

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON

1 IN RE: DAY L. BRUHN )  
2 )

DOCKET NOS. 17 18776 & 17 18777

3 CLAIM NO. AB-32514 )  
4 )

PROPOSED DECISION AND ORDER

5 Tom M. Kalenius, Industrial Appeals Judge — Day L. Bruhn, a 48-year-old barista,  
6 sustained injuries to her right upper extremity that aggravated a right median nerve condition and  
7 effectively restricted the use of her dominant right hand. Ms. Bruhn contends that she does not have  
8 the physical ability nor the necessary skills to perform reasonably continuous, gainful employment  
9 and she is permanently and totally disabled. The Department orders on appeal are **REVERSED** and  
10 the matter is **REMANDED** to the Department to pay time-loss compensation benefits for July 12,  
11 2017, and provide total and permanent disability benefits as of July 13, 2017.  
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16 **DISCUSSION**

17 Day L. Bruhn is 5 feet 2 inches tall and weighs about 125 pounds. Ms. Bruhn was born on  
18 May 4, 1970, and is right hand dominant. She completed an associate degree in business  
19 management and computer applications. Ms. Bruhn has worked nearly 30 years as a barista,  
20 waitress, receptionist, and retail manager. As a barista and waitress, Ms. Bruhn waited on customers,  
21 served food and beverages, and operated a cash register. As a receptionist, Ms. Bruhn typed and  
22 answered phones. As the owner of a pet food store, Ms. Bruhn managed the retail store, stocked  
23 shelves, and waited on customers.  
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28 In 1987, Ms. Bruhn cut her hand in a glass window, lacerating tendons and the median nerve  
29 in her right wrist. In 2003, Ms. Bruhn's right median nerve was repaired by grafting a nerve from her  
30 ankle into her right wrist. Ms. Bruhn testified that she regained feeling and function in her right hand  
31 after one year, but electrodiagnostic testing reported severe impairment of the median nerve,  
32 including sensory and functional deficits.  
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35 Ms. Bruhn testified that she suffered an industrial injury when she reached to prevent an  
36 espresso machine from falling on July 18, 2006. At the time of the industrial injury, Ms. Bruhn was  
37 working full time.  
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40 Ms. Bruhn's medical history described some psychological problems, but the claimant  
41 stipulated that Ms. Bruhn was not seeking acceptance of any mental health condition.  
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43 Ms. Bruhn complained of popping and snapping sensations, muscle spasms, and worsening  
44 pain. Ms. Bruhn also testified that she had a carpal tunnel release performed in 2013.  
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1 Ms. Bruhn testified that as of 2017, she felt loss of sensation in her fingers accompanied by  
2 weakness. Pain radiated up her right arm and into her shoulder accompanied by neck pain, severe  
3 headaches and back pain. Ms. Bruhn testified the symptoms reduced her function and prevented  
4 her from holding a drinking glass or silverware. An MRI of the right wrist demonstrated tendinopathy  
5 and swelling of the median nerve and possible carpal tunnel syndrome. The carpal tunnel diagnosis  
6 was confirmed by x-rays and electrodiagnostic testing of the right median nerve. The carpal tunnel  
7 was surgically released, but never fully cured.<sup>1</sup>

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11 Dr. Kamath, a neurologist, examined Ms. Bruhn on October 17, 2015, and on November 16,  
12 2016. Dr. Byam, a chiropractor, examined Ms. Bruhn on May 14, 2015, before joining Dr. Kamath in  
13 the examination on November 16, 2016. Dr. Kamath testified that a steroid block temporarily  
14 alleviated Ms. Bruhn's symptoms in 2015, but severe pain required ongoing pain medications through  
15 the time of the second examination in 2016.

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19 Dr. Kamath found evidence of neck rigidity and restricted range of motion, accompanied by  
20 tenderness. The radial aspect of the right hand was atrophied. Tingling and an electric shock  
21 sensation occurred when Dr. Kamath tapped the right wrist. Decreased vibration was noted in the  
22 right wrist. Globally decreased sensation was noted from the right shoulder to the fingers, but was  
23 not localized to the radial or ulnar half of the hand. Right arm muscle strength was unable to be  
24 tested on clinical examination due to pain, but right wrist and hand grip strength was strong and  
25 normal.

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30 Drs. Kamath and Byam diagnosed sprain and strain of the right shoulder and upper arm that  
31 had reached maximum medical improvement. The related right acromioclavicular, cervical and  
32 thoracic spine strains had resolved with treatment. The industrial injury aggravated a preexisting  
33 right median nerve injury, but it also had reached maximum medical improvement as of November 16,  
34 2016. Drs. Kamath and Byam testified there was no objective evidence of cervical radiculopathy,  
35 brachial plexus lesion or complex regional pain syndrome in the right upper extremity.

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39 Dr. Kamath testified that the extent of permanent partial disability was equal to  
40 WAC 296-20-240(1), cervical and cervico-dorsal impairments, 7 percent of the amputation value at  
41 the right shoulder and a previously assessed impairment equal to 10 percent amputation value of the  
42 right upper extremity, due to a median nerve condition.

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47 <sup>1</sup> Kamath Dep. 18.

1           Drs. Kamath and Byam imposed permanent restrictions on lifting more than 10 pounds with  
2 the right upper extremity and avoiding all repetitive forceful use of the right arm or using instruments  
3 or equipment that shocked or vibrated.  
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5           Drs. Kamath and Byam approved the job analyses of typist/receptionist and general office  
6 clerk provided the duties restricted Ms. Bruhn from lifting 10 or more pounds, engaging in repetitive  
7 forceful use of the right arm or using vibrating tools or instruments. Dr. Byam testified that "I doubt  
8 whether she could actually" perform the duties of a clerk typist.<sup>2</sup>  
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10           Ms. Bruhn testified that she attempted to return to work as a front office person in a doctor's  
11 office. She testified that she was unable to maintain a flat wrist position and experienced tingling and  
12 sharp burning pain.  
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14           Karin Larson, a vocational rehabilitation counselor, testified that Ms. Bruhn was asked to leave  
15 because she was making too many typing errors and could not process the medical documents at  
16 the required production pace.<sup>3</sup>  
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18           Ms. Bruhn testified that if she was restricted to a seated posture, she experienced headaches.  
19 Ms. Bruhn testified that the pain in her arm was very distracting and she was unable to attend work  
20 consistently, perform sustained effort or accomplish tasks that required endurance. Ms. Bruhn  
21 testified that she was generally unable to lift or carry and required assistance to perform household  
22 chores as well as shopping.  
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24           The parties stipulated and agreed that Ms. Bruhn's conditions, proximately caused by the  
25 industrial injury of July 18, 2006, were: sprain joint and ligaments, neck sprain and right  
26 acromioclavicular joint, sprain ligaments, cervical sprain spine, unspecified strain, right shoulder joint,  
27 right acromioclavicular sprain and strain, sprain and strain unspecified of the shoulders and upper  
28 arm, sprains and strains of shoulder and upper arm, sprain, other specified parts of thorax, strain  
29 muscle, fascia and tendon, neck level median nerve at arm level, right arm, median nerve wrist and  
30 level right arm, median nerve, right arm, thoracic sprain and strain, neck sprain and strain, median  
31 nerve, right arm.<sup>4</sup>  
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33           The Department presented the testimony of Ms. Aschenbrenner, a vocational rehabilitation  
34 counselor. Ms. Aschenbrenner only vaguely recalled Ms. Bruhn and was unsure if she conducted a  
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46 <sup>2</sup> Byam Dep. 17

47 <sup>3</sup> 2/27/18 Tr. at 23

<sup>4</sup> 2/27/18 Tr. at 11 & 12

1 phone interview of Ms. Bruhn. Ms. Aschenbrenner assigned the task of contacting four employers to  
2 an intern. Ms. Ashenbrenner prepared the job analysis of general office clerk, but not that of a clerk  
3 typist/receptionist. Ms. Aschenbrenner agreed that Ms. Bruhn had no reliable transportation.  
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5 Ms. Larson, the vocational rehabilitation counselor presented by the claimant, criticized the  
6 labor market survey as incomplete. The Baker School District and Encompass Home Health  
7 positions failed to indicate the amount of weight that was required to be lifted. Both positions required  
8 fingering and handling on a frequent basis for data entry. Ms. Larson testified the demands exceeded  
9 the restrictions on repetitive use. St. Alphonsus Health Group defined lifting as 10 pounds on a  
10 seldom basis, but mandated frequent fingering and handling while using the computer and answering  
11 the telephone. The pattern of employment was part time.  
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13 St. Luke's regional medical center indicated the work pattern was 20 to 40 hours per week.  
14 Lifting 30 pounds was required. Ms. Larson testified that the demands of St. Luke's were beyond the  
15 restrictions imposed on the industrial injury because St. Luke's also required frequent fingering and  
16 handling.  
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18 Ms. Larson testified that based upon her review of the labor market survey, the job analyses  
19 and a physical capacity evaluation, Ms. Bruhn was unemployable as a barista, general office clerk,  
20 clerk/typist/receptionist or in any other general employment in her competitive labor market as of  
21 July 12, 2017.  
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23 Drs. Byam and Kaman acknowledged restrictions in the use of the upper right extremity.  
24 Dr. Steven Bachman, a chiropractor, treated Ms. Bruhn about 35 times in 2014, 10-11 times in 2015,  
25 9 times in 2016, and 4 times in 2017. Dr. Bachman enunciated limits on sitting, standing, walking,  
26 lifting, carrying, pushing, pulling, reaching, fingering and handling based on the physical capacities  
27 evaluation, performed on February 7, 2018. According to Dr. Bachman, Ms. Bruhn could not perform  
28 the barista, the clerk/typist/receptionist or any other general employment.  
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30 Robert Bachman, a physical therapist, performed the physical capacities evaluation that  
31 measured Ms. Bruhn's exertional capacities as sedentary, at best. The medical testimony was  
32 consistent that Ms. Bruhn was unable to repetitively use her dominant right upper extremity.  
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34 The vocational testimony of Dana Aschenbrenner was based on Ms. Aschenbrenner's reports  
35 of Ms. Bruhn's ability to work issued in August 2014, July 2015, October 2016, and July 2017, but the  
36 vocational rehabilitation counselor did not recall them at the time of her testimony.  
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1 Ms. Aschenbrenner vaguely recalled Ms. Bruhn and acknowledged the restrictions on repetitive  
2 forceful use of the right hand and using instruments/equipment that shocked or vibrated.  
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4 Ms. Aschenbrenner was not informed of the preexisting functional limits imposed by the right  
5 median nerve and did not adopt the restrictions measured by a physical therapist, Mr. Robert  
6 Bachman. Mr. Bachman testified that the administration of the physical capacities evaluation on  
7 February 7, 2018, was designed to measure consistency of effort, consistent subjective pain  
8 complaints and consistent movement patterns. Ms. Aschnbrenner testified that Ms. Bruhn's heart  
9 rate was between 82 and 84 and the vocational rehabilitation counselor expected a higher pulse rate.  
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11 Ms. Aschenbrenner did not consider the physical capacities evaluation because Ms. Bruhn  
12 demonstrated physical capacities beyond her ability to sustain. Ms. Bruhn's actual level of function  
13 was below that demonstrated during the physical capacities evaluation. Mr. Bachman testified  
14 Ms. Bruhn's effort was consistent and the test was valid as to consistency.  
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16 The vocational opinion of Ms. Larson addressed the ability of Ms. Bruhn to perform the general  
17 office clerk duties that required repetitive use of both hands and Ms. Bruhn's inability to use her  
18 dominant right upper extremity without accommodations by employers and assistive devices.  
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20 Ms. Larson testified that even using a one-handed keyboard and a voice recognition software  
21 would not provide the increased function required by Ms. Bruhn because voice activation software  
22 was ineffective in the absence of training performing office tasks one-handed. Ms. Larson agreed  
23 there are adaptations, but that the Department had not provided Ms. Bruhn with one-handed typing  
24 lessons and that the accommodations were not communicated to the prospective employers in the  
25 labor market survey. Ms. Larson testified that modifications were required, but that the employees  
26 were not specifically asked if they were willing to provide that within the workspace or allow that in  
27 the workspace.  
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29 I agree with Ms. Larson that in order to be employed in an office setting, Ms. Bruhn would  
30 need assistive devices and accommodations from employers, as demonstrated by her unsuccessful  
31 return to work. Ms. Bruhn does not have the ability to obtain or perform work and is a totally and  
32 permanently disabled injured worker.  
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### 34 **DECISION**

35 In Docket No. 17 18776, the claimant, Day L. Bruhn, filed an appeal with the Board of Industrial  
36 Insurance Appeals on July 17, 2017. The claimant appeals a Department order dated July 12, 2017.  
37 In this order, the Department ended time-loss compensation benefits as paid through July 11, 2017.  
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1 This order is incorrect and is **REVERSED**. The matter is **REMANDED** to the Department to pay  
2 time-loss compensation benefits for July 12, 2017.  
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5 In Docket No. 17 18777, the claimant, Day L. Bruhn, filed an appeal with the Board of Industrial  
6 Insurance Appeals on July 17, 2017. The claimant appeals a Department order dated July 13, 2017,  
7 that closed the claim. This order is incorrect and is **REVERSED**. The matter is **REMANDED** to the  
8 Department to provide permanent and total disability benefits as of July 13, 2017.  
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#### 10 **FINDINGS OF FACT**

- 11 1. On September 19, 2017, an industrial appeals judge certified that the  
12 parties agreed to include the Jurisdictional History in the Board record  
13 solely for jurisdictional purposes.  
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- 15 2. Ms. Bruhn sustained an industrial injury on July 18, 2006, when she  
16 reached with her right hand to prevent an espresso machine from falling,  
17 aggravating a preexisting median nerve condition and proximately  
18 causing sprain joint and ligaments, neck sprain and right  
19 acromioclavicular joint, sprain ligaments, cervical sprain spine,  
20 unspecified strain, right shoulder joint, right acromioclavicular sprain and  
21 strain, sprain and strain unspecified of the shoulders and upper arm,  
22 sprains and strains of shoulder and upper arm, sprain, other specified  
23 parts of thorax, strain muscle, fascia and tendon, neck level median nerve  
24 at arm level, right arm, median nerve wrist and level right arm, median  
25 nerve, right arm, thoracic sprain and strain, neck sprain and strain,  
26 median nerve, right arm.  
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- 28 3. As of July 13, 2017, Ms. Bruhn's conditions proximately caused or  
29 aggravated by the industrial injury were fixed and stable.  
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- 31 4. As of July 12, 2017, the claimant was incapable of performing the duties  
32 of a general office clerk, clerk typist/receptionist, barista or any other  
33 general employment.  
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- 35 5. Day L. Bruhn is 5 feet 2 inches tall and weighs about 125 pounds.  
36 Ms. Bruhn was born on May 4, 1970, and is right hand dominant. She  
37 completed an associate degree in business management and computer  
38 applications. Ms. Bruhn has worked nearly 30 years as a barista,  
39 waitress, receptionist and retail manager. Ms. Bruhn right median nerve  
40 condition pre-existed the industrial injury and consisted of a serve  
41 impairment.  
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- 43 6. Ms. Bruhn's right upper extremity condition, proximately caused by the  
44 industrial injury, limited sitting for up to 2 hours consecutively and no more  
45 than 4 to 6 total hours in a workday, standing up to 2 hours consecutively  
46 and no more than 3 to 4 total hours in a workday, walking up to 1 hour  
47 consecutively and 1 to 3 total hours in a workday, lifting and carrying on  
a seldom basis from 11 to 30 pounds and occasionally up to 10 pounds,

1 pushing and pulling occasionally up to 10 pounds, engaging in frequent  
2 fingering and handling and repetitively using her right upper extremity.  
3 Ms. Bruhn was only able to work in the sedentary category and cannot  
4 perform the work of a general office clerk, clerk typist/receptionist, barista  
5 or any other general employment on July 12, 2107 and as of July 13,  
6 2017.

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7. Ms. Bruhn was unable to perform or obtain gainful employment on a reasonably continuous basis on July 12, 2107, and as of July 13, 2017, due to the residuals of the industrial injury and taking into account the claimant's age, education, work history, and preexisting conditions.

#### CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in these appeals.
2. Ms. Bruhn's conditions, proximately caused by the industrial injury, were fixed and stable as of July 13, 2017, and she is not entitled to further treatment. RCW 51.36.010.
3. Ms. Bruhn was a temporarily, totally disabled worker within the meaning of RCW 51.32.090 on July 12, 2017.
4. Ms. Bruhn was a permanently and totally disabled worker within the meaning of RCW 51.08.160, as of July 13, 2017.
5. The Department order dated July 12, 2017, is incorrect and is reversed. This matter is remanded to the Department to pay time-loss compensation benefits for July 12, 2017.
6. The Department order dated July 13, 2107, is incorrect and is reversed. This matter is remanded to the Department to find Ms. Bruhn permanently and totally disabled as of July 13, 2107, within the meaning of RCW 51.08.160.

Dated: May 29, 2018



Tom M. Kalenius  
Industrial Appeals Judge  
Board of Industrial Insurance Appeals

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**Addendum to Proposed Decision and Order  
In re Day L. Bruhn  
Docket Nos. 17 18776 & 17 18777  
Claim No. AB-32514**

**Appearances**

Claimant, Day L. Bruhn, by Williams Wyckoff & Ostrander, PLLC, per Wayne L. Williams  
Employer, Mackeys, Inc., None  
Department of Labor and Industries, by Office of the Attorney General, per Susan Pierini

**Hearing Testimony Considered**

Claimant Witnesses

1. Day Bruhn
2. Karin Larson

**Perpetuation Deposition Testimony Considered**

The following depositions are published in accordance with WAC 263-12-117 with all objections overruled and all motions denied except as indicated below.

Claimant Witnesses

1. Steven A. Bachman, D.C., taken on January 30, 2018
2. Robert Bachman, P.T., taken on February 26, 2018. Exhibit No. 1 has been admitted and renumbered Exhibit 1.

Department Witnesses

1. Voderbet Kamath, M.D., taken on March 6, 2018
2. Dennis Byam, D.C., taken on March 8, 2018
3. Dana Aschenbrenner, taken on March 15, 2018