Workers' Compensation and Repetitive Motion Injuries in Virginia

Christian Henneke

Introduction

Some jobs require workers to perform recurring tasks that may cause disabling conditions such as carpal tunnel syndrome, tenosynovitis ("trigger thumb"), or rotator cuff tear. In Virginia, workers claiming to suffer from repetitive motion disorders have sought compensation under two theories outlined in the Workers' Compensation Act: injury-by-accident and occupational disease. The Workers' Compensation Board and the Virginia Courts of Appeal have awarded benefits for cumulative trauma incurred through repetitive motion. The Virginia Supreme Court, however, has repeatedly denied repetitive motion claims under both the injury-by-accident and occupational disease theories, asserting that it is the Virginia legislature's responsibility to outline clearly the compensability of those claims.

In injury-by-accident claims, employees have contended that repetitive duties at work caused an injury-by-accident covered by the Workers' Compensation Act [WCA]. Indeed, the WCA requires that a compensable injury-by-accident arise out of and in the course of employment. Va. Code Ann. §65.2-101. The Virginia courts, however, interpret the WCA's definition of injury-by-accident narrowly: compensation is available only for an injury from a single, identifiable incident during the course of employment that results in an obvious, sudden mechanical or structural change in the body. Workers will not receive compensation, therefore, for repetitive motion injuries under an injury-by-accident theory.

In occupational disease claims, workers have asserted that recurring motions
performed in their jobs effected a disease specific to their work environment. The WCA defines an occupational disease as a "disease arising out of and in the course of employment, but not an ordinary disease of life to which the public is exposed outside of the employment." Va. Code Ann. §65.2-400(A). Judicial and legislative interpretations of occupational disease are currently in flux. In 1996, the Virginia Supreme Court held that cumulative trauma from repetitive motion constitutes a noncompensable injury, not an occupational disease. Stenrich Group et al. v. Jemmott, 251 Va. 186, 467 S.E.2d 795 (1996). In 1997, the General Assembly amended the WCA to permit compensation for two specific repetitive motion injuries: hearing loss and carpal tunnel syndrome. The amended statute stipulates that hearing loss and carpal tunnel syndrome are ordinary diseases of life as defined by §65.2-401, not occupational diseases. Va. Code Ann. §65.2-400(C).

Compensation is available for ordinary diseases only if a claimant establishes by "clear and convincing evidence (not a mere possibility)" that the disease "arose out of and in the course of employment as provided in §65.2-400(B)" and "did not result from causes outside of employment." Va. Code Ann. §65.2-401(1). §65.2-400(B) is a six-part test to determine whether a disease arose out and in the course of employment. In addition, "by clear and

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1Va. Code Ann. §65.2-400 (formerly §65-42)
A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances:
1. A direct causal connection between the conditions under which work is performed and the occupational disease;
2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
3. It can be fairly traced to the employment as the proximate cause;
4. It is neither a disease to which an employee may have had substantial exposure outside of the employment, nor any condition of the neck, back or spinal column;
convincing evidence," the disease must be "characteristic of the employment and caused by conditions peculiar to such employment." Va. Code Ann. §65.2-401(2)(c). Since the new law took effect on July 1, 1997, no cases on point have reached the Workers' Compensation Board [the Board]. Deputy commissioners have awarded benefits, however, in a handful of cases for hearing loss and carpal tunnel syndrome under this heightened standard of proof; in 1997, for instance, sixteen percent of claimants filing under the revised amendment received compensation for their carpal tunnel syndrome. Virginia Worker's Compensation Commission Statistical Report for the Calendar Year 1997. Compensation for other repetitive motion injuries, presumably, remains unavailable under the Jemmott holding.

