

REPETITIVE MOTION CLAIMS

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Repetitive motion claims fall under the occupational disease umbrella of the North Carolina Workers' Compensation Act. All compensable occupational diseases are enumerated in N.C. Gen. Stat. §97-53. A disease not specifically listed can still be considered an occupational disease if it meets the requirements of 97-53(13). Repetitive motion claims are also governed by N.C. Gen. Stat. §97-53(13): which states that an occupational disease is "any disease, ...which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the public is equally exposed outside of the employment." The Workers' Compensation Act was not intended to become a replacement for general health insurance. *Duncan v. City of Charlotte*, 234 N.C. 86, 90-91, 66 S.E. 2d 22,25 (1951), *Bryan v. Church*, 267 N.C. 111, 115, 147 S.E. 2d 633, 635 (1966). Therefore, there must also be evidence of a causal relation between the claimed condition and the plaintiff's employment.

There is no requirement regarding the amount of repetition required to contract an occupational disease based on repetitive motion under the North Carolina Workers' Compensation Act. The Industrial Commission and the courts focus on the elements of increased risk and causation rather than a definition of repetitive motion. Although ergonomic experts are helpful, the Industrial Commission does not always give their testimony weight. See I.C. NO. 047454, *Smith, v. Wal-Mart Stores, Inc., (Sam's Club)* and I.C. NO. 285962, *Bradley, v. Commonwealth Hosiery Mills, Inc.*

Repetitive motion claims include a range of conditions. Repetitive motion claims that have been found compensable by the Industrial Commission in the past year include the following examples. A masonry worker developed a shoulder impingement syndrome which was determined to be a compensable occupational disease, in I.C. NO. 369717, *Kelly B. Floyd v. GA Masonry Corp.* Carpal tunnel syndrome developed by a former trucker who was employed as a heavy equipment truck repairman was found compensable in I.C. NO. 432125, *David Haden v. Classic Custom, Inc.* A backhoe operator who developed bilateral epicondylitis due to his employment was found to have sustained a compensable occupational disease. I.C. NO. 218809, *Barney Williams, v. C.R. Hassinger Grading.* The Industrial Commission determined that a carpenter who developed DeQuervain's tenosynovitis of his right wrist had developed a compensable occupational disease. I.C. NO. 291805, *William J. Long, v. John Foster Homes, Inc.* The Full Commission found that a librarian contracted bilateral epicondylitis as a result of her occupation. I.C. NO. 283223, *Sandra Taylor v. Henderson County Public Library.* The final example of a compensable repetitive motion claim as determined by the North Carolina Industrial Commission is I.C. NO. 120146, *Hubert M. Johnson v. Baxter Health Care.* In this case the Full Commission found that a quality control inspector who routinely dyed ceramic parts sustained a torn rotator cuff as the result of his repetitive

motion and held claimant's shoulder condition compensable as an occupational disease under N.C. Gen. Stat. 97-53(13).

In order to prove that they have sustained an occupational disease as a result of repetitive motion a claimant must show that 1) the disease must be proven to result from causes and conditions which are characteristic of their particular employment, 2) the disease must not be an ordinary disease of life and 3) their employment placed them at an increased risk of contracting this disease to which the general public is not equally exposed outside of this employment. *Rutledge v. Tultex Corporation/King's Yarn*, 301 S.E. 2d 359(1983) and *Booker v. Duke Medical Center*, 297 N.C. 458, 256 S.E. 2d 189 (1979).

A disease is characteristic of a profession when there is a recognizable link between the nature of the job and an increased risk of contracting the disease in question. *Booker v. Duke Medical Center*, 297 N.C. 458, 256 S.E. 2d 189 (1979).

The second element of this test does not signify that all ordinary diseases of life are excluded from coverage under the statute, merely the ordinary diseases of life to which the general public is exposed equally with the workers in a particular trade or occupation. In *Booker v. Duke Medical Center*, 297 N.C. 458, 256 S.E. 2d 189 (1979), the claimant worked as a lab technician manually testing blood samples. He contracted serum hepatitis. The Supreme Court found although serum hepatitis was an ordinary disease of life that the public's exposure to serum hepatitis was to a lesser extent than a medical lab technician. Therefore, an ordinary disease of life can be found compensable provided that the claimant's employment increases their exposure to the disease.

Under N.C. Gen. Stat. §97-53(13), the claimant has to prove the additional element of increased risk as opposed to the listed diseases in N.C. Gen. Stat. §97-53. Expert medical testimony is required to establish that a claimant's employment placed them at an increased risk of contracting or developing the occupational disease as opposed to the general public not so employed. *Norris v. Drexel Heritage Furnishings, Inc.*, 139 N.C. App. 620, 534 S.E. 2d 259 (2000).

The final element of causal relation is satisfied if the employment significantly contributed to or was a significant causal factor in the disease's development. *Rutledge v. Tultex Corp.* 308 N.C. 85, 301 S.E. 2d 359 (1983) and *Hardin v. Motor Panels, Inc.*, 136 N.C. App. 351, 524 S.E. 2d 368 (2000). A claimant may show that the employment constituted a significant contributing factor upon showing that the occupational disease would not have developed to such an extent that it caused the physical disability which resulted in an incapacity to work. *Baker v. City of Sanford*, 120 N.C. App. 783, 788, 463 S.E. 2d 559,563 (1995), *disc. review denied*, 342 N.C. 651, 467 S.E. 2d 703(1996). Where the nature of an injury involves complicated medical questions, only an expert can give competent evidence of causation. *Click v. Pilot Freight Carriers*, 300 N.C. 164, 167, 265 S.E. 2d 389(1980). Although testimony that a causal relation is possible is admissible, it has been held to be insufficient to prove causation. The Court of Appeals requires that the experts testify to a reasonable degree of medical probability that there is a causal link. *Holley v. ACTS*, 357 N.C. 288, 581 S.E. 2d 750(2003). The Court of Appeals has also held that a causation opinion based solely on a temporal relation is not sufficient to prove causation. Temporal relationship is defined as where a condition has arisen after an event, therefore, the condition must be related to that event. *Young v. Hickory Business Furniture*, 353 N.C. 227, 538 S.E. 2d 912 (2000). However, the Court

of Appeals recently found that a doctor's causation testimony was sufficient even though his opinion was based on the temporal relationship between plaintiff's injury at work and the subsequent development of her fibromyalgia. In that case the doctor testified that he had tested for other possible causes of plaintiff's symptoms and was able to rule out those causes, therefore he opined that plaintiff had developed her fibromyalgia due to her employment. The Court of Appeals found although the temporal relationship played a role in that diagnosis because the doctor had tested for and excluded other possible causes of plaintiff's condition his opinion was not based in speculation. Therefore the Court of Appeals found that the doctor's testimony was competent evidence of causation and upheld the Full Commission's award of benefits. *Singletary v. N.C. Baptist Hospital*, ___ N.C. App. ___, 619 S.E. 2d 888 (2005).

In addition to proving that the occupational disease is causally related to employment, if a claimant is alleging that their employment aggravated a pre-existing condition, they still must show that their current employment placed them at an increased risk of aggravating their condition. *Futrell v. Resinall Corp.*, 151 N.C. App. 456, 566 S.E. 2d 181, *affirmed*, 357 N.C. 158, 579 S.E. 2d 269 (2003), *Norris v. Drexel Heritage Furnishings, Inc.*, 139 N.C. 620, 534 S.E. 2d 259 (2000).

If the claimant can meet the test set out in N.C. Gen. Stat. §97-53(13), their claim for an occupational disease based on repetitive motion will be found compensable. The important elements that must be proven include the following. The claimed condition or disease must be due to causes and conditions characteristic of and peculiar to a particular trade, occupation or employment. All ordinary diseases of life to which the public is equally exposed outside of the employment are excluded. The claimant must show that the employment placed him/her at an increased risk of developing the claimed disease. Finally, the claimant must prove that the employment significantly contributed to or was a significant causal factor in the disease's development. Repetitive motion claims cover a range of diseases and conditions, but no matter what the condition or the employment, the claimant must still prove each element of their cases as set out in N.C. Gen. Stat. §97-53(13).