

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508804

STEVEN WEDGE, EMPLOYEE	CLAIMANT
EATON CORPORATION, EMPLOYER	RESPONDENT
OLD REPUBLIC INSURANCE, CARRIER	RESPONDENT

OPINION FILED APRIL 27, 2007

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Mountain Home, Baxter County, Arkansas.

Claimant was represented by the HONORABLE Frederick "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondent was represented by the HONORABLE William C. Frye, Attorney at Law, Little Rock Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on February 21, 2007, in Mountain Home, Arkansas. A Prehearing Order was entered in this case November 20, 2006. This Prehearing Order set forth the stipulations offered by the parties and the issues to be litigated.

The following stipulations were submitted by the parties and are hereby accepted:

1. The employee-employer-carrier relationship existed on January 7, 2005, and at all relevant times.
2. The claimant sustained a compensable injury to his right thumb and hand on January 7, 2005
3. The respondent has accepted a 10% permanent impairment rating to the claimant's right hand.

By agreement of the parties, the issues to be litigated were limited to the following:

1. Whether claimant is entitled to additional medical benefits.
2. What is claimant's average weekly wage.
3. Whether claimant's depression is compensable.
4. Whether the claimant sustained a compensable Reflex Sympathetic Disorder injury.
5. Whether the claimant's attorney is entitled to attorney's fees.

At the hearing, the claimant alleged a cervical injury, and an issue arose regarding the admissibility of questions and answers pertaining to an Eaton form, "Injury and Illness Report." The claimant's attorney previously filed on January 29, 2007, a Motion to Recuse and alleged specific Constitutional violations of the present status of the Arkansas Worker's Compensation Laws.

The claimant reserved all issues regarding permanency and vocational rehabilitation.

With respect to the foregoing issues, the claimant contends he is entitled to reasonable and necessary medical care. He has not fully recovered from his injury and has not stopped treating.

The respondent contends that the claimant sustained a compensable injury to his thumb and hand. He was treated by Dr. Varela, who surgically repaired his thumb and his carpal tunnel syndrome. He was subsequently sent to Dr. Moore for a second

opinion. Dr. Moore recommended a repeat surgery for the claimant's carpal tunnel and repair of the thumb. Dr. Moore performed those surgeries and released the claimant to return to work. Dr. Moore gave the claimant a 10% rating and those benefits are presently being paid (This rating was given by Dr. Rutherford pursuant to the referral by Dr. Moore).

The claimant, on his own, has returned to Dr. Burton, his primary care physician, who has sent him to Dr. Robbins. The respondents also contend that further medical is not authorized, reasonable, and necessary.

At the hearing, the respondent further contended that some of the medical bills in contention have been paid by Eaton's/respondent's group health, which is Empire, Blue Cross Blue Shield.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order marked Commission's Exhibit No. 1, an Order was marked as Commission's Exhibit No. 2. The claimant's Prehearing Questionnaire was marked as Claimant's Exhibit No. 1, Documentary Medical Evidence was marked as Claimant's Exhibit No. 2, Motion to Recuse and Brief were marked as Claimant's Exhibit No. 3, a Photograph was marked as Claimant's Exhibit No. 4, and a second Photograph was marked as Claimant's No. 5. The respondent's Prehearing Questionnaire was marked as Respondent's Exhibit No. 1, Wage Records were marked as

Respondent's Exhibit No. 2, Documentary Medical was marked as Respondent Exhibit No. 3, Medical Index was marked as Respondent's Exhibit No. 4, and Baxter County Regional Record of 5/29/06 was marked Respondent's Exhibit No. 5.

The parties filed post-trial briefs, and they have been incorporated by reference. On April 17, 2007, a post-hearing telephone conference was held to discuss matters surrounding the claimant's average weekly wage, therefore my letter of April 17, 2007, outlining the substance of this discussion has been incorporated by reference.

The following witness testified at the hearing: the claimant.

DISCUSSION

The claimant, age 49 (8/9/57), is a high school graduate with previous work experience of approximately 30 years with Baxter Healthcare. According to the claimant, he last worked for Baxter Healthcare as a principal engineer. The claimant testified he was laid off by Baxter Healthcare due to a reduction in workforce.

The claimant began working for the respondent in April of 2004. The claimant sustained an admittedly compensable injury to his right thumb and hand on January 7, 2005 when his hand got caught in the reel of a large metal drum. At the time of his injury, the claimant was required to perform job duties as an extruder/team leader. The respondent paid medical benefits,

indemnity benefits and a 10% impairment rating for the claimant's right hand and thumb injury. The claimant now essentially contends that he sustained other injuries as a compensable consequence of his hand injury, which include Reflex Sympathetic Dystrophy (RSD), depression and a cervical injury. He also contends he is entitled to additional medical treatment.

According to the claimant, he mentioned the incident to one of the other team leaders, but did not seek immediate treatment, thinking his thumb would be "okay." The claimant testified he first sought treatment for his thumb from his family doctor, Dr. Burton, who mentioned he might need to see a hand specialist, Dr. Verela. According to the claimant, after seeing Dr. Burton, he notified the respondent about this, and they sent him directly to the ER for a drug test and an X-ray.

