BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CALLENTANA FUENTES, Claimant, v. CHIPOTLE MEXICAN GRILL, Employer, and AMERICAN ZURICH INSURANCE COMPANY, Surety, Defendants.	**IC 2012-006304** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED 9/27/2013**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise on February 22, 2013. Claimant, Callentana Fuentes, was present and represented by Bradford Eidam of Boise. Defendant Employer, Chipotle Mexican Grill (Chipotle), and Defendant Surety, American Zurich Insurance Company, were represented by Mindy Willman of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken. Briefs were submitted and the matter came under advisement on June 28, 2013.

ISSUES

The issues to be decided include:

1. Whether Claimant's alleged need for medical care is caused by a compensable

occupational disease;[1]

2. Claimant's entitlement to additional medical care; and

3. Claimant's entitlement to temporary disability benefits.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant alleges that she contracted the occupational disease of right carpal tunnel syndrome from her work at Chipotle and is entitled to additional benefits, including carpal tunnel release surgery and partial temporary disability benefits through the time of the hearing. Defendants assert that Claimant has failed to prove she suffers carpal tunnel syndrome or any other abnormal condition due to her work at Chipotle.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission's legal file;
2. The testimony of Claimant and Ken Stacy taken at the February 22, 2013 hearing;
3. Exhibits 1 through 10 admitted at hearing;
4. The post-hearing deposition of Robert H. Friedman, M.D., taken by Defendants on April 4, 2013;
5. The post-hearing deposition of T. Clark Robinson, M.D., taken by Claimant on April 5, 2013; and
6. The post-hearing deposition of Howard W. Shoemaker, M.D., taken by Defendants on April 16, 2013, and continued on May 2, 2013.

[1] Although not expressly set forth in the Notice of Hearing, this issue was extensively argued and briefed by the parties and is implicit in Claimant's request for medical care. See Gomez v. Dura Mark, Inc., 152 Idaho 597, 272 P.3d 569 (2012).

All objections made during Dr. Friedman's post-hearing deposition are overruled except Claimant's objections posed at pages 26 and 27 thereof which are sustained pursuant to JRP 10(E) as Defendants' questions addressed evidence developed after hearing or not previously disclosed. All objections posed during Dr. Robinson's post-hearing deposition are overruled except Defendants' objection posed at page 21 thereof which is sustained, and Claimant's objections posed at pages 38 and 39 thereof which are also sustained pursuant to JRP 10(E) as the questions objected to addressed evidence developed after hearing or not previously disclosed. Claimant's motion to strike arguments from Defendants' brief and references to Dr. Friedman's and Dr. Robinson's testimony elicited by Defendants over Claimant's above-sustained objections is granted. All objections posed during Dr. Shoemaker's deposition are overruled.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. **Background.** Claimant was 29 years old and resided in Caldwell at the time of the hearing. In 2002, she graduated from Homedale High School. After high school, Claimant worked for a temporary employment service and was assigned work at Simplot, cleaning and handling packages of potatoes. She later worked at KFC for four years, and thereafter worked at Qdoba Mexican Grill as a shift supervisor and cashier. Claimant also attended the Academy of Professional Careers for 10 months and learned administrative medical/dental assisting, but has never used those skills.

2. On September 9, 2011, Claimant began working full-time at Chipotle, a fast food restaurant, earning $8.50 per hour. She started working the grill, cooking chicken, steak, rice, and beans. After about one month she was assigned to food preparation and sliced jalapenos, diced onions, chopped lettuce and various vegetables, and made guacamole. All cutting, slicing,

and chopping was by hand with a knife. She generally worked from 8:00 or 8:30 a.m. until 4:00 p.m. From 8:30 until 11:00 a.m. she chopped 12 bags of cilantro, cut oregano and jalapenos, and cut up chicken and steak. Claimant rolled her wrist repetitively to chop; she gripped the knife firmly in her right hand, pinching with her thumb and index fingers. After lunch, she used a knife to cut chicken, steak, cilantro, and various vegetables in preparation for dinner. In total, she used a knife five to six hours per shift, five days per week. She had never worked a job that required so much cutting and chopping by hand. Her prior employers had machines to slice and dice vegetables.

3. **Alleged occupational disease and treatment.** By early November 2011, Claimant began noticing numbness, pain, and tingling in her right hand, principally in her middle, ring, and little fingers. She had never experienced these kinds of symptoms before. She noted these symptoms during the day, but even more so at night. Her work duties using a knife at Chipotle worsened her symptoms.

4. On November 12, 2011, Claimant told Chipotle supervisor, Ken Stacy, that she was having right hand problems and that she probably could not do her usual cutting duties. Mr. Stacy directed her to come to work anyway. He assigned her to grate cheese and wash lettuce. Mr. Stacy completed a notice of accident or occupational disease that day. Claimant was not asked to complete or sign anything. She did not use a knife and worked in a modified capacity that day. On or shortly after November 12, 2011, Mr. Stacy telephoned the Surety and had Claimant speak with a Surety representative who then transferred her to a nurse. Claimant told them she had been cutting vegetables with a knife at work and had noticed hand pain for several days. The nurse directed Claimant to ice her hand and take Ibuprofen to manage the pain.

5. After November 12, 2011, Chipotle assigned Claimant to work on the serving line

one or two days per week. She took customers' orders and made burritos and did not use a knife. The other three or four work days each week she was in the kitchen using a knife five hours per day. This continued for about a month. By the middle of December 2011, Claimant was back to working the grill, using a knife five to six hours per day, five days per week. Her right hand pain became constant and her right hand went numb if she bent her wrist. Her night-time hand pain was severe enough to disrupt her sleep. Claimant continued working in spite of her increasing hand pain.

6. On January 26, 2012, Claimant presented to William England, M.D., at the Saltzer Medical Clinic in Nampa, complaining of constant right hand pain. Dr. England provided a right wrist brace which Claimant wore consistently thereafter. He restricted her work activities and referred her to Howard Shoemaker, M.D. Chipotle changed Claimant's work duties for a time to provide less hand intensive work.

7. On February 1, 2012, Claimant presented to Dr. Shoemaker and explained her symptoms and work duties. Dr. Shoemaker advised Claimant that her right wrist and hand problems were caused by her work. He prescribed physical therapy, ordered a nerve conduction study, and restricted Claimant's work activities, expressly cautioning her against forceful grasping. Chipotle honored these restrictions for several weeks, but then returned Claimant to her regular duties, including chopping vegetables with a knife. Physical therapy improved Claimant's range of motion, but did not resolve her hand pain. The nerve conduction study was normal. Dr. Shoemaker then referred Claimant to hand surgeon T. Clark Robinson, M.D.

8. In March 2012, Chipotle assigned Claimant to cashiering. Her hours were initially reduced to working from 9:45 a.m. to 4:00 p.m. or from 5:00 until 9:00 pm. When she went in at 9:45 she swept and mopped the lobby, took down all of the chairs, stocked and

cleaned, and prepared vinaigrette. She noted difficulty in gripping and mopping using her right hand. As a cashier she also cleaned tables and took out trash—tasks she tried to do with her left hand. Her right hand continued to be painful when she used it extensively. Her supervisor provided ice packs by the cash register for Claimant to use to control her right hand pain. Her work hours as a cashier were later reduced to 11:00 a.m. until 3:00 p.m.

9. On April 20, 2012, Claimant presented to Dr. Robinson. She described her prior work duties requiring extensive cutting with a knife. Dr. Robinson examined her and concluded she suffered right carpal tunnel syndrome. He administered a cortisone injection which dramatically reduced her right hand symptoms for more than a week, after which her pain returned. Dr. Robinson then recommended carpal tunnel release surgery.

10. In April 2012, Claimant started classes at Treasure Valley Community College, studying business management. She attended classes two days per week and was available the other five days per week for work at Chipotle.

11. On June 19, 2012, Claimant was examined by Robert Friedman, M.D., at Surety's request. Dr. Friedman opined that Claimant did not suffer carpal tunnel syndrome and that her right hand complaints were not work related. After receiving Dr. Friedman's report, Defendants advised Claimant they would authorize only one more doctor's visit and three more physical therapy sessions. Dr. Robinson reviewed Dr. Friedman's report, disagreed with it, and continued to recommend carpal tunnel release surgery.

12. At the time of hearing, Claimant continued to have nearly constant right hand pain, tingling, and numbness. She continued to wear her right wrist brace. She has difficulty holding a toothbrush, squeezing a toothpaste tube or shampoo bottles, or holding a mop or broom handle. Using her right hand worsens her symptoms. Claimant testified that her symptoms were

worse at the time of hearing as compared to January 2012. Claimant has taken a number of college courses and was enrolled at Treasure Valley Community College at the time of the hearing. She continues to work as a cashier and enjoys her association with Chipotle where she hopes to progress into a managerial position.

13. **Claimant's credibility.** Having observed Claimant at hearing, and reviewed the evidence, the Referee finds that Claimant is a credible witness.

DISCUSSION AND FURTHER FINDINGS

14. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

15. **Occupational disease.** As a prerequisite to obtaining medical or temporary disability benefits, Claimant must first establish she suffered a compensable accident or occupational disease. Claimant alleges, and Defendants deny, that she contracted the occupational disease of carpal tunnel syndrome from her work at Chipotle.

16. The Idaho Workers' Compensation Law defines an "occupational disease" as "a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment …." Idaho Code § 72-102(22)(a). Idaho Code § 72-439 limits the liability of an employer for any compensation for an occupational disease to cases where (1) "such disease is actually incurred in the employer's employment," and (2) for a non-acute occupational disease, where "the employee was exposed to the hazard of such disease for a period of 60 days for the same employer." The

60-day period of exposure required by Idaho Code § 72-439 need not be a single continuous period. Jones v. Morrison-Knudsen Co., Inc., 98 Idaho 458, 567 P.2d 3 (1977). Furthermore, the law provides that:

> [w]hen an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, . . . and the disease was due to the nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, . . . shall be entitled to compensation.

Idaho Code § 72-437. Disablement means "the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease," and "disability means the state of being so incapacitated." Idaho Code § 72-102(22)(c). Finally, "Where compensation is payable for an occupational disease, the employer, or the surety on the risk for the employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefore." Idaho Code § 72-439(3). However: "Nothing in these statutes indicates an intent to require that an employer who employs an employee who comes to the employment with a pre-existing occupational disease will be liable for compensation if the employee is disabled by the occupational disease due to an injurious exposure in the new employment." Reyes v. Kit Manufacturing Co., 131 Idaho 239, 241, 953 P.2d 989, 991 (1998).

17. In summary, under the statutory scheme, claimants with occupational disease claims must demonstrate (1) that they were afflicted by a disease; (2) that the disease was incurred in, or arose out of and in the course of, their employment; (3) that the hazards of such disease actually exist and are characteristic of and peculiar to the employment in which they were engaged; (4) that they were exposed to the hazards of such non-acute disease for a minimum of 60 days with the same employer; and (5) that as a consequence of such disease, they became actually and totally incapacitated from performing their work in the last occupation in

which they were injuriously exposed to the hazards of such disease. In the present case, Claimant's occupational disease claim for carpal tunnel syndrome must be examined in light of each of the above elements.

18. Disease. Defendants dispute that Claimant suffers from right carpal tunnel syndrome. They rely upon the opinions of Dr. Friedman and Dr. Shoemaker. Claimant relies primarily upon the opinion of Dr. Robinson to establish her claim of carpal tunnel syndrome. The opinions of all three physicians are addressed below.

19. *Dr. Friedman.* Dr. Friedman is board certified in physical medicine and rehabilitation and in electrodiagnostic medicine. He is not a surgeon. He testified via post-hearing deposition on behalf of Defendants. Dr. Friedman testified that classic carpal tunnel syndrome symptoms include numbness and tingling in the thumb, index, and middle fingers, and possibly on the thumb-side of the ring finger. The symptoms may awaken the patient at night and may include achiness up to the elbow or even up to the shoulder. Dr. Friedman opined that three elements were required to diagnose carpal tunnel syndrome: abnormal physical examination findings, abnormal history, and objective abnormality confirmed by slowed nerve conduction tests. He acknowledged that not every physician in the medical community requires all three elements to diagnose carpal tunnel syndrome, but opined that the likelihood of a successful outcome from carpal tunnel release surgery for an individual without abnormal nerve conduction studies was much lower than for an individual with abnormal studies.

20. Dr. Friedman examined Claimant on June 19, 2012, at Defendants' request. He recorded Claimant's complaints of pain in her entire right hand, thumb, and joints of her fingers; occasional shooting pain up her right arm; and worsening pain when bending her wrist downward. Dr. Friedman testified that Claimant's complaints of thumb pain, shooting arm pain, and worsening hand pain when bending her wrist downward are all consistent with carpal tunnel

syndrome, but that the balance of her complaints are not. He found no abnormality upon examining Claimant's neck or upon nerve conduction velocity testing. He concluded that Claimant suffered right hand myofascial pain, but not carpal tunnel syndrome. Dr. Friedman also opined that Claimant's right hand symptoms were not related to her employment at Chipotle because when she used her right hand less as a cashier, her symptoms persisted rather than improved. He concluded that carpal tunnel release surgery was not a reasonable treatment for Claimant's condition.

21. Dr. Friedman testified that myofascial pain results from an injury or trauma, and admitted that he was not aware of any trauma precipitating Claimant's right hand symptoms. He further acknowledged that because of variations in human anatomy, carpal tunnel patients may report symptoms in only one or two of the affected digits: the thumb, index, middle, and proximal side of the ring finger. He opined that carpal tunnel syndrome can be caused by overuse of the hand and testified that once the condition develops, even rest will not always relieve ongoing symptoms. Dr. Friedman expressly acknowledged that Claimant's work activities at Chipotle would be a risk factor for developing carpal tunnel syndrome. Dr. Friedman could not quantify the amount of median nerve pressure required to produce an abnormal nerve conduction study. Regarding the amount of median nerve pressure in the carpal tunnel canal that would be detectable by nerve conduction testing, Dr. Friedman testified:

> The question's always going to be, how much pressure are we talking about. The pressure on the nerve, when it exceeds a certain amount, the nerve will begin to try to shrink itself by removing the myelin. It doesn't initially damage the nerves themselves. They try to make more space by shrinking. That process slows down the nerve. I honestly do not know the answer to how much pressure it would take to make the nerve do that.

Friedman Deposition, p. 72, ll. 14-23.

22. Dr. Friedman agreed that it would not be beyond the standard of care or unreasonable for a physician to diagnose carpal tunnel syndrome even though abnormal nerve conduction studies were lacking.

23. *Dr. Robinson.* Dr. Robinson testified on behalf of Claimant. Dr. Robinson is a board certified orthopedic surgeon with subspecialty certification in hand surgery. He performs carpal tunnel release surgeries multiple times per week and had done so for more than 10 years. Dr. Robinson examined Claimant on April 20, 2012 and diagnosed right carpal tunnel syndrome based upon Claimant's history of pain in the right palm, particularly over the thenar muscle and numbness in the median nerve distribution. He was fully aware of Claimant's normal nerve conduction test results. Dr. Robinson later explained in his deposition:

> Well, there are multiple studies out that confirm the fact that the nerve-conduction study is not 100 percent accurate. It's close, but it's not 100 percent. So, 5 to 10 percent of the patients who have carpal tunnel syndrome will have a normal nerve-conduction study. I don't know what the number of population in the United States with carpal tunnel syndrome is, but it's huge. So 5 to 10 percent of a huge number is a lot of people. I see them quite frequently that will have signs and symptoms of carpal tunnel syndrome that will have a normal nerve-conduction study. You treat them appropriately, work them up. And if it comes to surgery, they typically respond and their symptoms get better and go away.

Robinson Deposition, p. 18, l. 21 through p. 19, l. 10 (emphasis supplied). Dr. Robinson testified that he saw patients monthly that had carpal tunnel syndrome without abnormal nerve-conduction studies.

24. On April 20, 2012, Dr. Robinson administered a cortisone injection into Claimant's right carpal tunnel. He testified that "With patients who you suspect carpal tunnel syndrome, who have a normal nerve-conduction study, if you inject their carpal tunnel with cortisone, what you would expect is that their symptoms go away for awhile. Typically, they will recur." Robinson Deposition, p. 10, l. 23 through p. 11, l. 2. Dr. Robinson testified that the cortisone injection he performed was administered with lidocaine and that the anesthetic

lidocaine would have been effective for approximately one hour. He noted that when Claimant returned on May 18, 2012, she reported that her numbness and pain had improved 75% for approximately 10 days after the injection, and then recurred. Dr. Robinson concluded that Claimant's report of symptom relief for approximately 10 days post-injection confirmed his diagnosis of carpal tunnel syndrome.

25. In follow-up exam on July 12, 2012, Dr. Robinson found positive Tinel and Phalen's signs on the right, negative on the left and a positive Durkan exam. Dr. Robinson explained that in the Durkan exam: "You apply pressure to the carpal tunnel on the volar aspect of the wrist. And it typically will elicit numbness and tingling in the median nerve distribution" thus "indicating a sign of carpal tunnel syndrome." Robinson Deposition, p. 16, ll. 19-22 and p. 17. l. 1. Dr. Robinson further testified that in his practice, it is not unusual for carpal tunnel syndrome patients to report numbness, tingling, and pain in the whole affected hand rather than just specific digits. He noted that anatomic variations in the branching of the median and ulnar nerves explain the non-classical anatomic distribution of symptoms. He testified that Claimant has a fairly classic exam for someone with carpal tunnel syndrome. Dr. Robinson concluded Claimant's initial onset of symptoms, subsequent change of work duties and decrease of symptoms, then gradual worsening of symptoms are all consistent with his diagnosis of carpal tunnel syndrome.

26. *Dr. Shoemaker.* Dr. Shoemaker testified on behalf of Defendants. He is board certified in occupational medicine. Dr. Shoemaker disagreed that carpal tunnel syndrome could not be diagnosed without a positive nerve-conduction study. He testified that "most of the literature indicates that there can still be clinical carpal tunnel with a negative EMG. And I believe the number is somewhere around ten percent. Ten to 15 percent." Shoemaker

Deposition, p. 13, ll. 21-24. He affirmed that physical findings and positive nerve-conduction studies are desirable, however:

> But as is the case in medicine in general you rarely get everything to line up just the way you would like it in a perfect situation. Oftentimes, you'll have parts of the key components and not others. So you may have classic clinical signs and symptoms and a negative nerve test. And then it is really up to the specialist then whether that ultimately is a diagnosis that they feel comfortable with, for example, doing surgery versus treating conservatively.

Shoemaker Deposition, p. 10, ll. 16-24.

27. Dr. Shoemaker acknowledged that Claimant exhibited signs of a median nerve involvement at the right wrist, but he declined to diagnose carpal tunnel syndrome; rather, he diagnosed tenosynovitis related to her work at Chipotle. Specifically, he opined that Claimant's condition is an irritable median nerve, irritated by her work using a knife at Chipotle. He admitted that her symptoms during several examinations were classic symptoms of carpal tunnel syndrome. Dr. Shoemaker acknowledged that Claimant's history, course of symptoms, and clinical findings are all consistent with carpal tunnel syndrome, lacking only a positive nerve conduction test. Dr. Shoemaker agreed that Claimant's response to the cortisone injection administered by Dr. Robinson was consistent with a diagnosis of carpal tunnel syndrome.

28. Dr. Shoemaker acknowledged that Dr. Robinson was a hand surgeon and also a hand specialist. Dr. Shoemaker did not think surgery was reasonable because the diagnosis of carpal tunnel was not sufficiently established at this point. However, he also testified that he deferred to Dr. Robinson to determine the appropriateness of carpal tunnel release surgery. Dr. Shoemaker opined that the surgery was more risky in the absence of a positive nerve-conduction study, but that he would rely upon Dr. Robinson's judgment to make that decision.

29. Dr. Shoemaker observed that myofascial pain syndrome, as diagnosed by Dr. Friedman, is not a very specific diagnosis. Dr. Shoemaker testified that he disagreed with Dr.

Friedman's IME report that Claimant's symptoms were not work-related, but agreed with Dr. Friedman's conclusion that carpal tunnel release surgery was not indicated.

30. *Weighing the conflicting medical opinions.* Dr. Friedman's diagnosis of right hand myofascial pain is not persuasive because he expressly affirmed that myofascial pain is the result of trauma and the record contains no evidence Claimant sustained any precipitating accident or trauma.

31. Defendants expressly acknowledge that "it is possible for patients to have carpal tunnel without a positive nerve conduction study." Defendants' Post-hearing Brief, p. 12. Indeed, Drs. Friedman, Shoemaker, and Robinson all so testified. Nevertheless, Defendants assert that "For a physician to diagnose a patient with carpal tunnel syndrome on a more probable than not basis, the patient must have classic symptoms, objective findings during a physical examination and a positive nerve conduction study." Id. Thus the diagnostic criteria utilized by Dr. Friedman and insisted upon by Defendants admittedly exclude approximately ten percent of all legitimate cases of carpal tunnel syndrome which Defendants expressly acknowledge exist.

32. Dr. Robinson's level of expertise as a hand surgeon and hand specialist in addressing carpal tunnel syndrome substantially exceeds that of Drs. Friedman and Shoemaker. Dr. Robinson testified, and Dr. Shoemaker concurred, that medical literature establishes that five to ten percent of patients having carpal tunnel syndrome have normal nerve conduction studies. Dr. Robinson treats individuals in this five to ten percent monthly in his clinical practice. Claimant's response to cortisone injection further confirmed Dr. Robinson's diagnosis of carpal tunnel syndrome. Dr. Robinson further noted Claimant's positive Durkan test, indicative of carpal tunnel syndrome. Dr. Friedman did not know what the Durkan test was.[2] The Referee

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[2] Dr. Robinson affirmed that the Durkan test is not a relatively new test.

finds Dr. Robinson's opinion merits greater weight than that of Dr. Friedman or Dr. Shoemaker. Claimant has proven that she suffers right carpal tunnel syndrome.

33. Causation. Medical testimony to a reasonable degree of medical probability is required to prove a causal connection between the medical condition and the occupational exposure which caused it. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995). "Probable" is defined as "having more evidence for than against." Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

34. Defendants vigorously deny that Claimant contracted and incurred an occupational disease from her employment at Chipotle. They assert that there is no medical evidence to a reasonable degree of medical probability that Claimant's work activities caused carpal tunnel syndrome.

35. As previously noted, Dr. Friedman's opinion that Claimant's right hand symptoms were caused by trauma and are not work related is unpersuasive. All of the testifying physicians opined that Claimant's work with a knife at Chipotle exposed her to the risk of carpal tunnel syndrome.

36. While testifying that Claimant suffers median nerve irritability at the right wrist, but not carpal tunnel syndrome, Dr. Shoemaker opined that Claimant's right hand symptoms were caused by her work at Chipotle. Dr. Robinson testified that Claimant's carpal tunnel syndrome was caused by her forceful gripping activities using a knife at work at Chipotle. The causation opinion of Dr. Robinson is adequately explained, rests upon credible evidence, and persuasively relates Claimant's carpal tunnel syndrome to her work at Chipotle. Claimant has proven that her right carpal tunnel syndrome was caused by her work at Chipotle.

37. Peculiar hazard. In addition to proving actual causation, Claimant must also prove that the hazards of the disease are characteristic of and peculiar to her occupation.

> The phrase, "peculiar to the occupation," is not here used in the sense that the disease must be one which originates exclusively from the particular kind of employment in which the employee is engaged, but rather in the sense that the conditions of that employment must result in a hazard which distinguishes it in character from the general run of occupations.

Mulder v. Liberty Northwest Insurance Co., 135 Idaho 52, 56, 14 P.3d 372, 376 (2000), quoting Bowman v. Twin Falls Const. Co., Inc., 99 Idaho 312, 323, 581 P.2d 770, 781 (1978), overruled on other grounds, DeMain v. Bruce McLaughlin Logging, 132 Idaho 782, 979 P.2d 655 (1999) (emphasis in original).

38. In Mulder v. Liberty Northwest Insurance Co., 1998 IIC 1433 (1998), the Commission considered the description of Mulder's job activities and expert medical evidence that such activities were peculiar risks for causing carpal tunnel and concluded that the hazards to which Mulder was exposed at work "may be distinguished from the general run of occupations in that exposure to long periods of repetitive upper extremity motions, including writing and keyboarding … are not characteristic of all occupations" but were characteristic of Mulder's work duties. Mulder, 1998 IIC 1433 p. 6. On appeal to the Idaho Supreme Court, defendants asked the Court to take judicial notice that virtually all employees drive, write, and keyboard. The Court declined to do so and instead observed that while a great number of occupations required such activities, an equally great number did not. The Court affirmed the Commission's conclusion, finding that substantial and competent evidence supported the Commission's determination that Mulder's duties including: "exposure to long periods of repetitive upper extremity motions … [is] not characteristic of all occupations." Mulder, 135 Idaho at 57, 14 P.3d at 377.

39. In the present case, Claimant's work duties at Chipotle exposed her to the hazards of repetitive use of her right upper extremity. Dr. Robinson affirmed that her work activities of chopping and repetitively using a knife created a peculiar risk of contracting carpal tunnel

syndrome that distinguished her work from the run-of-the-mill occupations. Dr. Shoemaker also opined that Claimant's job duties created a risk for developing carpal tunnel syndrome and this risk was peculiar to her job, as distinguished from other types of work. The hazards of repetitive forceful use of her right hand, to which Claimant was exposed during several months of her work for Chipotle, are characteristic of some aspects of commercial food preparation and can be distinguished from the general run of occupations in that they are not characteristic of all occupations. Claimant has proven that the hazards of carpal tunnel syndrome are characteristic of and peculiar to her occupation.

40. Exposure. Claimant's months of extensive food preparation work for Chipotle, from September 9, 2011, through at least January 2012, exposed her to the peculiar hazards resulting from repetitive use of her right hand, including the hazard of carpal tunnel syndrome, for well in excess of the 60-day period required by Idaho Code § 72-439.

41. Incapacity. Dr. England restricted Claimant to light-duty work commencing January 26, 2012. By March 2012, Chipotle assigned Claimant to a cashiering position because she was incapacitated from performing her usual work duties due to her right carpal tunnel syndrome. Drs. Shoemaker and Robinson also expressly restricted her work activities.

42. Claimant has proven that she contracted and incurred the compensable occupational disease of right carpal tunnel syndrome from her employment at Chipotle.

43. **Medical care.** Having determined that Claimant suffered a compensable occupational disease, the next issue is Claimant's entitlement to additional medical care. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required by the employee's physician or needed immediately after an injury or disability from an occupational disease, and for a reasonable time

thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1). Of course an employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

44. In Sprague v. Caldwell Transportation, 116 Idaho 720, 722-723, 779 P.2d 395, 397-398 (1989), the Court held that medical treatment already received is reasonable when: 1.) the claimant made gradual improvement from the treatment; 2.) the treatment was required by the claimant's physician; and 3.) the treatment was within the physician's standard of practice, the charges for which were fair, reasonable, and similar to charges in the same profession. The Court has announced no similar standard for prospective medical treatment; thus, Sprague provides some guidance but the instant case must be judged on the totality of the circumstances. Ferguson v. CDA Computune, 2011 IIC 0015 (February 25, 2011); Richan v. Arlo G. Lott Trucking, Inc., 2001 IIC 0008 (February 7, 2011).

45. In the present case, Claimant asserts entitlement to additional medical care, specifically, right carpal tunnel release surgery. Dr. Friedman opined that Claimant needed no further treatment of her right hand due to her work and that carpal tunnel release surgery was unreasonable. As already noted, his opinion denies Claimant suffers right carpal tunnel syndrome, and is not persuasive. Dr. Shoemaker was somewhat ambivalent in his deposition but concluded that Claimant needed treatment for work-related median nerve symptoms at the right wrist, but not carpal tunnel release surgery. However he acknowledged Dr. Robinson's greater expertise in making this judgment.

46. Dr. Robinson testified that proper treatment for Claimant's right carpal tunnel syndrome, which has failed to respond to appropriate conservative physical therapy and medication, is surgical release. Carpal tunnel release surgery is a common part of Dr. Robinson's orthopedic surgical practice. He has performed multiple carpal tunnel release surgeries each week for at least the last 10 years. His rate of surgical success is approximately 95%. Under the facts presented herein, surgical release is reasonable treatment of Claimant's right carpal tunnel syndrome.

47. Claimant has proven her entitlement to medical care for her right carpal tunnel syndrome, including but not necessarily limited to surgical release, as recommended by Dr. Robinson.

48. **Temporary disability benefits.** The final issue is Claimant's entitlement to temporary disability benefits. Idaho Code § 72-102 (10) defines "disability," for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho Code § 72-408 further provides that income benefits for total and partial disability shall be paid to disabled employees "during the period of recovery." The burden is on a claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability. Sykes v. C.P. Clare and Company, 100 Idaho 761, 605 P.2d 939 (1980).

49. In Malueg v. Pierson Enterprises, 111 Idaho 789, 791-92, 727 P.2d 1217, 1219-20 (1986), the Supreme Court noted:

> [O]nce a claimant establishes by medical evidence that he is still within the period of recovery from the original industrial accident, he is entitled to total temporary

> disability benefits unless and until evidence is presented that he has been medically released for light work *and* that (1) his former employer has made a reasonable and legitimate offer of employment to him which he is capable of performing under the terms of his light work release and which employment is likely to continue throughout his period of recovery *or* that (2) there is employment available in the general labor market which claimant has a reasonable opportunity of securing and which employment is consistent with the terms of his light duty work release.

50. In the present case, Claimant has proven her need for right carpal tunnel release surgery is caused by her occupational disease and thus she is entitled to temporary disability benefits during her period of recovery. Claimant seeks a finding that her work hours at Chipotle were reduced due to her carpal tunnel syndrome and that she is entitled to partial temporary disability benefits. She does not seek to quantify the extent of those benefits at this time.

51. Dr. England restricted Claimant to light-duty work due to her right hand condition beginning January 26, 2012. Dr. Robinson continued to restrict her work activities through the time of hearing. He testified that Claimant was restricted from repetitive gripping in her work at Chipotle until she undergoes surgical release and her symptoms resolve. Prompted by Claimant's restrictions, Chipotle assigned Claimant less hand-intensive cashier work. Ken Stacy's testimony established that fewer weekly hours were available to Claimant in the cashier position than in the grill position. Claimant's testimony established that she actually worked fewer hours each week after being assigned to work as a cashier than she had when working on the grill. Defendants acknowledge that Claimant indeed worked fewer hours after being transferred from her usual duties on the grill to cashier work. Chipotle continued to offer her light-duty work through the time of the hearing.

52. Claimant has proven that her work hours at Chipotle were reduced due to her carpal tunnel syndrome, that she is still in a period of recovery, and that she is entitled to partial temporary disability benefits in an amount to be determined hereafter.

CONCLUSIONS OF LAW

1. Claimant has proven that she contracted and incurred the compensable occupational disease of right carpal tunnel syndrome from her employment at Chipotle.

2. Claimant has proven her entitlement to additional medical care including but not limited to right carpal tunnel surgical release as recommended by Dr. Robinson.

3. Claimant has proven that she is entitled to partial temporary disability benefits in an amount to be determined hereafter.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 18th day of September, 2013.

INDUSTRIAL COMMISSION

_______/s/______________________
Alan Reed Taylor, Referee

ATTEST:

_____/s/______________________
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _27th_____ day of _September____, 2013, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

BRADFORD S. EIDAM
PO BOX 1677
BOISE ID 83701-1677

MINDY WILLMAN
PO BOX 829
BOISE ID 83701

mg _/s/______________________________

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

<table>
<tr><td>CALLENTANA FUENTES,

Claimant,
v.

CHIPOTLE MEXICAN GRILL,

Employer,
and

AMERICAN ZURICH INSURANCE COMPANY,

Surety,
Defendants.</td><td>IC 2012-006305

ORDER

FILED 9/27/2013</td></tr>
</table>

Pursuant to Idaho Code § 72-717, Referee Alan R. Taylor submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has proven that she contracted and incurred the compensable occupational disease of right carpal tunnel syndrome from her employment at Chipotle.

2. Claimant has proven her entitlement to additional medical care including but not limited to right carpal tunnel surgical release as recommended by Dr. Robinson.

3. Claimant has proven that she is entitled to partial temporary disability benefits in an amount to be determined hereafter.

4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 27th day of September, 2013.

INDUSTRIAL COMMISSION

____/s/______________________________
Thomas P. Baskin, Chairman

____/s/______________________________
R.D. Maynard, Commissioner

____/s/______________________________
Thomas E. Limbaugh, Commissioner

ATTEST:

__/s/___________________________
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States mail upon each of the following:

BRADFORD S. EIDAM
PO BOX 1677
BOISE ID 83701-1677

MINDY WILLMAN
PO BOX 829
BOISE ID 83701

mg ________/s/__________________________