

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E610008/F305577/F305578

CLIFFORD SMITH	CLAIMANT
COOPER TIRE & RUBBER CO.	RESPONDENT
CROCKETT ADJUSTMENT INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 21, 2005

Hearing before ADMINISTRATIVE LAW JUDGE C. MICHAEL WHITE in  
Texarkana, Miller County, Arkansas.

Claimant represented by GREGORY R. GILES, Attorney, Texarkana,  
Arkansas.

Respondents represented by WILLIAM G. BULLOCK, Attorney, Texarkana,  
Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 6, 2004, in Texarkana, Arkansas,  
with Judge Michael White presiding. This case was reassigned to  
Judge Elizabeth Danielson on October 21, 2004. At the July  
hearing, the parties entered into stipulations as follows:

1. The Commission has jurisdiction.
2. The employee/employer/self-insured relationship existed at  
all relevant time.
3. On February 21, 1996, claimant sustained compensable neck  
injuries and left ulnar nerve injuries pursuant to the  
Administrative Law Judge's decision entered February 3, 1999.
4. Pursuant to the Administrative Law Judge's decision entered  
February 3, 1999, claimant reached maximum medical improvement on  
July 21, 1997, and sustained a 10 percent whole body rating as a  
result of the compensable neck injuries.

5. Subsequently the claimant was assigned and paid a 16 percent impairment rating to the left ulnar nerve.

6. All claimant's lower back issues are not work related and there are no claims for benefits associated with any lumbar complaints.

7. On March 11, 2001, claimant sustained a recurrence of the neck symptoms from the original February 21, 1996, compensable injury.

8. Following the March 11, 2001, recurrence, claimant was paid temporary total disability benefits initially through June 6, 2001, and at that point benefits were terminated until they were reinstated on or about February 14, 2002, and paid until September 11, 2002.

9. On September 11, 2002, claimant reached maximum medical improvement as a result of the recurrence of symptoms which occurred on March 11, 2001.

10. The appropriate compensation rates associated with the 1996 injury are \$337 for temporary total disability and \$253 for permanent partial disability benefits.

11. The compensation rates for the 2003 compensable injury which would be associated with the carpal tunnel claim, would be the maximum rates for 2003.

12. On February 21, 1996, claimant was working for the respondent in the job classification of spray and inspect operator.

13. As of February 21, 1996, Mr. Smith had been working in that job classification of spray and inspect operator for approximately one year and six months.

14. On March 11, 2001, the recurrence date, he was working in the job classification of 1-DR tire builder.

15. As of March 11, 2001, Mr. Smith had been working in the job classification of 1-DR tire builder for approximately three years and six months.

16. That on March 11, 2001, Mr. Smith alleged to have the recurrence of pain in his neck from an alleged injury of February 21, 1996.

By agreement of the parties the issues to litigate are limited to the following:

1. Claimant's entitlement to additional temporary total disability benefits from June 6, 2001, until February 2002 when respondents reinstated the TTD benefits and additional temporary total disability from February 11, 2003, until September 12, 2003, when he returned to work on a light duty basis. (The second period of unpaid TTD is in association with claimant's treatment for his carpal tunnel and right ulnar nerve.)

2. Whether claimant is entitled to additional permanent partial disability benefits of 12 percent associated with his neck injuries following his recurrence of symptoms which occurred on March 11, 2001, as assessed by Dr. Aaron Calodney.

3. Whether the medical treatment claimant has had for his carpal tunnel complaints and right ulnar nerve have been

reasonable, necessary and as a result of his compensable neck injuries, or as a result of his work related activities. Claimant had surgery for the left carpal tunnel on February 11, 2003, and surgery on the right carpal tunnel and right ulnar nerve on April 1, 2003.

4. Whether claimant is entitled to permanent impairment benefits associated with the bilateral carpal tunnel syndrome and bilateral ulnar nerve injuries.

5. Whether claimant has suffered any wage loss as a result of the 1996 injuries.

6. Additional temporary total disability for the period from April 1, 2004, to April 18, 2004.

In regard to the foregoing issues the claimant's contends that he is entitled to temporary total disability benefits from on or about June 7, 2001, until February 2002 when respondents reinstated his TTD benefits and that he is entitled to temporary total disability benefits from on or about February 11, 2003, until on or about September 12, 2003, when he returned to work. That he has sustained bilateral carpal tunnel injuries and a right ulnar nerve injury which have occurred either as a compensable consequence associated with his compensable neck injuries, or represent separate and new compensable injuries which have occurred as a result of the rapid repetitive nature of the job. That the medical treatment he has received for his carpal tunnel complaints, and his right ulnar nerve have been reasonable, necessary and are related to his compensable neck injuries, or were necessary as a result of

the rapid repetitive nature of his work related activities. That he is entitled to additional permanent partial disability benefits in excess of the 10 percent impairment rating accepted by respondents based upon the subsequent neck surgery he has had. Based upon Dr. Calodney's most recent letter report of August 26, 2003, it appears that the claimant would be entitled to an additional 12 percent. Claimant also contends that he is entitled to wage loss disability benefits in excess of the anatomical permanent impairment ultimately assigned. When claimant first sustained his injuries he was earning approximately \$22.00 an hour. Claimant is now earning \$14.27. Claimant further contends that he is entitled to permanent partial disability benefits as a result of the alleged compensable carpal tunnel injuries, right ulnar nerve, and the compensable left ulnar nerve, and that he is entitled to attorney's fees as permitted by law.

In regard to the foregoing issues the respondents contend that the claimant will be unable to meet his burden of proof under Act 796 regarding any or all of the neck condition he alleges, or any or all of the treatments, examination, surgeries and disability periods he seeks to relate thereto. The claimant will be unable to meet his burden of proof under Act 796 regarding any or all of the carpal tunnel syndrome he alleges, or any or all of the treatments, examinations, surgeries and disability periods he seeks to relate thereto. That the medical bills and treatments which claimant seeks herein were not incurred as a result of and were not reasonable and necessary treatment for a compensable injury, and

that the disability period(s) claimant has sustained, if any beyond the periods of TTD paid by respondents were not incurred as the result of a compensable injury. Respondent contends that claimant has had a natural progress of a pre-existing neck injury. That the medical bills and treatments which claimant seeks herein were not incurred as the result of and were not reasonable and necessary treatment for a compensable injury, and that the disability period(s) claimant has sustained, if any, beyond the periods of TTD paid by respondents were not incurred as the result of a compensable injury. Respondent contends that claimant has had a natural progression of a pre-existing carpal tunnel syndrome. That claimant's on-the-job actions as a Tire Builder do not constitute the "major cause" of the medical treatments or period(s) of disability with regard to which claimant seeks to recover benefits herein pertaining to his neck and/or his carpal tunnel syndrome. That claimant will be unable to produce evidence of any "objective medical findings" supporting his claims. Respondents further contend that, in the event an award is rendered in favor of claimant, respondent is entitled to offset against any disability benefits found to be owing the amount of money paid to claimant by respondent pursuant to its group health plan, its Accident\*Sickness (A&S)benefits plan, and any other employee benefit plan meeting the definitions set forth in Ark. Code Ann. §11-9-411.

#### DISCUSSION

The claimant testified that he has been employed with the respondent since July 21, 1980. It has been stipulated and the

claimant testified that he sustained a compensable injury while working for the respondent on February 21, 1996, working as a spray booth operator. The claimant testified on that date he had to move a big metal rack away from the line and that this rack had no wheels. The claimant testified that he used his strength to push and hit the rack until he finally heaved it away from the line. The claimant testified that he began to feel a burning sensation in the back of his neck going down through his shoulders and down through both of his arms. The claimant agreed that he was sent to the company doctor, Dr. Ditsch, and then was referred to Dr. Thomas Fletcher. The claimant testified that he was treated conservatively, had MRIs as well as physical therapy and continued to work for a period of time. The claimant testified that he went on his own to Dr. Joseph Greenspan and was taken off work and referred to Dr. Guy Danielson. The claimant remembers that Dr. Danielson had him undergo a diskogram and nerve conduction studies and, based on the findings from these studies, he underwent neck surgery on December 10, 1996, for a fusion at level C4-5 and 5-6. The claimant testified that this surgery also included removing two disks, replacing it with bone and implanting hardware in his neck. The claimant agreed that following this surgery he remained off work and eventually had physical therapy on his neck. The claimant testified that during the period of time he was off following his neck surgery, he underwent back surgery which was unrelated to any work involvement. The claimant testified that he was given a 10

percent rating for his neck problems and was released by his doctor in July 1997 at which time he returned to work for the respondent.

The claimant testified that he returned to work as a spray booth operator and after just two hours of work he was experiencing burning, stabbing and pinching pain in his neck. The claimant testified that he was sent to Dr. Greenspan who put him through physical therapy as well as gave him epidural steroid shots. The claimant remembers that he also used a bone stimulator to enhance bone growth. The claimant testified that he returned to work again in December 1997 as a spray booth operator and although he was having some pain he was able to do the job. The claimant testified that he was having a stabbing burning feeling in his left shoulder and that in April 1998 Dr. Greenspan did a nerve conduction study.

The claimant testified that he broke the fifth metacarpal on his left hand but that this incident was not work related. The claimant testified that he did miss time from work as a result of his broken finger and was back at work in September 1998. The claimant agreed that between April 1998 and September 1998 he had bid for and received another job within the company. The claimant testified that this job was entitled 1-DR tire builder and required him standing during his shift, taking steel belts and putting them on the belt drum and constantly cutting the belt and applying a piece of thread to these belts when they were cut and mashing them down and taking them off the air ring and putting them on the conveyor belt. The claimant testified that this work was production type work and was done repetitively throughout his

shift. The claimant testified that the respondent has an incentive program, so the more that is produced the more pay you will receive. The claimant testified that in September 2000 he was seen by Dr. Ditsch with complaints of swelling in his left wrist. The claimant testified that after a couple of weeks of treatment he returned to work on October 6, 2000, at his regular duty.

The claimant testified that he has hobbies outside of his job in that he is a singer and plays in a band. The claimant testified that his neck problems and his resulting surgery has messed up his voice as well as caused him problems with his breathing. The claimant testified that he began being treated again by Dr. Greenspan as well as Dr. Danielson to try to correct his swallowing and breathing problems.

