 property ceded to the federal government while such assistance is
41 being rendered and while going to and returning from the place in
42 which it is rendered.

43 Also, as used in this section, "doing public police duty" and "who
44 may be injured in line of duty" as applied to special, reserve or
45 auxiliary policemen, shall be deemed to include participation in any
46 authorized public drill, showing, exhibition or parade, and to include

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1 also the rendering of assistance in connection with other events
2 affecting the public health or safety in the municipality, and also, when
3 authorized, in connection with any such events in any political
4 subdivision or territory of this or any other state of the United States
5 or on property ceded to the federal government while such assistance
6 is being rendered and while going to and returning from the place in
7 which it is rendered.

8 As used in this section, the terms "doing emergency management
9 service" and "who may be injured in the line of duty" as applied to
10 emergency management volunteers mean participation in any activities
11 authorized pursuant to P.L.1942, c.251 (C.App. A:9-33 et seq.),
12 except that the terms shall not include activities engaged in by a
13 member of an emergency management agency of the United States
14 Government or of another state, whether pursuant to a mutual aid
15 compact or otherwise.

16 Every member of a volunteer fire company shall be deemed to be
17 doing public fire duty under the control or supervision of any such
18 commission, council, governing body, board of fire commissioners or
19 fire district or board of managers of any State institution within the
20 meaning of this section, if such control or supervision is provided for
21 by statute or by rule or regulation of the board of managers or the
22 superintendent of such State institution, or if the fire company of
23 which he is a member receives contributions from, or a substantial part
24 of its expenses or equipment are paid for by, the municipality, or board
25 of fire commissioners of the fire district or if such fire company has
26 been or hereafter shall be designated by ordinance as the fire
27 department of the municipality.

28 Every active volunteer, first aid or rescue squad worker, including
29 every authorized worker who is not a member of the volunteer fire
30 company within which the first aid or rescue squad may have been
31 created, shall be deemed to be doing public first aid or rescue duty
32 under the control or supervision of any such commission, council,
33 governing body, board of fire commissioners or fire district within the
34 meaning of this section if such control or supervision is provided for
35 by statute, or if the first aid or rescue squad of which he is a member
36 or authorized worker receives or is eligible to receive contributions
37 from, or a substantial part of its expenses or equipment are paid for by,
38 the municipality, or board of fire commissioners of the fire district, or
39 if such first aid or rescue squad has been or hereafter shall be
40 designated by ordinance as the first aid or rescue squad of the
41 municipality.

42 As used in this section and in R.S.34:15-74, the term "authorized
43 worker" shall mean and include, in addition to an active volunteer
44 fireman and an active volunteer first aid or rescue squad worker, any
45 person performing any public fire duty or public first aid or rescue
46 squad duty, as the same are defined in this section, at the request of

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1 the chief or acting chief of a fire company or the president or person
2 in charge of a first aid or rescue squad for the time being.

3 Nothing herein contained shall be construed as affecting or
4 changing in any way the provisions of any statute providing for sick,
5 disability, vacation or other leave for public employees or any
6 provision of any retirement or pension fund provided by law.
7 (cf: P.L.1995, c.383, s.1)

8

9 3. R.S.34:15-75 is amended to read as follows:

10 34:15-75. Compensation for injury and death, either or both, of any
11 volunteer fireman, county fire marshal, assistant county fire marshal,
12 volunteer first aid or rescue squad worker, volunteer driver of any
13 municipally-owned or operated ambulance, forest fire warden or forest
14 fire fighter employed by the State of New Jersey, member of a board
15 of education, special reserve or auxiliary policeman doing volunteer
16 public police duty under the control or supervision of any commission,
17 council or any other governing body of any municipality, [or]
18 emergency management volunteer doing emergency management
19 service, or any volunteer worker for the Division of Parks and
20 Forestry, the Division of Fish, Game and Wildlife, the New Jersey
21 Natural Lands Trust or the New Jersey Historic Trust, shall be based
22 upon a weekly salary or compensation conclusively presumed to be
23 received by such person in an amount sufficient to entitle him, or, in
24 the event of his death, his dependents, to receive the maximum
25 compensation by this chapter authorized.
26 (cf: P.L.1995, c.383, s.3)

27

28 4. N.J.S.59:1-3 is amended to read as follows:

29 59:1-3. Definitions. As used in this subtitle:

30 "Employee" includes an officer, employee, or servant, whether or
31 not compensated or part-time, who is authorized to perform any act
32 or service; provided, however, that the term does not include an
33 independent contractor.

34 "Employment" includes office; position; employment; or service,
35 under the supervision of the Palisades Interstate Park Commission, in
36 a volunteer program in that part of the Palisades Interstate Park
37 located in New Jersey, [or] as an emergency management volunteer
38 or as a volunteer doing work for the Division of Parks and Forestry,
39 the Division of Fish, Game and Wildlife, the New Jersey Natural Lands
40 Trust or the New Jersey Historic Trust, as authorized by the
41 Commissioner of Environmental Protection.

42 "Enactment" includes a constitutional provision, statute, executive
43 order, ordinance, resolution or regulation.

44 "Injury" means death, injury to a person, damage to or loss of
45 property or any other injury that a person may suffer that would be
46 actionable if inflicted by a private person.

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1 "Law" includes enactments and also the decisional law applicable
2 within this State as determined and declared from time to time by the
3 courts of this State and of the United States.

4 "Public employee" means an employee of a public entity, and
5 includes: a person participating, under the supervision of the Palisades
6 Interstate Park Commission, in a volunteer program in that part of the
7 Palisades Interstate Park located in New Jersey; a volunteer doing
8 work for the Division of Parks and Forestry, the Division of Fish,
9 Game and Wildlife, the New Jersey Natural Lands Trust or the New
10 Jersey Historic Trust, as authorized by the Commissioner of
11 Environmental Protection; and any person retained by the public
12 defender to serve as an arbitrator, mediator, or in such similar
13 capacity. "Public employee" does not include any independent
14 contractors or other individuals, agencies, or entities not established
15 in or employed by the Office of the Public Defender designated to
16 provide protection and advocacy services to indigent mental hospital
17 admittees or persons with a developmental disability as the term is
18 defined in section 3 of P.L. 1977, c. 82 (C. 30:6D-3).

19 "Public entity" includes the State, and any county, municipality,
20 district, public authority, public agency, and any other political
21 subdivision or public body in the State. "Public entity" does not
22 include any independent contractors or other individuals, agencies, or
23 entities not established in or employed by the Office of the Public
24 Defender designated to provide protection and advocacy services to
25 indigent mental hospital admittees or persons with a developmental
26 disability as the term is defined in section 3 of P.L. 1977, c. 82
27 (C. 30:6D-3).

28 "State" shall mean the State and any office, department, division,
29 bureau, board, commission or agency of the State, but shall not
30 include any such entity which is statutorily authorized to sue and be
31 sued. "State" also means the Palisades Interstate Park Commission,
32 but only with respect to employees, property and activities within the
33 State of New Jersey.

34 "Statute" means an act adopted by the Legislature of this State or
35 by the Congress of the United States.

36 (cf. P.L. 1995, c. 383, s. 4)

37

38 5. This act shall take effect on the 30th day following enactment.
39

40

41

42

43

44 Provides workers' compensation coverage for certain DEP volunteers.

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34.15-10

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

NJSA: 34:15-10 (Workers compensation--volunteers)

LAWS OF: 1997 CHAPTER: 199

BILL NO: S128

SPONSOR(S): Kyrillos

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Labor; Appropriations

SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: June 27, 1997

SENATE: May 16, 1996

DATE OF APPROVAL: August 14, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes 9-19-96 & 3-20-97

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

KBP:pp

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ASSEMBLY, No. 1309

STATE OF NEW JERSEY

INTRODUCED JANUARY 19, 1976

By Assemblymen JACKMAN and PELLECCCHIA

Referred to Committee on Labor, Industry and Professions

AN ACT concerning workmen's compensation and amending R. S.
34:15-29.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. R. S. 34:15-29 is amended to read as follows:

2 34:15-29. The right of compensation granted by this chapter
3 shall have the same preference against the assets of the employer
4 as is now or may hereafter be allowed by law for a claim for unpaid
5 wages for labor. Claims or payments due under this chapter shall
6 not be assignable, and shall be exempt from all claims of creditors
7 and from levy, execution or attachment, *and shall not be set off*
8 *or deducted from pension benefits or payments.*

1 2. This act shall take effect immediately.

STATEMENT

There are certain labor contracts and pension plans that provide for a deduction of workmen's compensation payments from monthly pension benefits. This practice is contrary to the basic purposes of the Workmen's Compensation Act and should be prohibited by law. This bill would provide such prohibition.

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Aa 272

ASSEMBLY LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1309

STATE OF NEW JERSEY

DATED: MAY 27, 1976

The statement appended to and printed with the bill adequately explains its provisions. This legislation may have been partially prompted in response to a 1959 New Jersey Supreme Court case, *Renshaw v. U.S. Pipe and Foundry Co.*, wherein a retired employee brought an action in which he demanded by way of money damages, all monthly pension benefits since his employer stopped making such payments (due to contractually permitted deductions of workmen's compensation payments). The plaintiff charged that such a provision, in effect, allows the employer to recoup the amount paid the employee for compensation contrary to the only method permitted under the statute. The court declared that, in the absence of a legislative expression of public policy . . . the pension plan provision permitting such reduction of payments after retirement was not invalid.

The New Jersey AFL-CIO supported the bill and the New Jersey Manufacturers stood in opposition.

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ASSEMBLY LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1309

STATE OF NEW JERSEY

DATED: MAY 27, 1976

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[SENATE REPRINT]

ASSEMBLY, No. 1309

with Senate amendment adopted April 28, 1977

STATE OF NEW JERSEY

INTRODUCED JANUARY 19, 1976

By Assemblymen JACKMAN and PELLECCCHIA

Referred to Committee on Labor, Industry and Professions

AN ACT concerning workmen's compensation and amending R. S.
34:15-29.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. R. S. 34:15-29 is amended to read as follows:

2 34:15-29. The right of compensation granted by this chapter
3 shall have the same preference against the assets of the employer
4 as is now or may hereafter be allowed by law for a claim for unpaid
5 wages for labor. Claims or payments due under this chapter shall
6 not be assignable, and shall be exempt from all claims of creditors
7 and from levy, execution or attachment***[** *and shall not be set off*
8 *or deducted from pension benefits or payments]** *The right of*
9 *compensation granted by this chapter may be set off against dis-*
10 *ability pension benefits or payments but shall not be set off against*
11 *employees' retirement pension benefits or payments.**

1 2. This act shall take effect immediately.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

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SENATE AMENDMENT TO
ASSEMBLY, No. 1309

STATE OF NEW JERSEY

ADOPTED APRIL 28, 1977

Amend page 1, section 1, line 7, after the word "attachment", delete
", and shall not be set off or deducted from pension benefits or pay-
ments", and add the following sentence, "The right of compensation
granted by this chapter may be set off against disability pension
benefits or payments but shall not be set off against employees' retire-
ment pension benefits or payments."