The claimant essentially testified a few days later, he saw Dr. Verela and he performed surgery on January 17, (2005), and sent him back to work the next day in a cast. According to the claimant, he eventually returned to Dr. Verela to get his stitches out, but his thumb would not bend at all. The claimant testified he was told that it would "work out," it was just going to be stiff for a while, but it never did.

According to the claimant, he went to work and dealt with it for approximately two months. The claimant essentially testified that the respondent sent him to Dr. Moore, who performed a second

surgery on August 1, 2005. He testified the surgery helped his thumb and he could bend his thumb a little better, but it basically made his finger more numb than anything else. The claimant continued to treat with Dr. Moore, and was thereafter given an impairment rating and released to return to work.

The claimant testified he eventually returned see Dr. Burton due to constant nagging and aching pain. According to the claimant, Dr. Burton sent him back for some additional therapy, and then he was sent for nerve blocks.

According to the claimant, Dr. Burton sent him to see Dr. Lennard, a specialist. The claimant testified he saw Dr. Clarke, from whom he received nerve blocks and a bone scan. He agreed he was asking the Commission to approve the expenses he has incurred with Dr. Bruton, Dr. Lennard and all of those doctors referred by Dr. Bruton. As of the date of the hearing, the claimant testified he currently takes Lorect for pain and Diazepam for his nerves, as well as Cymbalta.

Prior to his injury, the claimant admitted to experiencing some depression issues due to his divorce, which ended after 23 years of marriage. The claimant specifically testified concerning his use of anti-depressants, "I don't believe I was on any anti-depressants while I was working for Eaton. I had taken them in the past, but I don't believe I had any current prescriptions then."

According to the claimant, after his injury, he probably went

back on the depression medicine between the two operations. The claimant testified he is afraid to have any more operations, but would like to at least be able to go in and let a therapist look at him or maybe see what they can do about the nerve.

According to the claimant, he has a burning, aching, toothache-type pain that can run all the way up into the back of his shoulders and down his back. He essentially testified the level of pain can sometimes be a seven with pain relievers and it can sometimes be a two with pain relievers, as the pain never goes away. According to the claimant, since his injury, he has never had a pain-free moment. The claimant testified he has lost dexterity in his fingers and muscle tone, and his right arm is significantly smaller. As to his current care, he testified Dr. Bruton is giving him pain pills and depression medicine.

The claimant gave the following testimony concerning his work with the respondent:

Q. With regard to your work at Eaton, what was your work hours and days that you worked at Eaton? Explain that to the Judge so she can understand why this is different than a normal eight-hour-day-five-day-a-week job.

A. Well, I worked, I believe it was all nights, and we went in at 7:00 o'clock at night and worked till 7:00 o'clock in the morning, and it was kind of an alternating shift.

I liked the job because, you know, we did have - - sometimes we would get three days or four days off. But we called it the dreaded one, was the three-one-three where you had to work three twelve hours, one day off, just basically go home and sleep, and then work another three twelve hours. And then you have to do that maybe once every month or so. Zolla could explain that better than I can.

Q. All right.

A. And most of the times, you would only have to work three days a week, and then you would get three off, you know.

Q. So a full week, a full workweek would be 36 hours, three days on, four days off?

A. In most cases, I believe that's right, but then you would have to do the three-one-three every once in awhile to make up. And I don't know how that all works as far as pay goes, how that payroll stuff works.

Q. All right. When you were hired, were you hired as full-time?

A. Yes.

Q. Were you told about this, about what your work hours were going to be, three days, three twelve-hour shifts?

A. Yeah, they gave me a little calendar, I don't have it with me, but it showed me what days I would have to work. Yes.

Q. Did it show three twelve-hour shifts?

A. Yes.

Q. And was that explained to you as being a full workweek?

A. Yes, the way it worked, yes.

Q. Okay. And at the time of the injury, you were making 13.50 an hour; is that right?

A. I believe it was more than that, I'm not sure.

Q. I'm sorry.

A. I thought it was around \$15, because I was getting team leader's pay, and then had went back down to a Level 5. Zolla - - Ms. Kyle, could tell you what a Level 5 makes now. I don't know, but I was a Level 5 extrusion operator.

Q. Okay. Have you looked at Respondents' exhibit with regard to the payroll history they give?

A. Yes, but I don't recall my hourly wage at the time.

Q. All right. In any event, you were not a part-time employee; you were full-time.

A. Yes, I was full-time.

On cross-examination, the claimant admitted that Dr. Bruton's record of August 20, 2004, which stated "Doing well on valium" was correct. He also agreed that this occurred while he was working for the respondent. The claimant also admitted that Dr. Rutherford's report (of May 5, 2005) which states, "His only medication at present is Diazepam, which he takes for bad nerves and insomnia related to a divorce two years ago," reflects what he told Dr. Rutherford. The claimant testified that the Diazepam is for his nerves and to help him sleep. The claimant admitted to currently taking Diazepam. He further admitted to being on the same medication that he has been on all along since his bad divorce and losing his job.

The claimant gave the following testimony concerning a written report of the incident (Eaton form, "Injury and Illness Report) as he reported it to the respondent:

Q. ... Who filled out the accident report?

A. I believe - I believe it was Clay Schrable (phonetic) or Jim Bomack (phonetic), but I don't remember now.

Q. Did you make any statement on the accident report?

A. That's been a long time ago, but I'm sure - I've filled them out before. If there's a place for a statement, I would think that I would've made a statement.

Q. Let me ask you, and I'm not going to introduce the report, but there's an employee statement describing what happened. Is that your handwriting?

A. Yes.

Q. Would you tell me just what you put on there?

A. I said I was positioning a reel of tube in the back of Braider 16. My thumb got caught between reel and pulled thumb, and basically after I pulled the thing out -

Q. It say, "Taped up finger."

A. Taped my finger, right.

The claimant admitted to going to Dr. Bruton on his own, then having told the respondent he had gone to the doctor, as respondent sent him Dr. Varela after he went to the emergency room. The claimant admitted that after his surgery with Dr. Varela, he went back to work and worked until July 24, 2005.

The claimant further admitted that he complained in January, and the respondent sent him to Dr. Burnett, the company doctor, and they sent him to Dr. Moore. He also admitted that the respondent paid for him to see Dr. Moore, and for the surgery he performed. The claimant also admitted that while treating with Dr. Moore, he was seeing his family doctor (Dr. Bruton) for plantar fasciitis and anxiety.

The claimant testified he did not do well after the surgery with Dr. Moore. However, he admitted to having stated to Dr. Moore on September 14, 2005 that the numbness in his right hand had resolved. The claimant also admitted to telling Dr. Moore that there was no pain in his thumb and that it did work. He

also admitted to having described occasional pain over the volar aspect of the right wrist, which he stated continues to be a problem.

The claimant subsequently denied having told Dr. Moore that the numbness in his right hand had resolved, but did admit to having stated it had gotten better.

As to the claimant's October 11, (2005) visit with Dr. Moore, he testified:

Q. Then on October 11th, you told him that your pain in your right thumb had significantly improved, and the pain and numbness in your right hand had significantly improved. Did you tell him that?

A. Yes.

Q. And he sent you back to regular activities at that point, did he not?

A. Yes. I wore the brace. I had to wear a brace.

Q. And then at that point you came back, and, I believe, did you not tell Ms. Kyle that you were not going to Dr. Moore anymore, you were going to go on your own to your own doctor?

A. Dr. - - I probably told her that, because I had called Dr. Moore, and Dr. Moore said he wouldn't be able to see me anymore; he wouldn't see me anymore. I was told not to call him anymore because he couldn't do anything more for me, and so I couldn't call him anymore.

Q. All right. My question was real simple. Did you tell Ms. Kyle that you were going on your own to your family doctor for treatment, and you were going to put it on your group health?

A. I did not specifically probably say I was going to put it on my group health, but I probably remember going in and expressing my concerns that I was still having problems, and that I was going to go see my regular doctor, yes.

According to the claimant, he went to the company doctor, who would not let him come back because he told him he had been instructed not to let him come back anymore. The claimant specifically testified that once everyone was advised the workers' case was no longer open, they all kind of "shut him down, so he had no choice but to go to his regular doctor."

The claimant testified:

Q. Did you get anything from workers' comp or anybody saying you couldn't go back to Dr. Moore?

A. I was told not - - I was told that he could no longer do anything for me, and I was told, I believe, by the nurse that accompanied me every time that once I had signed off, or he had signed off, it was no longer going to be a workmen's comp case.

As to when he first mentioned problems with his neck, the claimant testified:

Q. Actually January 7th, so it would've been, what, actually a little less than that, about ten months.

A. Ten months.

Q. Would you agree with me, this is the first time that you mentioned your neck?

A. It probably was a starting concern at that time that my - - and I, again, thought my neck was caused from the way I was sleeping and clutching my arm. But I probably - - other than mentioning it to Dr. Clark, that might have been the first time that I was concerned, because this pain has been creeping on me.

The claimant subsequently testified he could not specifically say that was the first time he ever mentioned that his neck hurt to any of the doctors. In addition, the claimant testified:

Q. You mentioned your anxiety. You saw Dr. Moore, you

saw Dr. Varela, and you went to Dr. Burnett, and then back to Dr. Bruton, and at no time did you ever mention your neck, did you?

A. I'm not sure.

Upon being questioned about his deposition testimony, the claimant admitted to having testified that he was not sure about the cause of his neck problems and that it was not an issue for him.

Although a functional capacity evaluation showed the claimant could perform medium work, with the avoidance of lifting over 15 pounds with his injured arm, he admitted he has not looked for work due to collecting short-term and long-term disability. The claimant testified that the respondent has taken the stance that he is not going to be able to come back to work, but he is still an employee. According to the claimant, his long-term disability stopped because there was an offset for Social Security.

The claimant admitted he made the decision to go to Dr. Bruton, which ultimately led to him being referred to Dr. Lennard and Dr. Clarke.

On January 12, 2005, the claimant sought treatment from his family physician, Dr. Ronald Bruton, due to pain in his right hand and wrist, and numbness in the first three(3)-digits. Dr. Bruton noted that there was a question of right CTS. He referred the claimant to a surgeon for possible thumb extensor dislocation or rupture.

The claimant underwent nerve conduction studies on January

13, 2005 of both extremities. This study was consistent with right median neuropathy at the wrist.

On January 17, 2005, the claimant underwent evaluation with Dr. Charles Varela. The claimant complained of locking, catching and pain of the volar surface of his right thumb. He also complained of pain and numbness in the median distribution of his right hand, which worsened at night while sleeping. Dr. Varela's assessment was "carpal tunnel syndrome, right wrist and right trigger thumb." He wrote:

PLAN

____ Patient is advised of the benefits from both right carpal tunnel release and right trigger thumb release. Patient is advised that these problems are not specifically caused by his work, but this may have aggravated it. Therefore I do not believe that they are workman's compensable injuries. Therefore we will proceed with carpal tunnel release and trigger finger release today with his regular insurance.

Therefore, on January 17, 2005, Dr. Varela, performed carpal tunnel release, right wrist and release of right trigger thumb.

Also, January 17, 2005, Dr. Varela reported to Dr. Bruton that the claimant should be able to return to work after three to four days of restriction and back to full activities in one to two weeks.

On February 3, 2005, the claimant returned for follow-up care with Dr. Varela. His chief complaint was recurrent locking, right thumb. Dr. Varela reported on in pertinent part: "... Patient is noted to have a more subtle catching and locking of his thumb with audible clicking. He is unable to actively flex

the IP joint of his thumb." Dr. Varela's initial assessment was "recurrent right trigger thumb."

The claimant saw Dr. Michael Moore for a second opinion evaluation on May 5, 2005. He wrote:

Based on this finding, it is my opinion Mr. Wedge would benefit from excision of the right thumb scar and evaluation of the flexor tendon sheath. In addition, if the nerve study suggested a persistent right carpal tunnel syndrome, a right carpal tunnel release with hypothenar fat graft would be indicated.

On August 1, 2005, Dr. Moore performed right thumb A1 pulley release, and right carpal tunnel release with hypothenar fat graft."

On August 18, 2005, Dr. Moore reported in pertinent part, "He reports the numbness in the fingers of his right hand has improved." Dr. Moore reported that the claimant would start therapy treatments, to include scar massage, desensitization, finger range of motion exercises, and splinting. In two weeks, he noted the claimant would start wrist range of motion exercise and continue to wear a splint for protection. During the next four weeks he continued the claimant on light-duty work.

On August 19, 2005, Dr. Bruton assessed the claimant with, "plantar fasciitis and anxiety." Dr. Moore also returned the claimant to light duty work. The claimant was instructed to start off four hours for a week, then eight hours the second week, and 12 hours the next week.

Dr. Moore reported the following on September 15, 2005:

Mr. Wedge was seen at the Arkansas Hand Center on 09/15/05 approximately 6 [sic] weeks following a right

thumb A1 pulley release and right carpal tunnel release with hypothenar fat graft. He reports the numbness in his right hand has resolved. In addition, the pain and locking in the right thumb have resolved. Mr. Wedge describes occasional pain over the volar aspect of the right wrist, which is not uncommon 6 [sic] weeks following carpal tunnel release with hypothenar fat graft.

The review of systems referable to the musculoskeletal system is otherwise unremarkable and unchanged from the previous evaluation on 08/19/05.

Mr. Wedge will continue therapy treatments to include scar massage, desensitization, iontophoresis as indicated, and strengthening exercises. During the next 4 weeks, he will continue light duty work. He should not perform pushing, pulling, or lifting greater than 10 pounds using his right hand. Mr. Wedge will return to the office in 1 [sic] month for follow-up evaluation. I anticipate he will reach his maximum medical improvement in 1 [sic] month. He was given a prescription for Celebrex to take as needed.

On October 11, 2005, Dr. Moore reported:

Steven Wedge was seen at the Arkansas Hand Center on 10/11/05 approximately 10 weeks following a right thumb A1 pulley release and right carpal tunnel release with hypothenar fat graft. He reports the pain in his right thumb has significantly improved. The pain and numbness in his right hand have improved. Mr. Wedge describes intermittent palmar pain symptoms, which are aggravated when he works. He reports that his job requires him to perform frequent gripping using his right hand.

The review of systems referable to the musculoskeletal system is otherwise unremarkable and unchanged from the previous evaluation on 09/15/05.

It is my opinion Mr. Wedge's clinical history and physical examination are not consistent with recurrent right carpal tunnel syndrome. He understands that if the pain symptoms in his right hand become more bothersome, he may need to find work that is less stressful to his right hand. It is my opinion Mr. Wedge would not benefit from any further surgical treatment.

Mr. Wedge has reached his maximum medical improvement.

Dr. Reginald Rutherford will perform a postoperative nerve conduction and EMG study of the right median nerve. The impairment of Mr. Wedge's right hand will be determined by the results of the nerve study. The impairment will be based on the AMA Guides to the Evaluation of Permanent Impairment. Fourth Edition, page 57, Table 16. These statements are made within a reasonable degree of medical certainty. I will forward the results of the impairment when it is completed. Mr. Wedge was given a padded glove to wear as needed for protection. He can resume regular activities, including work. He understands and agrees with the treatment plan as outlined and all questions were answered.

Dr. Reginald Rutherford performed a limited nerve conduction study on October 11, 2005 to re-evaluate status of the claimant's right median nerve. He noted that the claimant had previously undergone surgery with improvement of symptoms, but they had not fully remitted. Dr. Rutherford noted that the pre-operative study was available for comparative purposes. He wrote:

The nerve conduction study demonstrates improvement in right median nerve function referable to the pre-operative study. Abnormality remains which is in the mild range. Recommended impairment is 10% to the right hand referable to residual objective abnormality right median nerve as defined by nerve conduction study. This is based upon 4th Edition, AMA "Guides to the Evaluation of Permanent Impairment". [sic]

The claimant returned to Dr. Bruton on November 2, 2005 for follow-up visit of his hand. Dr. Bruton specifically reported:

Mr. Wedge had a repetitive motion type injury of his right thumb that was repaired and he seems to be suffering a neuropraxia of the median nerve in that right hand as a direct result of this repetitive motion injury. At present, as he describes his work involving a lot of gripping and lifting, I don't feel like he is able to complete his job duties. He would need light duty or some sort of alternative duty at least for the next couple of weeks while we evaluate and come up with some further treatment options for this.

The claimant returned for another follow-up visit with Dr. Bruton on November 16, 2005, from which he reported the following:

48YO here for 2-wk f/u of chronic right wrist pain and nerve impairment that seems to be over the median nerve distribution. Still having difficulty gripping and pulling with that hand. We did a trial of Topamax to relieve what I thought was neuropathic component to it. He sees no difference in it. However, between his PT and Darvocet, he's able at least to have some mild to moderate pain relief. I think the next step should be a consultation with physiatrist and we'll attempt to get him in with Dr. T. Leonard in Springfield for an evaluation. Otherwise, continue the hand PT and medical management with the only change being the d/c of Topamax.

The claimant was seen by Dr. Ted Lennard on November 22, 2005 due to chief complaint of numbness in the 1st-3rd fingers, mainly in the 2nd digits. He noted that skin over the palm of the hand was slightly discolored greatest over the scar and palm of the hand. Dr. Lennard's assessment was essentially, "probable complex regional pain syndrome, right hand," for which he recommended "repeat EMG/NCS study of the right upper extremity, 3 phase bone scan of the upper extremity, and cervical stellate ganglion block."

A three phase bone scan of the right arm and hand was performed on December 6, 2005 with the following impression:

Impression:

1. No evidence of infection or osteomyelitis.
2. Normal radionuclide angiogram and blood pool images.
3. Very mild increased uptake in the carpal bones of the right hand. This is diffuse and mild, increased in activity compared to the left. In the absence of any radiographic finding on a preceding hand film, this probably represents degenerative change in the carpus.

The claimant also underwent on an EMG study of the right upper extremity on December 6, 2005, which was performed by Dr. Robbins, with the following impression:

IMPRESSION:

1. Nerve conduction study consistent with right carpal tunnel syndrome. There is also slowing of the right ulnar nerve across the wrist.
2. EMG needle examination shows neurogenic changes in C7 innervated muscles.

The claimant underwent a cervical MRI on January 18, 2006, which demonstrated bulging of the disk at the C6-C7 levels.

Hence, the following impression was rendered:

1. Some mild disk disease at the C5-C6 and C6-C7 levels, but it is not causing central canal or neural foraminal stenosis. The cord itself is intact.
2. The patient is complaining of right shoulder and arm pain, and I do not see definite impingement on an exiting right nerve root at any level.

On January 23, 2006 the claimant was seen by Dr. Bruton, who reported the claimant had seen Dr. Lennard for reflex sympathetic dystrophy of the arm.

The claimant saw Dr. James Clarke January 25, 2006. He reported:

... He has had a history of trauma and thus had multiple surgical procedures including a carpal tunnel release on the right wrist in the past and this has been followed by a prolonged period of wearing an arm and wrist brace, which has led to long periods of disuse and a considerable amount of atrophy in the muscle of his right forearm. As he presents today, he does have a very stiff joints that are extremely hypersensitive to touch and very resistive to any kind of movement of the fingers, hand, or wrist. His hand is noticeably cool and has decreased capillary refill as compared with the left arm and hand. I do think that he has reflex sympathetic dystrophy or at least some of the features of it and my plan is to proceed with right upper extremity _____ block series in hopes

this may bring about a resolution of his problem. This was discussed with the patient.

On January 27, 2006, Dr. Clarke reported in pertinent part, the following:

This is a very pleasant 48-year-old white male who has made remarkable improvement with 2 sympathetic blocks to his right upper extremity. His reflex sympathetic dystrophy appears to be essentially resolved today with normal capillary refill. Range of motion is increasing with every session of block and intensive physical therapy. Again, his capillary refill was normal. His skin and hand temperature is normal with respect to the left upper extremity, and his range of motion has improved markedly. My plan today is to proceed with a therapeutic right upper extremity sympathetic block again today. Probably the last in the series, and then we will set him on his way to continue to participate in both active and passive range of motion exercises.

Dr. Bruton reported in pertinent part on December 14, 2006, the following:

This man is a patient of mine. It is my opinion, stated within a reasonable degree of medical certainty, that the cause of this man's neck difficulties arising out of some bulging discs at the C-7 level of his cervical spine, his resulting Reflex Sympathetic Disorder and other problems in the right wrist and right arm and right shoulder and neck complaints arises out of his job with Eaton Corporation when the reel weighing almost a ton caught Steve's right hand and pulled him over the reel causing him to fall on the floor on the other side of the reel in January of 2005 while at his employment. Further, even if he had preexisting depression problems, those activities described by Mr. Wedge and his injury during his employment were the major cause [meaning more than 50%] of his present need for treatment and again arises out of his injury at this place of employment and the MRI of the Cervical Spine dated January 18, 2006 would be sufficient objective evidence of his injury in January of 2005 while working for Eaton and said medical treatment he has received related to these parts of his body injured in January of 2005 arise out of said injury and the consequent current disability and need for treatment as a result of that work-related injury.

Further, I believe that Steve has not been able to work as a result of that injury and still has not reached the end of maximum medical healing.

A. Admissibility of questions and answers pertaining to the Eaton form

With respect to questions and answers pertaining to the Eaton form, "Injury and Illness Report," the claimant objected to the same and asked that they be stricken from the record because he did not receive a copy of the form during discovery. In light of the fact that the claimant asserted at the time of the hearing a cervical spine injury, I find that the questions and answers pertaining to this form are critical for a full understanding of a complete and accurate description of how the accident happened and which body parts were involved. Therefore, I find that the claimant's objection to these questions and answers are overruled.

B. Reflex Sympathetic Disorder, additional medical treatment, authorized treatment

The claimant essentially alleges he suffered reflex sympathetic disorder (RSD) as a compensable consequence of his right thumb/hand injury.

The claimant bears the burden of proving that he is entitled to benefits, and he must sustain that burden by a preponderance of the evidence. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). Causal connection is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. Osmose Wood Preserving v.

Jones, 40 Ark. App. 190, 843 S.W.2d 875 (1992). The basic test is whether there is a causal connection between the two episodes. Air Compressor Equip. v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The determination of whether a causal connection exists is a question of fact for the Commission. Jeter v. B.R. McGinty Mechanical, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

In the present matter, I find that the claimant suffered reflex sympathetic dystrophy as a result of his compensable right hand and thumb injury of January 7, 2005.

The record indicates that the claimant sustained a stipulated right carpal tunnel syndrome and a right trigger thumb injury, as a result his work incident of January 7, 2005, pursuant to assessment by Dr. Charles Varela, for which he performed surgery. The claimant was subsequently released by Dr. Varela to return to work, but had continued complaints of hand related symptoms. The respondent next agreed for the claimant to see its company doctor, Dr. Burnett, who referred the claimant to Dr. Michael Moore. On August 2, 2005, Dr. Moore performed an A1 pulley and right carpal tunnel release. Dr. Moore released the claimant from care on October 15, 2005, and declared maximum medical improvement. He also referred the claimant to Dr. Rutherford for a post-operative nerve conduction study to be performed on the right median nerve, which was also done on October 15, 2005. Based on this study, Dr. Rutherford recommended a 10% impairment to the right hand. The respondent accepted this rating and paid for the aforementioned treatment. The claimant thereafter sought

treatment on his own from his family physician, Dr. Bruton, who referred the claimant to Dr. James Clarke. In a medical report dated January 25, 2006, Dr. Clarke reported, in pertinent part,

His hand is noticeably cool and has decreased capillary refill as compared with the left arm and hand. I do think that he has reflex sympathetic dystrophy or at least some of the features of it and my plan is to proceed with right upper extremity _____ block series in hopes this may bring about a resolution of his problem.

I find that this report of "coolness of the right hand and decreased capillary refill" constitutes objective medical findings of RSD. In a note dated December 14, 2006 Dr. Bruton essentially opined within a reasonable degree of medical certainty that the claimant's RSD and other problems of the right wrist arose out of his January 2005 compensable injury. In light of Dr. Bruton's expert opinion, the persistent nature of the claimant's hand related symptoms after the work incident, and his lack of symptoms before the work incident, I also find that the claimant has established by a preponderance of the evidence that the objective findings of "coolness of the right hand and decreased capillary refill," identified by Dr. Clarke are causally related to the claimant's work injury. Therefore, based on the preponderance of the evidence before me, I find that the claimant's RSD condition is compensable.

The employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). In the present matter, I find that the

claimant proved by a preponderance of the evidence that he is entitled to all of the medical treatment he has pursued for his RSD, from Dr. Bruton and the chain of referrals, including, Drs. Robbins, Lennard and Clarke until on January 27, 2006. Specifically, on January 27, 2006, Dr. Clarke reported, in pertinent part:

His reflex sympathetic dystrophy appears to be essentially resolved today with normal capillary refill. Range of motion is increasing with every session of block and intensive physical therapy. Again, his capillary refill was normal. His skin and hand temperature is normal with respect to the left upper extremity, and his range of motion has improved markedly. My plan today is to proceed with a therapeutic right upper extremity sympathetic block again today. Probably the last in the series, and then we will set him on his way to continue to participate in both active and passive range of motion exercises.

Based on the above cited expert opinion of Dr. Clarke, I find that any additional medical treatment rendered for the claimant's RSD after January 27, 2006 is not reasonable and necessary for the claimant's compensable RSD, since said condition had resolved on this date. The respondent is liable for all reasonable and necessary treatment incurred by the claimant for his compensable RSD. Said reasonable medical treatment includes, the treatment sought from Dr. Bruton and the chain of referrals until January 27, 2006.

As to the additional treatment for the claimant's compensable right hand and thumb injury of January 7, 2005, I find that the evidence clearly shows that the claimant required additional medical treatment as a result of his compensable right

hand and thumb injury, in light of the persistent nature of the claimant's symptoms, the residual abnormality right median nerve as defined by the nerve conduction study which was performed by Dr. Rutherford on October 15, 2005, and the December 6, 2005, nerve conduction study which revealed findings consistent with right carpal tunnel syndrome, a condition which the respondent has accepted as compensable. The respondent is liable for all additional reasonable and necessary treatment sustained to date and required in the future for the claimant's compensable right thumb and hand injury of January 7, 2005. Said reasonable medical treatment includes, the treatment sought from Dr. Bruton and the chain of referrals.

While I recognize the respondent contends that the treatment the claimant sought from Dr. Bruton was not authorized, hence he went "outside the change of physician rules" in seeking medical treatment from Dr. Bruton, and his chain of referrals. Based on the record before me, I find that the change of physician rules do not apply in this case.

Specifically, Ark. Code Ann. §11-9-514(c)(1)-(3) provides:

(1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified mail, return receipt requested, a copy of a notice, approved or prescribed by the commission, which explains the employee's rights and responsibilities concerning change of physician.

(2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.

(3) Any unauthorized medical expense incurred after

the employee has received a copy of the notice shall not be the responsibility of the employer.

In the instant case, there is no indication of record that the claimant was given a Form AR-N, Employee's Notice of Injury. There is no Form AR-N of record, there was no testimony on this issue, and the parties did not discuss at the hearing or in their post-trial briefs whether the claimant received notice of the change of physician rules. Without evidence of a Form AR-N being given to the claimant, the respondent cannot rely on any provision of the change of physician statute to controvert medical treatment. See, Sharp v. Lewis Ford, Inc., 78 Ark. App. 164, 78 S.W.3d 746 (2002).

C. Setoff

The respondent also contends that some of the medical bills in contention have been paid by Eaton's/respondent's group health plan, which is Empire, Blue Cross Blue Shield. If this be the case, I find that pursuant to Ark. Code Ann. §11-9-411, the respondent is entitled to a credit in an amount equal to, dollar-for-dollar, the amount of medical benefits previously paid by the employer's group health care plan, for the claimant's compensable hand and thumb injury.

D. Cervical Spine Injury and Depression

The claimant also contends that he sustained a compensable injury to his cervical spine, in addition to his admittedly compensable hand and injury, during his work incident of January 7, 2005. Ark. Code Ann. §11-9-102(4)(A)(i) defines "compensable

injury" as "[a]n accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is 'accidental' only if it is caused by a specific incident and is identifiable by time and place of occurrence." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "'in the course of employment' when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987). Under the statute, for an accidental injury to be compensable, the claimant must show that he sustained an accidental injury; that it caused internal or external physical injury to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. Id. Additionally, the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). Medical opinions addressing

compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. See, Ark. Code Ann. § 11-9-102(4)(E)(i) (Repl. 2002); Clardy v. Medi-Homes LTC Servs., 75 Ark. App. 156, 55 S.W.3d 791 (2001).

I find that the preponderance of the evidence demonstrates that the claimant did not sustain a compensable injury to his cervical on January 7, 2005, while working for the respondent. When the claimant reported his injury, he made absolutely no mention of any injury to his cervical area, as he reported having injured only his hand. Further, the claimant essentially admits that there is no medically documented complaint by him of any cervical problems until January (2006), one year following his injury. It would require conjecture and speculation to causally link the claimant's cervical problems (the C6-C7 bulge) to the January 7, 2005 incident. Conjecture and speculation cannot supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W. 2d 155 (1079). As a result, I find that the claimant failed to establish a causal connection between his accidental work injury on January 7, 2005, and his current cervical spine problems. I recognize that Dr. Bruton opined that the claimant's cervical

problems are related to his January 7, 2005, injury. However, the Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. Maverick Transp. v. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000). I do not place any weight on this opinion considering that the claimant did not initially report a neck injury, and because a year passed before he ever made a medically documented complaint of any neck problems.

The claimant also asserts that he suffers from depression as a result of his January 7, 2005 injury.

The claimant bears the burden of proving that he is entitled to benefits, and she must sustain that burden by a preponderance of the evidence. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). Causal connection is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. Osmose Wood Preserving v. Jones, 40 Ark. App. 190, 843 S.W.2d 875 (1992). The basic test is whether there is a causal connection between the two episodes. Air Compressor Equip. v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The determination of whether a causal connection exists is a question of fact for the Commission. Jeter v. B.R. McGinty Mechanical, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

I find that the medical evidence demonstrates that the claimant was being treated for depression well before January 7, 2005. Specifically, the claimant initially testified he was not on

any medication for depression when he went to work for the respondent. However, he later admitted to being on anti-depressant medication when he went to work for Eaton, and medical records clearly demonstrates that the claimant suffered from pre-existing depression and was being treated for the same at the time of his injury. According to the claimant, he suffered from depression due to the break up of his 23-year marriage, and because he loss his job of 30 years with Baxter Healthcare, a job from which he was earning substantial wages. Based on the record before me, I am constrained to find that the claimant suffered from pre-existing depression, a condition which the preponderance of the credible evidence does not show resulted due to his compensable right hand and thumb injury of January 7, 2005. In light of the foregoing, no weight is accorded Dr. Burton's opinion relating to the claimant's depression.

E. Average Weekly Wage

A.C.A. § 11-9-518 states:

(a) (1) Compensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of the accident, and in no case shall be computed on less than a full-time work week in the employment.

(2) Where the injured employee was working on a piece basis, the average weekly wage shall be determined by dividing the earnings of the employee by the number of hours required to earn the wages during the period, not to exceed fifty-two (52) weeks preceding the week in which the accident occurred, and by multiplying this hourly wage by the number of hours in a full-time work week in the employment.

(b) Overtime earnings are to be added to the regular weekly wages and shall be computed by dividing the overtime earnings by the number of weeks worked by the employee in the same employment under the contract of hire in force at the time of the accident, not to exceed a period of fifty-two (52) weeks preceding the accident.

(c) If, because of exceptional circumstances, the average weekly wage can not be fairly and justly determined by the above formulas, the Commission may determine the average weekly wage by a method that is just and fair to all parties concerned.

The parties agree that the wage records reflect the ending dates for the claimant's pay period. If that be the case, based on these records, it appears that on the date of the claimant's injury, using the pay period ending on January 9, 2005, the claimant's hourly rate of pay was \$13.58 (\$488.88 divided by 36 hours). The claimant specifically testified he was a full-time employee, and that a full work week for him was normally 36 hours. Based on the foregoing, I find that the claimant's regular weekly wage was \$488.88.

The claimant also had overtime earnings. Specifically, a review of the wage records demonstrates that the claimant had worked for the respondent 34 weeks prior to his injury. During this time period, (from May 16, 2005 until December 26, 2004), the claimant's overtime earnings totaled some \$1,536.09. These earnings divided by 34 weeks equals \$45.18 in overtime earnings. These earnings added to the claimant's regular wages (\$45.18 plus \$488.88) gives the claimant an average weekly wage of \$534.06, thereby giving him compensation rates of \$356.00 for temporary total disability and \$267.00 for permanent partial disability.

While I recognize that the claimant testified he earned team leader's pay, based on the evidence presented, I find it impossible to make a determination as to the value of this pay.

F. Constitutional Issues

The claimant filed a Motion to Recuse and a Brief in support of said motion on January 29, 2007. Therein, the claimant sought my recusal and challenged, *inter alia*, the constitutionality of the Workers' Compensation Act as it provides for administrative adjudication of workers' compensation claims. On January 31, 2007, I entered an Order denying the claimant's Motion to Recuse pursuant to Long v. Wal-Mart, Full Workers' Compensation Commission, Opinion filed January 25, 2006 (F309931); Edwards v. Galloway Sand & Gravel, Full Workers' Compensation Commission, Opinion filed October 11, 2005 (F109737); Plummer v. Wal-Mart, Full Workers' Compensation Commission, Opinion filed October 10, 2005 (F209057); Bland v. Baxter Regional Medical Center, Full Workers' Compensation Commission, Opinion filed August 16, 2005 (F204378). With respect to the balance of the motion pertaining to the constitutional challenges, I find that the Arkansas Court of Appeals has soundly rejected the same arguments in Long v. Wal-Mart Stores, Inc., ___ Ark. App. ___, ___ S.W.3d ___ (Ark. Ct. App. Feb. 21, 2007). Therefore, I find the claimant's constitutional challenges to be without merit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer-carrier relationship existed on January 7, 2005 and at all relevant times.
2. The claimant sustained a compensable injury to his right thumb on January 7, 2005.
3. The respondent has accepted a 10% permanent impairment rating to the claimant's right hand.
4. The questions and answers pertaining to the Eaton form, injury and illness report, are admissible.
5. The claimant suffered Reflex Sympathetic Disorder as a result of his compensable right hand and thumb injury of January 7, 2005.
6. The additional medical treatment sought by the claimant from Dr. Bruton and chain of referral is reasonable and necessary treatment for the claimant's compensable right hand and thumb injury and resulting RSD.
7. The claimant failed to prove that additional medical treatment for his RSD is reasonably necessary after January 27, 2006.
8. The respondent is also liable for all other reasonable and necessary treatment sustained to date and required in the future for the claimant's compensable right hand and thumb injury of January 7, 2005.
9. The change of physician rules do not apply, therefore, the treatment sought by the claimant from Dr. Bruton and his chain of referrals for his compensable hand and injury, and resulting RSD is authorized.
10. Pursuant to Ark. Code Ann. §11-9-411, the respondent is entitled to a credit in an amount equal to, dollar-for-dollar, the amount of medical benefits paid under this group health care plan for the claimant's compensable hand and thumb injury.
11. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a cervical injury as a result of his compensable January 7, 2005 hand injury.
12. The claimant has failed to prove by a preponderance of the credible evidence that his depression resulted from his compensable January 7, 2005 right hand injury.

13. The claimant's average weekly wage at the time of his injury was \$534.06, thereby giving him compensation rates of \$356.00 for temporary total disability, and \$267.00 for permanent partial disability.
14. The claimant's Motion to Recuse is denied, and his constitutional challenges are found to be without merit pursuant to Long v. Wal-Mart Stores, Inc., ___ Ark. App. ___, ___ S.W.3d ___ (Ark. Ct. App. Feb. 21, 2007).

AWARD

The respondents are directed to pay benefits in accordance with the Findings of Fact cited above. The respondent is entitled to a set-off pursuant to Ark. Code Ann. §11-9-411.

I am without authority to award the claimant's attorney an attorney's fee on the medical benefits awarded herein.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

ENTERED NUNC PRO TUNC May 15, 2007