The claimant testified that on March 11, 2001, he was performing his duties as a 1-DR tire builder and as he was pulling a 4922 light truck tire off of the air ring he felt a snap in his neck. The claimant agreed that this pain was in the same place that he had had it before, noting that it started in his neck and went down into his shoulders all the way to his fingers. The claimant testified that prior to this he had been having discomfort constantly in his hands, arms, shoulders and neck, noting that he has had these symptoms ever since his 1996 injury and surgery. The claimant testified that it was not as severe but it was a burning, stabbing, pinching feeling that he had been experiencing over a long period of time. The claimant testified that two days after March 11, 2001, he fell a sleep on the floor watching TV and when

he was seen by Dr. Greenspan after March 11 and this sleeping on the floor incident, he complained of symptoms and problems. The claimant testified that Dr. Greenspan took him off work and recommended home exercises for him. The claimant testified that he underwent another MRI and that he had another diskogram. The claimant agreed that by this time he was being seen by Dr. Calodney who had another diskogram performed. The claimant testified that everything relating to his medical problems was being accepted and paid up to this point.

The claimant testified that he was sent to Dr. Baskin on June 4, 2001, for an evaluation as to his condition and if additional surgery was needed. The claimant testified that when he left the doctor's office on June 4, 2001, he did not have anything from the doctor regarding his return to work. The claimant agreed that the doctor did not tell him that he was returning him to work on restricted duty. The claimant testified that when he learned that Dr. Baskin had sent a letter returning him to work with restrictions, he did not return to work because Dr. Greenspan had not returned him to work and he was still in pain. The claimant testified that there was a note from Dr. Greenspan taking him off work and that he wanted to continue under Dr. Greenspan's treatment as apposed to Dr. Baskin. The claimant testified that at that time his neck, shoulders and arms were all hurting. The claimant agreed that he underwent another diskogram and was seen by Dr. Danielson who recommended additional surgery. The claimant testified that he did return to see Dr. Baskin on August 30, 2001, and that he

recommended that the claimant undergo an EMG before any surgery was discussed. The claimant testified that when he left Dr. Baskin's office he was not given any kind of work release or note regarding his work status. The claimant testified that he subsequently learned that Dr. Baskin had indicated he should return to light duty work with no lifting more than fifteen pounds and no over head lifting but he did not agree with the doctor's assessment as to his ability to work. The claimant agreed that it was after the EMG that carpal tunnel and right ulnar nerve problem were discovered. The claimant testified that he underwent a second neck surgery on February 14, 2002. The claimant testified that following his second neck surgery his temporary total disability was reinstated. The claimant testified that it was his understanding that Dr. Danielson, in his second neck surgery, moved the C6,7 disc and removed the original hardware from his neck and replaced it with smaller hardware. The claimant testified that this second surgery did relieve some of the breathing problems he was having but it did not resolve any of his shoulder pain. The claimant agreed that following his second neck surgery he again began to have problems with his low back and underwent a second low back surgery on October 8, 2002. The claimant testified that he did not return to work between his low back surgery and his first carpal tunnel surgery. The claimant agreed that he underwent surgery for his left carpal tunnel on February 11, 2003, and underwent a recovery period for this surgery of approximately six weeks. The claimant testified that once he had sufficiently recovered from his left

carpal tunnel surgery he underwent right carpal tunnel as well as right ulnar nerve surgery performed by Dr. Danielson. The claimant testified that he associates his work at the 1-DR tire builder job as causing his carpal tunnel problems. The claimant testified that it was very repetitive work and was performed very fast, noting that he would have pain in his wrist and that his fingers would be numb and they would swell when doing this job. The claimant was asked about his guitar playing and he responded that he considered that to be therapeutic. The claimant testified that following his second carpal tunnel and his right ulnar nerve surgery, he underwent two different sessions of physical therapy, noting that some of this physical therapy was for his neck, shoulders and a little for his back as well as for his hands.

The claimant testified that he underwent a functional capacity evaluation on August 4, 2003, and that he returned to work on September 13, 2003. The claimant testified that he went back to a light duty position at a utility pay until they could get him back to full duty work. The claimant testified that after he returned to work in September 2003 he continued to have problems with his left shoulder and was seen by Dr. Danielson. The claimant testified that he relates his left shoulder problems to his 1996 original injury, noting that he had constantly hurt in his shoulders sometimes his left worse than his right. The claimant agreed that up until this time, he had not had an MRI on his left shoulder and that the MRI which they eventually did on his left shoulder revealed that he had a torn rotator cuff. The claimant

testified that Dr. Danielson referred him to Dr. John Walker who then did surgery on his left shoulder on April 1, 2004. The claimant testified that he was off work as a result of this surgery from April 1, 2004, until April 18, 2004. The claimant testified that he has continued to work on light duty although since June 2004 his weight restrictions have been increased from twenty pounds up to thirty pounds. The claimant testified that since his surgery his right shoulder is a little better but he is still having problems with his neck in that it still gets sore and he feels a little tingling in it. The claimant testified that his hands felt good for a little while but now they are starting to get back like they were.

On cross examination, the claimant agreed that it was not until 2004 that he was diagnosed with a torn left rotator cuff and it was not until November 15, 2001, that he had been diagnosed with having carpal tunnel syndrome. The claimant agreed that as of November 15, 2001, he had been off work, not working, since March 15, 2001. The claimant agreed that sometime after his first round of surgeries on his neck but prior to March 15, 2001, he was working twelve hours shift but working two days off three days working two days on a rotating system. The claimant agreed that in his leisure time he did play the guitar and in fact played volleyball, noting that in May 1998 he broke the fifth metacarpal on his left hand. The claimant agreed that he had another incident playing volleyball with regard to his hand hitting someone's face. The claimant testified that he also played basketball for

recreation during this period of time. The claimant agreed that when he filled out his accident report for his February 21, 1996, injury he only put down that he had injured his neck. The claimant again agreed that when he filed a report of his recurrence on March 11, 2001, he only reported problems with his neck. The claimant agreed that he signed an AR-C dated May 18, 2003, reporting an incident on March 11, 2001, injuring his neck and right ulnar nerve. The claimant agreed that he filled out another AR-C dated May 28, 2003, which referred to an accident on February 11, 2003. The claimant agreed that the February 11, 2003, date was in fact the date of his surgery and that this form sets out that the AR-C sets forth that the body part injured was bilateral carpal tunnel, noting that it was due to rapid repetitive nature of work or the March 11, 2001, injury. The claimant again agreed that he had his left carpal tunnel surgery on February 11, 2003, and added that he had his right carpal tunnel and right ulnar nerve surgery on April 1, 2003.

The claimant agreed that the respondents sent him to Dr. Barry Baskin after his reoccurrence of March 11, 2001. The claimant testified that eventually he was made aware of a letter which Dr. Baskin has sent to the respondents setting forth that he was able to return to work in a modified light duty position. The claimant testified that he did not agree with this assessment by Dr. Baskin and did not return to work for the respondent until September 12, 2003. The claimant explained that his job as a 1-DR tire builder required him to constantly be pulling and cutting material off of

rolls and loading it into a drum or machine. The claimant testified that he would reach out with his left hand for the first belt, then push a button and the product came toward him and the product was then put into the belt drum and he would then hit a peddle. The claimant explained that when he hit the peddle it made one revolution and when that revolution is finished he would fold it back with his right hand and take the hot knife and make a cut in the first belt. The claimant continued explaining that he would hit a retract button and the belt went back in and he would "throw his hot knife back in the deal and then hit belt number two when it comes," he would then grab the belt, pull it with either hand but probably with the second belt he would use his right hand and put it on top of the first belt, hit a peddle and it made a revolution. The claimant stated that he would then fold the product back with his left hand and make the cut with his right hand and hit the retract button. The belt then went back in and again he would hit a peddle and it makes the tread come up and as it makes the revolution he would go around and pull the treads out of the tread tray and then he would bend down and put it in the tray that was on the tire machine. The claimant stated that he would turn around and grab the tread and mash it down on top of the two belts. The claimant testified that he would hit a button for the transfer to come over and the tire was picked up and taken away at which time he then would reach up and grab what was called a first stage tire and when he would grab that he would put it on an air ring, hit another peddle which would make the tire blow up and then the

entire package which he had built would come over, expands and begins to roll. The claimant stated that then he would start the whole process over again. The claimant testified that in a twelve-hour shift he would make anywhere from 400 to 575 tires. The claimant agreed that between his return to work in December 1997 and his recurrence in March 2001 he worked different positions within the plant. The claimant testified that during this period of time before March 2001 he worked the creel calendar as well as a cold feed tuber. The claimant testified that he went back and forth indicating that he would work on creel and then go back to the 1-DR then went to cold feed and then went back to 1-DR, went to first stage building then back to 1-DR and so on. The claimant agreed that at the time his deposition was taken on November 14, 2003, no one had diagnosed him with having a left shoulder rotator cuff tear. The claimant agreed that he had experienced an injury to his knee and finger while playing volleyball and basketball prior to March, April or May 2004. The claimant was asked about an incident he had reported to Dr. Greenspan about hurting when he woke up after sleeping on the floor. The claimant explained that he worked the graveyard shift meaning that he would start to work on Sunday night and get off on Monday morning. The claimant testified that on Monday morning March 11, 2001, he experienced a reoccurrence of his neck injury at work. The claimant testified that when he got off work on Monday morning he went to see Dr. Greenspan who put him on light duty and was taken off work for Monday and Tuesday. The claimant testified that Tuesday night he

was sitting on the floor watching television and fell asleep, noting that when he woke up he was hurting in his neck, shoulders and across his chest extremely bad. The claimant testified that he had to go to work that Wednesday night and performed his light duty tasks. The claimant remembers that he hurt all night long and the next morning when he got off work he called Dr. Greenspan's office and told them that he needed to see the doctor because he was hurting. The claimant testified that at that point Dr. Greenspan took him off work.

