BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. E203713 & E401760

DONNIE LEMMONS, EMPLOYEE	**CLAIMANT**
ARK. GLASS CONTAINER CORP., SELF-INSURED EMPLOYER	**RESPONDENT #1**
SECOND INJURY FUND	**RESPONDENT #2**
DEATH & PERMANENT DISABILITY TRUST FUND	**RESPONDENT #3**

OPINION FILED FEBRUARY 2, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on December 3, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE ANTHONY BARTELS, Attorney at Law, Jonesboro, Arkansas.

Respondent #1 represented by the HONORABLE DAVID LANDIS, Attorney at Law, Jonesboro, Arkansas.

Respondent #2 represented by the HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

Respondent #3 represented by the HONORABLE JUDY W. RUDD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to additional workers' compensation benefits.

On September 28, 2004, a pre-hearing conference was conducted in these claims, from which a Pre-hearing Order was filed. The Pre-hearing Order reflects stipulations entered by the

parties, the issues to be addressed during the course of the hearing, and the parties' positions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The parties further stipulated that claimant worked through January 2000, and, as such, could not have been entitled to permanent total disability benefits during the period he was gainfully employed.

Although listed as an alternative pleading, claimant asserts that he is permanently and totally disabled such that vocational rehabilitation is no longer viable. Accordingly, claimant waives vocational rehabilitation.

The testimony of Mr. Donnie Lemmons, coupled with the deposition testimony of Dr. Earl Peeples, Mr. Bob White, coupled with medical records, prior hearing transcripts, and rulings generated as a result of the prior hearing comprise the record in this claim.

DISCUSSION

______Donnie Lemmons, the claimant, with a date of birth of July 24, 1953, is a high school graduate with additional education in a correspondence course in computer repair. Claimant commenced his employment history in Northwest Indiana where he started out cleaning trailers, mobile homes, campers and RV's.

Claimant commenced his employment as a security guard with respondent #1 in November 1998. There is no evidence in the record to reflect that claimant experienced any physical restrictions or limitations relative to his employment activities prior to his employment by respondent #1.

On February 19, 1994, claimant suffered compensable injuries to his left knee and left ankle in his employment with respondent #1. Claimant received medical treatment relative to the

left ankle and left knee under the care of Dr. Larry Mahon, a Jonesboro orthopedic surgeon, who performed surgery on the left knee in April 1994. Claimant remained off from work following the first left knee surgery from April 13, 1994, until July 7, 1994. Claimant underwent a second surgery relative to the left knee in August 1994, under the care of Dr. John Woloszyn, another Jonesboro orthopedic physician, and remained off work until October 5, 1994.

In February 1996, claimant underwent another surgical procedure under the care of Dr. Woloszyn relative to his left ankle which was the subject of August 21, 1996, hearing before the Arkansas Workers' Compensation Commission. In an Opinion filed November 26, 1996, growing out of the hearing, the treatment was found to be related to the February 19, 1994, compensable injury, and benefits were awarded. The November 26, 1996, ruling of the Administrative Law Judge was affirmed and adopted by the Full Commission in an April 4, 1997, Opinion, pursuant to the appeal of respondent #1.

On October 11, 1997, claimant left the employment of respondent #1. The testimony of the claimant reflects that after his initial left knee surgery in April 1994, he was released to return to work in a light duty capacity. Regarding the duration of his continued employment by respondent #1, claimant noted:

> Well, I worked there in one capacity or another as a security guard until October '97 when the transport department that all guards worked out of, it was shut down. (T. 19).

After leaving the employment of respondent #1 claimant secured employment on May 1, 1998, with Burns Security, as a security guard, and continued in the employment of same for approximately one year. The employment with Burns Security ceased on April 22, 1999, as a result of a dispute between the claimant and his local supervisors.

Claimant later secured employment on August 2, 1999, with StaffMark, a temporary employment agancey, and was assigned to Consolidated Molding where he discharged duties as a stamp-press machine operator. Claimant discharged the afore job duties for a period of two to three months. Claimant's assigned duties as Consolidated Molding ceased when the plant closed.