In comparison to other states, the Virginia rules regarding the compensability of repetitive motion injuries prove quite restrictive. The neighboring states of Maryland, West Virginia, Tennessee, Kentucky, and North Carolina all award workers' compensation benefits for repetitive motion disabilities. Indeed, Virginia remains one of only a handful of states that virtually prohibit compensation for such conditions.2

5. It is incidental to the character of the business and not independent of the relation of employer and employee; and
6. It had its origin in a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

2Allied Fibers v. Rhodes, 23 Va.App. 101, 474 S.E.2d 829 (1996). In a concurring opinion, the judge listed each state's rule on the compensability of repetitive motion injuries under the state's respective WCA. The opinion listed seven states as having no decision on the issue, and currently there are only three: Alaska, Massachusetts, and Vermont. The rest of the states grant benefits in some capacity.
Historical Background

In 1918, the Virginia General Assembly approved the state’s first WCA, modeling it after Indiana's act. This first version of the WCA permitted compensation only for an injury arising out of and during the course of employment: an injury-by-accident. Over the next fifteen years, the Virginia Supreme Court narrowed the definition of injury-by-accident considerably. In Clinchfield Carboccoal Co. v. Kiser, 139 Va 451, 124 S.E. 271 (1924), the court adopted the English interpretation of an injury-by-accident as one resulting from a definite event indicated by time, day, circumstances, and place. Nine years later in Big Jack Overall Co. v. Bray, 161 Va. 446, 171 S.E. 686 (1933), the court redefined an injury-by-accident as an unusual and unexpected occurrence which immediately caused an injury. The court specifically excluded injuries that resulted from "long, continued exposure to natural dangers incident to the employment." Id. at 457.

In 1942, the General Assembly formed a committee to consider the compensability of occupational diseases. After noting that workers' compensation statutes in twenty-five states awarded benefits for occupational diseases, the committee recommended revision of the WCA to follow the national trend. Report of the Commission for the Study of Occupational Disease Coverage in the Workmen's Compensation Act. Virginia S. Doc. No. 5 (1943). Rather than introducing a blanket statute that would include all illnesses arising out of work, the committee advocated a schedule that listed specific diseases compensable under the WCA. This format assuaged employers' fears that everyday conditions such as the common cold would become compensable; it also satisfied employees, who were content with any revision that permitted compensation for occupational diseases. Id.
In addition to the committee’s recommendation, a 1943 Virginia Supreme Court decision demonstrated a need for reform. **Aistrop v. Blue Diamond Coal Co.**, 181 Va. 287, 24 S.E.2d 546 (1943). In **Aistrop**, the court barred a claim involving an employee’s long-term exposure to poisonous gases while working in a coal mine. The court held that an injury incurred over time rather than arising out of one particular incident was noncompensable. *Id.* at 292. Taking into consideration the committee’s recommendation and the **Aistrop** decision, the 1944 General Assembly amended the WCA to include compensation for occupational diseases under a schedule format (Va. Code Ann. §65-43); it also added a six-part test to determine if the compensable disease arose out of employment. *(see supra FN1)*. The schedule did not include any repetitive motion injuries. The amendment also gave employers the option to forego the schedule format by agreeing to liability for occupational diseases solely under the six-part test. Va. Code Ann. §65-44.

By 1944, Virginia workers had two theories under which to pursue compensation for repetitive motion injuries: injury-by-accident and occupational disease. Thereafter the case law for each theory developed separately.

**Injury-By-Accident**

The WCA’s core language defining injury-by-accident has remained unchanged since its original incorporation in 1918. According to the WCA, an injury "shall mean only an injury-by-accident arising out of and in the course of the employment." Laws 1918, c. 400 §2(d). The Virginia Supreme Court has modified its interpretation of injury-by-accident over time, but the essence of its definition has endured: compensation is available only for
an injury resulting from an accident determinable by time, day, circumstance and place. Concerning work-related impairments from cumulative trauma, the court's piecemeal revisions have precluded the recovery of damages under an injury-by-accident theory.

In 1943, Aistrop defined an injury-by-accident as having taken place during a "reasonably definite time" period. In 1955, the court firmly linked cause with result by holding that an injury-by-accident was an "obvious sudden mechanical or structural change in the body" incurred during a “reasonably definite” length of time. Virginia Electric and Power Co. v. Quann, 197 Va. 9, 87 S.E.2d 624 (1955). In 1968, the court held that whether an injury stemmed from an accident did not depend on whether the same injury might happen to others. Reserve Life Insurance Co. v. Hosey, 208 Va. 568, 159 S.E.2d 633 (1968).

The Hosey ruling gave hope to workers with injuries that fell in the cracks between occupational disease and injury-by-accident theories. Such injuries included muscle strains in the back, neck, arms, and legs. These workers successfully recalled when their injuries had become too painful to continue employment but failed to identify the exact incidents that caused the disabilities. In Tomko v. Michael's Plastering Co., 210 Va. 697, 173 S.E.2d 833 (1970), a carpenter traced his back injury to repeated heavy lifting over a week-long period. In its rejection of the claim, the court held that the employee could neither identify the exact cause of his injury nor demonstrate that the injury resulted in a sudden mechanical or structural change in his body. In Badische Co. v. Starks, 221 Va. 910, 275 S.E.2d 605 (1981) and Virginia Electric and Power Co. v. Cogbill, 223 Va. 354, 288 S.E.2d 485 (1982), the Board and appellate courts respectively granted benefits to employees who
traced their back pain to an identifiable period at work. When the companies appealed the rulings, however, the Virginia Supreme Court denied benefits to the claimants. The court determined that the employees' inability to recount the actual incident that incited their pain nullified compensation.


In 1985, the Virginia Supreme Court heard two cases under the injury-by-accident theory in which workers attempted to differentiate their injuries from previous denials. In Lane Co. v. Saunders, 229 Va. 196, 326 S.E.2d 702 (1985), a claimant with no history of back pain traced his back injury to a particular day and activity. He had engaged in repeated heavy lifting in a task outside his normal work duties; he could not, however, identify a particular incident that caused his strained back. In Kraft Dairy Group, Inc. v. Bernardini, 229 Va. 253, 329 S.E.2d 46 (1985), the employee sought benefits for chronic arm strain that resulted from an alteration in her work duties that required heavy lifting. Doctors had concluded that the change in the employee's duties had caused her
impairment. The court denied compensation in both cases because the injuries ensued from cumulative trauma and not from a distinct, identifiable accident. From a standpoint of public policy, the court acknowledged that granting benefits to such disabling conditions might be desirable; with the General Assembly's failure to amend the WCA, however, the Virginia Supreme Court viewed the matter as closed. Id. at 256.

By the mid-1980s, the Virginia Supreme Court's stance on repetitive motion and injury-by-accident was clear: no benefits for a repetitive motion injury even when the injury resulted from work during an identifiable period of time. In 1985, the Court of Appeals nevertheless granted benefits under an injury-by-accident theory to an employee who had developed back strain during a three-hour period. Bradley v. Philip Morris, 1 Va. App. 141, 336 S.E.2d 515 (1985). "We do not understand the term 'identifiable incident' to mean an event or activity bounded with rigid temporal precision," the court explained. "It is rather a particular work activity which takes place within a reasonably discrete time frame." Id. at 145. The appellate court then ruled that three hours constituted a legitimate time period for a compensable repetitive motion injury to occur. Id. See McFeely Hardwoods & Lumber v. Miller, 4 Va. App. 334, 358 S.E.2d 178 (1987) (claimant carried a heavy object; the next day felt pain and appellate court awarded benefits).

In 1989, the Virginia Supreme Court reviewed the Bradley three-hour rule and the definition of injury-by-accident. In Morris v. Morris, 238 Va. 578, 385 S.E.2d 858 (1989), the court consolidated three appeals that all questioned whether repetitive trauma resulting from an identifiable period of time amounted to an injury-by-accident within the meaning of the WCA. The court rejected the appellate courts' three-hour guideline as inconsistent with
previous Virginia Supreme Court rulings and as outside the legislative intent of the WCA. Id. at 588. The court also reiterated that a compensable injury-by-accident must follow “an identifiable incident or sudden precipitating event resulting in an obvious structural change in the body.” Id. at 589.

Since 1989, the Board and the appellate courts have applied the Morris rule in their review of repetitive motion claims under an injury-by-accident theory. In Bowers v. TRW, Inc., 1996 WL 174595 (Va. App. 1996), for instance, a worker sought benefits under an injury-by-accident theory for a swollen knee. She sustained her disability while performing a job for two hours that required repetitive twisting of her legs. Because she failed to cite a specific incident that triggered her injury, the appellate court denied her benefits. Id. In 1995, Delegate Jackie Stump proposed a bill to change the definition of injury-by-accident to include any injury incurred during a single work shift; the amendment was defeated in committee. H.B. 2272, Virginia Gen. Assembly, Reg. Sess. (1995). Morris, therefore, remains the final word on repetitive motion injuries under the injury-by-accident theory.

**Occupational Disease**

In the decades following the 1944 legislative amendment that added occupational diseases to the WCA, the lower courts occasionally granted benefits to workers with repetitive motion disabilities under the occupational disease theory. During the 1970s, the lower courts broadened their interpretation of occupational disease theory in response to
societal demands.\textsuperscript{3} Until 1983, the Virginia Supreme Court remained silent on whether repetitive motion injuries were compensable under the occupational disease theory. Since 1983, the Virginia Supreme Court has unequivocally denied such claims. During the 1980s, the Board’s and appellate courts’ interpretations of occupational disease theory diverged from the stance of the Virginia Supreme Court, creating disarray in the case law. General Assembly revisions in 1986 and 1997 have only added to the legal confusion.

Since 1944, the General Assembly has revised the occupational disease section of the WCA several times. Each revision affected the compensability of repetitive motion injuries. The 1944 amendment granted compensation for occupational diseases that satisfied the six-part test (see supra FN1), but it prohibited compensation for ordinary diseases of life to which “the general public is exposed outside of the employment.” Va. Code Ann. §65-42. The WCA then listed compensable occupational diseases in a schedule that did not include repetitive motion injuries. Va. Code Ann. §65-43. The WCA did, however, allow employers to eschew the schedule in favor of accepting liability for all occupational diseases arising out of and in the course of employment under the six-part test. Va. Code Ann. §65-44.

Under the schedule, the Board denied compensation for repetitive motion injuries;

\textsuperscript{3}See Teri Scott Lovelace, note, The Ordinary Disease Exclusion in Virginia's Workers' Compensation Act: Where is it Going After Ashland Oil Co. v. Bean, 18 U. Rich. L. Rev. 161 (1983); Elizabeth V. Scott, Workers' Compensation for Disease in Virginia: The Exception Swallows the Rule, 20 U. Rich. L. Rev. 161 (1985). These two articles briefly discuss the increase in repetitive motion injury claims during the 1970s. Each attributes this development to an increased awareness and acceptance of these injuries as originating in employment and argues that employers should be liable for such disabilities.
using the blanket statute, however, the Board granted benefits. In *Wyatt v. H.E. Harman Coal Corp.*, 33 O.I.C. 313 (Va. 1951), the Board held that an employee's bursitis constituted an occupational disease. Initially, the Board rejected the claim since bursitis was not listed in the schedule. On further review, however, the Board discovered that the employer had opted for coverage of all occupational diseases under the blanket statute. Va. Code Ann. §65-44. Since the worker's bursitis was recognized as an occupational disease, the Board reversed its decision and awarded benefits. *Wyatt v. H.E. Harman Coal Corp.*, 33 O.I.C. 491 (Va. 1951).

In 1970, a drill press operator received benefits for repeated trauma to the hands that caused numbness and loss of circulation. In both cases, the Board granted benefits because the employers had elected blanket coverage of occupational diseases.

In 1966, the General Assembly appointed a joint committee to consider modernizing the entire WCA. In 1969, the committee produced its results, which included a recommendation to eliminate the occupational disease schedule. The committee reported:

The only possible effect the schedule can have is to eliminate a disease which may in fact be an occupational disease. The employee who contracts such a disease while working for an employer who has elected to be bound only by the schedule of occupational diseases receives no compensation. On the other hand, if an employee contracts a disease enumerated in the schedule, he must still prove it to be an occupational disease under the six-point test. The elimination of the schedule insures the most comprehensive coverage of occupational diseases, yet the employer is not prejudiced because the disease must in fact be an occupational disease, arising out of and in the course of employment. Report of the Legislative Counsel on Matters Pertinent to the Industrial Commission of Virginia and Workmen's Compensation Laws of Virginia. Virginia H. Doc. No. 17 (1969).


During the 1970s, the Board and appellate courts awarded benefits for repetitive motion injuries under an occupational disease theory in cases that successfully satisfied the six-part test. The Board analyzed three main concerns: (1) whether the claimant could establish a causal relationship between the disease and employment; (2) whether the disability was characteristic of and peculiar to employment; and (3) whether the condition constituted an ordinary disease of life to which the general public was exposed. Using these criteria, the Board awarded compensation in cases involving carpal tunnel syndrome,

After thirteen years of silence on the 1970 revision, the Virginia Supreme Court in 1983 heard the first in a series of cases involving repetitive motion injuries under the occupational disease theory. In *Ashland Oil Co. v. Bean*, 225 Va. 1, 300 S.E.2d (1983), a worker's repetitive duties aggravated a pre-existing condition. The court held that though the employment inflamed the condition, the impairment constituted an ordinary disease of life and therefore was noncompensable under the WCA. *Id.* In *Holly Farms v. Yancey*, 228 Va. 337, 321 S.E.2d 298 (Va. 1984), the claimant sought compensation under an occupational disease theory for back strain caused by a motion performed roughly 4000 times a shift. The court held that back strain was not a disease but a noncompensable injury. *Id.* The court noted that if back strains and similar injuries were classified as occupational diseases, then virtually any bodily disorder would become compensable. *Id.* at 341. In *Western Electric Co. v. Gilliam*, 229 Va. 245, 329 S.E.2d 13 (1985), the court held that another repetitive motion injury, tenosynovitis, was a condition that an employee could contract outside of employment and that it therefore constituted an ordinary disease of life. To make an ordinary disease of life compensable, the court called upon the legislature to revise the WCA. Virginia Worker's Compensation Commission Statistical Report for the Calendar Year 1997. Bound by *Gilliam*, the appellate court held that hearing

In 1986, a legislative joint subcommittee proposed to reverse Gilliam and allow compensation for ordinary diseases. Report of the Joint Subcommittee Studying Workers’ Compensation. Virginia H. Doc. No. 27 (1986). The General Assembly agreed and revised the WCA. An ordinary disease of life was now compensable if "by clear and convincing evidence" and "a reasonable medical certainty," the disease satisfied the six-part test. Va. Code Ann. §65.1-46.1. The revision stated that the disease must also be characteristic of employment and caused by conditions peculiar to such employment. Va. Code Ann. §65.1-46.1(3). To prevent the WCA from growing too broad, however, the revision prohibited compensation for any repetitive motion injury to the neck, back, or spinal column under an occupational disease theory. Va. Code Ann. §65.1-46(4).

The Board and the appellate courts interpreted the 1986 revision as consent to grant compensation for repetitive motion injuries as ordinary diseases under an occupational disease theory. In 1988, the appellate court awarded benefits for hearing loss gradually acquired through employment. Island Creek Coal Co. v. Breeding, 6 Va.App. 1, 365 S.E.2d (1988). Medical evidence established that factors outside of work did not cause the hearing loss. Id. at 11. In 1992, the appellate court found that carpal tunnel syndrome of both the hand and the arm qualified for compensation; bagging thirteen hundred whole chickens per hour had caused the claimant’s disability. Holly Farms Foods, Inc. v. Carter, 15 Va.App. 29, 422 S.E.2d 165 (1992).

The Virginia Supreme Court had divergent interpretations of the WCA’s 1986
In 1993, *Merillat Industries, Inc. v. Parks*, 246 Va. 429, 436 S.E.2d 600 (1993), the court held that a repetitive motion injury (a rotator cuff tear) must first be diagnosed as a disease before it can qualify as an ordinary disease and receive compensation under an occupational disease theory. In fact, the court held that a rotator cuff tear was an injury. The court refused to extend benefits, arguing that any ailment shown to arise out of and during the course of employment would qualify as an ordinary disease under an occupational disease theory, including repetitive motion injuries.

The appellate courts used the holding in *Parks* to reexamine repetitive motion injuries as occupational diseases. First, the claimant had to establish the repetitive motion disability as a disease; this was done through medical testimony. Second, the claimant had to prove, using the six-point test in §65.2-400, that the disease was an occupational disease. Third, the disease as an ordinary-disease-of-life had to be characteristic of employment and caused by conditions peculiar to such employment. Using these three criteria, the appellate courts continued to grant benefits for repetitive motion injuries as ordinary diseases under an occupational disease theory. See *Rocco Turkeys, Inc. v. Lemus*, 21 Va. 503, 465 S.E.2d 156 (1996) (carpal tunnel syndrome from gripping chickens with her hands); *YDO Yazaki Co. v. Snyder*, 21 Va.App. 605, 466 S.E.2d 750 (1996) (carpal tunnel syndrome from gripping electric screw driver repetitively with hands); *Perdue Farms v. McCutchan*, 21 Va.App. 65, 461 S.E.2d 431 (1995) (carpal tunnel syndrome from repetitive wrist movements); *Piedmont Manufacturing Co. v. East*, 17 Va.App. 499, 438 S.E.2d 769 (1993) (tenosynovitis from repetitive wrist movements). In 1995, the General Assembly took the next step and passed legislation making carpal tunnel syndrome and

In 1996, the Virginia Supreme Court consolidated three cases in Stenrich Group v. Jemmott that involved compensation for carpal tunnel syndrome using an occupational disease theory. Under the guise of consistency, the court refused to accept a doctor’s diagnosis of cumulative trauma from repetitive motion as a disease and instead classified all repetitive motion injuries as noncompensable injuries-by-accident. Stenrich Group, 251 Va. at 198. Specifically, the court "held that job-related impairments resulting from cumulative trauma caused by repetitive motion, however labeled or however defined, are as a matter of law, not compensable under present provisions of the WCA." Id. at 199.

The Jemmott decision prohibited benefits for any repetitive motion injury under an occupational disease theory. It also set the standard for future lower court rulings. See, e.g., Allied Fibers v. Rhodes, 23 Va.App. 101, 474 S.E.2d 829 (1996) (hearing loss due to repeated loud noise exposure at work); United Airlines Inc. v. Walter, 24 Va.App. 394, 482 S.E.2d 849 (1997) (photosensitivity resulting from cumulative exposure to radiation by fluorescent lights); and J.H. Miles Seafood Co. v. Guyton, 1997 WL 161844 (Va.App. 1997) (bilateral plantar fascitis resulting from standing for the entire workshift). In each case, the appellate court noted that all cumulative trauma conditions, including those caused by repetitive motion, were noncompensable under the WCA.

In 1997, the General Assembly passed legislation specifically making carpal tunnel syndrome and hearing loss ordinary diseases of life compensable under an occupational
disease theory. Va. Code Ann. §65.2-400(C). Delegate Richard Cranwell linked the
compensation of these two repetitive motion disabilities to an issue desired by employers in
Virginia: the return of excess money in the unemployment insurance reserve to participating
businesses. For employers to receive their money, they had to support Cranwell's
revision. The revision, however, has proved ineffective. The standard of proof required by
the revised statute eliminates nearly all claims: few disabled employees can convincingly
establish "by clear and convincing evidence" that the disease was "characteristic of the
employment and caused by conditions peculiar to such employment." Va. Code Ann.
§65.2-401(2)(c). As of August 1998, only a handful of workers have received benefits for
carpal tunnel syndrome and hearing loss; no cases have yet to reach the full Board.
Interview with Deputy Commissioner Mary Link (September 2, 1998).

In 1998, the appellate court distinguished between a compensable occupational
disease and a noncompensable condition incurred through cumulative trauma. In A New
suffered from skin allergies as a result of contact with chemicals released by tulips. A
doctor determined that the florist's allergic reactions resulted from at least two and probably
more physical contacts with the chemicals. Id. at 467. The court asserted that the
claimant's allergic contact dermatitis, though incurred over time, did not result from the
process of trauma but rather from each incident of chemical interaction. The court,

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4Tyler Whitley, Cranwell Brokers Compromise on Unemployment Benefits, Tax, Rchmtd, Feb. 3,
1997, A1. Interview with Gary Kendall, Attorney with Michie, Hamlett, Lowry, Rasmussen & Tweel,
P.C. in Charlottesville, Va. (July 24, 1998). Mr. Kendall assisted Delegate Cranwell with drafting the
1997 revision to the WCA.
therefore, deemed allergic contact dermatitis a compensable occupational disease. _Id._ at 474.

**Conclusion**

As of September 1998, Virginia employees suffering from repetitive motion disabilities other than carpal tunnel syndrome and hearing loss will likely fail in their attempts to seek compensation under the WCA. Furthermore, the restrictive standard for these two specific impairments under the 1997 revision is virtually impossible to meet; only 16% of those seeking compensation for their work-related carpal tunnel syndrome in 1997 received compensation under the WCA. Virginia Worker's Compensation Commission Statistical Report for the Calendar Year 1997. Until the General Assembly specifically and clearly delineates the compensability of repetitive motion injuries, the Virginia Supreme Court and the lower courts will probably deny benefits to injured employees who would receive benefits in many other jurisdictions.