



Washington Self-Insurers Association

**VIA E-Mail: Aquila.Doore@lni.wa.gov**

March 14, 2017

Ms. Aquila Doore  
Office of the Medical Director  
Washington State Department of Labor & Industries  
PO Box 44321  
Olympia, WA 98504-4315

RE: Comments on Treatment Guideline Amendments, Work-Related Carpal Tunnel Syndrome

Dear Ms. Doore:

Thank you for the opportunity to comment on proposed amendments to the above-referenced treatment guideline regarding work-related Carpal Tunnel Syndrome (CTS), especially pertaining to the work-relatedness of computer use.

These comments are submitted by the Washington Self-Insurers Association on behalf of the major private and public employers in Washington who choose to self-insure their workers' compensation programs. There are roughly 365 self-insured employers who employ approximately one third of Washington's workforce, and cover nearly 60 percent of Washington's total annual payroll. Self-insured employers are aligned in their commitment to provide timely and appropriate benefits to their covered workers for conditions that arise from employment.

Our primary concern with the new language in the CTS treatment guideline is the misapplication of an important legal concept to reach its conclusion.

Specifically, new language in the proposal states:

There is insufficient evidence to definitively establish a cumulative exposure to keyboarding and/or mouse usage at which CTS will occur. **However, given the imperative to liberally construe worker benefits (RCW 51.12.010)**, and given the available evidence of an association, workers whose principal job duties involve prolonged, consistent, and cumulative computer keyboard and/or mouse usage of at least 20 hours per week could be at an increased risk of developing work-related CTS.

(emphasis added)

RCW 51.12.010 states, in pertinent part, “This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment.”

In the context of a statutory scheme like Title 51 RCW, “liberal construction” is a legal term of art to describe the Legislature’s direction to the courts that, while construing the provisions of the Industrial Insurance Act, doubts as to the meaning of an ambiguous statutory provision are to be resolved in favor of the worker. See, e.g., *Dennis v. Dep’t of Labor & Indus.*, 109 Wn.2d 467, 470, 745 P.2d 1295 (1987) (citing RCW 51.12.010; *Sacred Heart Med. Ctr. v. Carrado*, 92 Wn.2d 631, 635, 600 P.2d 1015 (1979)).

But liberal construction applies only to interpretation of the law. It does not apply to the resolution of factual questions or the application of the law to factual evidence.

In an early case, our Supreme Court rejected the interpretation “that the Workmen’s Compensation Act of the State of Washington should be liberally applied in favor of its beneficiaries...,” *Hastings v. Dep’t of Labor & Indus.*, 24 Wn.2d 1, 12-13, 163 P.2d 142 (1945). Rather, while the court must liberally construe the statute’s meaning, resolution of factual questions must turn on “a determination of the facts of the case from the evidence presented.” *Id.*

This has been the rule before our Board of Industrial Insurance Appeals and the state courts for about as long as the Act has been in place.

In following an “imperative” to “liberally construe worker benefits” in favor of a finding of work-relatedness, the proposed guideline errs in conflating questions of fact – what the medical evidence would support, with questions of law – what the Act means, which isn’t at issue here.

Accordingly, WSIA would ask the Department to eliminate that faulty premise from its assessment of the work-relatedness of CTS among computer users. Not only is it a misstatement of the law, but it nourishes a problematic attitude that sometimes infects workers’ compensation to its detriment, that all ties go to the runner.

To the extent that not liberally interpreting conflicting medical evidence requires a reworking of the guideline’s core conclusions in this regard, WSIA would urge that work as well.

Thank you again for the opportunity to comment.

Very truly yours,

/s/  
Kristopher I. Tefft  
Executive Director and General Counsel  
Washington Self-Insurers Association