On redirect examination, the claimant stated that even though he had continuing pain in both of his shoulders since his original injury in 1996 he continued to do his normal activities of daily life such as play volleyball and work his job. The claimant explained that Dr. Greenspan had put it in his mind that he needed to prepare himself to live with pain so that was what he did. The claimant stated that, "Regardless of if I was hurting or not, I still tried to maintain normal function even though I was hurting." The claimant was asked about the types of activity required to do the other jobs which he performed for the respondent other than the 1-DR tire builder job. The claimant testified that as a spray booth operator the work was very repetitive constantly lifting tires and swinging them. The claimant testified that of all the jobs he did the 1-DR tire builder job was the one that hurt him the worse. The claimant testified that no one at the respondent's plant ever contacted him after Dr. Baskin wrote his second letter returning him to work to inform him that there was work available

for him. The claimant testified that throughout all of his history since his injury he has constantly complained of pain in his neck as well as pain in his shoulders but that he wanted to be sure that they knew that he had problems with his neck. The claimant stated that when he re-injured his neck on March 11 the pain in his shoulders just took off.

Judy Sullivan testified for the respondents stating that she was the HR administrator. Ms. Sullivan testified that part of her job was overseeing benefits on claims such as the claimants. Ms. Sullivan testified that the claimant drew accident and sick pay in the amount of \$340.00 per week through the respondent company from June 7, 2001, to at least February 14, 2002. Ms. Sullivan testified that the claimant also drew benefits in the amount of \$375.00 for a period of time from April 1, 2004, through April 16, 2004. Ms. Sullivan testified that these benefits are provided by the respondent to its employees, noting that it was a form of short term disability.

On cross examination, Ms. Sullivan testified that there can be withholding from these gross amounts that she had testified to. This witness was specifically asked that if the gross amount were about \$340.00 the recipients' check might be around \$280.00, she responded, "Yes, Sir."

The medical records, which are extensive, set forth that the claimant began treatment for his neck in 1996 and it is noted that the claimant's neck problems have been accepted as compensable and benefits paid. In February 1996, Dr. Richard Olsan notes that the

claimant has tenderness in the left paravertebral musculature made worse with range of motion of the left upper extremity. Later on in that same month it is noted that the claimant has complaints of pain from the base of his neck laterally out to his shoulder and tenderness of the trapezius muscle on the left is noted. Throughout the treatment of the claimant's neck complaints to June 1996 there is mention of pain in the claimant's left shoulder, left scapula, left clavicle. On June 26, 1996, along with the claimant's other complaints, it is noted that he has unbearable neck pain that goes into his left shoulder and that he wants an x-ray of his left shoulder. In a letter written by Dr. Thomas Fletcher dated July 1, 1996, it is noted that the claimant complaints of discomfort with elevation of his left shoulder and specifically requested that an x-ray be made of his left shoulder joint. Although the medical records primarily address the claimant's neck problems up through the year 1996, the claimant consistently had complaints of left arm and left shoulder pain. The claimant did undergo surgery on his neck at the C4-5 and C5-6 level as well as a left ulnar nerve decompression at the elbow on December 10, 1996. On January 15, 1997, the claimant was seen post operative for a physical therapy evaluation where it is noted that he demonstrated minimal to no pressure sensitivity over the medial aspect of his left elbow and noted neural sensitivity of the upper extremities. On March 12, 1997, at a return visit it is noted that the claimant continues to have some arm pain particularly on the left. The claimant continued to be seen for his ongoing problems

with his cervical spine. In September 2000 the claimant developed pain in the ulnar styloid area of his left wrist. He was placed in a cockup splint and returned to restricted duty with no lifting, pulling or pushing over ten pounds with his left hand. By October 6, 2000, it was determined that the claimant's left wrist tendinitis had resolved and he was returned to regular duty work. On March 11, 2001, the claimant filled out a Form N indicating that he had a recurrence of neck problems stemming from his 1996 injury. The respondents, investigation report indicates that the claimant had neck pain which started when he was taking tires off of air drums noting that it was an old injury which just keeps coming back. Dr. Danielson writes on March 12, 2002, that the claimant began to have difficulty with his right shoulder approximately seven months ago. The doctor notes that the claimant reports neck pain with radiation into the right shoulder to the fingers. Dr. Greenspan writes on March 15, 2001, that the claimant reports that he injured his right shoulder Tuesday night when he fell asleep on the floor. It is noted that it is unclear at this time whether the claimant injured himself at work, although he has been working light duty. Dr. Greenspan took the claimant off work, prescribed medications and recommended exercise. Dr. Danielson writes on April 9, 2001, that the claimant has undergone a cervical MRI where a small disc protrusion arterially at C3-4 was found and a central and right sided disc protrusion at C6-7.

Dr. Barry Baskin writes in June 2001 that he has examined the claimant and reviewed his past medical history. Based on all of

this information he talked extensively about the claimant's neck problems noting that the claimant has complaints of numbness in his right hand and, among other things, notes that he might have carpal tunnel syndrome. Dr. Baskin writes to the respondent on June 6, 2001, returning the claimant to modified duty work, noting that he should not lift more than thirty-five pounds to waist level and eliminate a lot of flexion, extension and lateral bending and rotational movements with his cervical spine. On June 27, 2001, Dr. Danielson recommended removal of the claimant's hardware, inspection of the site with possible further treatment depending on the status of the fusion. The claimant filled out an AR-C on July 6, 2001, setting forth that he had sustained a compensable injury while pushing an old tire rack away from tire conveyor and injured his neck and asking for additional benefits noting that these injuries occurred originally on February 21, 1996, with a recurrence on March 11, 2001. Dr. Baskin writes on August 30, 2001, that the claimant has continued pain from his neck down the right shoulder and right arm. Dr. Baskin recommended an EMG nerve conduction study and depending on the results of the various tests, the claimant could be considered a candidate for anterior discectomy and fusion. On September 13, 2001, Dr. Baskin returned the claimant to work at light duty with no heavy lifting over fifteen pounds, no overhead lifting with limited neck motion. The claimant underwent an EMG study of his upper extremities on November 15, 2001. The result of this test reveal that the claimant had bilateral carpal tunnel syndrome, bilateral ulnar