Claimant acknowledged that while an employee of StaffMark, assigned to Consolidated Molding, he filed a claim for workers' compensation benefits growing out of a August 31, 1999, fall. Claimant impacted the concrete floor with both knees in the accident, and received medical treatment under the care of Dr. Bradley. Claimant was referred by the workers' compensation carrier for StaffMark to Dr. Joseph Yoa, a Blytheville orthopedic physician. The testimony of the claimant reflects that his principle complaint following the August 31, 1999, accident, was to his left knee, on which he was wearing a brace relative to the February 19, 1994, injury, at the time. Claimant maintains that Dr. Yoa was awaiting authorization to provide medical treatment following the October 26, 1999, hearing before the Arkansas Workers' Compensation Commission.

Claimant's testimony reflects that when treatment was ultimate provided by Dr. Yoa after authorization from StaffMark, the same consisted of arthritis medicine. Claimant asserts that he received medical treatment under the care of Dr. Yoa until August 2003, for complaints to his left knee growing out of the August 31, 1999, accident.

Claimant was later employed at Plastics Plus, in Jonesboro for a period on one week. Claimant maintains that the afore employment ended because the supervisor did not believe that he could do the job. Claimant was employed by Plastic Plus in Mid-October 1999, and at the

time of a hearing for additional workers' compensation benefits on October 26, 1999, was in a lay-off status.

On October 26, 1999, a hearing was conducted before the Arkansas Workers' Compensation Commission on claimant's claim for additional medical benefits relative to the February 19, 1994, compensable injury. In a December 14, 1999, Opinion, the Administrative Law Judge found that the claim was not barred by the statute of limitation, that claimant had suffered a recurrence of his left ankle problems, and that claimant was entitled to a change of treating physician. The ruling of the Administrative Law Judge was affirmed and adopted by the Full Commission in its April 6, 2000, Opinion, pursuant to an appeal by respondent #1.

Claimant testified that while he has been to the employment office as various times he has never been able to secure employment. Claimant asserts that he was finally discouraged by Employment Security personnel, noting that he would not be hired by anyone with all of the visible hardware on his left leg. In describing the hardware, claimant's testimony reflects:

> Well, I have a left long leg brace and that's the visible part. I have that long leg brace is metal and on the left leg, underneath my pants I have a left knee brace and I have a left ankle brace. (T. 20).

Claimant attributes the need for the above apparatus, as prescribed by Dr. Joseph Yoa, an orthopedic physician, to the February 19, 1994, injury in the employment of respondent #1.

Claimant asserts that over the course of time following his February 19, 1994, compensable injury, he developed symptoms in his hands which was later diagnosed as carpal tunnel syndrom. The afore requires the use of braces on his hands. Claimant's testimony reflect:

> Well, over the course of trying to do my job that I had to

> do and use whatever was necessary to take care of business when I got hurt there in 1994, February 19th, that I found a broken broom-stick and I used that to get around and make do with what I could until I could finally get around to the drug store and get a store bought brace, excuse me, walking stick, I'm sorry, walking stick. (T. 21).

Claimant maintains that his condition deteriorated to the point that he was unable to continue using the walking stick, and now uses crutches. Claimant asserts that he has had to use crutches at one time or another since his first surgery in April 1994.

Regarding his current physical restrictions/limitations attributable to the February 19, 1994, injury in the employment of respondent #1, claimant notes that he has difficulty walking ,and standing without the aide of his crutches. Claimant further testified that he can sit for a prolong period of time, although he has to change positions frequently. Claimant notes that since he has to use the crutches for mobility, he has increasing problems with his hands with respect to the carpal tunnel syndrome. Claimant desires further medical treatment to address the afore. Claimant's testimony reflects that he does not have a treating orthopedic physician, and that if he had to see a physician relative to his left leg, he would have to rely on anybody that Dr. Spanos, a neurologist, could work with.

Claimant attributes the development of carpal tunnel syndrome to his use of cane, walking stick, and crutches growing out of the February 19, 1994, accident. Claimant added that the only medical treatment he has received relative to his wrist complaints was had under the care of Dr. Yoa with respect to a prescription for the wrist braces. Claimant started receiving the afore in August 1999. Regarding the August 31, 1999, fall, claimant acknowledged that he used his hands to brace himself to prevent hitting his head. Claimant added that he grabbed a box. Claimant's testimony reflects that his wrist complaints came "years later". (T. 35).

Claimant lives in a mobile home with his mother, who has purchased a power chair to help him get around. Claimant also noted that Dr. Spanos has authored a prescription for a handicap scooter. Claimant's current source of income is social security disability benefits. The testimony of the claimant reflects that Social Security Administration deemed his disabled as of June 2001.

The testimony of the claimant reflects that while he recently completed a correspondence course on computer repair, because he is unable to sit in a classroom he has been unable to get his certification associated with the course.

As previously noted, there have been two (2) prior hearings before the Arkansas Workers' Compensation Commission on the claimant's claim for additional workers' compensation benefits growing out of his initial February 19, 1994, injury. The record does not reflect that claimant registered complaints relative to the his hands or wrists during either of the earlier preceding.

A review of the medical in the record reflects that in addition to the left lower extremity complaints, claimant has been diagnosed with conversion disorder and bilateral carpal tunnel syndrome. Claimant was referred by Dr. Joseph Yao, a Blytheville orthopedic surgeon, to Dr. Demetrius S. Spanos, a Jonesboro neurologist. The March 24, 2003, consultation report of Dr. Spanos reflects a history of the claimant's injury and medical treatment relative to same. Of note regarding the history of the claimant as relayed to Dr. Spanos was the fact that claimant denied any upper extremity symptoms. Claimant underwent diagnostic studies pursuant to the direction of Dr. Spanos relative to his lower extremity complaints. During a July 24, 2003, visit, claimant noted a "new symptom of loss of feeling in his hands while driving like a 'tingling' affecting his

left more so than the right”. (R1,X1). Subsequent EMG/ nerve conduction studies disclosed bilateral carpal tunnel syndrome, right worse than left.

Dr. Spanos attributed the claimant’s bi-lateral carpal tunnel syndrome to his use of crutches growing out of the February 19, 1994, compensable injury. In a January 19, 2004, correspondence, Dr. Spanos relayed:

> . . . . . I indicated in my last office visit with Mr. Lemmons that “the paresthesias of the upper extremities I suspect are due to bilateral carpal tunnel syndrome possibly related to the use of crutches over the past five to six years”. If the patient used crutches for a work related injury then I feel any subsequent injury which develops due to the use of those crutches would also be covered under work related injury. . . . Also, a mention was made that the patient is “completely negative to Tinel’s testing. Although this is present in the majority of patient’s with carpal tunnel syndrome (approximately 60% or so) it does not have to be present and the nerve studies have already proven that carpal tunnel exists.(R1,X1)

On July 24, 2003, Dr. Spanos completed a Medical Source Statement - Physical document setting forth the claimant’s physical limitations/restrictions.

On August 7, 2003, Dr. Joseph Yoa completed a Medical Source Statement - Physical document relative to the claimant which identified physical restriction/limitation regarding the claimant’s impairments. The document recites that the claimant may lift less than 10 pounds frequently, and 10 pounds occasionally; walk/stand one (1) hour continuously with crutches; and sit eight (8) hours continuously. The document also recited restrictions/limitation with respect to climb, balancing, stooping, kneeling, crouching, bending, and handling, attributable to bilateral carpal tunnel syndrome, braces and crutches for both upper extremities and lower extremity. (R1,X1).

On November 17, 2003, claimant was evaluated by Dr. Earl Peeples, a Little Rock

orthopedic surgeon, pursuant to request of respondent #1. After reciting the history of the claimant's injury, medical treatment received relative to same, and prior pertinent medical reviewed, the November 17, 2003, report of Dr. Peeples' reflects the results of his physical examination of the claimant. The afore report reflects, in pertinent part:

> Mr. Lemmons has a history of meniscal tear related to a twisting injury in 1994. It would be anticipated that he would quickly recover from this and resume gainful employment. However, functional difficulties and a question of psychological abnormalities were noted by Dr. Mahon.
>
> His history since then and his examination today is consistent with conversion disorder and somatoform disorder, both of which are confirmed by recent MMPI testing. He has unusual ideation. He has stocking/glove decreased sensation of the entire left lower extremity. His mother expresses concern that nerve abnormalities in the foot will spread to his brain and kill him. He will not attempt to stand on his leg as it will give way. His examination is not consistent with organic findings.
>
> NCV studies have indicated a conduction delay in the median nerve. However, he does not display classic findings or carpal tunnel syndrome clinically. His previous elective operative interventions have failed to result in improvement and in view of his normal two point examination, I think it is unlikely that he will recover completely following carpal tunnel intervention. His carpal tunnel syndromes are not related to the accident of 1994. They are developmental. Perhaps, his unnecessary use of crutches secondary to his psychological condition would exacerbate the symptoms of carpal tunnel syndrome.
>
> My sole recommendation for treatment is that Mr. Lemmons seek psychological help and support. Elective surgical intervention for pain should not be performed on Mr. Lemmons.. . . . His psychological difficulties are well established and I do not believe they are likely to change. (R1,X1)

Dr. Peeples has an opportunity to review reports of Dr. Spano generated subsequent to the November 2003, evaluation that he performed. In his response correspondence of February 2,

2004, Dr. Peeples noted relative to the carpal tunnel syndrome question:

> Carpal tunnel syndrome is almost always idiopathic related to inheritance. By Arkansas law it is compensable only in rapid and repetitive activities. None are recorded by Mr. Lemmons. He may have, indeed, developed carpal tunnel syndrome, but, in my opinion, it is unrelated to his lower extremity injury. The development of carpal tunnel syndrome is not associated with use of cane or crutches. If this was so, literally thousands of individuals necessitated to use crutches by polio would have developed carpal tunnel syndrome and it would be well documented in the orthopedic literature.
>
> In would like to clarify any misunderstanding based on Dr. Spanos' comments regarding my evaluation of Mr. Lemmons' carpal tunnel syndrome. It is Possible that his use of crutches would exacerbate the symptoms of carpal tunnel syndrome, but the origin of carpal tunnel syndrome is not, in my opinion, related to his activities. . . . .
>
> It is my opinion that the presence of Mr. Lemmons' conversion disorder and the presence of litigation and long term perceived inability to be employed related to his alleged incident at work should be taken into consideration when considering his history and description of his symptoms. (R1,#1).

On August 28, 2003, claimant underwent a vocational assessment under the directions of Mr. Bob White, a North Little Rock vocational specialist. In his September 1, 2003, report, Mr. White outlined the material reviewed in conjunction with his one and one-half (1 ½) interview of the claimant which served as the basis opinion. The September 1, 2003, report of Mr. White concludes:

> Specifically, all jobs require persistence and pace to complete specific job tasks - all jobs required dependability and reliability (worker traits) and the ability to complete the normal eight hour work day and 40 hour work week. All jobs have on going work processes (requiring an individual to be in a set position for a specific period of time to complete specific work tasks) with time dependent schedules.
>
> Give the limitations of Donnie Lemmons, he is not capable of meeting any of the criteria to perform work activity at any exertional level or meet the requirements of sitting, standing and lifting and carrying to meet

the criteria of sedentary or light work. (CX1, ex. 16, p. 4).

During the course of his November 24, 2004, deposition Mr. White was questioned regarding the claimant's vocational prospects. In addition to the August 28, 2003, interview of the claimant, which served as the basis for the September 1, 2003, assessment report, Mr. White also interviewed the claimant on the Tuesday prior to the Wednesday November 24, 2004, deposition.

Mr. White's testimony reflects that he was informed by the claimant of claimant's additional formal training beyond high school, to included a computer repair course. The testimony of Mr. White reflects that the claimant did not inform him what the course taught him, or that he was qualified to work on the computer software. Regarding the afore, Mr. White testified:

> Well, it is interesting because I actually bought up the issue of retraining with him, and I specifically mentioned those areas to him, especially this last time. I asked him why he couldn't avail himself of possibly going back to school and going in the information technology software design, data entry, something of that sort. It is possible I should have pursued that farther. I took him to mean, hey, I did this correspondence course, but it didn't - - you did understand what I'm saying?
>
> I made the assumption it was quite limited, and I probably should not have done that. (R1X3, p. 16-17).

Mr. White was not aware that claimant was a minister. Mr. White added that he was not aware of other vocational areas of interest that the claimant had disclosed during a February 2003 deposition.

Mr. White agreed that it is equally important to know of psychological problems as well as physical medical problems in making a vocational assessment of an individual. At the time of his initial assessment of the claimant in August 2003, Mr. White was unaware of the

psychological evaluation which had been performed by Dr. Russell L. Dickson, a neuropsychologist. Mr. White learned of the afore prior to his November 2004, interview of the claimant. Dr. Dickson diagnosed the claimant with conversion disorder.

Mr. White testified regarding his vocational assessment of the claimant:

> Actually I might can give some real insight here. Basically what I did on this, Mr. Landis, what this really comes down to in a nutshell, I didn't really in my report take a position on whether or not he could work. What I really said was that if you believe and find credible the functional capacities as outlined by Dr. Spanos or Dr. Yoa, then they would not meet the technical definitions of sedentary and light work.
>
> That's why I ended where I ended, because I basically said, if you find this credible - - and I'm not taking a position one way or the other. If you find that credible, then it doesn't meet the definition of sedentary or light work. If you don't find it credible, then there's potentially things out there that he can do. That's really what my assessment boiled down to in a nutshell because we did have those functional capacity assessments. (R1X3, p. 23).

At another point in his deposition Mr. White explained the benefits gained from observing an individual that he is assessing vocationally:

> I understand. That's a tough call. Basically the reason you want to do the personal interview, of course, is to obtain information, to establish rapport and then observe the person. The truthful answer to how I have always perceived workers' comp is that when I go in and interview somebody, before I've sat down on the couch, they've told 500 reasons why they can't go back to work. That's the truthful answer.
>
> I try to glean then as that point from my interview to get some idea as to whether or not I think they're actually credible, they're partially credible or they're really full of it. Sometimes, especially if there's a psychological component involved - - which I'll be honest. I wish that hadn't been done because it really complicates matters for me vocationally. That makes it real difficult to know where this guy is coming from.
>
> I don't know if that's an answer. That's kind of how I'm looking at it. (R1X3, p. 27-28).

In the final analysis Mr. White responded that he did not disagree with the statement of Dr. Peeples that there was nothing to prevent the claimant from returning to gainful employment from the standpoint of the February 1994 compensable injury.

Mr. White's testimony reflects, regarding his most recent interview with the claimant:

> I actually asked that question. I pushed him in the interview Monday as to why he couldn't go back and do something. He said, Well, I have to elevate my leg. This is probably in the notes. I have problems with pain and that I have to alternately sit. I have to lay down a lot during the day. I continued to press him on that. I said, Well, don't you think you could do something? He then handed me a file, which I gave Mr. Bartels, that he was interested in alternative energy forms and robotics.
>
> I said, okay. First of all, What does this mean - - because I didn't know - - and what is the significance vocationally? He said, Well, I was interested in doing something like that. He had pulled information off the website. I'm not going to sit here and tell you that he could not perform. If he had the advantage where he could be self-paced, set his own schedule, I believe potentially he probably could do something. That's assuming that the limitations that he has provided me again are credible and accurate. (R1X3, p. 33-34).

Finally, in response to the new information he had received as a result of the recent interview and during the deposition, Mr. White testified regarding any changes in his answers about the claimant:

> Well, the big concern I have in all to these cases, Mr. Landis - - I love Mr. Bartels to death, but he kind of did the same thing with me that he did with Dr. Peoples about the pain issue. I never noticed him being in any distress or any pain. When I asked him about the pain, he said it's an eight or nine. I said, Wait, wait a minute. I equate an eight or nine to when I have a toothache. I can tell you that if it means getting the pliers and pulling the tooth, I'm going to get rid of the pain. I believe he has some problems. I believe he has some limitations. I think they're compounded by other things that are going on in his life.
>
> I will say this in his defense. And y'all have done this longer than I have. It's not unusual for somebody to exaggerate because so often they don't think you believe them anyway. So we go the extra mile to make sure

> you know how disabled I am. I do think, Mr. Landis, he's got problems. I doubt he could go back and do some of the things he's done in the past. But I'll be honest with you. Exactly how serious they are, I don't know. I just don't know.(R1X3, p. 37-38).

On June 6, 2004, the parties obtained the deposition of Dr. Earl Peeples. The evidence disclosed that Dr. Peeples, in addition to performing an examination of the claimant, reviewed all of the medical comprising Respondent #1, Exhibit #1. Regarding the summary of the medical records, the testimony of Dr. Peeples reflects:

> So my summary, after review of the records, was that, as I state in Page 4 of the report, Review of this record does not support a traumatic injury to the meniscus in 1994. The MRI findings show only signal change, and the operative note is consistent with degenerative changes. In 2003 the presence of conversion disorder was documented. It is my opinion that based on a review of this record, that he has had substantial conversion disorder or somatoform disorder symptoms from the very start, and this explains his consistent complaints and the absence of physical findings. I do not find specific indications for surgical intervention or treatments related to a traumatic lesion identifiable by MRI or surgically. The patient's pursuit of medical treatment for symptoms of the lower extremity correlate much better based on the review of this record with conversion disorder or somatoform disorder than they do with the presence of physical traumatic injury. This pattern of continued symptoms present over approximately ten years is unlikely to change, and I would recommend conservative treatment only. It is noted that orthopedic procedures performed by multiple experienced orthopedic surgeons have failed to alleviate his symptoms. I suspect further surgical - - surgical interventions will similarly fail, end of quote. (R1&2,X1, p.15-16).

After reviewing the medical records furnished by respondent #1, Dr. Peeples performed a physical examination of the claimant on November 17, 2003. Dr. Peeples observed with respect to the claimant's carpal tunnel syndrome:

> I asked hi to tell me about his current situation. He indicated he had hand pain. He was worried about some irregularity in his right thumbnail. He had not noticed his hands going to sleep. I might add parenthetically here that I was aware that there was a diagnosis of carpal

> tunnel syndrome, yet Mr. Lemmons did not volunteer the classic history. I've operated about 2,000 carpal tunnels, and I'm very familiar with the history, and he did not have the classic going to sleep. He did have some awakening prior to using his braces, but it was just a little bit different history that you typically see. (R1&2,X1, p. 17-18).

Dr. Peeples described the physical examination relative of the claimant:

> He would not walk. He tended to use crutches with his hip held - - with his foot held off the ground about a foot in a double upright brace, very peculiar. I did notice he had good neuromuscular coordination of the feet and didn't have any apparent nerve paralysis. The exam was pretty much unremarkable. The ankle was stable. Well healed surgical scar on the ankle, hips flexed. The muscle examination for strength was interesting in that he had what we call deliberated release where he shows initial function and then the muscle give way. It's not a finding that's consistent with disease. It's consistent with voluntary control and release. (R1&2, X1, p. 21-22).

Dr. Peeples has expressed the opinion that the incident suffered by the claimant in February 1994, did not result in an injury warranting surgery relative to the left knee. The testimony of Dr. Peeples reflects:

> In my opinion, the reason surgery was done is that he pushed - - in terms of symptoms, Dr. Mahon I think was compassionate. He saw some tip-offs early. He had a lot more tip-offs after surgery that there was a problem here but gave the gentleman the benefit of the doubt and operated. At the time of surgery I - - I don't have it recorded, but I believe Dr. Mahon was probably a little bit surprised. He does not record a traumatic lesion, which I believe he would have been quick to do so. Orthopedists like to justify honestly their actions. And if you have an opportunity to be honest and say, I've got good reason for being here and this corresponds to the injury, you have no reason to hide it. It is conspicuously absent from the record, and the functional symptoms become quite profound. And interestingly Mr. Lemmons fires Dr. Mahon and has had nothing good to say about him in my office. (R1&2, X1, 26-27)

Dr. Peeples went on to testify that he found no objective finding based on his examination of the claimant which had as their etiology the incident of February 1994. Dr. Peeples explained:

> The only abnormality found on the MRI is a signal change. He

is, I believe, about 41, and we know that the posterior portion of the meniscus does have signal changes as life progresses. It is very important to recognize that, as we'll see individuals who have some discomfort but who have a meniscus that is functional with a signal change. Our disks show signal - - signal changes as we get older. If you are in your 50s and we scan your disk, they will have a different signal than if you're in your 20s. That doesn't mean they need surgery. I think that there are occasions where the MRI is not perfect. I certainly have had the experience, and that is a situation where occasionally a physician will proceed with surgery because of symptoms. Arthroscopy has a very low morbidity. That is a fancy work for risk of - - of life or limb. Ant it can be done very safely with minimal risk and so it's - - it's not as hard a procedure to go ahead and do on someone you're a little bit uncertain about as the old arthrotomy procedure where you cut three inches incision and they were in the hospital several days. And so he did proceed with this, but the record does not indicate a traumatic lesion that would be attributable. If you'll look at the overall situation and his behavior, I think this entire record is best explained as an individual who has some preexisting psychological abnormalities and who focuses life's stresses into symptoms. And he seeks medical care for those and he seeks the attention that medical care brings. That's a situation familiar to physicians who treat Alzheimer's. We see folks that have a number of different personalities and different motivations in life, and this is one of the types of individuals we see. It is - - it is sometimes very hard on initial evaluation when you're trying to do right for the patient to pick this up. You can see in Dr. Mahon's note that there's one little comment early, but later it becomes pretty obvious that he's figured out that there's a lot more going on here than physical injury. (R1&2, X1, p. 27-28).

Dr. Peeples found nothing, based on his examination of the claimant and review of the medical records, to prevent the claimant from returning to gainful employment growing out of the February 1994 incident.

Dr. Peeples addressed the reports of Dr. Russell L. Dickson, a psychologist, relative to the claimant:

Yes, the MMPI test - - MMPI 2 version is an extremely helpful test. I've recommended it hundreds of times over 25 years of practice. It does confirm my clinical impression that goes along with the objective data of a conversion or somatoform disorder. A conversion or somatoform disorder is a situation in which stress or psychological or other personal

> factors are converted into physical symptoms and may include even numbness or failure to use an extremity or apparent paralysis. Typically those are in a nonanatomic pattern, that is they do not match the nerve pattern that the body has. When a particular nerve is damaged or fails to function, there is a particular group of muscles in a particular area of anesthesia that will be found. In his case this is not present. All the muscles are weak. The entire leg and that does not match up to an organic finding. The test is confirmed from the - - not in this case - - confirms the diagnosis not from looking at objective data, but looking at test data. I have taken the MMPI. It was routinely given to all medical students when I applied. I'm sure they scored it and looked at it before they decided whether or not to admit us. It's very helpful for evaluating how people will function in certain stressful situations, and it's still used in screening pilots, military individuals, policemen. And in this case it shows that he converts stresses into physical symptoms. (R1&2, X1, p. 30-31).

Finally, regarding the presence of carpal tunnel syndrome and a nexus to the February 19, 1994, incident in the employment of respondent #1, Dr. Peeples testified:

> He does not have clinically significant carpal tunnel syndrome as documented by an exam. He does have some nerve conduction changes. Nerve conduction testing is very operator dependent, and so I was not there to place the electrodes. I don't do that test, but I do - - he does have some things that suggest carpal tunnel, not of the level that shows any type of damage. Had he had a decrease two-point discrimination, positive Tinel's test on the path of the nerve where they should have been when they weren't, then I would have been happy to make that diagnosis. I have no reason to hide that. It's not related to the injury. At this point I do not think he should have carpal tunnel surgery, as I do not think he has physical changes that require it. This is independent of whether or not - - if either of you came in and said, Gosh, my nerve test is this, but if I examined you and the nerve is not irritable and does not show any change in sensation, I'd say, Let's wait and watch this and you come back to see me in six months and we - - you know, it's something you could always do later if it happened. And it may happen on him, but it's not related to his situation from 1994. (R1&2, X1, p. 37-38).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of prior hearing records and rulings, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and

and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of these claims.

2. At all times pertinent to these claims, the employment relationship exited between the claimant and respondent #1.

3. On February 19, 1994, the claimant earned an average weekly wage of $205.00, which generates a weekly compensation benefit rate of $137.00, for total/permanent partial disability.

4. On February 19, 1994, claimant sustained a compensable injury to his left lower extremity, which resulted in a permanent physical impairment in the amount of 20 % to the extremity.

5. Claimant reached the end of his healing period on October 10, 1996.

6. The claimant has failed to sustain his burden of proof by a preponderance of the evidence that his diagnosed carpal tunnel syndrome is a compensable consequence of the compensable February 19, 1994, injury.

7. The claimant has a permanent partial disability in the amount of 20% to the left lower extremity as a result of the February 19, 1994, compensable injury.

8. Respondent #2 has no liability in this claim, in that the claimant has failed to sustain his burden of proof by a preponderance of the evidence that he has been rendered permanently and totally disabled as a result of the compensable injury of February 19, 1994, suffered in the employment of Respondent #1.

9. While the claimant waived vocational rehabilitation, the evidence preponderates that claimant is capable of gainful employment at wages equal to or greater than those he earned at the time of his February 19, 1994, compensable injury, such that vocational rehabilitation is not warranted.

10. Respondent #2 and Respondent #3 should be dismissed as parties to the present claim, in that neither has liability in this matter.

CONCLUSIONS

On February 19, 1994, while discharging duties as a security guard in the employment of Respondent #1, claimant suffered a fall and injury to his left lower extremity. While the injury was accepted as compensable by Respondent #1, subsequent disputes regarding additional benefits resulted in two (2) hearing before the Arkansas Workers' Compensation Commission. Claimant now asserts entitlement to additional workers's compensation benefits to include treatment relative to carpal tunnel syndrome, as well as permanent total disability benefits. The positions of Respondents are as set forth in the Pre-hearing Order, which includes the respective pre-hearing filings of same. The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers's compensation benefits as a result of injuries suffered subsequent to the effective date of the afore provision.

The compensability of the claimant's February 19, 1994, left lower extremity injury has been adjudicated before the Arkansas Workers' Compensation Commission in one manner or another on two different occasions previously. As a result of the afore, claimant has undergone surgery on three occasions, two time relative to the left knee and one time relative to the left ankle. As a consequence of the afore, claimant has been assessed with a permanent physical impairment in the amount of 20%

to the left lower extremity, and corresponding indemnity benefits have been paid by Respondent #1.

Claimant is a highschool graduate. There is no evidence in the record to reflect that claimant experienced physical limitations or restriction relative to legs prior to his February 19, 1994, injury in the employment of Respondent #1. Following his initial injury and subsequent surgeries claimant returned to the employment of respondent #1 and continued in same until the division in which he worked closed. Claimant reached maximum medical improvement relative to the February 19, 1994, compensable injury on October 10, 1996, when a 20% permanent physical impairment was assessed relative to the injury to his left lower extremity.

While discharging employment duties for a different employer on or about August 31, 1999, claimant suffered a fall which resulted in the need for further medical treatment relative to his left lower extremity. The afore was adjudicated a recurrence for which respondent #1 remained liable. Claimant has not discharged employment activities since 1999. Pursuant to a August 11, 2003, evaluation by Dr. Russell L. Dickson, a psychologist, claimant was diagnosed with conversion disorder or somatoform disorder. In July 2003, claimant was diagnosed by Dr. Demetrius S. Spanos, a Jonesboro neurologist, with bilateral carpal tunnel syndrome.

Claimant asserts that the bilateral carpal tunnel syndrome is a compensable consequence of the February 19, 1994, compensable injury. Claimant attributes the carpal tunnel syndrome as the product of his use of crutches relative to the compensable left lower extremity complaints. The evidence in the record reflects that claimant did not register complaints of symptoms in his hands/wrist until 2003. Prior to the afore, claimant had completed a correspondence course in computer repair.

In cases where a second period of medical complications follows an acknowledged

compensable injury, the employer at the time of the acknowledged compensable injury remains liable if the second complication is found to be a natural and probable result of the first injury. *Bearden Lumber Co. vs. Bond,* 7 Ark. App. 65, 644 S.W.2d 321 (1983). Where it if found that the second episode has resulted from an independent intervening cause liability is affected, with the same being noted as an aggravation. *Farmland Insurance Co. vs. Dubois,* 54 Ark. App. 141, 923 S.W.2d 883 (1996).

In the instant claim, claimant has failed to sustain his burden of proof by a preponderance of the evidence that the diagnosed bilateral carpal tunnel syndrome is a compensable consequence of the February 19, 1994, compensable injury. During the course of his evaluation of the claimant, Dr. Earl Peeples opined that if indeed the claimant did have bilateral carpal tunnel syndrome, the same was not the product of the February 19, 1994, incident or the claimant's use of crutches. As previously noted, claimant suffered a fall on August 31, 1999, and landed on both knees and hands in the afore. There is no evidence of the claimant registering complaints relative to his hands/wrist prior to July 2003. The evidence does disclose that claimant has completed a correspondence course relative to computer repair. Claimant, during the course of his vocational assessment by Mr. Bob White produced documents reflecting his area of interest which had been retrieved from the internet, evidencing his use of the computer.

Vocationally, the claimant has undergone an assessment by Mr. Bob White, who concluded that there are jobs available for the claimant within his medical restrictions/limitations. Claimant, with a date of birth of July 24, 1953, is a high school graduate. Claimant had completed a course in computer repair. The compensable injury suffered by the claimant in the February 19, 1994, incident is limited to the claimant left lower extremity, and has resulted in a permanent physical impairment

in the amount of 20 % to the extremity. Claimant has failed to sustain his burden of proof by a preponderance of the evidence that he has been rendered permanently and totally disabled as a result of the scheduled injury to his left lower extremity suffered on February 19, 1994. *Maxey vs. Tyson Foods, Inc.,* 341 Ark. 306, 18 S.W.3d 328 (2000).

The claimant's claim for additional workers' compensation benefits relative to the February 19, 1994, compensable injury, to include permanent total disability benefits, medical and indemnity benefits relative to bilateral carpal tunnel syndrome, is respectfully denied and dismissed.

IT IS SO ORDERED.

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Andrew L. Blood, Administrative Law Judge