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FROM THE OFFICE OF THE GOVERNOR

JULY 14, 1977

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

ANNE BURNS

Governor Brendan Byrne today signed into law S-3177, sponsored by Senator Joseph P. Merlino, D-Mercer, which supplements the Appropriations Act for FY 1978.

The bill appropriates a total of \$18,331,000. Of this, \$14,331,000 will be used to provide normal merit increments for state employees. The other \$4 million will be used to fund Veterans Education Benefits under P.L. 1975, c.356.

The Veterans Education Benefits grant tuition credits to veterans for study at colleges, graduate schools, professional and vocational schools.

Governor Brendan Byrne today also signed into law A-1309 sponsored by Assemblyman Christopher J. Jackman, D-Hudson, which amends R.S. 34:15-29.

The bill provides that worker's compensation payments may be deducted from disability pension benefits or payments but they may not be deducted from an employee's retirement pension benefits or payments.

Prior to this amendment, a worker who was disabled and then retired could have his retirement pension payments decreased by the amount of his workmen's compensation benefits.

The Division of Pensions estimates that when applied to public pension plans, this bill will affect about three cases each month at an average annual cost of approximately \$108,000.

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Interested Persons see Inside Front Cover

(a)

DIVISION OF PENSIONS AND BENEFITS**Workers' Compensation Reductions****Proposed Repeal and New Rule: N.J.A.C. 17-1-4.32**

Authorized By: Margaret M. McMahon, Director, Division of Pensions and Benefits.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1994-319.

Submit comments by July 6, 1994, to:

Peter J. Gorman, Esq.

Executive Assistant

Division of Pensions and Benefits

CN 295

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed repeal and new rule changes the present practice of permanent retirement allowance reductions based upon the present value retirement annuity factor in favor of a dollar-for-dollar reduction in the pension portion of the allowance over the period of the workers' compensation award. The Division's actuaries have indicated that this would be consistent with industry practice.

Under present practice, workers' compensation offsets are prospective in nature, that is, any workers' compensation benefits the retiree received prior to the date the Division received notice of the award serve to reduce future pension benefits. The proposed amendment would require Division personnel to collect any pension overpayment resulting from workers' compensation benefits received by the retiree prior to the date the pension offset is effected; however, the pensioner is spared the effect of a lifetime reduction in pension benefits.

Additionally, proposed new rule will base the pension adjustments or cost of living adjustments on the full retirement allowance rather than the reduced allowance created by the workers' compensation offset.

Finally, the proposed new rule will apply future actuarial reductions only in accidental disability cases.

Social Impact

The proposed new rule may affect disability retirants from the State-administered retirement systems who have been granted workers' compensation awards and are having their State-administered monthly retirement allowances reduced as a result of the receipt of the workers' compensation award.

At present, public employment pensioners who retire under the several disability retirement provisions of the statutes and thereafter receive workers' compensation payments relating to that public employment receive lifetime reductions in their pension benefits as a result. Further, in the case of retirees of the Public Employee's Retirement System and the Teachers' Pension and Annuity Fund, those reductions are passed onto the pension beneficiaries at the pensioners' death. The proposed amendments limit future pension reductions resulting from the receipt of workers' compensation benefits to only those individuals retiring under the accidental disability provisions of the statutes, and eliminate reductions for pension beneficiaries.

Economic Impact

The proposed new rule would benefit current disability retirants from the State-administered retirement systems who have received workers' compensation awards and are having their monthly retirement allowances reduced as a result. In some cases, the lifetime actuarial reductions have caused some disability retirants to suffer economically an amount in excess of their actual workers' compensation award. Although the proposed new rule might result in an additional cost to the retirement systems, it does not appear to be a significant, adverse economic loss.

The proposed amendments permit COLA payments to be calculated on the full retirement allowance instead of the reduced allowance resulting from the workers' compensation offset. Further, upon the pensioner's death, pension option beneficiaries would receive the full retirement option allowance rather than a reduced allowance derived from the pensioner's reduced allowance.

The proposed amendments will also alter the actuarial method by which the pension reduction due to receipt of workers' compensation benefits is calculated. As an example, we may consider the case of a

PROPOSALS

with lost pension checks. The replacement of the current indemnity requirement with an affidavit of non-receipt should facilitate the check procedure.

Economic Impact

The proposed new rule will not have any significant, adverse economic impact upon the persons who may be affected by the proposal or the persons who ultimately pay for the administration of the retirement system. In fact, the persons involved with such lost checks will most likely experience an economic benefit but not be required to pay for an indemnity bond while the system will still be protected by the member's execution of an affidavit that the check involved was not cashed by the member.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rule and new rule does not impose reporting, recordkeeping or other compliance requirements upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule concerns the processing of lost check claims made by retirees or other payees on the Division of Pensions and Benefits.

The text of the proposed repeal and new rule follows (additions are indicated in boldface thus; deletions indicated in brackets [thus]):

16 Lost pension checks

(a) Upon receiving notification that a retirant or other payee has received a particular check for whatever reason, the Division of Pensions and Benefits will send the payee an indemnity bond for completion: On receipt of this advice, the Division will, 14 days after the check date, send a stop payment order to the bank on which the check was drawn; however, if theft is alleged, a stop payment order shall be sent to the bank immediately.

Upon receipt of the completed bond and the receipt of an acknowledgment from the bank of the "Stop Payment Notice", the Division will issue a replacement check.

If the payee refuses to execute the bond, the procedure set forth in this subsection will be followed but a replacement will not be issued until 90 days after the check date.

(b) The Division of Pensions, upon being notified that the retirant has not received a particular check, will review its cancelled check

file. If the check has been paid, it is examined for signature.

A copy of the check together with a forged check affidavit (if the signature on the Division's record does not properly compare with the signature on check) is to be sent to the retirant.

Upon receipt from the retirant of the properly executed affidavit and issuance of a credit by the bank to the account, a replacement check will be issued.]

(a) Upon receiving notification that a retirant or other payee has received a particular check for whatever reason, the Division of Pensions and Benefits shall send the payee an affidavit of non-receipt for completion.

1. Upon receipt of the affidavit of non-receipt, the Division shall send a stop payment order to the bank upon which the check was drawn. However, if theft is alleged, a stop payment order shall be sent to the bank immediately upon notification of the alleged theft.

2. Upon receipt of an acknowledgment from the bank of the stop payment notice, the Division shall issue a replacement check.

3. If the payee refuses to execute the affidavit, the procedure set forth in this subsection will be followed but a replacement check will not be issued until 90 days after the check date have passed.

(b) The Division of Pensions and Benefits, upon being notified that the retirant has not received a particular check, shall review its canceled check file.

1. If the check has been paid, a copy of the check, together with a forged check affidavit, shall be sent to the retirant.

2. Upon receipt from the retirant of the properly executed affidavit and issuance of a credit by the bank to the account, a replacement check shall be issued.

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55 year old disability retiree who has been awarded a workers' compensation award of \$100.00 a week for 52 weeks (or \$433.33 a month for 12 months) commencing after the date of retirement. The retiree is receiving a retirement allowance of \$700 per month (composed of a pension of \$500.00 plus an annuity of \$200.00). Under the current method, the retirement reserves are considered to be reduced by the value of the total award of \$5,200. This would reduce his retirement allowance by about \$580.00 a year for the rest of his life. Under the proposed method, the pension portion of the retiree's allowance would be offset by \$433.33 a month only for the 12 months' duration of the award, after which time the full allowance would be restored. The proposed amendment would ease the economic hardship disability retirees now face when reduced pension benefits continue after the workers' compensation award has ceased, and would eliminate the penalty to long-lived pensioners who suffer greater pension reductions over time than the total value of the workers' compensation award.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, recordkeeping or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or public employees, the new rule will not have any effect upon small businesses or private industry in general.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

17:1-4.32 Workers' [Compensation: Reduction] compensation; reduction of retirement allowance

(a) In the event the Division receives, subsequent to the date a member has retired, a confirmation that he is in receipt of periodic Workers' Compensation benefits, his allowance shall be reduced.

1. The reduction will be based on the actuarial factors applicable to his age at the time the confirmation is received.

2. The allowance will be reduced to take effect as of the first of the month following the date the confirmation is received.]

(a) A member who retires on an accidental disability retirement under the provisions of the applicable statutes governing the various State-administered retirement systems and who receives periodic benefits under the workers' compensation law after the date of retirement shall be subject to a reduction in the pension portion of his or her retirement allowance in the amount of the periodic benefits received after the date of retirement.

1. The reduction shall be a dollar-for-dollar reduction in the pension portion of the retirement allowance in the amount of the periodic benefits for the time period for which the periodic benefits are received.

2. If an accidental disability retiree receives a retirement allowance without reduction and periodic benefits under the workers' compensation law for any time period after the date of retirement, the retiree shall repay to the retirement system the amount of the pension portion of his or her retirement allowance which should have been subject to reduction under the applicable statute and this rule. The repayment may be in the form of a lump sum payment or scheduled as deductions from the retiree's retirement allowances and pension adjustment benefits, except that, if the retiree does not respond by remitting payment in a lump sum within 60 days, the Division shall establish a repayment schedule. In the event of the death of the retiree before full repayment of the amount required under this rule, the remaining balance shall be deducted from any death benefits payable on behalf of the retiree.

3. The reduction under this rule shall not affect the retiree's pension adjustment benefits or survivor benefits that may be payable upon the death of the retiree.

(b) Any retiree or beneficiary receiving pension adjustment benefits based upon a retirement allowance reduced due to receipt of periodic workers' compensation benefits shall be entitled to receive pension adjustment benefits based upon the full retirement allowance.

(a)

**DIVISION OF PENSIONS AND BENEFITS
State Health Benefits Commission
Voluntary Furlough Program; Continued Coverage
Proposed Amendments: N.J.A.C. 17:9-4.2, 8.3 and 9.1**

Authorized By: State Health Benefits Commission,
Patricia A. Chiacchio, Acting Secretary.
Authority: N.J.S.A. 52:14-17.27 et seq.
Proposal Number: PRN 1994-253.

Submit comments by July 6, 1994 to:

Peter J. Gorman, Esq.
Executive Assistant
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments provide for continued coverage for core benefits, State prescription drug program and State Employees' dental expense program regarding persons participating in the State's voluntary furlough program, as authorized by P.L. 1993, c.297. The continued coverage requires advance payments of the appropriate charges, if any.

Social Impact

The proposed amendments may positively affect present and future participants in the State's voluntary furlough program who wish to continue his or her core benefits, State prescription drug program and State employees' dental expense program during the periods of such voluntary furloughs, by providing for continuing coverage, with the employee remitting, in advance, any required employee contribution.

Economic Impact

The proposed amendments will require payments from the participants for the cost of their contributions to continued coverage during voluntary furloughs, but, in return, they will receive health benefits coverage during their periods of voluntary furlough. The proposed amendments should not have a significant, adverse economic effect upon the State, since the participants will not be paying for their continued coverage themselves, but only for their contributions, if any.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or public employees, the amendments will not have any effect upon small businesses or private industry in general.

Full text of the proposal follows (additions indicated in boldface thus):

17:9-4.2 State; full-time defined

(a) (No change.)

(b) Where the otherwise eligible employee elects a voluntary furlough, as authorized by P.L. 1993, c.297, coverage shall continue with the employer paying the costs as if the member were an active employee, provided that the employee remits in advance to the employer the amount required, if any, as the employee's contribution for coverage.

17:9-8.3 Termination; effective date

(a) (No change.)

(b) Eligibility shall be terminated as follows:

1.-5. (No change.)

6. Where the otherwise eligible employee elects a voluntary furlough, as authorized by P.L. 1993, c.297, coverage shall continue with the employer paying the costs as if the member were an active employee.

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2. Upon receipt of an acknowledgment from the bank of the stop payment notice, the Division shall issue a replacement check.
3. If the payee refuses to execute the affidavit, the procedure set forth in this subsection will be followed but a replacement check will not be issued until 90 days after the check date have passed.
 - (b) The Division of Pensions and Benefits, upon being notified that the retirant has not received a particular check, shall review its canceled check file.
 1. If the check has been paid, a copy of the check, together with a forged check affidavit, shall be sent to the retirant.
 2. Upon receipt from the retirant of the properly executed affidavit and issuance of a credit by the bank to the account, a replacement check shall be issued.

(a)

DIVISION OF PENSIONS AND BENEFITS Workers' Compensation Reductions

Adopted Repeal and New Rule: N.J.A.C. 17:1-4.32

Proposed: June 6, 1994 at 26 N.J.R. 2201(a).

Adopted: July 19, 1994 by Margaret M. McMahon, Director,
Division of Pensions and Benefits.

Filed: July 25, 1994 as R.1994 d.424, without change.

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: August 15, 1994.

Expiration Date: May 1, 1998.

Summary of Public Comments and Agency Responses:

Written comment was received from Jonus Reilly, Director of Research and Economic Services, New Jersey Education Association, as follows:

"We feel that changing the system to provide a dollar-for-dollar offset for workers' compensation benefits is a major improvement over the current system of highly unpredictable life actuarial reductions. We have two questions:

1. The actual language discusses only accidental disability retirements and seems to provide only dollar-for-dollar offsets. The description suggests in the last sentence of the summary that some kind of actuarial reduction will apply to accidental disability retirements. We are thus somewhat confused about whether there will still be some kind of actuarial reduction applying to accidental disability retirements.
2. There is no specific mention of ordinary disability. Are ordinary disabilities thus exempt from offsets?

If there are to be no offsets for ordinary disability, and only dollar-for-dollar offsets for accidental disability, the code should so state explicitly."

RESPONSE: The statutes governing the various retirement systems permit members to retire while receiving periodic Workers' Compensation benefits. In this event the pension portion of the retirement allowance is subject to reduction as a result of the Workers' Compensation award. N.J.S.A. 18A:66-32.1 stipulates that "the actuarial equivalent of such periodic benefits remaining to be paid shall be computed and will serve to reduce the pension portion of the retirement allowance payable to the retirant..." The statute, therefore, mandates some form of actuarial reduction.

In the past the Division of Pensions and Benefits employed two methods of actuarial reduction to offset disability retirement allowances when retirees received periodic Workers' Compensation benefits. The most common offset involved the use of the present value disability retirement annuity tables to calculate the reduction. This method of calculation was employed whenever the total value of the Workers' Compensation award was known. The result was a lifetime reduction in the pension portion of the retiree's allowance. In those few cases when the termination date of the compensation award was unknown, the pension portion of the monthly retirement allowance was reduced on a dollar-for-dollar basis by the monthly amount of the periodic Workers' Compensation payment received by the retiree. If and when a termination date for the award became available, the reduction calculation was revised to employ the disability retirement annuity tables.

This second method (the dollar-for-dollar reduction) was still considered to be a form of actuarial reduction as required by the statute. The Division is proposing that this second method be utilized in all future

calculations of allowance reductions resulting from the payment of periodic Workers' Compensation benefits after retirement.

The Division's former use of the present value disability retirement annuity tables to calculate the retirement allowance reduction had the advantage of administrative ease and usually resulted in a lesser monthly reduction than would be achieved from a dollar-for-dollar offset. The lifetime nature of the reduction disadvantaged long-lived pensioners, who over time, lost more in retirement allowance reductions than they received from the Workers' Compensation award. Further, the lifetime reductions caused some pensioners economic hardship because the reduction in the retirement allowance continued even though the pensioner was no longer receiving any periodic Workers' Compensation benefit. The Division believes the proposed method of actuarial reduction will be more equitable to its pensioners.

The proposed rule details the method of future calculations for actuarial reductions due to Workers' Compensation awards for individuals who are retired under the accidental disability retirement provisions of the statutes. Reductions for ordinary disability retirements were deliberately omitted as the Division does not intend to calculate future Workers' Compensation reductions in cases other than accidental disability retirements. While there is a readily apparent link between compensable injury under Workers' Compensation law and the statutes governing accidental disability retirement, the Division believes there is no inherent link between the ordinary disability statutes (which require applicants to meet certain years of service standards) and Workers' Compensation benefits.

Full text of the adoption follows:

17:1-4.32 Workers' compensation; reduction of retirement allowance

(a) A member who retires on an accidental disability retirement under the provisions of the applicable statutes governing the various State-administered retirement systems and who receives periodic benefits under the workers' compensation law after the date of retirement shall be subject to a reduction in the pension portion of his or her retirement allowance in the amount of the periodic benefits received after the date of retirement.

1. The reduction shall be a dollar-for-dollar reduction in the pension portion of the retirement allowance in the amount of the periodic benefits for the time period for which the periodic benefits are received.

2. If an accidental disability retiree receives a retirement allowance without reduction and periodic benefits under the workers' compensation law for any time period after the date of retirement, the retiree shall repay to the retirement system the amount of the pension portion of his or her retirement allowance which should have been subject to reduction under the applicable statute and this rule. The repayment may be in the form of a lump sum payment or scheduled as deductions from the retiree's retirement allowances and pension adjustment benefits, except that, if the retiree does not respond by remitting payment in a lump sum within 60 days, the Division shall establish a repayment schedule. In the event of the death of the retiree before full repayment of the amount required under this rule, the remaining balance shall be deducted from any death benefits payable on behalf of the retiree.

3. The reduction under this rule shall not affect the retiree's pension adjustment benefits or survivor benefits that may be payable upon the death of the retiree.

(b) Any retiree or beneficiary receiving pension adjustment benefits based upon a retirement allowance reduced due to receipt of periodic workers' compensation benefits shall be entitled to receive pension adjustment benefits based upon the full retirement allowance.

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Social Security Administration
Retirement, Survivors and Disability Insurance
Notice of Award

Office of Central Operations
1500 Woodlawn Drive
Baltimore, Maryland 21241-1500
Date: June 30, 2001
Claim Number: 135-68-6441HA

TAMI M FOX-ROSALES
56 GLADNEY AVE
TOMS RIVER, NJ 08753

You are entitled to monthly disability benefits beginning May 2000.

The Date You Became Disabled

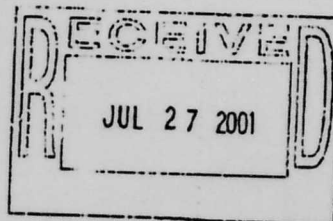
We found that you became disabled under our rules on November 5, 1999.

However, you have to be disabled for 5 full calendar months in a row before you can be entitled to benefits. For these reasons, your first month of entitlement to benefits is May 2000.

What We Will Pay And When

- You will receive \$734.00 for July 2001 around August 22, 2001.
- After that you will receive \$734.00 on or about the fourth Wednesday of each month.
- These and any future payments will go to the financial institution you selected. Please let us know if you change your mailing address, so we can send you letters directly.
- Later in this letter, we will show you how we figured these amounts.

The day we make payments on this record is based on your date of birth.



See Next Page

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Your Benefits

The following chart shows your benefit amount(s) before any deductions or rounding. The amount you actually receive(s) may differ from your full benefit amount. When we figure how much to pay you, we must deduct certain amounts, such as Medicare premiums. We must also round down to the nearest dollar.

Beginning Date	Benefit Amount	Reason
May 2000	\$708.80	Entitlement began
December 2000	\$733.60	Cost-of-living adjustment
July 2001	\$734.30	Cost-of-living adjustment

Other Government Payments Affect Benefits

We are holding your Social Security benefits for May 2000 through June 2001. We may have to reduce these benefits if you received Supplemental Security Income (SSI) for this period. We will not reduce your past-due benefits if you did not get SSI benefits for those months.

However, we will withhold part of any past-due benefits to pay your lawyer. Later in this letter, we will tell you more about the money we are withholding to pay your lawyer. When we decide how much you are due for this period, we will send you another letter.

Information About Lawyer's Fees

We have approved the fee agreement between you and your lawyer.

Your past-due benefits are \$9,354.00 for May 2000 through May 2001. Under the fee agreement, the lawyer cannot charge you more than \$2,338.50 for his or her work. The amount of the fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' reports). This is a matter between you and the lawyer.

If we approve your claim for SSI, the lawyer may be able to charge an additional amount for his or her work. We will send you another letter about SSI telling you the additional amount of the fee, if any, he or she can charge.

How To Ask Us To Review The Determination On The Fee Amount

You, the lawyer or the person who decided your case can ask us to review the amount of the fee we say the lawyer can charge.

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If you think the amount of the fee is too high, write us within 15 days from the day you get this letter. Tell us that you disagree with the amount of the fee and give your reasons. Send your request to this address:

Social Security Administration
Office of Hearings and Appeals
Attorney Fee Branch
5107 Leesburg Pike
Falls Church, Virginia 22041-3255

The lawyer also has 15 days to write us if he or she thinks the amount of the fee is too low.

If we do not hear from you or the lawyer, we will assume you both agree with the amount of the fee shown.

Information About Past-Due Benefits Withheld To Pay A Lawyer

Because of the law, we usually withhold 25 percent of the total past-due benefits to pay an approved lawyer's fee. We withheld \$2,338.50 from your past-due benefits to pay the lawyer.

We are paying the lawyer from the benefits we withheld. Therefore, we must collect from the lawyer a service charge of 6.3 percent of the fee amount we pay. We will subtract the service charge from the amount payable to the lawyer. This means that we subtract \$147.33 from the \$2,338.50 we are paying toward the lawyer's fee, and send him or her \$2,191.17.

The lawyer cannot ask you to pay for the service charge. If the lawyer disagrees with the amount of the service charge, he or she must write to the address shown at the top of this letter. The lawyer must tell us why he or she disagrees within 15 days from the day he or she gets this letter.

Other Social Security Benefits

The benefit described in this letter is the only one you can receive from Social Security. If you think that you might qualify for another kind of Social Security benefit in the future, you will have to file another application.

Your Responsibilities

The decisions we made on your claim are based on information you gave us. If this information changes, it could affect your benefits. For this reason, it is important that you report changes to us right away.

We have enclosed a pamphlet, "When You Get Social Security Disability Benefits...What You Need To Know." It will tell you what must be reported and how to report. Please be sure to read the parts of the pamphlet which explain what to do if you go to work or if your health improves.

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A state or other public or private vocational rehabilitation provider may contact you to talk about their services. The rehabilitation provider may offer you counseling, training, and other services that may help you go to work. To keep getting disability benefits, you have to accept the services offered unless we decide you have a good reason for not accepting.

You do not have to wait to be contacted about vocational rehabilitation services. You can contact the nearest state vocational rehabilitation office directly and let them know that you are interested in receiving services.

If you go to work, special rules can allow us to continue your cash payments and health insurance coverage. For more information about how work and earnings may affect disability benefits, you may call or visit any Social Security office. You may wish to ask for any of the following publications:

- Social Security - Working While Disabled...How We Can Help (SSA Publication No. 05-10095).
- Social Security - If You Are Blind--How We Can Help (SSA Publication No. 05-10052).
- How Social Security Can Help With Vocational Rehabilitation (SSA Publication No. 05-10050).

Other Information

We are sending a copy of this notice to JAMES J D'ALESSANDRO and JOHN MARUT.

Do You Disagree With The Decision?

This action supersedes our previous determination and is in accordance with the decision on your hearing request. You have already been notified of your appeal rights regarding the decision made on your hearing request and what you must do to have that decision reexamined. If you want this reconsideration, you may request it through any Social Security office. If additional evidence is available, you should submit it with your request. We will review the case and consider any new facts you have. A person who did not make the first decision will decide your case. We will correct any mistakes. We will review those parts of the decision which you believe are wrong and will look at any new facts you have. We may also review those parts which you believe are correct and may make them unfavorable or less favorable to you.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to sign a Form SSA-561-U2, called "Request for Reconsideration". Contact one of our

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offices if you want help.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim". It contains more information about the appeal.

Things To Remember For The Future

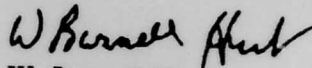
Doctors and other trained staff decided that you are disabled under our rules. But, this decision must be reviewed at least once every 3 years. We will send you a letter before we start the review. Based on that review, your benefits will continue if you are still disabled, but will end if you are no longer disabled.

If You Have Any Questions

We invite you to visit our website at www.ssa.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-732-244-5737. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
190 ST CATHERINE BLVD
TOMS RIVER, NJ 08755

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.



W. Burnell Hurt
Associate Commissioner for
Central Operations

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PAYMENT SUMMARY

Your Regular Monthly Payment

Here is how we figured your regular monthly payment effective July 2001:

You are entitled to a monthly benefit of	\$	734.30
Amount we subtracted because of		
• rounding (we must round down to a whole dollar)30
This equals the amount of your regular monthly payment	\$	734.00

Ac 285

A 2110-02T3

Superior Court of New Jersey

FILED
APPELLATE DIVISION
OCT 14 2003
Clerk

APPELLATE DIVISION

DOCKET NO. A-002110-02T3

A. TS

TAMI ROSALES,
 Petitioner-Respondent
 v.
 STATE OF NEW JERSEY
 DEPT. OF THE JUDICIARY,
 Respondent-Appellant
 v.
 THE SECOND INJURY FUND,
 Respondent-Respondent

CIVIL ACTION

ON APPEAL FROM

DIVISION OF WORKERS'
COMPENSATION, TOMS RIVER
C.P. Nos. 99-7099, 95-34296

SAT BELOW

HON. LAWRENCE G. MONCHER
JUDGE OF COMPENSATION

RECEIVED
APPELLATE DIVISION

SEP 18 2003

BRIEF ON BEHALF OF
PETITIONER-RESPONDENT TAMI ROSALES

SUPERIOR COURT
OF NEW JERSEY

FRANK S. SALZER, ESQ.
611 Main St., P.O. Box 4806
Toms River, NJ 08754
(732) 240-4215

ATTORNEY(S) FOR PETITIONER-RESPONDENT

FRANK S. SALZER, ESQ.
Of Counsel and On the Brief

THOMAS W. POLASKI, ESQ.
On the Brief

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PROCEDURAL HISTORY

Petitioner-respondent adopts the Procedural History as set forth in the brief of respondent-appellant State of New Jersey.

COUNTER STATEMENT OF FACTS

The petitioner in this case is Tami M. Rosales, who was born on November 25, 1963 (2T3-2 to 3). She graduated high school from Toms River High School East and received an Associates degree and worked toward her Bachelor degree, but never received it. (2T3-4 to 24).

On or about April 15, 1991, the petitioner filed a Claim Petition bearing C.P. No. 91-015164 alleging an occupational exposure from October 1989 through that time while employed by the County of Ocean as a clerk-typist. The allegations in the Claim Petition state that her repetitive work effort on computer and typewriter and constant use of both hands caused permanent injuries to her hands. (Aa1).

On July 24, 1995, a Judgment was entered by the Honorable James J. O'Connell, Jr., Judge of Compensation, providing for 25% of partial total disability for the residuals of bilateral carpal tunnel syndrome, de Quervain's syndrome, aberrant ulnar nerve and status post release of transverse carpal tunnel ligament, synovial biopsy, exploration and decompression of the ulnar nerve at the right wrist, status post left carpal tunnel release, and status post right carpal tunnel release and neurolysis of the median nerve. (Aa4).

On or about September 20, 1995, an Application for Review or Modification of Formal Award concerning that Claim Petition was filed on behalf of the petitioner. This Application alleged that her condition had worsened since the entry of the original Judgment

in the matter. On or about September 20, 1995, a new Claim Petition bearing C.P. No. 95-034926 was filed on behalf of petitioner against her new employer, the State of New Jersey, alleging that her repetitive work effort as a clerk-typist on the computer and typewriter involving constant use of both hands and arms caused additional permanent injuries to both hands, arms and her neck with neurological consequences. (Aa1).

On April 15, 1998, a Judgment was entered by the Honorable Chester Apy, J.W.C. against the State of New Jersey in which petitioner was awarded 45% of partial total disability on C.P. No. 95-034926 for residuals of nerve impingement and de Quervain's syndrome with bilateral carpal tunnel release followed by right ulnar nerve release, right median nerve and trigger thumb release, flexor tenosynovitis with status post anterior transposition and neural releases, right ulnar nerve at right elbow. The respondent received credit for a prior judgment of 25% of partial total against the County of Ocean. (Aa7). On the same date, the petitioner received an Order Approving Settlement with Dismissal pursuant to N.J.S.A. 34:15-20 with respect to C.P. No. 91-015164 which had been filed against the County of Ocean and said settlement was in the amount of \$5,500.00.

On or about March 4, 1999, an Application for Review or Modification of Formal Award on Claim Petition No. 95-034926 was filed on behalf of the petitioner alleging that her condition had materially worsened since the entry of the original Judgment. (Aa8). Simultaneously, a new occupational exposure claim was filed

against the State of New Jersey bearing C.P. No. 99-007099, alleging an occupational exposure due to her continued repetitive work effort on the computer and constant use of both hands, arms and shoulders which caused further injuries to her hands, arms, shoulders and neck with neurological consequences. (Aa10).

The petitioner continued to work for the State of New Jersey into November of 1999. (2T12-11 to 15). During the last 18 months of her employment with the State of New Jersey, her job required continued use of her hands and she was given more things to do. Petitioner testified that these additional duties required her to use her hands more so than prior to April of 1998. (3T17-14 to 15 and 3T18-4 to 7). She was the head of the front counter at the office. She took care of the main switchboard, including three telephone lines. She had three incoming computer lines. She fought for a headset and advises that when she received the same, there was somewhat less pressure on her. (2T14-3 to 25).

Ms. Rosales had to take care of the customers that came in, as well as work on the computer. She also had to make sure all forms were copied and stocked up so that there were enough forms to give to clients. If clients needed copies, she made them. She did just about everything there was to do in the office, including helping others who were behind in their work. (2T5-1 to 2). The phone that she operated was a multi-button phone and this required her to push different buttons to switch calls to where they were to go and handle calls on her own at times. (2T17-1 to 10).

She worked 8:30 a.m. to 4:30 p.m. five days a week. Although

scheduled for lunch break, she did not always get a break because it was often too busy and others could not cover for her. She had a computer to the left of her body at a diagonal position. The telephone was on the right-hand side and also at an angle. She worked the desk dealing with customers, answering the phone and using her left hand for the computer for six to seven hours a day. During the rest of the day, if she had to leave her desk it was either to make a copy for someone or she was pulling files until her doctor advised her not to pull files any longer. (2T18 and 2T29).

Pulling files gave her more pain because the files were so tightly packed and she actually had to fight to get them out. She was getting more pain in her hands and up in her arms so the doctor eventually advised her not to pull files any longer. Other people were to pull files for her and it did get to the point where they resented helping her. As a result, she had to get up anyway or else she simply could not perform her required tasks. She worked with what are called Atco fasteners with two holes punched in the top so that everything can be put in and slid on top of them. (2T20 and 2T21). She performed many other job duties for her employer which she indicated were set forth on a list given to her. (Aa96) and (2T5-20 to 25 and 2T7-1 to 3).

Ms. Rosales had sufficient difficulty and complaints to cause her to return to see the doctor. She eventually returned to see Dr. Pess on October 13, 1998, complaining of numbness from the side of her neck to her shoulder and down. She continued to have

complaints and pain with regard to her arms, hands and fingers. (2T21 to 2T23).

She continued under the care of Dr. Pess and was eventually referred to Shore Neurology for an EMG. An EMG and nerve conduction study performed on March 2, 1999 was indicative of left ulnar neuropathy at the elbow site. (Aa173). The petitioner continued under the care of Dr. Pess and underwent an EMG and nerve conduction study of the right upper extremity on April 6, 1999, which was indicative of a right median nerve disorder at the wrist as in carpal tunnel syndrome. In comparison with a study from June, 1995, there was mild worsening of the carpal tunnel syndrome with some improvement of right ulnar neuropathy. (Aa175).

The petitioner was complaining of numbness in the neck with her shoulder going numb. (2T23-1 to 16). On May 25, 1999, the petitioner was seen by Dr. Pess, at which time she was injected with Xylocaine and Celestone.

On June 22, 1999, she was seen by Dr. Pess with complaints of pain shooting into her finger and tenderness over the radial tunnel. On July 1, 1999, an x-ray of the right shoulder was performed by X-Ray Associates, revealing possible calcific tendinitis of the great tuberosity. (Aa177). On July 8, 1999, an MRI of the cervical spine was performed which did not reveal any abnormality. (Aa178).

On September 14, 1999, the petitioner again received an injection from Dr. Pess. (Aa181). On October 5, 1999, Dr. Pess authored a report in which he indicated that there was no

possibility that petitioner might improve to a degree to perform her duties and that she was permanently and totally disabled as a direct result of events occurring during, and as a result of, her performance of her regularly assigned duties. (Aa185).

During this period of time the petitioner was also seen by her personal physicians at Alpha Medical Services. She complained of pain in the right arm to the shoulder and neck. On January 18, 2000, the petitioner was again seen by Dr. Pess complaining of swelling in her fingers and joints of the fingers with stiffness. At the time she was receiving treatment, she was having numbness, tingling, pinching, and burning in her hands. She was unable to grab things and was dropping things from her hands. The petitioner worked through the pain because she had to support her child. She testified that additional surgery was recommended on both arms, but she declined the same. (2T26-16 to 2T27-5). She indicated that every time she performed work, every day, she experienced pain. Sometimes she would go home in such severe pain that she would just go to her room and did not want to be bothered. She believes it took a lot from her. It made her depressed. She hated to be there, but had to be there. It also took a lot away from her relationship with her son because she could not do a lot of things. (2T37 and 38).

Physically she has more problems now. She has twitching for which she has seen her regular doctor and has been sent for tests. (2T39-9 to 25).

The petitioner continues to have complaints of pain and

discomfort on the side of her neck, shoulders, arms and hands. She continues to have these complaints even though she has not been working. She has applied for, and received, an ordinary disability pension. (2T41-1 to 10).

Emotionally these injuries took a lot from her. It made her depressed and her relationship with her son is not good. (2T38-10 to 25).

In terms of her life now, she basically does nothing. She does not really drive unless she has to because she goes numb and stiff and is uncomfortable. It is uncomfortable for her to sit for long periods of time and while sitting she has to keep moving about. Her neck and back go numb. She is now seeing Dr. Blum, an orthopedic doctor, for problems with her left leg. She is on Zoloft for her nervous twitch, which has helped her. (3T24-18 to 25 and 3T27-4 to 15).

Petitioner has a significant past medical history. At age 10 or 12, she broke her arm on a couple of occasions. She had knee surgery performed by Dr. Ralph Kuhn at Kimball Medical Center in and about 1981 involving her left knee. She continued to have problems thereafter and still gets pain today. She has had right ankle surgery in 1988 performed by Dr. Kramer at Kimball Medical Center. She has a problem walking on this ankle and has pain. She has had to wear sneakers frequently because of the problems with her foot. (2T45-18 to 25).

The petitioner has applied for, and been awarded, Social Security disability benefits as of May 1, 2000. (Aa280). As

indicated, she is also receiving an ordinary disability pension effective December 1, 1999. (Aa280).

Dr. Martin Riss testified on behalf of the petitioner and indicated he felt her to be totally disabled as of his last evaluation on January 10, 2000. He opined that there was demonstrable objective medical evidence of restrictions of function and lessening of working ability. He did not feel there would be improvement and did not feel she could be rehabilitated. (4T41-2 to 16).

Dr. Riss had examined petitioner earlier on April 15, 1996 and felt her to be disabled at that point. (AT39-9 to 17). The doctor testified that in spite of his previous assessment of total disability, the petitioner tried as hard as she could and continued to work and additionally traumatized these areas. He felt she could no longer effectively use her hands, wrists, elbows, shoulders or neck in the workplace and was not even fit for sedentary work. (4T45-17 to 25 and 4T46-1 to 7).

The doctor felt that there was a worsening of her condition as a result of the last additional work effort from and after April, 1988. (5T15-17 to 23). When presented with the October 5, 1999 report of the treating surgeon, Dr. Pess, by defense counsel, Dr. Riss indicated he was in complete agreement with Dr. Pess. Dr. Pess, in the report mentioned, indicated that petitioner was unable to perform duties as a judicial clerk, was unable to lift more than five pounds, had no use of the right arm and that her conditions

were due to her occupational exposure. (5T17-19 to 25 and 5T18-22 to 25 and 5T19-1 to 6) and (Aa184).

In response to a Hypothetical Question, Dr. Riss did opine as to causation and then gave his reasons for his opinion in detail. (4T43-3 to 4T45-11). The doctor explained how the petitioner's work effort caused each of her various conditions from a psychological standpoint.

Dr. A. Gregory McClure testified for the defense. He felt that there was additional disability with regard to petitioner's left arm (6T41-19 to 21). An electrodiagnostic study of March, 1999 of the left arm presented findings indicative of left ulnar neuropathy at the elbow. (6T41-3 to 17). While the doctor did not feel there was causation between petitioner's work exposure and various medical conditions, he did concede that any return to work would require avoidance of repetitive or forceful work. (6T46-12 to 15). The doctor conceded that an EMG in April of 1999 also showed mild worsening of the right carpal tunnel syndrome (6T64-21 to 24). When the doctor was asked if he sent patients with similar conditions back to repetitive work, he responded that you take it on an individual basis, but frequently not. (6T71-23 to 6T72-3).

When asked if petitioner could do keyboard work, the doctor responded she could do some. (6T47-13 to 17). He went on to state she could not work as a supermarket checkout person and she could probably not work in a cafeteria at lunchtime. (6T47-17 to 6T48-7).

In an Interim Decision of January 2, 2002, Judge Moncher found that Ms. Rosales was 100% totally and permanently disabled due to

conditions related to her occupational exposure through November, 1999. (Aa28). The judge found specifically that Ms. Rosales had sustained the burden of proof required by showing that her conditions and the acceleration of same were due in a material degree to the exposure, and the exposure and conditions were characteristic of her occupation and place of employment and the material cause of her conditions. The judge went to great lengths to explain the requirements as to burden of proof and how and why they were met in this instance. He determined there would be Second Injury Fund involvement and noted that petitioner had been receiving Social Security disability benefits effective May 1, 2000. He then provided for an appropriate offset pursuant to N.J.S.A. 34:15-95.5 and ordered the employer to pay prospectively at the offset compensation rate of \$93.69 per week.

The Second Injury Fund was given opportunity to present proofs and chose not to do so. Thereafter, a Judgment providing for total and permanent disability benefits with Second Injury Fund involvement was entered by Judge Moncher on November 4, 2002. (Aa81). The Judgment for total and permanent disability benefits sets forth a date of totality of December 1, 1999 with payments by the respondent to be made from December 1, 1999 to August 29, 2004 and payments thereafter by the Second Injury Fund. Since Ms. Rosales did not receive Social Security disability benefits until May 1, 2000, the respondent was ordered to pay at the petitioner's full rate of \$329.19 per week from the date that she was found totally and permanently disabled by Judge Moncher begin December 1,

1999 through and including April 30, 2002. Thereafter, the employer was ordered to continue to pay at the full rate without offset while petitioner's share of fees and costs accumulated for 19-1/7th weeks, followed by payment at the offset rate of \$93.69 per week through August 29, 2004, with payments by the Second Injury Fund at the reverse offset rate thereafter.

LEGAL ARGUMENT

Point I

THE AWARD OF PERMANENT DISABILITY BENEFITS AND SIMULTANEOUS RECEIPT OF PETITIONER'S ORDINARY DISABILITY PENSION BENEFITS DOES NOT CONSTITUTE A DOUBLE RECOVERY UNDER LAW AND SHOULD NOT BE OFFSET AGAINST THE WORKERS' COMPENSATION AWARD.

One of the issues on appeal is whether the State should be permitted to reduce the award of permanent disability benefits found in favor of petitioner Tami Rosales in the Division of Workers' Compensation. The State contends that it should be permitted to do so because petitioner is also receiving an ordinary disability benefit pension from the Public Employees Retirement System (hereinafter PERS), codified in N.J.S.A. 43:15A-1 et seq. In light of this fact, our Workers' Compensation Law, N.J.S.A. 34:15-1 et seq., permits it to do so. (Pb29-40).

The heart of this controversy lies within a portion of the language of N.J.S.A. 34:15-43 (hereinafter Section 43). This provision has been the subject of prior discussions which have set forth the legislative history in detail. See, e.g., Bunk v. Port Authority of N.Y. & N.J., 144 N.J. 176 (1996); Conklin v. East Orange, 73 N.J. 198 (1977); In re Smith, 57 N.J. 368 (1971). Section 43 deals with individuals who are employed within the public sector. Basically, it brings all public employees, as defined in this provision, within the ambit of protection afforded by the Workers' Compensation Act.

The present controversy concerns language in Section 43 which, if read literally, prohibits any public employee who is retired on pension from injury or disability from receiving periodic workers' compensation benefits under that law. The statute, as it currently reads, contains this prohibitive language. Petitioner-respondent herein believes that this language should be deleted from Section 43 as a result of a legislative amendment to this provision in 1996. Resolution of this issue requires the proper interpretation of N.J.S.A. 34:15-43, both standing alone and in conjunction with N.J.S.A. 43:15A-25.1, a provision under the PERS statute. The principles of statutory construction required herein are not novel, however, the factual circumstances to which these principles are to be applied appear to be unprecedented.

The prohibitive language of Section 43 appears as the last sentence in the first paragraph of that provision. This sentence reads:

No former employee who has been retired on pension by reason of injury or disability shall be entitled under this section to compensation for such injury or disability; provided, however, that such employee, despite retirement, shall, nevertheless, be entitled to the medical, surgical and other treatment and hospital services as set forth in R.S. 34:15-15.

This language has been practically ignored so as to provide for an offset of pension benefits to any individual who is found eligible to receive both disability pension and workers' compensation benefits as a result of the same injury. See Conklin v. East Orange, supra at 204. Earlier, it was held to prohibit recovery of

disability pension benefits to an individual who was receiving periodic workers' compensation benefits. In re Smith, supra at 380.

The State has advanced several challenges to the decision of Judge Moncher denying its right to offset petitioner's workers' compensation award against her receipt of an ordinary disability retirement pension pursuant to N.J.S.A. 43:15A-42. The essence of this challenge is that Section 43 deems simultaneous receipt of workers' compensation benefits and ordinary disability pension benefits to constitute a "double recovery." (Pb29) The State emphasizes the long-standing "public policy" against permitting double recoveries of this type, citing several decisions of our courts addressing this particular issue, including In re Smith, supra. (Pb30-31). The State also cites other examples set forth in other provisions of our Workers' Compensation Law prohibiting double recoveries as being deemed against public policy. See, e.g., N.J.S.A. 34:15-40. Id.

A study of our courts' prior decisions involving interpretation of Section 43 reveal that reference is frequently made to provisions in the pension law which were germane to a particular case. Our courts have noted that Section 43 and pertinent provisions of pension statutes are to be read in pari materia. Leoni v. Twp. of Hamilton, 134 N.J. Super. 231, 236 (App. Div. 1975). In each case, our courts have found it necessary to review legislative history in its attempt to ascertain the objective behind a particular statute. See, e.g., James v. Bd. of

Trustees of PERS, 164 N.J. 396, 404-405 (2000); In re Smith, supra at 375-380. This legislative history of Section 43 prior to 1996 has been thoroughly described in the Smith and Conklin decisions and will not be repeated here. Our brief will focus on amendments to Section 43 subsequent to the Conklin decision.

It is a well settled principle of statutory construction that a law will not be interpreted in a manner so as to result in an illogical consequence. Strasenberg v. Staubmuller, 146 N.J. 527, 541-542 (1996). The issue in matters requiring statutory interpretation is to determine legislative intent. Wright v. Port Authority, 263 N.J. Super. 6, 19-20 (App. Div. 1995). When there exists some interrelationship between different statutory provisions, our courts have considered the legislative history of each statute to assist in determination of legislative intent. See, e.g., Bunk v. Port Authority, supra at 182-184. The history of Section 43 should be viewed in this context.

In early 1996, our Legislature enacted Assembly No. 1977 which is entitled

AN ACT concerning the receipt of disability retirement allowances and workers' compensation benefits and amending various parts of the statutory law.

This bill, as enacted, appears in Ch. 369 of the 1995 Session Law Service. The act amends similar provisions in the Teachers' Pension and Annuity Fund Law, N.J.S.A. 18A:66-1 et seq., the Public Employee Retirement System (PERS), N.J.S.A. 43:15A-1 et seq., the Police and Firemen's Retirement System, N.J.S.A. 43:16-1 et seq.

and N.J.S.A. 43:16A-1 et seq., and the State Police Retirement System, N.J.S.A. 53:5A-3 et seq. All of the above pension systems provide for early retirement on account of disability. With the exception of the Police and Firemen's Retirement System, all of the above pension systems provide for two types of disability retirements. One is termed an "ordinary disability retirement;" the second is termed an "accidental disability retirement." Different criteria apply in determining eligibility for an "ordinary" verses and "accidental" disability retirement under each of the above laws. The one common feature of these disability retirement provisions under each of the systems providing for these types of retirements is that the amount of benefits provided for an "ordinary disability retirement" is substantially less than those benefits provided for an "accidental disability retirement." Compare N.J.S.A. 18A:66-41 with N.J.S.A. 18A:66-42 (pertaining to teachers); N.J.S.A. 43:15A-42 with N.J.S.A. 43:15A-43 (pertaining to public employees); and N.J.S.A. 53:5A-9 with N.J.S.A. 53:5A-10 (pertaining to members of the State Police). We believe these distinctions are important in ascertaining the legislative intent and proper construction of Section 43.

Prior to the enactment of Assembly No. 1977 in 1996, all of the above pension laws provided for an actuarial offset of retirement benefits paid to any individual who is also receiving periodic benefits under the Workers' Compensation Law. In effect, the "pension portion" of the retirement allowance was reduced to account for receipt of workers' compensation benefits. The

provision under the PERS law which provided for such an offset is N.J.S.A. 43:15A-25.1.

In 1996, Assembly No. 1977 amended this particular provision, and related provisions in the aforementioned pension laws, to provide for an offset of pension benefits against workers' compensation benefits only in those cases where a retirant is receiving an "accidental disability retirement allowance." The 1996 amendment provides for a "dollar-for-dollar" reduction in the pension portion only of an accidental disability pension. By doing so, our Legislature acted to prohibit an offset of any other type of pension benefits against receipt of workers' compensation benefits, including ordinary disability retirement allowances.

In order to effectuate this intent, our Legislature had to amend Section 43 of our Workers' Compensation Law by deleting the prohibitive language previously mentioned. If this language was not deleted, it would literally prohibit any person who was receiving either an "ordinary" or "accidental" disability pension from receiving workers' compensation benefits. In a literal sense, this would render the amendment to N.J.S.A. 43:15A-25.1 meaningless because there could be no "dollar-for-dollar" offset of workers' compensation benefits against an "accidental" disability pension. Thus, Assembly No. 1977 had to amend Section 43 of our Workers' Compensation Act by deleting the prohibitive language. By so doing, the prohibitive language would not frustrate legislative intent which provided for a reduction in a retirant's accidental disability allowance when the retirant was also receiving workers'

compensation benefits. An offset was intended in favor of the pension benefits. No offset was intended to be created in favor of the workers' compensation provider regardless of the nature of the disability retirement benefits which an individual may be receiving. In other words, our Legislature no longer reviewed simultaneous receipt of "ordinary disability retirement" benefits and workers' compensation benefits as a prohibited double recovery.

This interpretation is evident from the Statements of the committees in the Assembly and State commenting upon the intent of these amendments. These Statements appear in the Appendix of respondent-appellant State of New Jersey. (Aa220-Aa227). The Statement of various committees in the Senate and Assembly comment that the "actuarial equivalent" method, then in effect, of computing an offset against a workers' compensation award could result in a greater reduction of retirement allowance than the amount of workers' compensation received. Thus, the Legislature adopted the "dollar-for-dollar" method as being more fair.

The Statements of these committees also commented that

[t]he committee amended the legislation
... to exclude the offset of workers'
compensation periodic benefits from an
ordinary disability retirement allowance.

(Aa221, Aa223, Aa227). The intent of the amendments of this bill is clear. The Legislature acted to prohibit any reduction in an "ordinary disability pension" allowance when the retirant is also receiving workers' compensation benefits.

This interpretation is further supported by the enactment of

Senate No. 180 only five days following the adoption of Assembly No. 1977. The title of this bill is

AN ACT to provide workers' compensation coverage for emergency management volunteers and amending R.S. 34:15-43,

This bill amended several provisions of our Workers' Compensation Law affecting volunteer firemen. It expanded workers' compensation coverage to all "emergency management volunteers." Section 43 was also amended to accomplish this result.

As originally enacted, Senate No. 180 contained the language in Section 43 which had been deleted by Assembly No. 1977 adopted only five days earlier. Accordingly, Legislative Counsel took action to correct this situation in his February 8, 1996 letter to then Attorney General Deborah T. Poritz by seeking to delete that language in Section 43 which was mistakenly incorporated in Senate No. 180, but which had been deleted from Section 43 by Assembly No. 1977. (Aa241-246). This circumstance was noted by Judge Moncher in his decision and was addressed in detail. (Aa66-68). It is obvious that the Legislature intended to delete the prohibitive language of Section 43 in Assembly No. 1977 by striking out that language in the bill. The action of Legislative Counsel Albert Porrioni on February 8, 1996 with respect to Senate No. 180 provides additional evidence of this fact. Yet, for some unknown reason, the prohibitive language remains in Section 43.

There have been subsequent amendments to Section 43 by our Legislature as set forth in the State's brief. (Pb42). The language which had been deleted by Assembly No. 1977 reappears in

these bills, however, as noted by Judge Moncher, there is no indication that any of these amendments consciously sought to reinsert the language previously deleted by Assembly No. 1977.

Assembly No. 2302, for example, addressed an issue pertaining to the scope of service of "certain police, fire and emergency services." (Aa248). Section 43 was amended by including language to reflect the adoption of a provision supplementing Title 40A. The title to this bill does not make any reference to any amendment to Section 43 pertaining to workers' compensation benefits and disability pensions. The title merely comments that it is "amending R.S. 34:15-43."

It is important to note that the bottom of the first page of A2302 as enacted comments that "Matter underlined thus is new matter." (Aa248). The prohibitive language in Section 43 (last sentence of the first paragraph) remained in the statute. (Aa249). There is no indication, however, that this language was intended to be restored after having been deleted by Assembly No. 1977 in 1996. The only change in the language of Section 43 is the inclusion of a phrase which broadens the definition of what constitutes "doing public fire duty", (Aa249), and "doing emergency management service." (Aa250). There is no indication by the Legislature that it intended to restore the prohibitive language to Section 43.

A review of every bill enacted by our Legislature which amended Section 43 in some respect after Assembly No. 1977 contains the prohibitive language in question, yet does not indicate that the language which had been deleted was intended to be restored by

our Legislature. See L.1977 c.199; L.1999 c.152 and c.251; L.2001 c.325. Furthermore, none of the titles of the legislation amending Section 43 after Assembly No. 1977 suggests that any of the amendments were intended to affect receipt of disability pension benefits and workers' compensation benefits. We believe this is highly significant.

The Constitution of New Jersey 1947 provides in part:

To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. ...

Const. 1947, Act IV, sec. VII, par. 4. It is evident that the wording in the title of an act is deemed of such significance that it is the subject of a provision in our Constitution.

It has been held that the purpose of this provision in our Constitution is to insure that members of our Legislature, as well as members of the public, are generally advised of the purpose of legislation. See Cambria v. Soaries, 169 N.J. 1, 11 (2001); see also, Kline v. N.J. Racing Comm., 38 N.J. 109 (1962). We do not contend that our Legislature must index all changes in the title of an act. When there is intention to modify substantive law in any significant degree, however, we believe that the title to an act should contain more than mere reference that the act is amending a particular statute. Our courts have considered the title of an act to assist in its interpretation. Dunn v. Hoboken, 85 N.J.L. 79, 83 (Sup. Ct. 1913). We submit that the failure to define any

intention by our Legislature to restore the prohibitive language of Section 43, which had been deleted by Assembly No. 1977 in 1996, in any subsequent amendments to this statute may properly be considered by the court on the issue of legislative intent. In light of this Constitutional provision, we believe it would be illogical to assume that the Legislature intended to restore the prohibitive language of Section 43 without a more clear statement in the title of any amendment bill so as to reflect this purpose. We submit that it is more likely that there was some type of administrative or technical error, of which our Legislature was unaware, that resulted in a mistaken re-insertion of the previously deleted prohibitive language in Section 43. If, as argued by the State, the Legislature intended that the prohibitive language remain in Section 43, we believe that the failure to provide a more specific title evidencing this intent, in conjunction with the failure to reflect that the language in question was intended to be restored, would give rise to a constitutional challenge.

It is the position of petitioner-respondent that the prohibitive language in Section 43 which had been deleted by Assembly No. 1977 has been restored by some technical error rather than by legislative re-enactment. Accordingly, we believe it to be not only proper, but necessary, for the court to consider this issue and to hold that Section 43 should be interpreted to read as if the prohibitive language at issue is no longer in the statute. We respectfully submit that such a ruling would not only give meaning to legislative intent, but also protect the substantive

rights of Tami Rosales.

Our courts may properly interpret Section 43 as if the prohibitive language is deleted from the statute. An analogous situation was addressed by our Supreme Court in deciding Conklin v. East Orange, supra. That case involved interpretation of a provision in the Police and Fireman's Retirement System, N.J.S.A. 43:16A-15.2b., which was the subject of an amendment in 1971. Prior to the amendment, this provision prohibited receipt of retirement benefits under that pension system to any individual who was receiving workers' compensation benefits. The amendment removed this prohibition, but provided for an actuarial offset of pension benefits against workers' compensation benefits.

It is important to note that the prohibitive language of Section 43 was not modified by our Legislature in adopting the above amendment. The Conklin court was mindful of this fact. It noted that different outcomes could result in entitlement to retirement benefits depending upon whether a person was awarded pension benefits before or after being awarded compensation benefits. Conklin, supra at 204. It found this possibility, created by a literal interpretation of Section 43, to be illogical.

While the Legislature did not modify the restriction contained in section 43 of the Compensation Act at the time it was adopting the 1971 amendment, we think it was inadvertent.

Id at 204. The Conklin court thus "implied" a legislative intent to modify the prohibitive language in order to prevent an illogical outcome if Section 43 were deemed to be interpreted literally. We

respectfully urge this court to follow the approach taken by the Conklin court and hold that Section 43 should be interpreted as if the prohibitive language had been deleted.

The State urges this court to read Section 43 literally in its present form in order to prevent a double recovery. (Pb29-30). The State's position is that our courts have adopted a broad and all-inclusive definition of the term "double recovery." This definition, according to the State, is one that holds that any receipt of benefits from more than one collateral source constitutes a double recovery which is proscribed under our laws. (Pb36-37). As a corollary, any such "double recovery" would entitle the employer or the workers' compensation carrier to offset against, if not totally extinguish, the employer's obligation to provide benefits under this statute in situations such as the one before this court. We submit that such a definition was not intended by our Legislature in its enactment of our Workers' Compensation Law or any of the amendments subsequently adopted thereto.

A review of case law addressing the issue of what constitutes a prohibited double recovery demonstrates that this term has been determined by our courts only after a thorough evaluation of a specific right, or limitation of any right, created by statute within the context of the particular facts and circumstances before the court. With one exception, all of the decisions cited by the State in support of its contention that Section 43 prohibits receipt of both workers' compensation benefits and disability

pension benefits were decided prior to the 1996 amendment.

Petitioner-respondent herein does not dispute the fact that our courts have determined in several prior decisions that N.J.S.A. 34:15-43 was held to prohibit receipt of both workers' compensation benefits and disability pension benefits in the factual context of those cases. We also acknowledge that there is a general policy of our courts to prohibit double recoveries in certain circumstances when deemed appropriate. The "public policy" of prohibiting double recoveries is not, however, an independent public policy adopted by our courts. Rather, determinations as to what constitutes a double recovery under our law have been decided only after considering the specific statutory provision and ascertaining the apparent or implied legislative intent behind the adoption or amendment of such a provision. See, e.g., Young v. Western Electric Co., Inc., 96 N.J. 220, 225 (1984) involving an interpretation of N.J.S.A. 34:15-29, a workers' compensation provision pertaining, in part, to private disability pension plans. Accordingly, we submit that the "public policy" against double recoveries is not as broad and independent as is suggested by the State.

There is a general policy, however, adopted by our court decisions in all matters in determining the legislative intent behind particular provisions of our Workers' Compensation Law. This policy recognizes that our Workers' Compensation Law is deemed to be remedial social legislation which should be liberally construed in a manner most favorable to the employee. Brower v. ICT Group, 164 N.J. 367, 373 (2000); Close v. Kordulak Bros., 44

N.J. 589, 604 (1965).

A similar policy has been adopted by our courts in evaluating provisions under our pension laws. This policy requires "that pension acts are required to be construed most favorably to the employee's interests." Mercer County v. State Dept. of Treasury, Division of Pensions, 193 N.J. Super. 229, 233 (App. Div. 1984). We submit that these policies are broader and more dominating than the purported public policy against "double recovery." A prohibited "double recovery" is so determined only when it is clear that our Legislature intends it to be so.

In ascertaining legislative intent, we submit that the guidelines enunciated by Justice Francis in In re Smith, 57 N.J. 368 (1971) should be employed in the present case.

The receipt of compensation and the effect thereupon of receipt of pensions are controlled by the pertinent statutory provisions and their relations to the circumstances of each case. ... And since the purpose of N.J.S.A. 34:15-43 is to withhold benefits that ordinarily would go to public employees who suffer injury arising out of or in the course of their employment, it has been strictly construed. ... Consequently its bar against receipt of compensation and a pension arising out of the same accident does not apply to dependents of a deceased employee since it speaks in terms of a living employee, ... nor to a person on an ordinary retirement pension based on age and service, as distinguished from a work-connected disability allowance, ... nor where a person had two public employments, one with a municipality and the other with a county, and he is receiving a workmen's compensation award from one and a disability pension from the other. ... Moreover, it is right and just that statutes allegedly designed to restrict pension allowances should be interpreted

favorably to the public employee. He is required to contribute a percentage of his gross annual pay over his employment period in order to qualify for it. Consequently, we agree that he should not be deprived of it except upon an express or implied legislative mandate which leaves no doubt of the purpose.

In re Smith, supra at 374 (citations omitted).

The Smith case found against the employee and held that Section 43, as it existed at the time of that decision and when read in conjunction with a pertinent disability pension statute applicable to that case, revealed a legislative intent to prohibit a public employee's receipt of "concurrent pension and compensation benefits for the same disability." Id. at 380. In reaching this conclusion, the court retraced the history of Section 43 and found an effort by our Legislature to integrate benefits provided under our workers' compensation law and those available to public employees under appropriate pension statutes. Id. at 375-380.

The Smith court's decision was based upon what it perceived was the legislative intention to prohibit workers' compensation benefits to any person who has been retired on an accidental disability pension. It was within this context that Justice Francis noted:

But no matter how sympathetically the employee's interests are viewed, the judiciary cannot ignore the legislative intention which plainly emerges from the total statutory treatment of the subject. Such intention must be given sensible application in order to accomplish the indicated purpose and to avoid a bizarre result.

In re Smith, supra at 380. This language suggests that the court

would have preferred to find for petitioner Howard Smith, but could not do so because of the clear legislative intent which mandated that decision under the circumstances as they existed at that time. In 1996, our Legislature expressed its intent to change the law. The Legislature no longer deems simultaneous receipt of "ordinary" disability pension benefits and workers' compensation benefits as a prohibited double recovery. Simultaneous receipt of an "accidental" disability pension and workers' compensation benefits constitute such a double recovery insofar as the pension benefits are entitled to be offset against workers' compensation benefits. No intention exists to offset workers' compensation benefits against receipt of an "ordinary" disability allowance.

The only Supreme Court case addressing a similar issue involving Section 43 decided after the 1996 amendment is Bunk v. Port Authority, supra. This decision addressed the issue of whether the prohibitive language could be applied in a situation where a Port Authority employee was awarded an ordinary disability pension as a result of a work accident which occurred in 1988. The Port Authority pension was funded through the public employees retirement system in the State of New York. Mr. Bunk sought workers' compensation benefits under New Jersey law. The issue was whether Section 43, and the prohibitive language contained therein, was applicable in that situation. The 1996 amendment to Section 43 was not adopted until the Bunk case was pending before the Supreme Court. Thus, the prohibitive language at issue in this case was rightfully part of Section 43 at the time of Mr. Bunk's injury, his

award of an ordinary disability pension under New York law and at the time the case was decided in the Division of Compensation.

The compensation judge literally applied Section 43 as it existed at that time and denied any award of permanent disability. Bunk v. Port Authority, supra at 181. The Appellate Division reversed this decision on the ground that it did not believe Section 43 applied to Port Authority employees. It predicated its decision on a United States Supreme Court decision which held that Eleventh Amendment immunity did not apply to the Port Authority.

The Bunk court appears to have addressed the issue of applicability of Section 43 to a case where a disability pension was awarded under the laws of another state. The challenge by petitioner in Bunk did not address the prohibitive language since the 1996 amendment had not yet been adopted. Rather, the argument raised by Mr. Bunk was whether the prohibitive language would affect his New York-based pension and whether Port Authority employees should be deemed to be "public employees" and thus bound by Section 43 if they sought workers' compensation benefits under New Jersey law. These were the primary issues addressed by our Supreme Court in Bunk. These issues were decided against the petitioner and the prohibitive language was found to evidence legislative intent to prohibit a double recovery of disability pension benefits and workers' compensation benefits. Id at 184-189.

A difficulty in evaluating the Bunk decision lies in the fact that there was some consideration of Assembly No. 1977 by the Bunk

court. Id at 192. The court adopted the position urged by the Port Authority that the 1996 amendment to Section 43 "merely clarifie[d] existing case law." Id. This position does not appear to have been seriously challenged by any of the other parties in Bunk and was accepted by the court. The changes in the New Jersey pension laws also reflected in Assembly No. 1977 were not considered by the court because it did not have to do so. The pension rights in Bunk were the subject of New York law. By not considering the amendments to the pension provisions under New Jersey law, however, the import of the amendment to Section 43 was not appreciated. There was, in fact, a substantial change in Section 43 which we contend did more than "merely clarify existing case law."

We do not contend that Bunk was wrongly decided. Mr. Bunk's rights under our Workers' Compensation Law accrued in 1988, well before the 1996 amendment. Legislative history is silent upon whether the amendment should have been applied retroactively. Absent such clarification, the general rule of construction requires prospective application. See Schiavo v. John F. Kennedy Hosp., 258 N.J. Super. 380, 385-387 (App. Div.) aff'd 131 N.J. 400 (1992). Therefore, unless the 1996 amendment was deemed to be retroactive in its application, it should not affect the application of the prohibitive language in Section 43 to the Bunk controversy.

Unfortunately, the Bunk decision does address the impact of the amendment to Section 43 and suggests that this amendment might

not change the substantive law with respect to how Section 43 is to be interpreted. As was previously mentioned, we do not believe that the Bunk decision addressed an issue such as is presented in this case. To the extent that Bunk might be read to hold that Section 43, as amended, might properly be applied so as to create an offset of workers' compensation benefits to persons who also receive "ordinary" disability pension benefits under pension laws of New Jersey, we respectfully submit that the Bunk decision be reconsidered and clarified as to this issue.

These distinctions were addressed by Judge Moncher in his decision in the Division of Workers' Compensation (Aa71). His opinion comments that

[i]f Mrs. Rosales' case had been presented before 1996, or in absence of the teams of L. 1995 c. 369, there is no doubt that the public policy expressed by the then effective provisions of N.J.S.A. 34:15A-25 barred duplicative payments from two sources for the same impairment. **But this policy was changed by the Legislature when it amended that statute.**

Id. (emphasis added)

Judge Moncher's decision describes in considerable detail, not only the factors leading to the confusion regarding the present language of N.J.S.A. 34:15-43, but also the policy which he understands to have been behind the legislative amendments in 1996. He notes key distinctions between an ordinary disability retirement as provided by N.J.S.A. 43:15A-42 and an accidental disability retirement as provided by N.J.S.A. 43:15A-43. (Aa58-61; 75-78). Consideration of these distinctions are important in ascertaining

the legislative intent behind the 1996 Amendments. Accordingly, we respectfully submit that Judge Moncher properly decided that simultaneous receipt of ordinary disability retirement and workers' compensation benefits does not constitute a double recovery under law.

Point II

THE JUDGE OF COMPENSATION DID NOT EXCEED HIS STATUTORY AUTHORITY IN RENDERING HIS DECISION IN FAVOR OF PETITIONER-RESPONDENT.

The State also challenges the decision of Judge Moncher on the grounds that he exceeded his statutory authority by ignoring the plain language of Section 43, as well as ignoring the Supreme Court's decision in Bunk v. Port Authority, supra, in its interpretation of Section 43. (Pb41). It argues that the statutes "should be construed as written rather than according to some unexpressed intention." (Pb42). A careful reading of Judge Moncher's decision clearly indicates that the judge did not exceed any authority granted to him in making this decision.

The State would have this court interpret Section 43 literally. By making such a request, the State is asking this court to overrule the Supreme Court holding in Conklin v. East Orange, supra. Since Section 43 and pension statutes are to be read together, our courts have adopted an interpretation of Section 43 which would be logically consistent to effectuate the intended purpose of the provisions under our pension laws for public employees. In order to accomplish this purpose, our courts have realized that Section 43 could not be literally interpreted. To do so would actually frustrate, rather than further, legislative intent.

The State further contends that Judge Moncher refused to abide by our Supreme Court's ruling in Bunk v. Port Authority, supra. As

previously discussed, the Bunk court did address certain issues concerning the 1996 amendment to Section 43. As also discussed in our brief, our Supreme Court accepted an interpretation advanced on behalf of the Port Authority in that case. That interpretation was that the 1996 amendment did not change prior case law. The Bunk court did not believe that the amendment altered any "substantive rights" of pension recipients by the legislative amendment in 1996. Bunk, supra at 193-194. Therefore, it concluded that it would make no difference whether the amendment to Section 43 was applicable in the Bunk case or not. It applied the Conklin rationale which provided for an offset of pension benefits.

As discussed in Point I of our brief, it does not appear that the position advocated by the Port Authority in the Bunk decision was seriously challenged by any of the parties in that action. The Supreme Court cites a comment in one of the committee statements to the bill enacting the 1996 amendment to Section 43. This note specifically comments upon the fact that a sentence which prohibits receipt of workers' compensation benefits by a retirant receiving disability benefits had been deleted from the Workers' Compensation Law. However, the Bunk court acted as if the prohibitive language in Section 43 had not been deleted by prior court decisions since it permitted the offset of workers' compensation benefits because the Port Authority pension did not permit such an offset.

It does not appear that the legislative history of Assembly No. 1977 was considered in any significant detail. Clearly, the intent of amending Section 43 in light of the amendments to the

respective pension provisions affecting public employees in New Jersey was not addressed in the Bunk case because it was not necessary to do so. We respectfully submit that this portion of the Bunk decision is somewhat ambiguous since it appears to act on the supposition that there was no change in substantive law by the enactment of the 1996 amendment which deleted the prohibitive language from Section 43.

Judge Moncher was clearly cognizant of the fact that there were attempts to modify the language of Section 43 to delete the prohibitive language. His decision discusses the confusion surrounding what actually transpired around that time in considerable detail. (Aa58-68).

Judge Moncher was mindful that our court decisions recommend that legislative history be considered in interpreting any statute. (Aa71-72). He believed that the Bunk case was distinguishable from the matter before him at this time. He was not addressing application of our workers' compensation law against a pension which was awarded in a separate state. Although not specifically mentioned, he inferred that the Bunk decision involved a claim brought prior to the enactment of the 1996 amendment. He specifically comments that petitioner's claim would have been decided differently if it had occurred prior to 1996. (Aa71). It is evident that Judge Moncher did precisely what our Supreme Court decisions have directed lower courts to do in similar circumstances. He evaluated the law based upon both its literal meaning and as interpreted by our court decisions. He considered

amendments to the law and looked to the legislative history for guidance as to the proper means of interpreting a particular statute. Judge Moncher's decision is predicated, not only upon the application of law as expressed by our courts, but also as consistent with the language of the applicable pension statute.

His decision is also consistent with our court's policy that workers' compensation laws should be liberally construed in favor of the worker. He believed that the facts supported a judgment in favor of the petitioner and that it was fair to do so consistent with his interpretation of the law. We therefore submit that there was no breach committed by Judge Moncher in any aspect of his obligation and responsibility to the Division of Compensation and to our court system in the manner in which he decided this case.

Point III

**THE DECISION OF THE JUDGE OF
COMPENSATION PROVIDING FOR AN AWARD
OF PERMANENT DISABILITY WITH SECOND
INJURY FUND INVOLVEMENT IS BASED
UPON CREDIBLE EVIDENCE CONTAINED IN
THE RECORD AND SHOULD BE AFFIRMED.**

It is well established that the scope of appellate review in a workers' compensation case is limited to a determination as to whether the findings of the Judge of Compensation could reasonably have been reached on sufficient credible evidence present on the whole record after giving due weight to his expertise in the field and his opportunity of hearing and seeing witnesses. Close v. Kordulak Bros., 44 N.J. 589 (1965); D'Angelo v. Alsan Masons, Inc., 122 N.J. Super. 88 (App. Div. 1973) aff'd ob62 N.J. 58 (1973). The State of New Jersey takes the position that petitioner failed to sustain its burden of proof with regard to the nature and extent of permanent disability and causation to the work exposure and that the judge's decision could not then be based upon credible evidence in the record.

A reading of the testimony of Ms. Rosales proves otherwise. She testified at length as to her duties for the last year and a half of her employment with the State through November of 1999. (2T5-1 to 8, 2T14-3 to 25, 2T16-1 to 25 and 2T19-1 to 2T21-12).

On cross-examination, Ms. Rosales reiterated her duties and stated that after April of 1988 she did the same thing, but more was given to her. (3T17-9 to 15). She stated that each year she got more to do and more to do with each supervisor. (3T18-4 to 7).

She indicated that the additional duties required the use of her hands even more so than before April of 1988. (3T23-1 to 10). The defense produced no testimony to contradict what Ms. Rosales had to say about her work duties and environment.

Dr. Martin Riss, petitioner's orthopedic expert, opined that petitioner was totally disabled and that her conditions causing total disability were related to her exposure. (4T43-3 to 8). He went on to provide a basis for his opinion from a physiological standpoint, explaining the nature of her work requiring repetitive motion causing impact on particular joints causing pain, inflammation, restriction and impaired mobility of the affected areas. (4T43-9 to 25). He did explain that in spite of his previous assessment of total disability, Ms. Rosales continued to work, which caused additional trauma to these areas. (4T45-21).

In his interim decision of January 2, 2002, Judge Moncher describes the claim before him. (Aa28). In a detailed opinion, he comments upon and makes specific findings of fact relative to the nature of the work exposure, medical conditions of the petitioner, causation and the extent of disability. The judge discusses credibility of witnesses and the weight of evidence, along with burden of proof in this occupational exposure claim, citing case and statutory law.

At Page 11 of his decision, Judge Moncher sets forth his findings and conclusions. He comments favorably as to the credibility of Ms. Rosales and sets forth her work activities at Page 12. He finds that respondent's orthopedic expert unduly

minimized the impact of the injury on petitioner, indicating he gave little weight to the doctor's opinion. (Aa43-44). Judge Moncher found that the findings and opinions as to disability by Dr. Riss were consistent with the findings of treating physicians and entitled to more weight. (Aa28-17).

He noted that Dr. Pess, a Board Certified hand surgeon, had stated that there was a relationship between petitioner's work and her medical impairment in her upper extremities, which caused total disability. He noted that Dr. Riss had examined Ms. Rosales on five occasions from 1991 through January 10, 2000 and that he had been presented with 13 separate records concerning diagnostic studies, treating medical records, hospital charts for surgical procedures and the hypothetical question, which he found to be accurate. Judge Moncher noted that Dr. Riss, on each occasion, had detailed findings on examination and commented on the treatment. He felt the doctor had traced the gradual progression of her impairment as she continued to engage in repetitive activities at work. Dr. Riss had opined that Ms. Rosales was totally disabled and not capable of employment and supported that opinion citing medical findings and treatment records. He traced the connection of the increase in her impairment to her work activities. The trial judge indicated that he paid particular attention to the records of treating physicians, stating that our courts have consistently held that a treating physician in a workers' compensation case is in a better position to express an opinion as to cause and effect than one performing an examination in order to

give expert medical testimony. Bober v. Independent Plating Corp., 28 N.J. 160, 167 (1958); DeVito v. Mullen's Roofing Co., 72 N.J. Super. 233, 236 (App. Div. 1962); Celeste v. Progressive Silk Finishing Co., 72 N.J. Super. 125, 143 (App. Div. 1972).

According to Judge Moncher,

I find Dr. Riss' findings and opinion on disability is consistent with the findings of the treating physicians and thus entitled to more weight. Additionally, Dr. Pess, her board certified hand surgeon has stated unequivocally, that there is a relationship between her work and her medical impairment in her upper extremities which do cause permanent total disability.

Decision of Judge Moncher Aa44. Judge Moncher accepted

Dr. Pess' recommendation that she be retired is the well reasoned conclusion of a hand surgeon concerning the future activities of this seriously impaired young woman. Further exposure to the work activities described above will only cause further complications. One can not ignore the history of this ladies physical deterioration and its continued association with work activities.

Decision of Judge Moncher Aa45.

Ultimately, the lower court did find petitioner to be totally disabled from the last compensable occupational exposure. The judge's reasoning is thoroughly discussed and is based upon competent findings of fact. There is sufficient credible evidence in the record to justify his conclusions and his decision should therefore be affirmed.

Point IV

**THE JUDGE OF COMPENSATION DID NOT
ABUSE HIS DISCRETION IN AWARDING
FEES AND COSTS.**

In this case, Judge Moncher determined that Ms. Rosales was totally disabled as of December 1, 1999. She did not begin to receive Social Security disability benefits until May 1, 2000. Accordingly, there could be no reverse offset as to compensation benefits until May 1, 2000 as found by the trial judge.

The judge when on to indicate that the State of New Jersey would not be entitled to a reverse offset from May 1, 2000 for 19-1/7th weeks while petitioner's share of fees and costs accumulated and that the State of New Jersey would then receive its offset as per N.J.S.A. 34:15-95.5. The State suggests this was an abuse of discretion.

N.J.S.A. 34:15-64 does not give a Judge of Compensation the authority to provide for attorney's fees and costs. It does appear well established that the judge of compensation can allocate fees and costs as between the respondent and petitioner in a given case. Gromack v. Johns-Manville Products Corp., 147 N.J. Super. 131 and Dey v. David Kahn, Inc., 92 N.J. Super. 250, at 253.

In the instant case, it would then appear that the judge in compensation could have set fees and costs and then made them all payable by the respondent, all payable by the petitioner, or divided same between respondent and petitioner.

Here, the Judge of Compensation felt it appropriate not to offset or diminish petitioner's award in compensation while

petitioner's share of fees and costs were accumulating after her receipt of Social Security disability benefits in May of 2000. This seems completely in accord with the spirit of the legislation and cases cited on the issue of allocation of fees.

If petitioner had received Social Security disability benefits as of December 1, 1999, the State of New Jersey would not even be arguing this point. Under that circumstance, there would be no reverse offset of compensation while fees and costs of petitioner accumulated. It should not be different because dates of total disability differ. In either case, the defense gets the benefit of a reverse offset and the petitioner should not be punished because Social Security determines a different date as to totality.

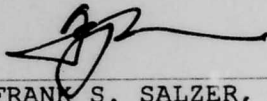
CONCLUSION

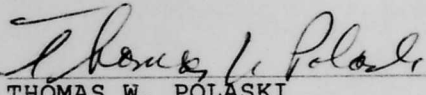
For the reasons set forth herein, petitioner-respondent Tami Rosales respectfully requests that this court affirm the 1996 Legislative amendment to N.J.S.A. 34:15-43 which deleted the prohibitive language and that this provision be interpreted so as not to permit any reduction in workers' compensation benefits to any public employee who is also receiving an ordinary disability retirement pension.

We further respectfully request that the Order of Judgment in favor of petitioner entered on January 2, 2002 and the decision of Judge Moncher of September 23, 2002 in favor of petitioner-respondent herein be affirmed.

Respectfully submitted,

By:


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Dated: September 17, 2003



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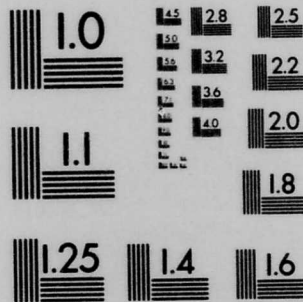
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