elbow compression and bilateral radial sensory neuropathies. Dr. Jonathan Blau writes that in regard to the findings on his EMG studies that these may represent chronic or repetitive use injury without frank compression. On February 14, 2002, Dr. Danielson removed the hardware from the claimant's neck at the C4-5 and C6 levels as well as performed a micro surgical anterior diskectomy with decompression of channel and nerve roots at the C6-7. Dr. Danielson writes on April 1, 2002, that the claimant is doing better, noting that he also has ulnar nerve compression and carpal tunnel syndrome bilaterally. The claimant was to continue on his off work status. On June 10, 2002, Dr. Danielson notes that the claimant continues to be in physical therapy and should remain off work for the next six weeks, noting that he is having continual low back pain. The claimant continued to receive treatment and be seen by Dr. Danielson for his lumbar problems which are not work related. Dr. Arron Calodney determined that the claimant had reached maximum medical improvement as of September 10, 2002, as to his cervical spine. Dr. Danielson did a left carpal tunnel release on the claimant on February 11, 2003, and a right carpal tunnel release as well as a right ulnar nerve decompression at the elbow on the claimant on April 1, 2003. Dr. Danielson writes to the claimant on May 15, 2003, and sets forth his medical history specifically as it pertained to his cervical problems as well as his bilateral carpal tunnel and ulnar nerve decompression. Dr. Danielson concludes by writing that he believes that these surgeries were done for carpal tunnel syndrome and ulnar nerve

decompression secondary to repetitive work injuries that the claimant sustained while working for the respondent. Dr. Calodney writes on August 26, 2003, and assessed the claimant with having a 13 percent whole body impairment for his two cervical operations performed at three levels and he also assessed the claimant with having a 10 percent whole body impairment based on the claimant's loss of cervical range of motion. Dr. Calodney writes that the claimant would be entitled to a 23 percent whole body impairment when considering range of motion.

The claimant was seen by Dr. Danielson on February 5, 2004, with complaints of left shoulder pain. Dr. Danielson notes that this has been present off and on for many years and he has always been told that after his neck surgery it would go away. In the doctor's opinion the claimant has never been worked up for primary shoulder pathology. After examination, Dr. Danielson recommended the claimant undergo an MRI of his left shoulder. Dr. John Walker writes on March 25, 2004, that after taking a history from the claimant and examination as well as review of the claimant's MRI, the claimant was diagnosed with a torn left rotator cuff with impingement. Dr. Walker recommended surgery to repair the claimant's rotator cuff. Dr. Danielson writes on April 7 that he has seen the claimant following his left shoulder surgery one week earlier. Dr. Danielson notes that the claimant is not able to go back to work right now but will see him in approximately three months.

Dr. Arron Calodney testified in his deposition that for rating the claimant he used the A.M.A. Guides, Forth Edition, specifically using Table 75 on page 113. The doctor testified that he considered the claimant's multiple level fusion as well as his two operations in assessing the claimant with a 13 percent whole body impairment rating in accordance with Table 75. The doctor testified that he also took a series of measurements dealing with the claimant's range of motion which he then calculated and came up with an additional 10 percent which, in his opinion, would entitle the claimant to a total whole body impairment of 23 percent. The doctor testified that the claimant certainly can effect the measurements by virtue of tensing or stiffening his body part in response to the range of motion test. Dr. Calodney testified that as to rating the claimant's right upper extremity, his range of motions tests revealed that the claimant's shoulder and elbow were completely normal, the only abnormality was found at the wrist and that the 2 percent impairment rating was given for the abnormality of loss of range of motion of the claimant's right wrist. When asked about the claimant's left upper extremity, the doctor stated that range of motion tests for the claimant's wrist and elbow were completely normal but he was found to have a loss of range of motion in his left shoulder of 2 percent. Dr. Calodney testified that he utilized the A.M.A. Guide, Forth Edition, in Chapter 3 Subsection 1J of the Guides at page 41. The doctor was asked what he opined the loss of range of motion in the claimant's left shoulder was attributable to and the doctor replied, "My opinion is

that the range of motion loss of the left shoulder was caused by a tear of the rotator cuff." Dr. Calodney testified that the claimant's loss of range of motion in his left upper extremity was not attributable to his carpal tunnel surgery. The doctor was asked that if the claimant underwent left rotator cuff surgery would this improve his range of motion. Dr. Calodney testified that the range of motion loss which was measured with the claimant was very moderate in his left upper extremity, noting that it was not terribly significant. The doctor stated that if the surgery has the best possible outcome then the claimant might see some improvement in his range of motion.

