

AN EMPLOYMENT REPORT

ON

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CONTENTS

	SECTION
INTRODUCTION: AREA OF STUDY	1
PERSONAL PROFILE	2
EDUCATION AND TRAINING	3
PRE-INJURY EMPLOYMENT HISTORY	4
SKILLS, ATTAINMENTS AND EARNINGS POTENTIAL	5
THE ACCIDENT AND ITS CONSEQUENCES	6
POST-INJURY EMPLOYMENT HISTORY	7
PRESENT TRANSFERABLE SKILLS	8
PRESENT EMPLOYABILITY	9
LABOUR MARKET CONDITIONS	10
EFFORTS TO MITIGATE LOSS (JOBSEARCH)	11
RETRAINING OPPORTUNITIES	12
RESIDUAL EARNINGS CAPACITY	13
SUMMARY AND CONCLUSIONS	14
EXPERT'S DECLARATION	
APPENDIX : JOB SEARCH ASSISTANCE AND RETRAINING	

1. INTRODUCTION: AREA OF STUDY

1.1 This report is prepared for the Court on the joint instructions of My Lawyer.com, solicitors for the Claimant and Their Lawyer.com, solicitors for the Defendant and will consider the employment opportunities of the Claimant following a work place accident on xx/xx/xxxx. At the time of her accident The Claimant was 20 years old, and employed as a Production Line Operative at xxx Industries in xxx.

Specific instructions include dealing with the following;

- (a) Recommendations for vocational rehabilitation and any steps which The Claimant could take in respect of training and/or qualifications that would assist her employability.
- (b) Identify any other barriers which prevent The Claimant from seeking full time work.

1.2 This report will cover The Claimant' qualifications and experience, her employment history, and her pre-injury earnings potential. It will then look at the occupational implications of The Claimant' accident, employability, transferable skills, and her efforts to return to the labour market or to seek appropriate rehabilitation or retraining. By considering this information in relation to labour market conditions, an objective estimate may be made of any loss of earnings she may have suffered and may suffer in the future.

1.3 The opinions expressed in this report are correct to the best of my knowledge and belief and fall within my expertise as an employment consultant. My qualifications and background are as follows:

Qualifications: Chartered Fellow of the Chartered Institute of Personnel & Development (CFCIPD), Post Graduate Diploma in Law and Employment Relations (Leicester University), HND Business Studies.

I have over twenty eight years' experience as a human resource specialist in three industry sectors, manufacturing, leisure and retail. My last position before moving into Consultancy was at director level, specializing in employee relations for a large retail organization employing approximately 16,000 employees. My experience covers all aspects of the HR function including trade union negotiations, establishing and chairing voluntary consultative committees, and implementing significant change programmes. Throughout my career I have had recruitment responsibility, latterly including board level activity. I have also held responsibility for Health and Safety at a senior level.

Much of my recent work has involved a number of major acquisition and merger projects, delivering wide ranging HR policies and procedures as well as achieving business integration objectives and financial benefits.

A significant part of my work is concerned with the preparation of reports on loss of earnings for Trevor Gilbert & Associates to whom I am contracted as a member of their team of experts since 2005. Whilst TGA is specifically concerned with the delivery of expert evidence I am regularly involved with other issues relating to employment. TGA is part of the long-established TRG Recruitment Group which has placed tens of thousands of people into work. I have undertaken expert training through Bond Solon and TGA's internal development programme.

1.4 As part of the preparation of this report I have had sight of copies of the following documents:-

- a) Letter of instruction dated xxx
- b) Medical report by Mr xxx, dated xxx 200x
- c) Letters from Mr. yyy dated xxx 200x
- d) Letter from Mr. zzz dated xxx 200x
- e) Letter from xxx NHS Trust dated xxx 200x
- f) Medical report by Mr aaa dated xxx 200x

g) Witness Statement of Agreed Medical Evidence, Mr. xxx and Mr. yyy dated xx/xx/xxxx

1.5 Unless otherwise stated earnings levels referred to in this report are gross figures. Where net figures are quoted these are taken from the *Personal Injury Toolkit* published by Sweet and Maxwell. At present these do not include figures for the tax credit system introduced in April 2003 because of the complexity of the calculation. In years when marriage allowances were granted there was a beneficial effect on net pay for employees who had the allowance. These calculations are based on standard tax codes and do not therefore take into account any variations in the Claimant's tax code and, as such, are only intended as an approximate guide to net equivalents. Net earnings for the current year are calculated according to 2005/6 tables.

1.6 The report draws upon information from a variety of documentary sources, research data, and information supplied by The Claimant at interview, which took place on xx/xx/xxxx at her home in xxxx.

2. PERSONAL PROFILE

2.1 The Claimant presents at interview as a very pleasant, confident and articulate young lady. She has a firm handshake and well developed inter-personal skills. She talks in quite a relaxed manner about herself, her background, achievements and the accident, which has restricted her activities since it occurred in April 200x.

2.2 She lives with her parents in a well-maintained and quite modern detached house on a housing estate in xxx. She cycles to her current job, which is very local, and there are regular buses and trains to xxx and xxx, both of which are commutable. xxx town centre is easily accessible for her.

- 2.3 Her family background is that she is the middle child of three with a brother 5 years older than her and a sister who is a year younger. She is the only sibling still living at home but this due to circumstances rather than choice. Both her parents are retired, her mother only very recently.
- 2.4 The Claimant does not possess a driving licence but cycles whenever she can, otherwise depending upon public transport.
- 2.5 The Claimant, who is right dominant, has suffered an injury to her right hand.
- 2.6 Her disability would probably be immediately apparent to an interviewing employer, for example when she shakes hands. Many employers automatically demand a medical examination or declaration on their application forms and The Claimant would be obliged to declare the limited movement of the index finger of her right hand. If appropriate, the personnel department should pass the details to an occupational health person/department/advisor for further processing.
- 2.7 The Claimant apparently receives £70 per month industrial injury benefit. In fact she remains on the books of the employer with whom she was working (and where she had the accident) at the time of her accident though she has not worked for them for 3 years. She has not received a P45.

3. EDUCATION AND TRAINING

- 3.1 The Claimant attended xxx Secondary School in xxx, which she left in 19xx at the age of 17 with the following GCSE educational qualifications:

	<u>Grade</u>
Design and Technology	B
English Language	C
English Listening	C
English Literature	C

Child Development	C
Humanities	C
Business Studies	C
Maths	C
Science	C
Media Studies	D

- 3.2 She stayed on at school initially to do an IT course but left when she had the opportunity to work in a veterinary practice as she was very keen to work with animals. Her place on the IT course was kept open for her for a while and although she left her job at the Veterinary Surgeon after 6 months this was too late to return to the course. Her subsequent training was confined to 'on the job' though she is now undertaking a NVQ in Childcare.

4. PRE-INJURY EMPLOYMENT HISTORY

- 4.1 The Claimant left the Veterinary Surgery of her own accord and following a couple of months of unemployment she joined the pet retailer, xxxx, as a Livestock Assistant which entailed cleaning, feeding and caring for a variety of animals. She also provided a service to customers, serviced the filter system of the fish tanks and looked after the quarantine room in which new animals were placed upon delivery.
- 4.2 She was promoted to Livestock Manager where she had overall responsibility for a wide variety of animals and 4 staff reporting to her. Her training was undertaken 'on the job', from books and from working with vets.
- 4.3 xxxx was acquired by zzzz around Christmas 20xx and although The Claimant was offered a Deputy Manager's position in xxx town she was unable to accept due to the location. She was therefore made redundant.

- 4.4 She then did some temping work for a couple of weeks through the Blue Arrow employment agency before joining xxx, where her brother worked, again in a temporary capacity. She continued working for xxx up to her accident in April 200x. She was employed as a Production Assembly worker, engaged on the assembly of office furniture – filing cabinets, desks, cupboards and small cabinets with roller shutter doors. Some of the furniture was flat packed and some ready assembled. She used a variety of hand tools including screwdrivers, cordless drills and scrapers.
- 4.5 She was engaged on these duties when her accident occurred on xx/xx/xxxx.

5. SKILLS, ATTAINMENTS AND EARNINGS POTENTIAL

- 5.1 At the time of her accident on xx/xx/xxxx, The Claimant had the following range of skills, attainments and experience:
- a) Retail/customer service skills.
 - b) Skills and knowledge relating to domestic animal care.
 - c) Experience of managing a small team of workers.
 - d) Manual dexterity skills.
 - e) Ability to work at pace on a production line.
 - f) Some experience of administration/paperwork.
- 5.2 At the time of her accident The Claimant was earning £281.25 gross per week. I have had sight of pay slips, which confirm this, as well as her starting Statement of Terms and Conditions of Employment, which indicated her starting pay to be £240 per week gross.
- 5.3 There is no reason to suggest that her employment was under threat of any kind and whilst we did not discuss promotion prospects at xxx, given her past supervisory experience, albeit in a different industry sector, there is no reason

why she could not have been realistically considered for a supervisory position in time if such an opportunity presented itself to her.

- 5.4 For the purposes of comparison reference was made to the *Annual Survey of Hours and Earnings* published by the Government's Office for National Statistics, which is a useful general guide to national earnings across a range of occupations. The 2005 edition records average gross pay levels at April 2005.

<u>Occupation</u>	<u>Gross Median Weekly Pay</u>
Childcare and related personal services	162.90
Sales and retail assistant	125.60
Retail cashiers and check-out operators	111.80
Telephone salesperson	246.60

- suggesting a potential pay range of £111.80 - £246.60 per week.

- 5.5 Had the accident not occurred, it is more likely than not that The Claimant would still be working at xxx as a production line assembly worker. However, it was her desire, given her love and experience of working with animals, to work in this field and allowing her demeanour and interpersonal skills, I am of the opinion that she would have eventually moved to more appealing work that required a wider range of skills and was more challenging for her. This would very likely be working with animals or children in some capacity, the latter of which she is now doing.

6. THE ACCIDENT AND ITS CONSEQUENCES

- 6.1 On xx/xx/xxxx The Claimant was working at the assembly line at xxx. She was surrounded by drawers which were stacked around her to enable her to insert them into the furniture she was assembling. She states that she saw one of the stacks out of the corner of her eye that was unstable and started to tumble. She instinctively put out her hand to prevent them falling which caused damage to the index finger of her right hand.

6.2 The Claimant' injury and subsequent treatment are comprehensively documented elsewhere. However, I refer to the following comments contained in the various medical reports made available to me in relation to her future employment potential:

- a) Mr.xxx makes the following comment in his medical report dated xxx 200x; *“She was working part-time though with difficulty and had stiffness at the proximal interphalangeal joint and pain if accidentally knocked”*. He further states in relation to her production line job *“she was hampered in the use of her hand by the splint and also by recurrent swelling and was unable to continue in her previous job.”* and in relation to her current part time work at a toddler and after school club *“The work is such that it does not require her to use her hand to any significant extent and she is able to manage.”*
- b) Mr. yyy makes the following comments in his medical report dated xxx 200x; *“She feels she could not go back to a production job. She did try but it was painful and anything that requires the use of both hands means that she knocks the right hand and it hurts. She has to be quite careful, she is not asked to do any lifting at the nursery or in particular not lift anything heavy and it is not particularly bad apart from the occasional problem with after school care.”* He further comments *“I think this young woman could have gone back to some form of part time work within six months of the injury. She could probably work full time now if the finger was protected but not in an industrial situation.”*
- c) From Mr. zzz and Mr. aaa in the Statement of Agreed Medical Evidence; *“The Claimant will be left with a stiff finger which does affect work and outside activity, though not badly enough to stop her working in most occupations or participating in most activities that she wishes to.”*

d) Mr. xxx comments in his letter dated xxx 200x *“You have asked me to comment on the types of jobs the claimant would be able to manage. You have asked me to comment specifically on whether I expect her to be able to undertake a job requiring:*

- *Typing and mouse work*
- *Bilateral hand strength (including lifting)*
- *Bilateral dexterity , or fine skills*
- *Writing”*

He goes on to comment for each activity as follows:

Typing and mouse work – *“Yes”*

Bilateral hand strength (including lifting) – *“Yes, she can certainly lift most items required in daily life. Clearly it will be uncomfortable for her to lift very heavy items such as furniture”*

Bilateral dexterity , or fine skills – *“Both hands are free for her to use apart from the right index finger so anything that does not require specific use of the index finger she is able to do.”*

Writing – *“Although awkward I see no reason why she should not be able to write fluently.”*

In the same letter he answers questions relating to The Claimant' ability to do jobs if she could not find an adequate form of protection. Specifically as follows;

“Q. Do I agree that the range of jobs available to her is radically reduced?

A. No, I believe it is reduced but not radically.

Q. Is it more likely that she will only be able to work part time, for example, in the type of job she now manages?

A. I see no reason why she should not work full time if she wishes to. It is therefore not more likely that she will only be able to work part time.”

Again in the same letter, Mr. xxx comments on her potential handicap in the labour market as follows; *“I agree that the finger injury will place the claimant*

at a handicap in the labour market but it would not be far worse if no adequate protection could be found.”

In summary he writes, *“The patient has two good hands. The only problem she has is a stiff index finger. I appreciate that this is of great consequence to her but it has to be put into context and there are many individuals who either do not have an index finger or have a stiff index finger as she does who perform perfectly adequately with any tasks they wish to do. I accept that it is painful but when comparing her with others who have injured fingers or diseases such as rheumatoid arthritis affecting the hands, her disability is moderate, not severe. Many other individuals with similar problems would continue to cope with most tasks and most jobs”.*

6.3 She now claims that her work prospects are limited by the following symptoms:

- a) Pain if the finger is knocked in any way.
- b) Difficulty in lifting to the extent that she is unable to help parents lift their buggies in her present job, she said. However, I would not have thought this was an essential component of the job.
- c) Lack of keyboard speed.
- d) Writing takes a long time.

7. POST-INJURY EMPLOYMENT HISTORY

7.1 Since her injury The Claimant returned to work but found that she was still in pain and unable to use the tools necessary for her to do the job. She was unable to grip or lift items, was put on light duties just assembling with screws but was unable to do that as a result of her difficulties in gripping. She, therefore, went off sick again having initially been off for 4 weeks immediately after the accident.

- 7.2 She made further efforts to return but effectively gave up after 6 months and went 'long term sick'. She became bored so decided to do a City & Guilds computer course at xxx College. She found this quite difficult and she was very slow on the keyboard but developed a particularly sound knowledge of Microsoft Word.
- 7.3 She is currently working variable hours on a part time basis (average 16 hours per week) at a nursery/after school club working with toddlers and under 8's. She could not remember exactly when she started this work but states that her hours vary from day to day and she does 'anything to help out' such as preparation for arrivals, taking children to the toilet, calming disruptions and generally managing groups of children. The club delivers art classes, drama and dance to the children and she helps where she can.
- 7.4 The Claimant was introduced into this type of work by her brother's girlfriend who runs the group. She enjoys it immensely but has no idea how long it will last, mainly because of the issue of funding she believes. She is, however, doing a NVQ level 2 in Childcare at xxx College, though she claims she experiences difficulty doing the paperwork/writing element of this course.

8. PRESENT TRANSFERABLE SKILLS

- 8.1 The following observations apply to The Claimant' present transferable skills:
- a) Basic childcare coupled with experience and learning from the NVQ
 - b) Thorough knowledge of Microsoft Word
 - c) Retention of customer service skills
 - d) Knowledge of pet care
 - e) Experience of low level team management
 - f) Administration

9. PRESENT EMPLOYABILITY

- 9.1 Employability can be defined as a range of qualities which make a candidate attractive to a potential employer. These include the following: presentation; interpersonal skills; flexibility and a positive attitude towards work; occupational skills; qualifications; experience; commitment; trainability and willingness to learn.
- 9.2 The Claimant displays many of these qualities. In particular she presents herself well and with confidence. She possesses well developed interpersonal skills, finding conversation easy and comfortable. She is demonstrably keen to learn.
- 9.3 She is eager to get back to some form of permanent employment and would like to either progress her work with children on a more stable basis or to return to working with animals. She appears frustrated with her circumstances as she is fit, healthy, intelligent and fully able apart from the 'finger disability' which imposes some restrictions upon her. She is certainly employable within the limitations of that imposed by her finger injury.
- 9.4 Any recruitment interviewer would be impressed with The Claimant. Her disability is not so obvious, but would become apparent or was specifically asked about any restrictions on what she was able to do. Her work record prior to her accident is quite stable. She only takes pain killers occasionally if she feels the need to (she is not on any other medication) and it would appear that treatment options have been exhausted from the information contained in the medical reports.
- 9.5 There no reason, therefore, to expect her to be any less reliable than other employees, she is unlikely to require extensive time off but is disadvantaged only in respect of the duties she is able to carry out. No special arrangements would need to be made for her to attend interviews. In terms of work ability

when considering her disadvantage, I have thought about this very carefully and, indeed, have practised certain hand movements with a stiff index finger, as well as I was able, to see what restrictions might be experienced. So far as keyboard work is concerned, I am unsure whether The Claimant was a fully trained and experienced typist, using all fingers rapidly. Most people do not use all digits, although the index finger is one that is commonly used. Nevertheless, it is perfectly possible to type without the use of the right index finger and there would no special equipment allowance made for it. Operating the 'mouse' is not a problem as I practised it. Till working would most certainly not require the specific use of the index finger. Although fine dexterity and heavy lifting is precluded I did, for example, move some furniture around without the use of the index finger and I would think it is entirely possible The Claimant could carry out such a function. I recognise that writing may prove difficult in that it normally requires the use of the thumb, index and second finger. However, in my experience the art of writing is fast disappearing at work.

- 9.6 What I cannot reconcile, though, is that The Claimant uses her bicycle as often as possible to ride to work and elsewhere which, of course, would require both hands to safely grip the handlebars and either to operate the brake levers. Clearly, she is able to carry out this function, in which case I must take the view that if she can manage this operation then she should be able to manage most workplace operations requiring use of the right hand, albeit with some difficulty.
- 9.7 The Claimant would appear to fall within the ambit of the DDA. The DDA requires employers to make reasonable adjustments, especially at interview. However, "a disability should not bar a person from employment unless it would genuinely and significantly impede that person from doing the work in question, and there is nothing the employer can reasonably be expected to do to overcome this."
- 9.8 The definition of the term "disability" and estimates of prevalence can vary. As a result the Department of Work and Pensions has clarified its position and

produced a user's guide (*Labour Market Trends*, July 2004). It has also revised its estimates. It now believes that there are 6.7 million people of working age in Great Britain with a long-standing illness that significantly limits their day to day activities and or a work-limiting disability (*Labour Force Survey* Spring 2003).

9.9 The following information is taken from *Labour Market Trends* December 2003 (n.b. this is latest such report):

- The non-disabled were more likely to be in work than the disabled (81.1% compared with 49.0%).
- Fewer disabled people than non-disabled people were working full-time (35.0% compared with 62.4%).
- The ILO unemployment rates for disabled people were nearly twice those for non-disabled people (8.6% compared with 4.9%).
- The economic inactivity rate was 46.4% for the disabled compared with 14.7% of the non-disabled. The difference was greater for men (42.8% compared with 8.8%) than for women (50.3% compared with 21.2%).
- More disabled people (14.4%, compared to 3.8% of the non-disabled) want a job.

9.10 It can be concluded that, generally speaking, there are a great many disabled workers who, following injury, find it difficult to return to the workplace. However, national statistics do not tend to be helpful in dealing with individual cases, where an assessment of overall employability should focus on a complex mix of factors including previous experience, transferable skills, motivation, and levels of mobility. The future employability of a disabled worker must be judged on the merits of each individual case. In some cases disability will prove an absolute bar to employment, while in others the occupational impact of disability is of minor significance.

10. LABOUR MARKET CONDITIONS

10.1 According to the October 200x edition of *Labour Market Trends* the ILO unemployment level for the UK was 1.418 million, a rate of 4.7% in the three

months to July 200x, unchanged from the previous quarter and unchanged from a year ago. The national claimant count stood at 2.8% in August 2005.

10.2 Claimant unemployment by the North xxx Local Authority area at August 2005 was 707 male, 284 female, totalling 991, expressed as 1.4% of the working age population – reflecting extremely high employment in the area.

10.3 Information taken from the *Labour Force Survey* (as reported in *Labour Market Trends*, June 2003) reports the main method of job search. Most unemployed men obtained a job through the Jobcentre while most unemployed women found employment as a result of studying the situation vacant columns of newspapers. A more details breakdown is given in the following table:

Method	Unemployed	Unemployed
	Men (%)	Women (%)
Jobcentre	33	23
Situation vacant columns	27	38
Other	13	13
Friends, relatives	9	6
Direct approach to employers	9	11
Answering newspaper advertisements	8	9

10.4 The Department Work and Pensions estimates that Jobcentres handle about one-third of all vacancies. A further third are advertised in the press, with the remaining number filled by word-of-mouth or by other means, e.g. employment agencies. Jobcentre notified vacancies are now accessed via the Department's web pages.

10.5 An examination of the Jobcentre Plus website revealed the following positions, which may be suitable and are an example of Childcare positions currently available:

SENIOR NURSERY ASSISTANT

Hours

40 HOURS PER WEEK, MONDAY-FRIDAY, DAYS ONLY

Wage

£6.39 PER HOUR

Duration

PERMANENT

Description

Applicants must be qualified to NVQ level 3 in Crèche, or NNEB or equivalent. Duties include assisting in the daily running of a nursery. Successful applicants are required to provide an enhanced disclosure. Employer will meet disclosure expense.

NURSERY NURSE

Hours

40 PER WEEK, MONDAY TO FRIDAY, DAYS

Wage

MEETS NATIONAL MINIMUM WAGE

Duration

PERMANENT

Description

Applicant must have NVQ level 3 or NNEB or BTEC. Duties involve assisting the nursery team to provide a suitable environment for the children, assisting the base room manager in training, organising themes and projects and monitoring students. Successful applicant will require a Criminal Records Bureau check.

NURSERY ASSISTANT

Hours

MONDAY-FRIDAY, 4PM-6PM OR 8AM-10AM, 10 HOURS A WEEK

Wage

£4.25-£5.05 PER HOUR DEPENDS ON QUALIFICATIONS

Duration

PERMANENT

Description

Childcare qualifications preferred but not essential. Duties include caring for children aged 6 months to 5 years, which will include all activities. Applicants will be required to take an enhanced disclosure. Employer will meet the costs.

PLAY WORKER

Hours

18 HOURS PER WEEK, MONDAY-FRIDAY, 3.00AM - 6.00PM

Wage

£5.00 PER HOURS

Duration

PERMANENT

Description

Applicants should have experience within a similar role. Training will be given relevant to the post. Duties include collecting children from school and bringing them to the club, administering paperwork, setting up and participation in childrens activities. Successful applicants are required to provide an enhanced disclosure. Employer will meet disclosure expense.

NURSERY NURSE

Hours

10-30 HOURS PER WEEK BETWEEN MONDAY+FRIDAY DAYTIME

Wage

£5.50 PER HOUR

Duration

PERMANENT

Description

Must have NVQ level three or equivalent. Will be responsible for supervising and encouraging play activities in a day nursery.

PLAY WORKER

Hours

35 HOURS PER WEEK BETWEEN MONDAY+SATURDAY SHIFTS

Wage

£5.86 - £7.38 PER HOUR

Duration

PERMANENT

Description

Must be 18 + years of age for insurance purposes and have previous experience in a childcare role. Will be providing play activities in a term time, after school club. Hours will include some Saturdays. 35 hour week applies to school holidays, with reduced hours to cover term time after school and Saturday club.

- 10.6 In addition there were many jobs advertised in the xxx and xxx areas for Sales Assistants and Call Centre Agents, paying in the range £11,000-14,000 p.a.

10.7 It should be noted that the above jobs represent *entry* pay levels in a range of Jobcentre-advertised positions. Anyone taking a job which was not entirely unskilled might expect progress from this low level of starting pay to a higher level as they acquired know-how and experience.

11. EFFORTS TO MITIGATE LOSS (JOBSEARCH)

11.1 The Claimant has undergone appropriate medical treatment and appears to have retained her employability. She has attempted to return to the workplace by returning to her employer at the time of the accident and trying to get back to her own job. This was not possible, but she also tried light duties which equally could not be carried out due to her injury.

11.2 She has not carried out extensive job search activities other than to read the situations vacant column of her local newspaper, but has enhanced her skills and knowledge by attending college to do a computer course and a NVQ in childcare. She has also gained additional work experience within the childcare industry.

11.3 She has not consulted her local Jobcentre (see Appendix) nor has she consulted a Disability Employment Advisor.

11.4 She appears not to regularly refer to recruitment advertising in the local newspaper or on the internet but sticks with her 'variable hours' childcare work which she obviously enjoys.

11.5 The Claimant is not currently registered with other employment agencies and has not engaged in other forms of job search, even though pre-accident she had experience of temping through Blue Arrow. It is possible her registration with that agency still exists.

12. RETRAINING OPPORTUNITIES

- 12.1 As outlined above, The Claimant has undertaken further training in IT since her accident and added to her experience and skills by undertaking child care work and supplementing this by studying for her NVQ Level 2.
- 12.2 There is no doubt that she has the ability to undertake further training but needs to determine exactly what her occupational preferences are, within her capabilities, in order to establish the exact nature of future training. She states her desire is to work with either animals or children, the former of which she has experience, and the latter requiring prescribed training routes, which she is currently pursuing.
- 12.3 Students for the NVQ Level 2 in Early Years Care and Education must be in employment or on a placement within a nursery environment and have a keen interest in child care. Jobs would include Nursery Assistant, Pre-School Assistant, Creche Assistant, Playgroup Assistant, Mother's Help, Babysitter. Moving on to NVQ Level 3, appropriate jobs would include Nursery Supervisor, Pre-School Leader, Creche Leader, Playgroup Leader, Nursery Nurse, Childminder. Level 3 is available at North xxx College on a part-time basis for 30 weeks from 6.30pm to 9.30pm each Wednesday evening. The next course will start in March 200x.
- 12.4 At this stage I see no merit in proposing alternative training for The Claimant other than that which she is currently undertaking. It is unknown whether her current employer provides full time child care, but only offers her part-time work. It may, therefore, be more helpful for her to find alternative full-time employment in the same environment that would still allow her to study during the evening. On the face of it, there appears to be no reason why she shouldn't.

13. RESIDUAL EARNINGS CAPACITY

- 13.1 Medical evidence suggests that The Claimant is capable of returning to full-time employment within the limitations of her disability. I fully agree with this view and can see no reason why she could not work full time now if she undertook thorough and detailed job search activities to find work that does not require manual dexterity or cause distress to her finger. As I have said above, the study of NVQ Level 3 in Early Childcare requires the student to be employed in that environment and it is recommended that she pursues this option at the very least. It is my understanding most colleges will make allowances for students with disabilities.
- 13.2 As I have discussed in this report, which is confirmed by medical opinion, The Claimant does not appear to be hugely disadvantaged and she is able to work full-time. She is currently working part-time within a child care environment at which she seems at ease, although she complains she cannot lift parents' buggies. I just cannot understand the rationale behind that comment as I can see no reason to lift a parent's buggy. Moreover, there will not be any huge typing or administration requirement, or the need for manual handling or dexterity, in which case such a career would seem to be the most appropriate option.
- 13.3 The Claimant lives at home with her parents. She did live in a flat with a friend but had to give this up and return home after her accident as she was unable to continue to afford to live independently. As she is restricted to either cycling or public transport this restricts her travel to work and will be constrained to the immediate locality of xxx or the xxx areas.
- 13.4 When considering the residual earnings of a disabled worker it is generally more accurate to exclude overtime and productivity payments, which are generally not available to workers with a disability. Reference to the *Annual Survey of Hours and Earnings 2005* indicates that median gross weekly pay

and gross basic pay (i.e. excluding overtime, shift bonus, payment by results) for full-time females in relevant occupations are given in the table below:

<u>Occupation</u>	<u>Gross Median Weekly Pay</u>
Childcare and related personal services	162.90
Sales and retail assistant	125.60
Retail cashiers and check-out operators	111.80
Telephone salesperson	246.60

13.5 The above would suggest a basic pay range of £111.80 - £246.60 per week (in fact, the same values as described in Section 5). However, it is important to note that the pay scales shown above relate to pay achieved by those who are already established in the workplace and are national averages.

13.6 In April 1999 the Government introduced legislation enforcing a minimum wage. This rate was increased to £4.85 in October 2004 and will rise to £5.05 in October 2005, and £5.35 in October 2006.

13.7 As can be seen from Section 10, most of the lower status Child Care work is of a part-time nature, leading to full-time with responsibility, with the exception of the Play Worker paying between £5.86-7.30 ph for a 40 hour week. The Claimant' residual earnings capacity upon achieving full-time work in Child Care is likely to be approximately £5-5.86 per hour, or £200-234.40 gross per 40-hour working week. This could rise to £295.20 per week were she lucky, or when she achieves NVQ Level 3 to much the same rate

14. SUMMARY AND CONCLUSIONS

14.1 On xx/xx/xxxx The Claimant was involved in an accident at work as a result of which the index finger of her right hand was damaged. The impact of this injury is that she is unable to bend that finger at the knuckle joint and

consequently it is virtually extended on a permanent basis and she is in pain if it is knocked accidentally or otherwise or is interfered with in any way.

- 14.2 At the time of the accident The Claimant worked on a factory production assembly line earning £281.25 per week. She lived with a friend in a flat and clearly enjoyed a full life. She was a regular long distance swimmer which she is no longer able to do and she has moved back in with her parents as she was unable to continue to afford living in the flat.
- 14.3 She had worked in two main occupations prior to her accident, in a factory and animal work/retailing but did not have a clearly planned career path or particular career aspirations. However, she had acquired a range of occupational skill suited to a number of environments although particularly she desired to work with animals or children.
- 14.4 Had it not been for the accident she would probably still be working on the production assembly line at xxx company earning in excess of £310 per week but it is equally likely that she may have left that job to further her desire to work with either animals or children, the latter she is doing now. In this case her earnings would be in the range of £230-235 gross per week (£189.98-193.33 net). It is possible that the earnings level at xxx company may, however, have kept her in that job for a while. It would be a matter of The Claimant' choice to balance earnings against job satisfaction.
- 14.5 Turning to her present condition and circumstances, it would appear from the medical evidence that she has exhausted all medical treatment options other than potentially a course in pain management and control. There is unlikely to be any significant improvement in her condition therefore she will continue to have this minor disability indefinitely.
- 14.6 It is important to recognise that the disability is minor but nevertheless significant in terms of restricting the use of her right, dominant hand and

limiting her manual dexterity with that hand. In all other respects she is fit, well and healthy and indeed enjoys the advantages of personal confidence, excellent presentation and she is articulate and intelligent. These advantages will be attractive to a potential employer and in my opinion outweigh the disadvantages caused by her disability. There is no doubt that she is able to work full time but she is experiencing difficulties in establishing the right job for herself. Her main interests are working with either animals or children which would utilise her work experience, but she has yet to fully explore job or further training opportunities in these areas.

- 14.7 Her current part-time earnings of £5 per hour in unstable employment are unsatisfactory but she should be able to find greater stability and earnings. (It should be noted that the National Minimum Wage increased to £5.05 per hour on 1st October 2005 so it is likely that she will have received a small increase since I interviewed her). The NVQ Level 2 that she is studying can progress to Level 3, upon which she can secure higher status employment within the child care industry and concomitant pay in the range. Were she to achieve full-time work now she could expect to earn £200-235 gross per week (£169.87-£193.33 net), rising to £295 gross per week (£233.52 net) upon achieving NVQ Level 3.
- 14.8 There seems to me no reason why she should not seek full time employment, preferably (on her part) in the same field, and continue with her NVQ work assessments. She could not continue with the NVQs in Child Care were she to work outside this environment. In the alternative, she could carry out other work within her scope at which she could expect to earn in the broad range of £111.80-246.60 per week (mid-point £179.20).
- 14.9 In summary, The Claimant has two options in my opinion; to either stay where she is, which she enjoys, and continues with her NVQs to Level 3, seeking to move from part to full-time employment, or to seek alternative full-time employment in a different occupation, of which she is entirely capable. It will be a matter of personal choice, but it should be apparent that earnings are much

the same in either event, although with the possibility of enhancement the more she pursues NVQs.

- 14.9 In my opinion the above considerations should be taken into account in relation to The Claimant' claim for loss of earnings.