

disability were attributable to repetitive trauma sustained during the employee's work-related activities. What is the medical and legal distinction between the work-related injuries of Schlup and Vencil? Is the distinction based on the fact that Schlup was employed for five years, whereas Vencil was employed ten years? If so, injury from repetitive trauma during employment less than five years is compensable, while injury from repetitive trauma during employment lasting more than five years is noncompensable. That infirm distinction, and this is quoting Justice Shanahan, that infirm distinction might be best characterized as a case of acute arbitrariness. Or does compensability lie in the fact that Schlup's injury was to her wrists and arms, whereas Vencil's injury was to his back? If the repetitive injury is to an employee's wrist, the claim is compensable. But if the repetitive injury is to an employee's back, the claim is noncompensable? Well, there you have it. Nobody has quite explained it that way before. That's what we're looking at, ladies and gentlemen. A court that actually comes down to the fact that the only distinction that one of the justices can find in their awarding compensation to one individual and their not awarding compensation to another is the fact that one injury is in the wrist and the other is in the lower back. That is arbitrary, ladies and gentlemen. There is no reason why an individual who's injured in a way that's similar to another individual that has been compensated should not expect to be compensated. That's simple fairness. That's simply the way that our system of workers' compensation ought to work in the State of Nebraska. If you have a condition...

SPEAKER BAACK: One minute.

SENATOR WILL: ...that's present, that's work related, that you can prove is work related, you ought to be able to be compensated for it, regardless of whether it's cumulative trauma, the result of an accident or some other type of disease. And the final point I would like to make is that this amendment does absolutely nothing with respect to the burden of proof. The burden of proof, as before, is on the employee to prove that that injury was work related, that that cumulative trauma developed because of the working conditions under which that employee is employed. The burden of proof does not change. The employee has to prove that the condition came about because of work-related activities. I would urge your support for this amendment.