On cross examination by the claimant's attorney, Dr. Calodney was asked based on the history of the claimant's injury and the complaints which are documented in the 1996 medical reports if in his opinion it was more likely than not the rotator cuff tear is related to his 1996 injury. Dr. Calodney testified that in the absence of any specific information of an intervening injury to the claimant's left shoulder as well as given what sounds like a fairly continuous thread of information suggesting some complaints related to the left scapular or shoulder girdle area, it was his opinion that the claimant's rotator cuff tear was related to his 1996 injury. The doctor was asked about the causation of the claimant's bilateral ulnar nerve entrapment problems and Dr. Calodney stated that, "The entrapment neuropathy at the ulnar nerve of both sides could have been directly related to the work itself that the claimant was doing or it could be a secondary issue due to the

cervical spine injury and invoking what we call the double crush theory or phenomena." The doctor was asked if, in his opinion, the claimant's right ulnar nerve entrapment was a direct result of his 1996 injury. Dr. Calodney responded that based upon the medical information, it was his opinion within a reasonable degree of medical probability that his right ulnar nerve entrapment neuropathy was directly related to the claimant's 1996 injury. The doctor explained that due to the claimant's cervical problems initially the right ulnar nerve problem would have been a bit more difficult to differentiate as a separate but similar problem.

Dr. Calodney was asked on redirect if interscapular pain itself was enough to diagnose a rotator cuff tear. The doctor responded "no". Dr. Calodney indicated that there could be numerous events that could cause a rotator cuff tear such as things that would happen around the house or doing yard work or some sort of physical activity. The doctor indicated that if tests that diagnosed the entrapment syndrome were not carried out until some years after the claimant's injury and surgery it would cast doubt on the etiology of these problems.

#### FINDINGS & CONCLUSIONS

1. The Commission has jurisdiction.
2. The employee/employer/self-insured relationship existed at all relevant time.
3. On February 21, 1996, claimant sustained compensable neck injuries and left ulnar nerve injuries pursuant to the Administrative Law Judge's decision entered February 3, 1999.

4. Pursuant to the Administrative Law Judge's decision entered February 3, 1999, claimant reached maximum medical improvement on July 21, 1997, and sustained a 10 percent whole body rating as a result of the compensable neck injuries.

5. Subsequently the claimant was assigned and paid a 16 percent impairment rating to the left ulnar nerve.

6. All claimant's lower back issues are not work related and there are no claims for benefits associated with any lumbar complaints.

7. On March 11, 2001, claimant sustained a recurrence of the neck symptoms from the original February 21, 1996, compensable injury.

8. Following the March 11, 2001, recurrence, claimant was paid temporary total disability benefits initially through June 6, 2001, and at that point benefits were terminated until they were reinstated on or about February 14, 2002, and paid until September 11, 2002.

9. On September 11, 2002, claimant reached maximum medical improvement as a result of the recurrence of symptoms which occurred on March 11, 2001.

10. The appropriate compensation rates associated with the 1996 injury are \$337 for temporary total disability and \$253 for permanent partial disability benefits.

11. The compensation rates for the 2003 compensable injury which would be associated with the carpal tunnel claim, would be the maximum rates for 2003.

12. On February 21, 1996, claimant was working for the respondent in the job classification of spray and inspect operator.

13. As of February 21, 1996, Mr. Smith had been working in that job classification of spray and inspect operator for approximately one year and six months.

14. On March 11, 2001, the recurrence date, he was working in the job classification of 1-DR tire builder.

15. As of March 11, 2001, Mr. Smith had been working in the job classification of 1-DR tire builder for approximately three years and six months.

16. That on March 11, 2001, Mr. Smith alleged to have the recurrence of pain in his neck from an alleged injury of February 21, 1996.

17. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury in the form of bilateral carpal tunnel as well as right ulnar nerve problems while working for the respondent. The claimant has testified that his work was both rapid and repetitive and the description which the claimant gave of his work activities substantiate this finding. Dr. Danielson, wrote on May 15, 2003, that he believed that the claimant's carpal tunnel syndrome and ulnar nerve problems are secondary to his repetitive work for the respondent. Therefore, the respondents should pay for all medical treatment associated with the claimant's bilateral carpal tunnel syndrome as well as his right ulnar nerve problems. See Kildow v. Baldwin Piano Organ, 333 Ark. 335, 969 S.W. 2d 190 (1998).

18. I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to an impairment rating for his bilateral carpal tunnel or his right ulnar nerve problems. Dr. Arron Calodney rated the claimant with a 2 percent to each of the upper extremities as a result of these problems but based this finding on the claimant's loss of range of motion which, under Arkansas law, cannot be used as an assessment of impairment.

19. I find that the claimant has proven by a preponderance of the evidence that he is entitled to additional permanent partial disability as a result of his recurrent neck problems on March 11, 2001, and subsequent surgery. Dr. Calodney assessed the claimant with a 23 percent whole body impairment noting that this impairment is based on the initial 10 percent for the claimant's first injury and an additional 3 percent for the additional surgery as well as additional level being operated on subsequent to March 11, 2001. Dr. Calodney also rated the claimant with a 10 percent loss of range of motion as a result of these neck injuries. As stated earlier, under Arkansas law range of motion, as calculated by Dr. Calodney, cannot be used as an assessment of impairment, therefore, the claimant is entitled to an additional 3 percent permanent partial impairment as a result of his compensable cervical injuries.

