

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408463

DENNIS WALLIS	CLAIMANT
BALDOR ELECTRIC COMPANY	RESPONDENT
SPECIALTY RISK SERVICES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 16, 2006

Before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL HAMBY, Attorney, Greenwood, Arkansas.

Respondents represented by TOM HARPER, JR., Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A pre-hearing order was entered in this case on January 4, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order has been made Commission's Exhibit No. 1 in the current record. Although the parties did not make the pre-hearing order part of the stipulated record, this Commission has the authority to take judicial recognition of all of the prior orders and opinions entered in this case. For the sake of convenience, I have elected to formally make a copy of this pre-hearing order part of the current record.

Both parties have waived their right to a hearing on the current issues and have requested that this matter be decided on the stipulated record. A copy of this waiver and stipulations signed by counsel for both parties, is made Commission's Exhibit No. 2 to this record. Finally, the stipulated record consists of

various medical reports and records which are identified in the written agreement. These include those previously tendered as Claimant's Exhibit No. 1 (consisting of 140 pages), Respondent's Exhibit No. 1 (consisting of 1 page), Respondent's Exhibit No. 2 (consisting of 3 pages), and a 1 page report by Dr. Roger Bise (dated February 22, 2006).

Due to the nature of the single issue currently before the Commission (i.e. the claimant's entitlement to permanent partial disability benefits for permanent physical impairment from the compensable injury to his left wrist and hand, in the form of carpal tunnel syndrome) and the fact that this issue is essentially a medical question, I find that the request of the parties to submit this issue on documentary evidence identified and forego a formal hearing, is certainly reasonable. Thus, this matter will be submitted on the agreed evidence and stipulations.

The following stipulations have been offered by the parties and are hereby accepted:

1. On October 22, 2002, the relationship of employee-self insured employer-TPA existed between the parties.
2. The appropriate weekly compensation benefits are \$403.00 for total disability and \$302.00 for permanent partial disability.
3. On October 22, 2002, the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome.
4. There is no dispute over the payment of medical expenses.
5. There is no dispute, at present, over temporary

disability benefits.

6. The healing period ended on or about August 26, 2005.
7. The respondent has accepted liability for permanent partial disability benefits for a permanent physical impairment of 20% to the right wrist/hand.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to additional permanent partial disability benefits for a 5% permanent physical impairment to the left wrist/hand.
2. Appropriate attorney's fees.

In regard to these issues, the claimant contends that he is entitled to permanent partial disability benefits for a permanent physical impairment of 5% to his left arm below the elbow for his compensable left carpal tunnel syndrome. He further contends that the respondents have controverted his entitlement to such benefits and that his attorney is entitled to the maximum statutory attorney's fee on any such benefits awarded.

The respondents concede that the claimant sustained a compensable injury to his left wrist and hand in the form of carpal tunnel syndrome. They contend that they have paid all appropriate benefits owing for this compensable injury. However, the respondents deny that this compensable injury (left carpal tunnel syndrome) has entitled the claimant to any permanent partial disability benefits for permanent physical impairment and controvert the claimant's entitlement to such benefits.

DISCUSSION

The central issue in this case is the claimant's entitlement to permanent partial disability benefits for permanent physical impairment, under Ark. Code Ann. §11-9-521, for his compensable left carpal tunnel syndrome. The burden rests upon the claimant to prove the existence and extent of any permanent physical impairment. The claimant must show that any permanent physical impairment is supported by or based upon "objective and measurable physical or mental findings", Ark. Code Ann. §11-9-704(c)(1)(B). The term "objective" is defined as the independent observation of findings, which are beyond the claimant's voluntary control, Ark. Code Ann. §11-9-102(16)(A)(i). No consideration can be given to complaints of pain or other subjective matters in determining either the existence or extent of permanent physical impairment, Ark. Code Ann. §11-9-102(16)(A)(ii)(a). Any calculation of the degree of permanent physical impairment must also be conducted in a manner that conforms to the Commission's official rating guide, which is currently The American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition, Ark. Code Ann. §11-9-521(g). Finally, the evidence must show that the compensable injury was the "major cause" of the permanent physical impairment, Ark. Code Ann. §11-9-102(4)(F)(ii)(a). The term "major cause" is defined as more than 50% of the cause, Ark. Code Ann. §11-9-102(14)(A).

Under prior law, the existence and extent of permanent physical impairment was solely a medical question. This Commission

could only accept or reject assessments made by medical experts and could not independently calculate the specific degree or percentage of permanent physical impairment. However, under current law, it is the obligation of this Commission, rather than any medical expert, to determine both the existence and the specific degree or percentage of permanent physical impairment. While expert medical opinion on this issue remains helpful, it is no longer absolutely binding on this Commission. In fact, to even be considered by this Commission, any expert medical opinion on this issue must be stated “within a reasonable degree of medical certainty”, Ark. Code Ann. §11-9-102(16)(B).

The medical evidence submitted by the parties contains various and somewhat conflicting assessments of permanent physical impairment for the claimant’s left carpal tunnel syndrome. Dr. Keith Bolyard (an orthopaedic surgeon and one of the claimant’s various treating physicians), initially assessed no permanent physical impairment for the claimant’s left carpal tunnel syndrome. In his report of April 23, 2004, Dr. Bolyard indicated that since the claimant’s electrodiagnostic studies (EMG/NCV) were within normal limits, the claimant would have no permanent physical impairment for this injury.

However, subsequent electrodiagnostic studies (EMG/NCV’s) were interpreted as abnormal and showed neurological deficits in the area of the claimant’s left wrist. As a result, a surgical release was ultimately performed on the claimant’s left carpal tunnel. I would also note that the assessment made by Dr. Bolyard

was prior to the surgical release by Dr. Kelly on June 2, 2005.

The assessment of permanent physical impairment was also made by Dr. James Kelly III (a plastic and reconstructive surgeon and another of the claimant's treating physicians). However, prior to this assessment, Dr. Kelly requested and obtained a physical capabilities evaluation and impairment rating by Sharon Miesner, a physical therapist. In her reports, Ms. Miesner indicated that her testing revealed less than maximal effort and that the testing was of questionable validity. It was her ultimate conclusion that the claimant had experienced no permanent physical impairment for his left carpal tunnel syndrome and surgical release, under the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition and the "Arkansas Workers' Compensation Regulations". While Ms Miesner may be competent and knowledgeable in calculating permanent physical impairment under the American Medical Association's Guides to the Evaluation of Permanent Impairment, I am concerned that she also considered her interpretation of what is required by the Arkansas Worker' Compensation Act. I have found from experience that such interpretations are often in error.

In apparent disregard of Ms. Miesner's findings, Dr. Kelly went on to assess a permanent physical impairment of 5% to the claimant's left hand for the left carpal tunnel syndrome and resulting surgery. However, he went on to state that, under the factors shown, he would normally give no permanent physical impairment. He indicated that the only basis for his assessment of a 5% permanent physical impairment was the fact that the claimant

has actually undergone a surgical release on the left carpal tunnel.

The final assessment of permanent physical impairment was made by Dr. Roger Bise (a plastic and reconstructive surgeon and the claimant's current treating physician). In his reports of February 22, 2006, and March 9, 2006, Dr. Bise indicated that he did not "disagree" with the 5% assessment made by Dr. Kelly. However, he further noted that this 5% impairment rating "may be bit generous".

Although the evidence indicates that the claimant has continued to complain of difficulties with his left wrist and hand, there is little or no "objective" evidence of any permanent physical deficits from his left carpal tunnel syndrome. Physical testing and evaluation of the claimant has shown that the passive range of motion of his left wrist and hand was within normal limits. In fact, it would appear that even his active range of motion of this portion of his body was within normal limits. The claimant also again exhibits normal sensory findings. Current electrodiagnostic studies were interpreted as normal with no residual neurological deficits from the claimant's left carpal tunnel syndrome. The only mention of a physical deficit appears to be a slight decrease in the grip strength of the claimant's left hand, which is clearly not "objective" and is even of questionable validity.

The only arguable "objective finding" to support any percentage or degree of permanent physical impairment is the fact that the anatomical structure of the claimant's left wrist has been

permanently altered by the surgical release of the claimant's carpal tunnel. It would appear from Dr. Kelly's report of January 13, 2006, that it is his opinion that such an alteration would entitle the claimant to the 5% permanent physical impairment rating he had assessed.

However, even if the permanent changes in the anatomical structure of the claimant's left wrist from the corrective surgery would represent "objective and measurable physical findings", under Ark. Code Ann. §11-9-704(c)(1)(B), these "objective and measurable physical findings" must still entitle the claimant to a permanent physical impairment rating under the procedures recognized by the Commission's official rating guide. This guide is currently The American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition.

Clearly, this guide does provide for permanent physical impairment in certain instances where permanent alteration of anatomical structures have occurred from corrective surgery (for example, structural alterations attributable to corrective back surgery under Table 75, page 113). However, this guide does not provide for an assessment of permanent physical impairment merely because a surgical release of the carpal tunnel has been performed.

The only methods recognized by this guide for an assessment of permanent anatomical impairment is based upon the presence of permanent residual neurological deficits (such as those involving the claimant's right hand) or permanent mechanical deficits, such as loss of range of motion or strength. In the present case, the

evidence shows that the claimant has no residual “objective” permanent neurological loss from his left carpal tunnel syndrome. Extensive electrodiagnostic studies performed by Dr. William Griggs, on February 23, 2006 were entirely normal. There is also no evidence of any “objective” permanent mechanical loss of function of the claimant’s left wrist/hand. Extensive physical examinations performed by Sharon Miesner and by Dr. Kelly, in August of 2005, showed a normal range of motion of the claimant’s left wrist and hand. The only loss noted involved what Dr. Kelly describes as a “slight decrease in grip strength”. However, the testing performed by Ms. Miesner casts significant doubt on the validity or accuracy of this deficit. Based on the evidence presented, this observed mechanical deficit would not represent an “objective” finding as required by the Act.

In summary, I find that the evidence presented fails to show any permanent physical anatomical impairment from the claimant’s compensable left carpal tunnel syndrome that would be supported by or based upon “objective and measurable physical findings” and can be calculated in a manner that would be in accord with the Commission’s current official rating guide (i.e. The AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition). Therefore, no permanent partial disability benefits can be awarded under Ark. Code Ann. §11-9-521((b) for the claimant’s compensable left carpal tunnel syndrome.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers’ Compensation Commission has

jurisdiction of this claim.

2. On all relevant dates, including October 22, 2002, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. The appropriate weekly compensation rates would be \$403.00 for total disability and \$302.00 for permanent partial disability.
4. On or about October 22, 2002, the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome.
5. There is no dispute over the payment of medical expenses for this compensable injury. There is no dispute, at the present time, over the payment of temporary disability benefits for this compensable injury.
6. The claimant's healing period from the effects of this compensable injury ended on or about August 26, 2005.
7. The claimant has sustained a permanent physical impairment of 20% to his right wrist/hand for his right carpal tunnel syndrome and the respondents have paid benefits accordingly.
8. The claimant has failed to prove by the greater weight of the credible evidence that his compensable left carpal tunnel syndrome has resulted in any permanent physical impairment to his left wrist/hand that would be supported by objective and measurable physical findings and that could be calculated in a manner that would conform to the

Commission's current official rating guide (The American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition). Thus, he would not be entitled to any permanent partial disability benefits for permanent physical impairment of his left wrist/hand from his compensable bilateral carpal tunnel syndrome.

9. The respondents have denied that the claimant has experienced any permanent physical impairment to his left wrist/hand from his bilateral carpal tunnel syndrome and controvert the claimant's entitlement to any permanent partial disability benefits for such alleged permanent physical impairment.
10. As no controverted benefits have herein been awarded to the claimant, no controverted attorney's fee can be awarded to the claimant's attorney.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss the current claim for permanent partial disability benefits attributable to permanent physical impairment of the claimant's left wrist/hand from his compensable bilateral carpal tunnel syndrome.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge

