

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F705738**

**CHARLES KOSTER, EMPLOYEE**

**CLAIMANT**

**CUSTOM PAK, SELF-INSURED EMPLOYER**

**RESPONDENT**

**TRISSEL, GRAHAM & TOOLE, INC, TPA**

**RESPONDENT**

**OPINION FILED MARCH 10, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on January 18, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE JIM R. BURTON, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits. On November 6, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Charles Koster, the claimant, Lynn Curtis, and Deborah Manns, coupled with medical reports, photographs, and other documents comprise the record in this claim.

## DISCUSSION

Charles Koster, the claimant, with a date of birth of November 15, 1965, commenced his employment with respondent on August 23, 2005. Claimant completed the 9<sup>th</sup> grade and obtained his GED in order to secure employment with respondent. The claimant worked a number of factory jobs prior to his employment by respondent.

The testimony of the claimant reflects that in 1995 he sustained a low back injury in an automobile accident. Claimant asserts that prior to June 6, 2006, he had never experienced an injury to either his left or right elbow/arm.

In describing his job duties in the employment of respondent and the onset of his arm pain attributable to same claimant's testimony reflects:

Yeah. You cut and pull flash. And you trim it after you pull it. And then you torch it, inspect it and stack it.

I don't remember the date but it was in the, the first time my arm started bothering me I was working on 68-B machine.

It's a blow molding tube. And you pull the flash off of both ends, trim it and then pull it. I don't know something had just started burning in my arm and my elbow. (T. 11).

The machine on which the claimant was working is a blow molding machine which extrudes plastic parts. The parts fall out of the machine onto a conveyor belt to the claimant's location at which time the claimant manually takes the flashing off the parts. In removing the flashing claimant explained "you cut and then you use your hand and pull it". (T. 12).

Claimant testified that at the time of the onset of his symptoms he was working on his left table when it comes off of 68-B. In describing the setup at work, claimant testified:

When it comes up your blow molding machine is right yonder.

Your part falls down. Tow parts fall. You've got two people working together. And it comes up the belt. You grab yours and put it here. The other person grabs theirs and takes care of theirs right over here (indicating). (T. 12).

Claimant's testimony reflects that the machine had a rate/quota of "68 seconds", in which parts came out and required him to deal with them. (T. 13). Claimant offered, with respect to the time period in which he handled parts from the machine:

Yes. It may have been a little more seconds than that. I'm not sure. They've got different seconds on different parts you run. (T. 14).

The testimony of the claimant reflects that on the morning of June 6, 2006, he was pulling a leaf blower tube when he noted pain in his left elbow. (JX. #1) Claimant testified that he notified his supervisor/coach, Theresa Oglesby, of his problem.

The testimony of the claimant reflects that in June 2006, when he reported his complaints/symptoms to his supervisor, Theresa Oglesby, documentation was generated:

Yes, there was paperwork. Yes there was a, every time you are hurt or anything it goes into a log into your files, into the computers at work. And then they also come out and take pictures of what you're doing and how you did it. (T. 21).

Claimant testified that after experiencing problems with his left elbow he began favoring it, and thereafter began to have problems with his right arm. Regarding the amount of time between the problems in both arms, claimant's testimony reflects:

I don't know. I favored - - I can't really say. I don't really remember but to keep, I like my job up yonder. I loved it. And, you know, I made Dedman's (phonetic) a promise when I started on I would give her 110%. And I busted my backside to get where I was at. And I don't know, I love my job. They're hard to find. And it wasn't too long, it was, I don't know. I don't even know how long it was after that but I would favor my left arm. (T. 16).

Claimant testified that he continued to work for a period of time, and, in doing so, attempted to avoid using his left arm.

Claimant received initial medical treatment relative to his left arm complaints under the care of respondent's designated medical provider, Dr. Michael Lack. The testimony of the claimant reflects that he was later referred to Dr. John F. Ball, a Jonesboro orthopedic surgeon, and thereafter to Dr. Randy Bindra.

Claimant worked until April 2007, and thereafter received short-term disability benefits through his employment with respondent from April 2007 until July 2007. Claimant's testimony reflects that his employment efforts since leaving the employment of respondent consisted of attempts to work at the Lord's Ranch in September or October 2007, however he was physically unable to do so. Claimant described the operation of the Lord's Ranch:

It is a childcare facility to where troubled kids go or out yonder.  
I tried pressure washing and I couldn't do it. (T. 17-18).

Regarding the duration of his efforts at the Lord's Ranch, claimant testified:

I worked out there about - - I worked when I felt like it, when I could, you know what I'm saying? If my arm would bother me, I wouldn't work. And I mean they told me to do it at my own pace. And I just couldn't so I let my daughter take over doing it. (T. 18).

Claimant estimates that the total amount of time he worked at the Lord's Ranch was about one month.

Claimant testified that both elbows are sore with a burning sensation and with numbness that comes and goes in his arms/hands. The testimony of the claimant reflects that in July 2007, he was seen by Dr. Bindra and underwent an MRI relative to his right arm. Claimant noted that while he was scheduled to return to Dr. Bindra for a follow-up visit in October 2007, he was not

financially able to do so. Claimant noted that the July 2007, visit to Dr. Bindra was the last medical attention/treatment he received. The testimony of the claimant reflects that since July 2007, when he needs his medication filled he would call either Dr. Ball or Dr. Troxel. Claimant testified the he continues to take medication in connection with his injuries, an anti-inflammatory and Hydrocodone.

The testimony of the claimant reflects that in February 2007, he became a floor person at work. Claimant characterized the afore as a type of promotion:

To me it was, you know. I mean I still get the same pay but, you know, you assume more responsibilities. And one week you'll drive a forklift taking care of getting your hardware, which consists of latches and handles and everything out to the floor to the other people on the machines. And one week you would be back on your machine. You'd work a week - -

Yeah, every other week, they would switch you back and forth.  
(T. 19-20).

In addition to driving the forklift, when assigned to the above job, claimant would relieve other workers for their 10 minute break and 20 minute lunch.

Regarding the symptoms in his right upper extremity, claimant noted that he had pain in his right elbow, numbness in his ring and middle fingers, and problems with his grip. Claimant testified that his right upper extremity pain would increase while undergoing physical therapy. While the claimant denied ever having any previous problems with his right elbow, he does not dispute the contents of April 1995, medical records reflecting similar right upper extremity complaints as he is presently experiencing. Claimant maintains that his failure to disclose the prior problems with his right upper extremity was due to the fact that he did not remember them.  
(T. 26).

During further cross-examination, claimant denied having any other right wrist injuries. When questioned regarding a August 29, 2000, visit to Randolph County Medical Center relative to a fall and resulting right wrist injury, claimant responded:

Yeah, that may be from when I hurt my back. Yeah, I might have. I had numbness in my leg. (T. 26).

Claimant acknowledged taking medicine for depression prior to June 2006. Claimant explained that the reason he was taking Soma and Percocet at the time of his June 2006 initial visit to Dr. Lack, respondent's designated medical provider, for his left elbow complaint was of his teeth. The testimony of the claimant reflects that he was prescribed some pain medication when he had a car wreck, however he was uncertain exactly how long ago it is been. Claimant had an automobile accident in 1995, and received medical treatment under the care of Dr. Tonymon and Dr. Hackbarth for chronic low back pain and radiating pain down the leg. Claimant's testimony reflects that he continues to occasionally have back pain.

Claimant continued to work in June 2006, having been assigned to light duty. Claimant maintains that at the time he went to see Dr. Lack there was swelling in his elbow. Following his treatment with Dr. Lack claimant was seen by Dr. Ball, a Jonesboro orthopedic surgeon. Claimant testified that he informed Dr. Ball that his work history consisted of construction work as well as factory work.

The testimony of the claimant reflects that his work at Land of Frost consisted of deboning chickens, which was repetitive-type work, however he never had any elbow problems performing it. Claimant also worked at Waterloo. Claimant explained that while the Waterloo Industries job was repetitive-type work, he did not perform the same job all the time. Claimant

also worked at Brown Shoes which entailed repetitive-type work. Claimant denies having any elbow problems with the job. Claimant testified that he did not remember what caused his left elbow problems in 1995. While the claimant testified that he had a prior workers' compensation claim for his back he has no recollection of a prior work-related claim regarding his elbow.

Regarding the repetitive nature of his job duties with respondent, claimant testified:

Well you may not run the same part over and over but you pull flash the same, all the time. I mean you've still got to pull your flash. (T. 33).

The testimony of the claimant reflects that while under the care and treatment of Dr. Ball in 2006, he was provided a steroid injection and placed on light duty. Claimant explained that after he started feeling better and was released to full duty by Dr. Ball he continued to favor his left arm. On July 11, 2006, claimant was released by Dr. Ball to return on an as needed basis.

Regarding the light duty that he was assigned pursuant to the directions of his treating physician relative to his left elbow complaint, claimant testified:

Doing hinge pins, putting hinge pins in Milwaukee boxes and stacking boxes or stacking them on the pallets, sweeping floors and cleaning out from underneath machines and stuff like that. (T. 35).

Claimant testified that he did not recall whether his right arm was bothering him in January 2007. However, claimant later testified that he would take Tylenol or if he needed to his prescription medicine when he would experience symptoms in his right arm. Claimant concedes, pursuant to documentation, that in January 2007, he was running the machines 13 days and doing the floor work [operating the forklift] seven days.

Claimant went to Dr. Troxel for his right elbow complaint. Claimant acknowledged that when a physical complaint is not work-related he would go on FMLA and get short-term

disability benefits. Further, claimant concedes that on a certificate of healthcare provider for complaints relative to his right elbow Dr. Troxel indicated that the same was not work-related. Claimant acknowledged that he indicated that the right elbow complaint was not work-related. The documentation of Dr. Ball reflects that the claimant's right elbow complaints started in March 12, 2007, in the form of soreness of arms and was not work related. (T. 38). Claimant acknowledged that he was not instructed by anyone in a supervisory position with respondent to file his right upper extremity complaint as a non-work-related injury for short-term disability purposes and to complete a FMLA claim.

Claimant asserts that while he informed Dr. Lack during the April 10, 2007, visit that he noticed the swelling and pain in his arms and elbow at home, it was after he had been working. (T. 40). The testimony in the record reflects that the claimant was off work on March 24, 2007, and that on March 25, 2007, he performed the floor person duties [operating forklift and relieving machine line workers during breaks and lunch]. On April 6, 2007, claimant was seen by Dr. Ball with complaints of mild tenderness and full range of motion in the elbow.

The claimant was later referred by Dr. Ball to Dr. Bindra. Claimant was seen by Dr. Bindra on June 11, 2007, at which time he asserts that both elbows were sore. Claimant confirmed that Dr. Bindra reviewed his June 11, 2007, findings with him, which included tenderness, however no swelling or redness on the right side. Claimant's testimony reflects that the bone scan ordered by Dr. Bindra showed an uptake in both elbows, shoulders, knees, ankles and the cervical spine. (T. 42). Claimant concedes that Dr. Bindra indicated that the etiology of his bilateral elbow pain was unknown.

The testimony of the claimant reflects that he physically pulled the flash of the Craftsmen

tool boxes, torch it up, put the logo on and stack them. With respect to the leaf blowers, claimant pulled off whatever flash and then put it on the machine, push the buttons, and the machine handles trimming it up and getting it ready. Regarding the similarity of the afore jobs to all of the other jobs at respondent, claimant testified:

No. All of them are different. You've got to pull flash. And you don't know how it's going to pull before you ever grab a hold of it, so if it pulls, if you've got something in your mold and it forms more flash, you're not going to pull that flash. (T. 44).

Claimant maintains that 90% of his job with respondent consisted of pulling flash.

Claimant is right hand dominate. Claimant testified that normally he pull the flash with his right hand. Claimant further testified:

Depending on what part I was pulling. If I happen to hold it down and it's not pulling real good sometimes you've got to reach over and pull with your left. (T. 45).

Claimant concedes that he woke up at home with symptoms in his right elbow, after work.

Claimant visited with Ms. Debbie Manns, who responsible for processing FMLA and workers' compensation claims, relative to his right upper extremity complaints. Claimant concedes that he was asked on a couple of occasions whether or not the afore complaint was work-related:

I said I am not sure. I said I woke up with it an dit was hurting at home. And Dr. Ball had pulled his charts and told me that it was the same thing that had happened before. (T. 46).

Claimant acknowledged that in 2006 Dr. Ball recommended that he try to find a different job rather than the one he had with respondent. Claimant's testimony reflects, regarding the afore:

Yes, sir. But I love my job at Custom Pak. I worked my backside off to get to where I was at. And a lot of the people that were on machines when I was on the floor complimented me on my job. They really liked the way I worked. (T. 46-47).

On re-direct examination, claimant testified that the medicine that he was taking for his dental problems prior to June 2006, was Percocet. Further, claimant explained that his 1995, motor vehicle accident was not the product of work activities. Finally, claimant's testimony reflects that his right elbow problem, for which he received physical therapy, was confined to the period April 5, 1995 through April 18, 1995. Claimant asserts that his nerves started bothering him during his employment with respondent, however he did not notify anyone about it.

The testimony of Ms. Lynn Curtis reflects that in November 2007 she worked as HR Coordinator for the Arkansas Division of respondent. Ms. Curtis now performs the job duty of HR Coordinator at the Iowa Division of respondent. Regarding the procedures for handling work-related and non-work-related problems at respondent, Ms. Curtis testified:

Work related from the get go we tell our people right up front if they have, when they are at work that if they find themselves where maybe machines aren't running right or the flash is pulling hard or whatever that they should notify somebody or if they're in distress of any kind to notify someone immediately. And at that point

--

Their coach, yes. That would be their immediate supervisor. And at that point they actually would do a safety analysis to kind of observe and look over what was going on to make sure, you know, maybe some machine adjustment, you know, whatever or to find out what happened there so that if there is an injury that the next person doesn't have to go through the same thing. So it's a process there.(T. 59).

Following the completion of an accident report the person is sent for a first-aid evaluation. The individual is removed from operating the machine responsible for the complaint and placed on light duty. The employee is seen by Dr. Michael Lack, respondent's designated medical provider. With respect to non-work-related complaints, Ms. Curtis testified:

Okay. For a non-work related a person, if they are going to be off more than one day would either bring in a doctor's note or if it was

going to be for three days or more they would come in and we would fill out FMLA papers and also short-term disability papers, they'd be eligible for at seven days. (T. 59-60).

Ms. Curtis testified that in June 2006, the claimant reported a left elbow problem as a work-related injury and it was handled in the usual fashion:

That was handled in the same fashion I just described to you, safety analysis done, sent for first-aid analysis. After going to Occupational Partners Dr. Lack felt that he needed to see a specialist so we sent him to a specialist. I'm not exactly sure what all happened but I do believe he got a shot and he was on light duty all through that period of time, you know, there were several testings done and, you know, different things like that. I don't know exactly what testing but . . . (T. 60).

The claimant was eventually released and came back to regular duty. Ms. Curtis inquired about the claimant's well-being following his treatment by Dr. Ball:

Yes, I did. Actually I make it a point, when someone comes back from, has been brought back to full duty I make it a point to actually stop and visit with them, talk to them when they come in or whatever, how you doing, how's things going, just to see how it's going, you know. And he on two different occasions told me he was feeling great, worked great, everything's fine and, you know, I didn't think anything more of it because he seemed to be fine. (T. 60-61).

Ms. Curtis testified that he next contact with the claimant regarding an elbow problem occurred in March 2007:

Oh, of 2007. And just out of the blue he came into the office and said that he needed FMLA papers and short-term disability papers. And at that time I asked him, you know, what's the problem. You know, usually when someone comes up and asks for FMLA papers they will discuss it with you and what have you but he did not want to really talk about it. He just kind of hesitated, you know, this and that and he said, well it's nothing it's just that - - I just need some FMLA papers. So sensing that he didn't want to talk about it we just filled out the FMLA papers. I told him his options on short-term disability. He took those papers and away he went. But he never really, he didn't want to talk about it. He didn't explain it to me. (T. 61).

Ms. Curtis noted that the claimant did return the FMLA and short-term disability paperwork from his primary care physician, Dr. Troxel. The documents reflected that the claimant wanted FMLA commencing March 27, 2007, for a non-work-related illness. Regarding her subsequent contact with the claimant, Ms. Curtis' testimony reflects:

I did speak to him at different times because I was trying to get insurance for him and things like that, you know trying to get those things resolved.

Oh absolutely. Well insurance premiums have to be paid while they're off on FMLA, I explained that to him. The first few payments were late but I finally did get that payment but it was a struggle. Every time I'd call him he'd say I'll come in Friday and he wouldn't show up. And then I would call his house and his wife would say he wasn't home, that he would call me. He never called me back. It was very difficult to try to communicate with him. (T. 62-63).

Ms. Curtis provided testimony regarding a document that the claimant furnished from Dr.

Ball:

This page was when Charles' FMLA was completely done. He had been off for his full 12 weeks. And he called and asked and said that he needed more time. And so I told him that he could have his doctor request more time that Custom Pak would give him an additional six weeks if he needed it. He had used a couple days of medical leave prior to that so it was a little less than six weeks that he had left. But all he had to do was have his doctor request medical leave extension which Dr. Ball did, his specialist. And again, he noted on here too at 12 weeks that this was not a work-related - - (T. 63).

Ms. Curtis noted that while respondent did grant the requested medical leave extension the claimant's employment was ultimately terminated:

It got to the end of the extended period and again - - there were two things that happened. There are two because during that period I still struggled and struggled and struggled to get him to communicate with me about his insurance premiums. So unfortunately after not hearing from him for a month on his premiums, we had to let that go. So he lost his

insurance. And then right after that, right about the same time because he had used up all his medical. He had used all his FMLA and all his medical. We had to send a letter saying that it would have to be a voluntary quit because he still was unable to come back. He couldn't bring me anything related from his doctor saying he could come back. (T. 63-64).

The testimony of Ms. Curtis reflects that respondent has in place a program for the employees relative to exercise and rotation of work stations:

Okay. Because this job could be repetitive in nature Custom Pak goes to great lengths to do what they can to reduce some repetitiveness and also in some cases eliminated. And I will explain a little bit of that. First of all when a person come in in the morning we do a series of exercises. Then we also do another series of exercises after their lunch break.

The purpose of those are two fold really. Obviously we are trying to build them up a little bit, you know, because the morning exercises are actually resistance, they are stretching exercises and resistance training. And then the afternoon exercises are stretching again. And mainly the whole thing is get those muscles working and make sure that they are ready for the job before they just run out there and start working. The other thing again that we do is training. Right from day one from orientation and all through the year through any of their training they are told that if there's any kind of deal with their machine, it's not running right, the flash isn't pulling right or you're in any kind of distress, I don't care if it's from a personal illness or a work-related illness, let somebody know immediately. I mean that's really stressed out there that they are to notify us. Okay. And then we can address that issue immediately too, you know, and that's the whole purpose of that. And another thing that we do is rotation. We don't want people to do the same thing every night. We just don't want them doing that so we kind of rotate them through the jobs. Each team has like 10 machines but even in the wintertime there's even less than that but we still rotate them through it because we don't want them doing the same thing all the time. And even if a machine, let's say that one type job is harder than another or maybe we've got a new job that came in that we're not really sure about the timing or anything. Well we may have a person we wouldn't put them on there for eight hours, we'd put them on there for four. And we just tried to do everything humanly possible - - and another thin the we do is fixtures, okay? (T. 64-65).

Ms. Curtis elaborated with respect to fixtures:

What that is is years ago when we first started in this business everything had to be hand trimmed. I mean every piece had to be hand trimmed and very labor intensive. Well through the years and on a daily basis we try to do things to make them better. Like right now there is a little bit of trimming but most of it is done with the torch. Just move that part and it torch trims the edge.

Oh gosh, they don't have to use their hands. I mean they can just hold that torch and move that part and that takes the stress off the hand to have to be trimming that. Another instance is handles. Years ago you had to put those handles on all individually. Stress on the wrist and the elbow. Now that person puts that part in a fixture, presses two buttons and it puts the handle on for them. That's what fixtures do is they help them complete the job and make the job easier for the person. (T. 66).

Regarding any connection between the claimant's March 2007 upper extremity complaints to his work, Ms. Curtis testified:

Yes. And he came in and at any rate said that the he thought his doctor said that this could have been the same thing as 2006. But that's the only thing we ever heard, you know. And so there really wasn't, you know, when she talked to me about that the first thing we did when eh mentioned that then was to send him again, that was the first thing we heard about it, to send him for first-aid evaluation. (T. 68).

The claimant was sent to Dr. Lack.

During cross-examination Ms. Curtis acknowledged that in April 2007 she became aware that the claimant had an orthopedic appointment. Ms. Curtis testified that she never did see the results of the orthopedic evaluation of the claimant.

While Ms. Curtis testified that she was unable to identify the specific job that the claimant was placed on in June 2006, following his complaint relative to his left elbow, she can confirm that "it would be very light duty work". (T. 70). Among the task the claimant would have been assigned while on light duty would have been sweeping and some housekeeping

duties.

Deborah Manns is presently employed by respondent as the HR Coordinator, and has been so employed since November 2007. Prior to November 2007, Ms. Manns was the manufacturing facilitator for respondent. In explaining the duties of the manufacturing facilitator Ms. Manns testified:

I'm kind of over the supervisors making sure that they do their jobs that they are supposed to be doing. (T. 72).

The testimony of Ms. Manns is corroborative of that of Ms. Curtis regarding the manner in which respondent handles work-related and non-work-related medical problems involving its employees. Ms. Manns testified that in April 2007, she had a conversation with the claimant regarding his right elbow complaint. Ms. Manns' testimony reflects, regarding the afore:

The first time that he has called up there and wanted me to make sure I got his paycheck to his coach that he would be up there to pick it up. And I knew he had been off a couple of days and I asked him if it was work related and he said, no, I just woke up, my elbows were hurting me. I don't know what I've done but it's not work related. I asked him again before we hung up if it was work related or not and he stated no. (T. 73).

Had the claimant indicated that his elbow complaints were work-related, Ms. Manns testified, he would have sent to respondent's designated medical provider, Dr. Lack.

During cross-examination, Ms. Manns acknowledged that she was aware that the claimant had been going to the doctor in 2006. Ms. Manns testified that the reason she asked the claimant during the April 2007 conversation if his complaints were work-related was because the claimant had not reported anything.

A chronology of the pertinent medical in the record reflects that while the claimant received medical treatment relative to complaints of right elbow and wrist pain from April 5,

1995 until April 18, 1995, he did not again receive treatment for the right upper extremity until 2000. (RX. #1, p. 3-7). On or about August 29, 2000, the claimant injured his right wrist while attempting to catch himself during a fall. The right wrist complaint was ultimately diagnosed as a sprain. (RX. #1, p. 8-11).

There is no medical evidence in the record to reflect that the claimant sought or received treatment relative to his upper extremities between August 29, 2000, and June 2006. Claimant commenced his employment with respondent on August 23, 2005.

It is undisputed that the claimant reported complaints relative to his left elbow attributable to his employment activities to appropriate supervisory personnel of respondent. As a consequence of the afore, and in accordance with the policy of respondent, the claimant was seen by Dr. Michael Lack, respondent's designated medical provider on June 6, 2006. A June 6, 2006, chart note of Dr. Lack relative to the claimant reflects an onset of the claimant's left elbow pain on June 4, 2006, at 11:00 p.m. The June 6, 2006, chart note further reflects:

**Injury:** Left elbow pain, started out being very sore and later that night pain began pain level=8, pt pain is a burning sensation.

**Explanation of injury in patient's own words:**

Pt stated pulling flash on tubs when left elbow becomes sore.

**ASSESSMENT/PLANS:**

DOCTOR'S REPORT: Pt hs worked for Custom Pack for 10 months. He thinks he injured his left elbow on 6-5-06. Pt was pulling flash when his elbow started burning. He has no bruising. There is no swelling although he states he had a knot there last night. Pain located over the lateral epicondyle and radiates around the arm. Pt has no numbness or tingling. Pt has taken no medication. He has used a muscle rub.

Pt has been in good health previously, takes xanax, zolof, soma and percocet and has no allergies.

Generalized tenderness. There is no swelling or swelling. Forced extension of the wrist [sic] causes pain in the lateral epicondyle and forced flexion causes pain in the medial epicondyle. (RX. #1, p. 21).

The June 6, 2006, chart note of Dr. Lack reflects that the claimant's left elbow pain was work-related. Claimant was treated with a tennis elbow splint and ibuprofen and returned to work.

During a June 26, 2006, visit Dr. Lack recommended an orthopedic referral of the claimant to Dr. John Ball. (RX #1, p.32-33).

On June 28, 2006, the claimant was evaluated by Dr. John Ball, a Jonesboro orthopedic physician, pursuant to the above recommendation of Dr. Lack. The June 28, 2006, office note of Dr. Ball reflects, in pertinent part:

40 yom seen in consultation for Dr. Michael Lack with CC involving L lateral elbow pain. This began on June 6<sup>th</sup> while "pulling flash." Reports he reported this to his supervisor. He saw Dr. Lack and was placed on a course of PT. Describes having pigment of the skin over the area and has also developed medial epicondyle pain. Reports that his hand goes numb and tingles about 3 x a day and may last for 30-45 minutes or so. He tried a tennis elbow brace on both arms and that seemed to make his R arm hurt worse but the workplace required that he continue to wear it because it was listed as one of his restrictions for work. Does feel the brace helps the L elbow somewhat. Over all, the symptoms have been staying about the same. He's been on restricted duty.