20. I find that the claimant has failed to prove by a preponderance of the evidence that his left rotator cuff tear is a result of his 1996 compensable cervical injury. It is true that the claimant had complaints of left shoulder pain following his

1996 injury and eventually was operated on for a left ulnar nerve problem. There are, however, long periods of time in the medical records where there is no mention of left shoulder problems. The claimant has testified, however, to being very active as far as playing basketball and volleyball, both of which require stress on the shoulders. It is not noted in the medical records that the claimant was having problems with his left shoulder until February 5, 2004, almost eight years after his original workers' compensation injury. Although the doctors have opined that his rotator cuff problem is related back to his 1996 injury, at least Dr. Calodney has indicated that his opinion was based on there not being any other intervening injury or activity which would have caused the left rotator cuff tear. The doctor, quite plainly, testified that a rotator cuff tear can occur as a result of many different activities. Therefore, the claimant will not be entitled to any benefits as it relates to his left rotator cuff tear.

21. The claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability from June 6, 2001, until February 14, 2002. The medical records set forth that the claimant had been off work as a result of the recurrence of his cervical problems in March 2001. These records set forth and the claimant has testified that his pain level increased significantly subsequent to his March 2001 recurrence. Dr. Danielson's records reflect that additional surgery was being discussed with the claimant as well as additional testing for what was suspected as bilateral carpal tunnel. As early as June 27,

2001, Dr. Danielson was looking into seeking permission to proceed with surgery. Dr. Baskin, who did an independent medical evaluation of the claimant in early June 2001, recognized and recommended that the claimant would benefit from having EMG studies to determine if he had bilateral carpal tunnel. On June 6, 2001, Dr. Baskin did write that it was his opinion after reviewing the claimant's records that he could return to work for the respondent on some type of modified duty noting that he should not lift more than thirty-five pounds to the waist and to try and eliminate a lot of flexion, extension and lateral bending and rotational movement with his cervical spine. On August 30, 2001, Dr. Baskin again recommended that the claimant undergo EMG nerve conduction studies, noting that the claimant's pain is just as severe as it was when he first saw him. On September 13, 2001, Dr. Baskin again released the claimant to light duty with no lifting more than fifteen pounds with no overhead lifting and limited neck movement. The claimant's nerve conduction studies were eventually conducted on November 15, 2002, which reveal that he had bilateral carpal tunnel syndrome, bilateral ulnar nerve problems and bilateral radial sensory neuropathies. In light of the claimant's cervical problems and untreated bilateral carpal tunnel as well as ulnar nerve problems it seems very unlikely that he had the ability to return to work until some time after he underwent his cervical surgery on February 14, 2002.

22. I further find that the claimant has proven by a preponderance of the evidence that he is entitled to additional

temporary total disability from February 11, 2003, until September 12, 2003. The claimant underwent left carpal tunnel surgery on February 11, 2003, and surgery for his right carpal tunnel on April 1, 2003. A functional capacity evaluation performed on August 21, 2003, sets forth that the claimant has significant restrictions and some incomplete recovery from his recent right nerve release surgeries. The evaluator writes that the claimant is still symptomatic with his neck and back, he has a low tolerance of maintained positions and repetitive activities especially those involving firm grasp with his right hand. The evaluator set forth that the claimant was at risk to return to work at any PDC level for a full work schedule, noting that part time sedentary work might be an option but he would probably benefit from continued focused rehabilitation and work hardening. I find, therefore, that the claimant was temporarily totally disabled from February 11, 2003, until September 12, 2003.

23. The parties raised the issue of the claimant's entitlement to wage loss, however, this particular issue was not addressed in the testimony or in the documentary evidence nor in the briefs submitted by the parties. At this time, no wage loss will be assessed but will be reserved for future determination.

24. The respondents have controverted the compensability of the claimant's bilateral carpal tunnel and right ulnar nerve problems, entitlement to additional impairment rating for his cervical spine, and the claimant's entitlement to additional temporary total disability.

25. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that his bilateral carpal tunnel problems are a result of his working for the respondent. Therefore, the respondents should pay all medical treatment associated with this claimant's bilateral carpal tunnel as well as right ulnar nerve problems.

The claimant has failed to prove by a preponderance of the evidence that he is entitled to an impairment rating for his bilateral carpal tunnel or right ulnar nerve problems.

I find that the claimant has proven by a preponderance of the evidence that he is entitled to additional permanent partial disability as a result of his recurrent neck problems in the amount of an additional 3 percent. This would give the claimant a total impairment rating of 13 percent to the body as a whole. The respondents, therefore, shall pay an additional 3 percent impairment for this claimant's additional impairment rating.

The claimant has failed to prove by a preponderance of the evidence that his left rotator cuff is a result of his 1996 compensable injury. Therefore, no benefits will be paid for his injury.

The issue of wage loss is reserved for future determination.

The respondents are entitled to a credit for any long term or short term benefits which this claimant may have received while he was temporarily totally disabled.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE