TRACY MANN, Employee, v. GRAND RAPIDS MED. ASSOCS. and DODSON INS./ADJUSTMENT SERVS. UNLIMITED, Employer-Insurer/Appellants, and CONCORDIA COLL. and PREFERRED RISK MUT. INS. CO., Employer-Insurer, and MN DEP'T OF LABOR & INDUS./VRU and BLUE CROSS/BLUE SHIELD OF MINN., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 7, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - GILLETTE INJURY. Substantial evidence supports the compensation judge's determinations that a causal relationship existed between the employee's work activities at GRMA and her Gillette injury, and that the employee's later work activities for the Concordia College food service did not substantially contribute to her disability or need for medical treatment.

GILLETTE INJURY - DATE OF INJURY. The compensation judge reasonably found that July 26, 1995, when the employee first sought medical treatment for her upper extremity symptoms and was prescribed wrist splints which she subsequently wore in order to perform her job, was a date on which ascertainable events occurred which marked the culmination of the employee's injury.

CAUSATION - INTERVENING CAUSE. The compensation judge reasonably concluded that the employee's activity in lifting a pan of chicken out of her oven, at which time the employee sustained the onset of a temporary aggravation to her work-related condition, was a reasonable and normal activity of daily living and that it thus did not constitute an intervening and superseding cause of the employee's disability and medical care during the period of aggravation.

PERMANENT PARTIAL DISABILITY - WEBER RATING. An award of 6% PPD, rated pursuant to Weber v. City of Inver Grove Heights, 461 N.W.2d 918, 43 W.C.D. 471 (Minn. 1990), for "repetitive overuse syndrome" reversed where employee had full range of motion and normal motor and sensory exams, there was no positive electrodiagnostic test, and where the employee documented an insufficient degree of impairment of function to justify the rating given by the compensation judge by analogy to Minn. R. 5223.0470, subp. 2B.

IMPAIRMENT COMPENSATION. The compensation judge's alternative award of 26 weeks of impairment compensation pursuant to Minn. Stat. § 176.101, subd. 3t(b), was clearly erroneous where there was no dispute that the employee continued to perform her job with the employer following the injury, and eventually left the job not because she was medically unable to perform the job, but to pursue her professional career after graduation from college. The employee was not "unable to return to former employment for reasons attributable to the injury", and did not qualify for 26 weeks of impairment compensation under the applicable statute.

TEMPORARY BENEFITS - SUBSTANTIAL EVIDENCE. Minimally sufficient evidence was present to support the awards of temporary benefits in this case.
Affirmed in part and reversed in part.

Determined by Wilson, J., Pederson, J., and Wheeler, C.J.
Compensation Judge: Gary P. Mesna

OPINION

STEVEN D. WHEELER, Judge

Employer Grand Rapids Medical Associates and its insurer appeal from the compensation judge's findings that the employee sustained a compensable Gillette injury [1] culminating in disability on July 26, 1994. The appellants also appeal from the denial of apportionment against the employer Concordia College and its insurer, from the determination that the employee sustained a three percent permanent partial disability and from the awards of temporary benefits. We affirm in part and reverse in part.

BACKGROUND

The employee, Tracy Mann, began working for the employer Grand Rapids Medical Associates ("GRMA")[2] in about June 1991, following her junior year in high school in Grand Rapids, Minnesota, working full time during summers and school breaks. Her job consisted of various clerical duties, including switchboard work, taking appointments, filing, entering account information into a computer, and tearing apart billing statements. She testified that these job duties generally required repetitive use of the hands. After the employee graduated from high school in 1992, she attended Itasca Community College for two years and then began attending Concordia College in 1994, but continued to work in her job for GRMA during summers and holidays. (T. 40-48; Exh. 2.)

On or about July 20, 1994, the employee began to experience pain and numbness in her hands at work while operating a switchboard. Since she had an appointment scheduled for July 26, 1994 with Dr. Jack Carlisle at Grand Rapids Medical Associates for a college physical examination, she waited to seek medical attention for her hands until then. Dr. Carlisle's notes for the date of that appointment state that the employee reported concern over numbness in her hands at work, particularly when working on the computer. On examination, Tinel's sign was positive and Phalen's sign was equivocal. Dr. Carlisle suspected an early carpal tunnel syndrome. He suggested wrist splints, but he and the employee decided to hold off splinting at that time as

[1] Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

[2] At various points in the record, GRMA is also referred to as Grand Rapids Medical *Association*.

the employee would try to spend less time on the computer at work and would be off work and returning to school at the end of August. However, the employee returned the next day and was provided with wrist splints. She reported the problem to her supervisor, Ione Boor, as work related, but no first report of injury was prepared. She wore the wrist splints at work for the remainder of the summer, and at home whenever her wrists bothered her. She continued to experience a dull, aching pain in the hands and wrists, and occasionally experienced numbness, tingling and shooting pains which sometimes extended to elbow or even shoulder level. She self-treated for the pain with Advil and by applying ice. (T. 31-33, 48-54; Exh. 5: 7/26/94.)

The employee attended school at Concordia College during the 1994-1995 academic year. She testified that she continued to have a dull, aching pain and some numbness and tingling. In approximately October 1994 the employee began working for the food service at Concordia in a part-time job seven hours per week. She characterized this work as somewhat heavier than the work for GRMA, with more repetitive use of the hands. However, she did not wear her wrist splints during the food service job because they interfered with wearing gloves and keeping sanitary conditions during food preparation. The employee testified that she wore the wrist splints much of the time outside of this part-time job while at school. She did not return for medical treatment for her upper extremity symptoms during the school year except for one occasion on May 15, 1995, when she was seen by Dr. Carlisle and reported that she had experienced pain behind the elbow for a few days. The employee related that she had not been performing repetitive or unusual activities other than brief periods of typing, although the pain had worsened for a short period following typing. Dr. Carlisle diagnosed triceps tendinitis. (T. 55-63; Exh. 5: 5/15/95.)

The employee testified that her symptoms did not significantly change until about October 26, 1995. On that date, she experienced a shooting pain in the right hand while taking a pan of chicken out of the oven at her apartment. She was seen by Dr. Ron Wiisanen at the Heartland Medical Center in Fargo, North Dakota, on October 27, 1995. Dr. Wiisanen noted some swelling in the right hand on examination, and some crepitus with movement. Tinel's sign was negative and no fracture was apparent on x-rays. Dr. Wiisanen diagnosed a probable right wrist tendinitis. He recommended that the employee wear splints, take naprosyn, use ice and heat and elevate her wrists. The employee was seen by Dr. Wiisanen for a recheck on October 31, 1995. She reported that pain at night was much relieved but that she was still experiencing stiffness particularly when writing or typing. No crepitus was present but Tinel's sign was positive on that date. (T. 63-65; Exh. 6.)

The employee testified that her doctors recommended that she not work in order to rest her hands. A chart note by Dr. Carlisle on November 9, 1995 stated that she should remain off work at least one more week and ideally until Thanksgiving. An EMG was performed at the Dakota Clinic in Fargo, North Dakota, on that date, at Dr. Carlisle's suggestion, but revealed no significant abnormalities in nerve conduction or velocity. The employee testified that she did not work at the college food service job for 1.4 weeks through November 21, 1995. These dates were consistent with the wage loss information indicated on Exhibit 14, which was introduced for illustrative purposes. (T. 67-68, 98; Exh. 5: 11/21/95; Exh. 14.)

The employee's symptoms worsened for a few months after the October 26, 1995 pan lifting incident. When she returned to work at the job at the Concordia College food service, she was able to modify her job to eliminate some of the lifting and chopping duties. She was seen by Dr. Carlisle at GRMA on December 29, 1995, during her Christmas break from school, and received steroid trigger point injections. During this school vacation, the employee returned to work at GRMA but was physically unable to maintain a full-time schedule, working 32 hours per week instead of her regular 40 hours from December 1, 1995 to January 1, 1996, and missing four hours on January 2, 1996. (T. 66-7; Exh. 14.)

On January 19, 1996, Dr. Carlisle wrote a letter expressing the view that the employee's wrist problems constituted a work-related injury from an overuse syndrome secondary to typing and working on a computer while at GRMA as identified during treatment in July 1994. Dr. Carlisle believed that repetitive motions including chopping and lifting during the employee's subsequent work at the college food service exacerbated the pre-existing wrist condition that was initially identified in 1994. (Exh. 5: 1/19/96 letter.)

The employee testified that by February 1996, her symptoms had improved to the point that they had returned to the same level they had been prior to the incident lifting the pan of chicken on October 26, 1995. She was again able to perform the full duties of the work at her job in the food service without the modifications she had adopted in October 1995. (T. 66-69, 73.)

The employee graduated from Concordia College in May 1996, completed a required internship in August 1996 and began working in a supervisory position for First Care Medical Services in Fosston, Minnesota. The employee testified that her symptoms have remained at about the same level since February 1996. (T. 40-41, 75, 82-105.)

On June 18, 1996, the employee was examined by Dr. Jack Bert on behalf of the employer GRMA and its insurer. Dr. Bert opined that the employee had sustained a mild overuse syndrome in both upper extremities. He attributed her symptomology to writing and highlighting during college and to her work at the Concordia College food service. He further opined that the employee had sustained no permanent partial disability and required no restrictions. (Dodson Exhs. 1, 2.)

The employee was also examined by Dr. Duane F. Person, apparently at the request of her attorney, on June 12, 1997. Dr. Person recorded that the employee complained of crepitus in both wrists with motion, intermittent numbness of both hands in the index, middle and ring fingers, and volar forearm pain radiating into elbow and occasionally to her shoulders on both sides. On examination, Tinel's and Phalen's signs were found to be positive bilaterally. Wrist range of motion was full, but discomfort was present at the extremes of dorsi and volar flexion. Finkelstein's sign was negative. Dr. Person opined that a diagnosis of bilateral carpal tunnel syndrome seemed appropriate on the basis of the employee's examination findings and history, but was "reluctant to make this diagnosis in the face of a negative EMG." Dr. Person accordingly diagnosed an overuse syndrome of both upper extremities. He attributed the cause of this syndrome to the employee's work at Grand Rapids Medical Associates, but also thought that the

employee's work at the Concordia College food service was a substantial contributing factor. In his view, neither keyboarding nor writing at school were a substantial cause. He considered the incident of October 1995 when the employee's pain increased after lifting a pan of chicken to have resulted in a temporary aggravation of her right arm condition. He offered a non-scheduled permanency rating of three percent under the principles set forth in the Weber decision,[3] and felt that certain restrictions were appropriate.

On June 9, 1998 a hearing was held before a compensation judge of the Office of Administrative Hearings. The issues presented, among others not here at issue, included whether the employee had sustained a work-related injury in either the employment with GRMA or with Concordia College, whether the employers had sufficient notice of such injuries, whether the employee was entitled to temporary total and temporary partial disability compensation, whether the employee was entitled either to permanent partial disability compensation or to 26 weeks of economic recovery compensation, and whether liability should be apportioned between the two employers and insurers. Following the hearing, the compensation judge determined, among other things, (1) that the employee had sustained a work-related Gillette injury at GRMA culminating in disability on July 26, 1994 when wrist splints were prescribed, (2) that the nature of the injury was an overuse syndrome meriting a three percent permanent partial disability rating to each of the employee's upper extremities under Weber, (3) that the employee's work activities for the food service at Concordia College were not a substantial contributing cause of the employee's disability or need for medical treatment, (4) that the flare up of symptoms following lifting a pan of chicken at home on October 26, 1995 was not an intervening, superseding cause of the employee's disability and need for medical care, (5) that as a result of the July 26, 1994 injury the employee sustained various periods of temporary partial and temporary total disability and related wage loss and (6) that the employer GRMA had adequate actual notice of the July 26, 1994 work injury. GRMA and its insurer appeal. (Judgment Roll: 6/18/98 F&O.)

STANDARD OF REVIEW

On appeal, this court must determine whether the compensation judge's findings and order are "clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1(3) (1992). Substantial evidence supports the findings if, in the context of the record as a whole, they "are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where the evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Factfindings may not be disturbed, even though this court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of

[3] Weber v. City of Inver Grove Heights, 461 N.W.2d 918, 43 W.C.D. 471 (Minn. 1990).

the evidence or not reasonably supported by the evidence as a whole." Id.

DECISION

Causation, Primary Liability and Apportionment for the Employee's Gillette Injury

The compensation judge determined that the employee sustained a Gillette injury to both upper extremities as a result of her work activities at GRMA which required repetitive use of the hands, and that the injury first culminated in disability when the employee sought treatment for her symptoms and was prescribed wrist splints. Appellants argue that the compensation judge erred in finding that the employee sustained a Gillette injury related to her work at GRMA. First, they argue that the employee's history is inconsistent with a Gillette injury in that the employee did not display a gradual progression of symptoms at work prior to July 26, 1994. Next, they argue that the employee failed to adequately explain which specific activities at work were directly associated with the emergence of her hand symptoms. Finally, they argue that the compensation judge erred in finding that the employee's injury culminated on July 26, 1994, arguing that the employee's symptoms were not sufficiently disabling as of that date to sustain such a finding.

A Gillette injury is a result of minute injury from repeated trauma which results in a compensable injury when the cumulative effect culminates in disability. See Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960). In order to establish a Gillette injury, an employee must "prove a causal connection between her ordinary work and ensuing disability." Steffen v. Target Stores, 517 N.W.2d 579, 581, 50 W.C.D. 464, 467 (Minn. 1994). While evidence of specific work activities causing specific symptoms leading to disability "may be helpful as a practical matter," determination of a Gillette injury "primarily depends on medical evidence." Id. Questions of medical causation fall within the province of the compensation judge. Felton v. Anton Chevrolet, 513 N.W.2d 457, 50 W.C.D. 181 (Minn. 1994).

The employee described her job duties at GRMA and described their repetitive nature with respect to use of the upper extremities. Both Dr. Carlisle, who was fully aware of the nature of the employee's work activities, and Dr. Person, who took a history from the employee and reviewed the employee's medical records in forming his opinion, opined that the employee's repetitive work activities at GRMA were a substantial contributing cause of her overuse syndrome. We conclude that substantial evidence supports the compensation judge's determination that a causal relationship existed between the employee's work activities at GRMA and her Gillette injury.

With respect to the date of culmination, the compensation judge found that the injury culminated in disability on July 26, 1994 when the employee first sought medical treatment for her upper extremity symptoms and on which date the use of wrist splints was recommended by her treating physician. The employee subsequently used the wrist splints in order to perform the usual duties of her job at GRMA. In addition, according to the employee's testimony, her symptoms have remained the same since that time, except for a period between October 1995 and February 1996 when her symptoms were temporarily aggravated, but after which they returned

again to the same level. The date on which minute trauma culminates in a Gillette-type injury is not so much a medical question as a question of ultimate fact for the compensation judge, to "be determined on all the evidence bearing on the issue." Schnurrer v. Hoerner-Waldorf, 345 N.W.2d 230, 233, 36 W.C.D. 504, 509 (Minn. 1984). In determining that "ultimate breakdown" date, a compensation judge is not restricted to finding that the injury occurred on the date the employee became disabled from work, although that is a frequent conclusion; instead, the judge may consider the full history of "ascertainable events" relevant to the injury's development. Schnurrer, 345 N.W.2d at 233, 36 W.C.D. at 508, cited in Ellingson v. Thriftway, Inc., 42 W.C.D. 565, 573. We conclude that the compensation judge was not unreasonable in finding that July 26, 1994 was a date on which ascertainable events occurred which marked the culmination of the employee's injury.

The appellants next argue that substantial evidence fails to support the finding that the employee's work activities for Concordia College's food service were not a substantial contributing cause of the employee's disability and need for medical treatment from and after October 25, 1995. The employee worked only seven hours per week at the food service job. She had been able to perform this work through almost the entire 1995-1996 school year without notable difficulty and, according to her testimony, with no increase in her symptoms. The employee did not testify to any activity at work for Concordia's food service which she associated with the emergence of increased symptoms in October 1995; rather, the temporary period of aggravation of the employee's symptoms between late October 1995 and February 1996 had its onset in a specific event on October 26, 1996 when the employee experienced a flare up of her symptoms while lifting a pan of chicken out of the oven at home. Under the specific facts presented in this case, we cannot conclude that the compensation judge clearly erred in finding that the work at Concordia was not a substantial contributing cause to the flare ups of the employee's disability or need for medical treatment.

Superseding, Intervening Cause

A superseding intervening cause is one which legally severs the causal link between the original personal injury and the resultant disability such that the original personal injury is no longer a substantial and contributing cause of the resultant disability. As a general rule, where an injury or condition is found to have arisen out of and in the course of employment, an employer and insurer are liable for every natural consequence that flows from the condition unless it can be shown that later disability is the result of an independent, intervening cause. Nelson v. American Lutheran Church, 420 N.W.2d 588, 590, 40 W.C.D. 849, 851 (Minn. 1988); Rohr v. Knutson Constr. Co., 305 Minn. 26, 29, 232 N.W.2d 233, 235, 28 W.C.D. 23, 26 (1975). Thus, an insurer's liability will continue despite an intervening, nonwork-related condition if the work-related injury remains a substantial contributing cause of the ongoing disability. Rogers v. Cedar Van Lines, 36 W.C.D. 125, 126-27 (W.C.C.A. 1983) (interpreting Roman v. Mpls. Street Railway Co., 268 Minn. 367, 129 N.W.2d 550, 23 W.C.D. 573 (1964)). The work injury need not be the sole cause of the employee's disability. Cole v. Hafner, Inc., 47 W.C.D. 314 (W.C.C.A. 1992); see also Salmon v. Wheelabrator Frye, 409 N.W.2d 495, 40 W.C.D. 117 (Minn. 1987). The causal relationship between the work injury and subsequent aggravation, however, is broken when the

aggravation is the result of "unreasonable, negligent, dangerous or abnormal activity on the part of the employee." Eide v. Whirlpool Seeger Corp., 260 Minn. 98, 102, 109 N.W.2d 47, 49-50, 21 W.C.D. 437, 441 (1961).

The compensation judge found that the employee's activity in lifting a pan of chicken out of the oven at home caused a temporary period of aggravation of the employee's symptoms between late October 1995 and February 1996. However, the compensation judge also found that the flare up of the employee's symptoms remained a natural consequence of the initial injury of July 26, 1994. These conclusions were directly supported by the medical opinion of Dr. Person, by the employee's testimony and by the contemporary medical records. The compensation judge further concluded, however, that the employee's activity in lifting a pan of chicken out of her oven was a reasonable and normal activity of daily living and that it thus did not constitute an intervening and superseding cause of the employee's disability and medical care during the period of aggravation.

On appeal, GRMA and its insurer point out that there was no specific evidence to prove that lifting a pan of food out of an oven at home was a customary or typical activity for the employee and further argue, in essence, that the fact that a significant exacerbation to the employee's condition followed from this activity demonstrates that it was not reasonable. (Appellants' brief at 25.) We find neither of these arguments persuasive, as we think that the compensation judge was entitled to take judicial notice of the fact of common knowledge that people do regularly cook food at home and that this does on occasion involve removing a pan of food from the oven. The compensation judge's conclusions were reasonable under the facts and circumstances of this case, and we affirm.

Permanent Partial Disability

The compensation judge found that the employee had sustained an overuse syndrome to each of her upper extremities as a result of the July 26, 1994 work injury. As this condition is not one which is addressed in the permanent partial disability schedules, the compensation judge made a permanency rating pursuant to Weber v. City of Inver Grove Heights, 461 N.W.2d 918, 43 W.C.D. 471 (Minn. 1990), and Minn. Stat. § 176.105, subd. 1C. Adopting the disability rating proposed by Dr. Person, the compensation judge rated the employee's percent permanent partial disability to each of her upper extremities at three percent of the whole body.

As a general rule, PPD must be rated and paid in accordance with the permanency schedules in Minn. R. 5223. Minn. Stat. § 176.105, subd. 1; Minn. R. 5223.0300, subp. 3A. A rating under Weber is appropriate where an employee's condition is not one which has been addressed in the permanent partial disability schedules. Where the schedules do contain a rule addressing an employee's condition, the conditions of the rule must be applied and a Weber rating is inappropriate, even if a zero percent rating would result by application of the rule. See, e.g., Warner v. Luther Haven Nursing Home, slip op. (W.C.C.A. October 14, 1993.)

On appeal, GRMA and its insurer argue that the compensation judge erred in rating

the employee outside the disability schedules, and that he should have addressed her condition under Minn. R. 5223.0470, subpart 2B, which applies in cases of nerve entrapment of the ulnar, radial or median nerve at the wrist. That rule provides a range of permanent partial disability ratings from zero percent (subparagraphs 1 and 2) to three percent or more. The three percent rating, under subparagraph 3, required that an employee's nerve entrapment be "substantiated by persistent findings on electrodiagnostic testing." As the employee's EMG testing was negative, the appellants argue that the employee's condition should have been rated at zero percent under Minn. R. 5223.0470, subp. 2B(2) ("pain and paresthesia recurring or persisting despite treatment, but not substantiated by persistent findings on electrodiagnostic testing"). Alternatively, the appellants suggest that the employee's condition might properly have been rated as a tendinitis syndrome under subpart 2A of the same rule ("[p]ainful organic syndrome . . . substantiated by appropriate, consistent, and reproducible clinical findings which results in persistent limitation of active range of motion but no limitation of passive range of motion"), again resulting in a zero percent permanency rating.

The compensation judge accepted the diagnosis by Dr. Carlisle and others that the employee suffered from an "overuse syndrome," a condition not found in the disability schedules, over the diagnoses of either carpal tunnel (nerve entrapment) syndrome or tendinitis. We agree that there was some evidence for all three of these diagnoses. Dr. Carlisle had postulated the possibility of an early carpal tunnel syndrome when the employee first came in for treatment in July 1994. In May 1995 Dr. Carlisle treated the employee once for pain behind the elbow which he diagnosed as triceps tendinitis, and Dr. Wiisanen, who first treated the employee after her symptoms increased following the pan-lifting episode at home, diagnosed her condition as a probable wrist tendinitis. In his letter dated January 19, 1996, however, Dr. Carlisle adopted a diagnosis of overuse syndrome. Dr. Person, who saw the employee on June 12, 1997, similarly diagnosed an overuse syndrome of both upper extremities. Dr. Bert, although he believed that the employee's condition was resolving, also diagnosed an overuse syndrome. As the compensation judge's finding as to the nature and diagnosis of the employee's condition has substantial support in the record, we must affirm that finding. Accordingly, a Weber rating was not inappropriate in this case.

The appellants argue, however, that even if a Weber rating was appropriate, the employee's condition was not such as to warrant the three percent permanency rating adopted by the compensation judge. Generally, a compensation judge's finding regarding the rating of permanent partial disability is one of ultimate fact and must be affirmed if it is supported by substantial evidence. Jacobowitch v. Bell & Howell, 404 N.W.2d 270, 274, 39 W.C.D. 771, 778 (Minn. 1987). As trier of fact, a compensation judge is responsible for determining the degree of disability after considering all evidence and relevant legal factors in a case, and medical testimony is considered helpful but not dispositive on the issue of disability. Erickson by Erickson v. Gopher Masonry, Inc., 329 N.W.2d 40, 43, 35 W.C.D. 523, 528 (Minn. 1983); see Jensen v. Best Temporaries, 46 W.C.D. 498, 500 (W.C.C.A. 1992); Hammer v. Mark Hagen Plumbing & Heating, 435 N.W.2d 525, 529, 41 W.C.D. 634, 640 (Minn. 1989).

On appeal, the appellants' principal argument is that we should follow our decision

in Labrocca v. Children's Health Care, slip op. (W.C.C.A. March 4, 1997), in which we reversed a three percent rating under Weber for an upper extremity overuse syndrome on the basis that the employee in that case, who had no ongoing or permanent symptoms, had not documented an extent of permanent impairment of function such as would justify a three percent rating for a permanent partial disability.

The facts of this case are almost identical to those in Labrocca. The diagnosis in each case is one of an upper extremity overuse syndrome and the symptomology reported in both cases is markedly similar. In both cases, the only objective findings were positive Tinel's and Phalen's signs, without positive findings on electrodiagnostic testing. On examination, there was no loss of range of motion, no swelling or atrophy and reflexes and motor and sensory function were normal. The employees in each case were merely given wrist splints and similar minimal precautionary restrictions. In both cases, medical opinion suggested that the employee's condition likely involves an incipient carpal tunnel syndrome, not yet progressed to a stage where sufficient nerve loss is present to appear on electrodiagnostic testing. Here, as in Labrocca, the compensation judge relied on Minn. R. 5223.0470, subp. 2B(3), which would be used to rate a carpal tunnel syndrome with persistent electrodiagnostic results, as the closest compensable category under the schedules. (See Finding 15 and the compensation judge's Memorandum at p. 8).

We concluded in Labrocca that the level of disability demonstrated in this situation is not analogous to the degree of disability consistent with a three percent rating in the case of scheduled conditions, but is instead analogous to a minimal level of disability for which analogous conditions received a zero percent rating under the disability schedules. Minn. R. 5223.0470, subp. 2B(2).[4] The employee in this case has pain and paresthesia but without any positive electrodiagnostic results. She has minimal restrictions and intermittent positive Tinel's and Phalen's test results. As a result, consistent with our decision in Labrocca, we conclude that the compensation judge here clearly erred as a matter of law in concluding that the employee's permanent disability in the present case is of a level analogous to conditions receiving a three percent rating under the disability schedules. Accordingly, we must reverse.[5]

Economic Recovery Compensation

The compensation judge made, as an alternative finding, the determination that the employee would be entitled to 26 weeks of economic recovery compensation under Minn. Stat. § 176.101, subd. 3t(b), should this court reverse the award of permanent partial disability.[6] That

[4] See also Messenger v. Browning Ferris, slip op. (W.C.C.A. Aug. 29, 1997).

[5] Should the employee's condition progress to the point where electrodiagnostic testing confirms the requisite degree of nerve function loss, a three percent rating may then become appropriate. The issue of such a future rating is not foreclosed by this decision.

[6] We note that both this and the Labrocca case were decided by the same compensation

statutory provision states that economic recovery compensation is payable "where an employee has suffered a personal injury for which temporary total disability is payable but which produces no permanent partial disability and the employee is unable to return to former employment for medical reasons attributable to the injury."

The appellants argue that the evidence fails to establish an inability to return to the former employment, as the employee, in fact, did continue to work in the same job at GRMA at various times following the injury. Thus, the appellants request that this court reverse this alternative finding.

Again, we must agree. The employee continued to work for the employer GRMA on her normal summer schedule following the July 26, 1994 work injury. She worked for GRMA thereafter on her college vacations in the 1994/1995 and 1995/1996 school years and during the summer of 1995. She left the job with GRMA to pursue her professional career after graduation from Concordia College and not because she was medically unable to perform the job. The employee was not "unable to return to former employment for reasons attributable to the injury." We, accordingly, reverse the alternative award of 26 weeks of economic recovery compensation.

Temporary Benefits

The compensation judge awarded temporary total and temporary partial disability compensation for two brief periods during the employee's temporary aggravation of symptoms between October 1995 and February 1996. The appellants argue that the award of temporary total disability benefits was unsupported by any evidence that the employee had been taken off work by her physicians, and that her claims were not sufficiently supported by documentary evidence of wage loss.

We have reviewed the record closely and agree that the employee presented only minimal evidence to support her wage loss. Specifically, she presented an illustrative exhibit listing the specific dates and amounts of the claimed lost earnings and merely testified that the lost earnings as listed in the exhibits presented accurately represented the time she lost from work due to the injury. Contrary to the assertions of the appellants, we note that there was additional support for the medical nature of the off-work recommendation in the records of Dr. Carlisle, who on November 19, 1995 noted that the employee should remain off work for at least one more week, and ideally until Thanksgiving. The monetary amount in dispute in this case was small and the issue of the employee's temporary total and temporary partial disability was greatly overshadowed at the hearing by the parties' presentations of the other issues in this case. However, even though the issue was a minor one in this case, the employee's minimal presentation on the issue

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judge.

As he found that the employee was entitled to PPD under a Weber rating, we find it interesting that he also awarded 3t(b) benefits "if it is determined on appeal that . . . she is not entitled to PPD." (Finding 16.)

jeopardized her claim, and we would have affirmed had the compensation judge denied the benefits requested. However, the compensation judge awarded the benefits requested, and as we conclude that minimally sufficient evidence was present to support the awards, we affirm.