

SENATOR WILL: Thank you, Mr. Speaker, members of the body, one of the problems when it comes to the issue of cumulative trauma is determining simply where...once you acknowledge that it is a legitimate condition that can occur from work-related activities, and I don't know that there's anyone that disputes that, it comes...what comes into play is where exactly does it fit within the workmen's compensation statutes, because with the two methods that you have of determining whether something does qualify, accident or injury or disease, that is, accident or disease, sometimes cumulative trauma seems to overlap the two. Senator Coordsen did a very good job of outlining the characteristics that must be present for an accident to have occurred. Typically, I think cumulative trauma might have some of the characteristics of an accident in that it's something that occurs because of an activity that really separates it from a disease, like lifting, like moving heavy objects. On the other hand, it occurs over a period of time and develops kind of like a disease would. What I would do is simply make clear with my amendment that cumulative trauma is included under the definition of occupational disease because that seems to be where the preponderance of the characteristics of the condition fit. So that's why I think my amendment is proper in the way that I am attempting to do this. Justice Shanahan, in his concurring opinion that I referred to when I spoke earlier, in fact, points out that several courts, quoting now from his opinion, several courts construing workers' compensation statutes with language identical or substantially similar to that in the section that I'm amending have concluded that injury and disability attributable to carpal tunnel syndrome, which is causally related to work activities, is compensable as an occupational disease. So there is a body of case law out there, not in Nebraska, but a body of case law out there that simply does state that a language substantially similar to that which we have in our statute right now can apply to cumulative trauma. So, to that extent, my amendment simply clarifies that. With respect to the ambiguity that the court has had present in its decisions regarding cumulative trauma, again, I want to quote from Justice Shanahan's concurring opinion. He says, referring to the comparison between the injuries and disabilities of Schlup and Vencil, the two individuals that I referred to earlier, one immediately sees that Dorothy Schlup's work-related injury consisted of pressure on the median nerve in her carpal tunnel and resulted in her disability, while Daniel Vencil's work-related injury consisted of pressure on the nerves along his vertebrae. In both situations, the injury and ultimate