\* \* \*

PHYSICAL EXAM: Pt has tenderness over the lateral and medial epicondyles of the L elbow. This is worsened with gripping and resisted wrist motion.

IMPRESSION: Medial and lateral epicondylitis, L elbow.

Dr. Ball reviewed the findings with the patient. The XRS that were sent along with the pt, 3 views, of the elbow are normal. Reviewed with the pt that this problem can be hard to get over, especially in someone who continues to do repetitive gripping. Beyond what has

been done, we offered to inject the elbow but he needs to try to rest his arms as much as eh can. This could develop into a condition where he might possibly need surgery.

OFFICE PROCEDURE: Following betadine prep, the L lateral epicondyle was injected with a combination of Marcaine and 60mg of Triamcinolone and tolerated well.

He's given a note that he does not need to wear the brace on the R elbow. He should continue light duty. Recheck in 2 wks. (RX. #1, p. 34-35).

The medical in the record reflects that the claimant was again seen by Dr. Ball on July 11, 2006.

After reciting the history of the claimant's injury and medical treatment received relative to same, the July 11, 2006, office note of Dr. Ball reflects, in pertinent part:

Today, Mr. Koster says that he has improvement on the lateral side, still having symptoms on the medial side. He also reports that there seems to be some issue with his attendance at therapy and he says that Dr. Lack withdrew him from therapy when it didn't seem to be helping and he wanted that documented.

PHYSICAL EXAM: On examination, he has full ROM. He has much less tenderness over the lateral epicondyle. He still has some tenderness directly over the medial epicondyle. I discussed the possibility of an injection in the medial epicondyle but he said he would prefer to defer that for the present. He would like to try to go back to his regular duty and he was released to do that assuming he doesn't have significant recurrence of symptoms as he adds more stress to the elbow.

PLAN: Routine recheck should be done in about 6 wks. (RX. #1, p. 37).

The HR Coordinator, Lynn Curtis, was notified on July 11, 2006, that the claimant was released to full duty by Dr. Ball. (RX. #1, p. 36).

On August 16, 2006, the claimant sought and obtained treatment under the care of Dr. Roger Troxel for complaints of right elbow pain. (RX. #1, p. 38). The claimant was seen by Dr. Troxel on November 30, 2006, cor complaints of left arm pain. (RX. #1, p. 40). On February 20,

2007, claimant was seen by Dr. Troxel for bilateral elbow pain. (RX. #1, p. 41). During a March 28, 2007, visit Dr. Troxel referred the claimant to Dr. John Ball. (RX. #1, p. 42). Dr. Troxel authored an off work slip directing the claimant to remain off work from March 27, 2007, until further testing. (RX. #1, p. 43). On April 3, 2007, Dr. Troxel completed a Certification of Health Care Provider on behalf of the claimant in connection with the claimant FMLA filing. The document reflects that the condition, elbow pain and orthopedic follow-up, was not related to the claimant's work. (RX. #1, p. 44).

On April 6, 2007, the claimant was again seen by Dr. John Ball. The chart note of the April 6, 2007, visit reflects, in pertinent part:

Mr. Kostner comes in today with complaints involving the L forearm and elbow. Actually, both elbows bother him. He tends to lose the grip in his L hand. He has some previous problems with the upper extremities and seemed to have gotten better but when he had an exacerbation, he states he couldn't afford to lose his job and had to return to work. He feels that he's now in a better position with his benefits to get this looked into. Reviewed his work activities and he's in his job descriptions. When he does a particular activity which he calls "pulling flash," he describes repetitive stress to his arms. He notes that even when it is easy type work, it is hard on his arms. He's been off since March 27<sup>th</sup> related to his arm pain and swelling. He states he's attached some sort of hook above his pillow on the wall or head board where he will tend to place his hand at night and that seems to cause the hand and arm to feel better when it is elevated. Some symptoms in the R side but the L is much worse.

PHYSICAL EXAM: Medial epicondyle has some mild tenderness. Lateral epicondyle is tender. Full ROM of the elbow.

We discussed his work history and he's been at the current job for about a year and a half. Symptoms seemed to start after he'd been working there for about 6 months. No prior symptoms before that. His previous work was construction work.

There appears to be 2 aspects of his problem. One is a chronic tendinitis

which develops attritional tears. This sort of problem can be treated. The numbness he describes however, is of concern and we've recommended a NCV testing to evaluate that further. The other aspect of the problem is in the work place which involves repetitive stress to his arms and cumulative trauma syndrome. Unfortunately, the human body upper extremities are not designed to do repetitive stress over long course of time. He reports that there are 13 machines in his department and they switch out every day. They are also doing some exercises at work twice daily.

Dr. Ball discussed that he's not really saying that his employer is not progressive in what they're trying to do but they are still left with the fact that he's having upper extremity cumulative trauma. Dr. Ball reviewed the various levels of cumulative trauma and this can reach a point where the arms are chronically sore and symptoms don't resolve even when they're not doing the activity that's causing it. Would be happy to evaluate and treat this further but we may be faced with the fact that no matter what we do, some of his symptoms would be continuing. He reports that he really worked hard to get to the position that he's in.

Have recommended NCV testing of his upper extremities and return visit after that. He states that Dr. Troxel has prescribed some Mobic and Hydrocodone for him and also gave him a steroid pack. The steroids didn't seem to help much. The pain has not been as bad since he's been off work. Dr. Troxel had him off work until he was seen here. (RX. #1, p. 45-46).

On April 10, 2007, the claimant was seen by Dr. Michael Lack, respondent's designated medical provider, for complaints of bilateral arms, elbows and wrists pain. The chart note relative to the claimant's visit reflects, in pertinent part:

**Explanation of injury in patient's own words:**

Pt stated swelling, severe soreness, fever in elbows, numbness travels to fingers and wrist swells, notice at home and seen family PCP Dr. Troxel, was sent to Dr. Ball.

**ASSESSMENT/PLANS:**

DOCTOR'S REPORT: Pt has worked for Custom Pack for almost two years. He has had problems with his elbow in the past. He had lateral epicondylitis of the right elbow and has seen Dr. Ball who injected his arm. He states that the injection did not make any difference. He was complaining of numbness in the right elbow at the time. Now he is

having pain in the left arm as well as numbness in a ulnar distribution. He saw Dr. Troxel and was referred to Dr. Ball who has him scheduled for a NCV with Dr. South. Pt has had swelling and his arm has been hot.

**Assessment:**

LATERAL EPICONDYLITIS, BILATERAL (ICD-726.32).

**Problem work related?** Undetermined

**Treatment:** Get medical records Dr. Troxel and Dr. Ball  
cont present meds.

**CASE/WORK STATUS:** Remain off work.  
(RX. #1, p. 47-48).

The April 10, 2007, chart note of Dr. Lack reflects that the claimant was directed to remain off work in accordance with the instruction of his primary care physician (Dr. Troxel). (RX. #1, p. 49).

On April 16, 2007, the claimant underwent a Nerve Conduction Study pursuant to the directions of Dr. Ball. The April 16, 2007, report reflects, in pertinent part:

**IMPRESSION:** Slightly abnormal studies.

**CONCLUSION:**

1. The nerve conduction studies revealed evidence consistent with slight entrapment of the median nerve at the wrist bilaterally. The findings are compatible with the diagnosis of slight bilateral carpal tunnel syndrome.
2. The ulnar and radial studies were unremarkable. However, given the patient's history of elbow pain, I think it would be wise to go ahead and check segmental studies involving the ulnar nerve despite the normal routine ulnar studies. My office will contact the patient to make these arrangement. A subsequent report outlining those results is to follow.  
(RX. #1, p. 50).

On April 23, 2007, claimant underwent Motor Nerve Conduction testing under the direction of Dr. South. The report reflects that the nerve conduction studies of the ulnar nerve bilaterally did

not reveal any evidence of an entrapment neuropathy or of a peripheral neuropathy. (RX. #1, p. 52-53).

The claimant was again seen by Dr. Ball on April 25, 2007, for “his cumulative trauma and tendinitis of his hands”. After noting the results of the NCV testing, the April 25, 2007, office note reflects, in pertinent part:

He feels he’s doing a bit better recently since he’s been off. Options at this point in time would be to continue to rest the upper extremities by being off and add in some anti-inflammatories to hopefully, let his body heal this up. Another option would be an injection which might improve him more quickly. The other option would be therapy which could treat this with iontophoresis. Surgery can also be done to detach the muscle and clean out the granulation tissue and reattach it. This would take a fairly prolonged course of casting. There are some reservations since surgery is most effective when the problem is well localized but he’s had some symptoms farther down his forearm.

Reports he has a short term disability started and he wants to get this “fixed.” Dr. Ball discussed with him that we can’t promise to resolve his problem with any one particular treatment. Still having some numbness in the long and ring finger, poor grip. Seems to be more of a pattern of generalized inflammation than a localized problem. Again, the concern would be if surgery were done it would not solve all of the problem. He wants to try to avoid injection treatment. He will be started on a burst and taper course of Prednisone and we’ll plan on getting the remainder of the neurology report in a day or so and discussed that the pt. . . . (RX. #1, p. 54).

On or about June 11, 2007, the claimant was evaluated by Dr. Randy R. Bindra, at UAMS Orthopedic Surgery Clinic, pursuant to a referral of Dr. Ball for a diagnosis of cumulative trauma epicondylitis. (RX. #1, p. 56-70). The June 11, 2007, Outpatient Note generated as a result of the claimant’s evaluation by Dr. Bindra reflects, in pertinent part:

This gentleman appears to have bilateral upper extremity pain which has been present since June 2006 when it was first reported. At that time, he was about 8 months into his job working as a packer. He complains of

bilateral elbow pain, first started off more on the left, now appears to be on the right.

According to him, you have given him 3 steroids injections on the left, 1 on the right. None of them have given him any relief whatsoever.

**CLINICAL EXAM;**

I failed to find any objective findings apart from tenderness. He did not have any swelling, no redness, and on the right side he was tender proximal to the lateral epicondyle and the common extensor origin. On the right, he was tender at the common extensor origin. Medially, he was tender anterior to the medial epicondyle on the right elbow, and over the medial epicondyle on the left. He complained of a positive Tinel sign on the right elbow. We did not have ny signs of carpal tunnel syndrome.

I reviewed his nerve conduction studies and, in view of the lack of clinical findings, I do not think his problem is one of nerve compression. Unfortunately, his symptoms are not localized enough for lateral epicondylitis. With the lack of response to injection, I do not think surgery will provide him any benefit.

I have arranged for him to have a bone scan to see if there is any increased uptake in the elbows, and I have also asked him to bring his x-rays of the elbows with him at the next visit so that I can review them. (RX #1, p. 65-66).

On July 9, 2007, the claimant underwent a whole body bone scan. The radiology results of the bone scan disclosed mild diffuse uptake related to both elbows and degenerative changes present in the shoulders, knees, ankles, and cervical. (RX. #1, p. 71). The findings, as reflected on the July 9, 2007 whole body bone scan of the claimant, reflect, in pertinent part:

There is mild diffuse uptake related to both elbows. The uptake is equal and not more intense in any of the other joints, suggestive of a chronic rather than acute process.

\* \* \*

**IMPRESSION:**

DEGENERATIVE CHANGES NOTED IN THE ELBOWS BILATERALLY, ALSO DEGENERATIVE CHANGES NOTED OTHER JOINTS AS DESCRIBED ABOVE. (RX. #1, p. 72).

The claimant was seen in follow-up by Dr. Bindra on July 16, 2007. The outpatient note of the afore visit reflects, in pertinent part:

I arranged a whole body bone scan and brought him back with the reports today. I reviewed the films myself. These were done on 7/9/07. I did not find any significant increased uptake at the elbows on either side. They reported degenerative changes in the elbows bilaterally and in the other joints as described above.

I reviewed the x-rays this gentleman brought with him of his elbows, and these x-rays are completely normal. No signs of degenerative arthritis.

**IMPRESSION/PLAN:**

Bilateral elbow pain; unknown etiology.

I examined this gentleman's neck, and he appears to have some restriction of terminal motion. No radicular pain. I obtained cervical spine radiographs. They do show some reduced joint space in the lower levels of the cervical spine but no osteophytes or significant degenerative changes to suggest any pathology there that may explain the elbow pain. I have, hence, arranged for him to have an MRI study on his right elbow, and I will see him with the results of that. . . . I will see him once he has had his MRI scan. I have explained to this gentleman if the MRI scan fails to show any significant pathology or any surgical correctable pathology then he may need to be put on a chronic pain management program, and I will not be able to help him. (RX. #1, p. 74-75).

The claimant underwent the recommended right elbow MRI scan in Jonesboro on July 19, 2007. The radiologist report relative to the afore study reflects, in pertinent part:

**CONCLUSION:** There are subtle MRI findings suggestive of lateral epicondylitis.

\* \* \*

**ADDENDUM:**

On further review, it looks like there is partial detachment of the common extension tendon from the lateral epicondyle. There is also abnormal signal and appears to be detachment of the radial collateral ligament as well. (RX. #1, p. 79-80).

Consistent with the testimony of Ms. Curtis and Ms. Manns, the record contains an Accident Investigation Report which was completed on June 14, 2006, and signed by the claimant and his immediate supervisor, regarding the reporting of his June 6, 2006, left elbow complaint. (RX. #2, p. 1). The record also reflects the presence of a document entitled “Ergonomics” with directions to employees in the workplace. Noteworthy is the direction to report all injuries and the explanation for same. (RX. #2, p. 2).

The documents completed by the claimant in accordance with his request for FMLA benefits relative to his March 2007, upper extremity complaints do not attribute the complaints to the claimant’s work activities. (RX. #2, p. 3-4). A disability claim form completed by Dr. John Ball on April 6, 2007, in furtherance of the claimant’s FMLA benefits reflects the onset of the claimant’s symptoms as March 12,2007, and that they were similar to symptoms experienced by the claimant in June 2006. (RX. #2, p. 5-6).

On April 16, 2007, the claimant completed a Form AR-N, reflecting an injury to his arms which he describes as “soreness pain both arms”. (RX. #2, p. 10). The claimant’s time off work beginning in March 2007, was applied toward his FMLA benefit. (RX. #2, p. 9, 11).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

#### **FINDINGS**

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On June 6, 2006, the relationship of employee-employer existed between the parties.

3. On June 6, 2006, the claimant earned an average weekly wage of \$493.00, which generates weekly compensation benefits of \$329.00/\$247.00, for temporary total/permanent partial disability.

4. The claimant has sustained his burden of proof by a preponderance that on or about June 6, 2006, he sustained an injury to his left elbow arising out of and in the course of his employment which caused internal or external physical harm and required medical services by medical evidence supported by objective findings.

5. The claimant's right upper extremity complaints, which required medical treatment and resulted in periods of temporary total disability, is a compensable consequence of the June 6, 2006, compensable injury.

6. The claimant was temporarily totally disabled for the period commencing March 27, 2007, and continuing through the end of his healing period, a date to be determined. Claimant failed to notify respondent of the compensable consequence right upper extremity complaint until on or about April 7, 2007.

7. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's June 6, 2006, left upper extremity injury and compensable consequence right upper extremity injury.

8. The respondent has controverted the payment of benefits in this claim subsequent to April 7, 2007.

### **CONCLUSIONS**

The claimant asserts that he sustained injuries to his upper extremities within the course and scope of his employment with required medical treatment and rendered him temporarily

totally disabled for a period of time. Although respondent paid medical benefits on behalf of the claimant, at least through July 14, 2006, it now denies that the claimant sustained a compensable injury.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. In order to be entitled to workers' compensation benefits for a specific incident injury claimant has the burden of proving by a preponderance of the evidence that he suffered an accidental injury, identifiable by time and place, that arose out of and in the course of his employment, caused internal or external physical harm to his body and required medical services by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102 (4)(A)(i). *Kimbrell v. Arkansas Department of Health*, 66 Ark. App. 245, 989 S.W.2d 570 (1999).

Claimant asserts a specific incident injury to his left elbow on June 6, 2006. Contrary to the assertion of respondent, the evidence preponderates that the claimant reported the June 2006, injury to his immediate supervisor, Theresa Oglesby, and that the established protocol of respondent was followed, to include the completion of an Accident Investigation Report and the referral of the claimant to respondent's designated medial provider- Dr. Michael Lack.

At the time of the initial visit to Dr. Lack on June 6, 2006, claimant provided a history of his left elbow consistent with the information contained in the Accident Investigation Report. There is not a dispute regarding the claimant's job duties during the pertinent time period. The claimant was pulling on flash on tubes at the onset of his initial symptoms of burning and later soreness. Medical treatment rendered to the claimant by Dr. Lack consisted of ibuprofen and a

tennis elbow splint and release to limited job duties. At the time of his June 13, 2006, follow-up visit with Dr. Lack, the chart note of the visit reflects the presence of swelling in the claimant left hand and point tenderness over the medial and lateral epicondyle. Following several follow-up visits, on June 26, 2006, Dr. Lack referred the claimant to an orthopedist, Dr. John Ball.

Claimant continued on restricted duties and wearing the brace while under the care of Dr. Lack.

The claimant was seen by Dr. Ball, a Jonesboro orthopedic physician, on June 28, 2006, pursuant to the above referral of Dr. Lack relative to his left elbow complaint. A review of the medical records generated in connection with the claimant's medical treatment subsequent to June 6, 2006, reflects that the claimant was also provided a tennis elbow brace for his right arm. Further, the claimant was required to wear the tennis elbow brace on both arms as the same was one of his restrictions. It is noteworthy that the claimant complained that while the wearing of the brace on the left elbow help somewhat, the one on the right arm made "his right arm hurt worse". Dr. Ball assessed the claimant's complaint as medial and lateral epicondylitis of the left elbow, for which he received treatment in the form of a steroid injection. Dr. Ball also provided the claimant with written authorization not to wear the tennis elbow brace on the right elbow.

It is clear that the claimant requested the full duty release of Dr. Ball during the July 11, 2006, visit. The respondent treated the claimant's June 6, 2006, left elbow injury as a medical only claim, providing limited duty work for the claimant and paying the cost of the claimant's medical treatment associated with the injury.

During the July 11, 2006, visit to Dr. Ball, the physical examination of the claimant's left elbow disclosed that he was much less tender over the lateral epicondyle, however he still had some tenderness "directly over the medial epicondyle". Further treatment was offered to the

claimant in the form of an injection in the medial epicondyle, however the claimant deferred for the time. The July 11, 2006, office note of Dr. Ball concluded, “he would like to try to go back to his regular duty and was released to do that assuming he doesn’t have significant recurrence of symptoms as he adds more stress to the elbow”. (RX. #1, p. 37). The July 11, 2006, office note of Dr. Ball also reflects “routine recheck should be done in about 6 weeks”. (RX. #1, p. 37). The office note reflects that a copy was provided to the workers’ compensation carrier.

The evidence preponderates that respondent, a self-insured employer, has in place a progressive ergonomic work environment. Proper implementation of and realization of maximum benefits from the afore program is dependant upon prompt and accurate reporting by its employees. As noted above, at the time of the July 11, 2006, release to regular duty a routine recheck of the claimant was recommended within six (6) weeks by Dr. Ball. The claimant was not again seen by Dr. Ball until April 6, 2007, and then pursuant to a referral of Dr. Roger Troxel, the claimant’s primary care physician.

Claimant does not provide or offer an explanation of the failure to follow-up with Dr. Ball for the routine recheck in six (6) weeks as recommended in the July 11, 2006, office note. The claimant sought and obtained medical treatment relative to his right elbow complaints on August 16, 2006, under the care of Dr. Roger Troxel. On November 30, 2006, claimant was seen by Dr. Troxel for left arm pain, and on February 20, 2007, for bilateral elbow pain. Finally, during a March 28, 2007, visit, Dr. Troxel referred the claimant to Dr. Ball.

The evidence preponderates that respondent was unaware that the claimant’s medical treatment under the care of Dr. Troxel was related to any work-related injury. Claimant continued to discharge his regular employment duties, and had do so since his July 11, 2006,

release by Dr. Ball. The claimant was fully aware of the nexus of his continued symptoms to his employment activities. In this regard, the evidence reflects that when the claimant was last seen by Dr. Ball on July 11, 2006, he continued to have symptoms over the medial epicondyle for which he was offered and declined an injection. Dr. Ball's July 11, 2006, released the claimant to his regular job duties "assuming he doesn't have significant recurrence of symptom as he adds more stress to the elbow". Finally, there is the question of the routine recheck which should have been done in six (6) weeks of the July 11, 2006, release. The claimant noted complaints of pain in his right elbow with the wearing of the tennis elbow brace, which was required as a part of his restricted duty, at the time of his June 28, 2006, initial visit with Dr. Ball.

Although the claimant received medical treatment under the care of and at the directions of Dr. Troxel beginning August 16, 2006, for his upper extremity complaints, which culminated in the April 2007, referral to Dr. Ball, he continued performing his regular job duties until March 27, 2007. Respondent is not liable for the cost of the claimant's treatment under the care of Dr. Troxel, since notice of same was not provided by the claimant.

On March 28, 2007, claimant filed for FMLA and short term disability benefits effective March 27, 2007. The evidence preponderates that the claimant was directed to remain off work by his treating physicians, Dr. Troxel and Dr. Ball, for the period beginning March 27, 2007, and continuing through the date of the hearing in this claim, and was within his healing period relative to his bilateral upper extremity complaints.

Respondent was notified of the claimant's claim for workers' compensation benefits on or about April 7, 2007, following the claimant's April 6, 2007, visit with Dr. Ball. Following the afore, the claimant was again referred to respondent's designated medical provider, Dr. Lack, by

respondent in accordance with its protocol. On April 10, 2007, claimant was seen by Dr. Lack who noted the treatment measures already undertaken by Dr. Troxel and Dr. Ball as well as a scheduled NCV with Dr. South. Finally, Dr. Lack noted that the claimant was directed to remain off work "per personal physicians' directive 4/6/07".

The claimant was referred by Dr. Ball to Dr. Randy Bindra at UAMS. Subsequent diagnostic studies disclosed the presence of objective findings. Specifically, a July 19, 2007, MRI of the right elbow disclosed the presence of a partial detachment of the common extensor tendon from the lateral epicondyle as well as detachment of the radial collateral ligament. The April 6, 2007, office note of Dr. Ball sufficiently addresses the nexus of the claimant's injury/symptoms to his employment.

By either measure, a specific incident injury or gradual onset, the claimant has sustained his burden of proof by a preponderance of the evidence the compensability of his bilateral upper extremity injury. Claimant identified the burning sensation in his left elbow with the pulling of flash within the course and scope of his employment on or about June 6, 2006. The injury was reported to appropriate supervisory personnel of respondent. On June 14, 2006, the claimant also completed a Form AR-N in conjunction with the reporting. (RX. #2, p. 13). Claimant was referred to respondent's designated medical provider, Dr. Lack, and ultimately came under the care of Dr. Ball, an orthopedic physician, who released the claimant to return to regular duty work on July 11, 2006, "assuming" that he did not have "significant recurrence of symptom as he adds more stress to the elbow".

The claimant's right elbow complaints which resulted in the August 16, 2006, visit to Dr. Troxel, his primary care physician, is evidence of the recurrent symptoms of which Dr. Ball

cautioned. When an employee sustains a compensable injury, then every natural consequence of that injury is also compensable. *Hubley v. Best Western Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). At issue is whether there is a casual connection between the initial injury and the consequential condition alleged. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). It is not a prerequisite that consequential injuries arise within the time and space boundaries of the employment.

In the instant claim, the claimant, who is right hand dominant, sustained an injury to his left upper extremity - elbow, within the course and scope of his employment on or about June 6, 2006. During the course of his medical treatment relative to the injury the medical documents that claimant registered complaints relative to his right upper extremity -elbow as a result of the treatment measures. Employers may be liable for injuries resulting from medical treatment obtained in response to a work-related injury. *See Air Compressor Equipment Co. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1(2000). The claimant was required to wear a tennis elbow brace on his right elbow, which caused symptoms, as a requirement of his light duty restriction. Additionally, the evidence preponderates that as the claimant discharged his regular duties subsequent to his July 11, 2006, release he "favored his left arm", thereby placing greater stress on the right upper extremity.

In order to prove a compensable injury under the rapid repetitive motion theory, the claimant must prove by a preponderance of the evidence: the injury arose out of and in the course of his employment; the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; the injury was caused by rapid repetitive motion; the injury was the major cause of the disability or need for treatment; and the

injury must be established by medical evidence supported by objective findings. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998). The evidence preponderates that the claimant's work activities involved rapid repetitive motion in that the tasks performed on the line of cutting and pulling flash was repetitive and the repetitive motion was rapid. *Malone, supra*.

The claimant's compensable injuries are scheduled pursuant to Ark. Code Ann. §11-9-521. Effective March 27, 2007, claimant was directed to remain off work relative to his injuries pursuant to his treating physician. As of the January 18, 2008, hearing claimant had not been released to return to work by his treating physicians. An employee who sustains a scheduled injury is entitled to compensation for temporary total disability during the healing period or until the employee returns to work, whichever occurs first. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Once the underlying condition causing the disability stabilizes, and nothing further in the way of treatment will improve the injury, the healing period has ended. The healing period continues until the claimant is as far restored as the permanent nature of his injury will permit. *Carroll General Hospital v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). Claimant did not notify respondents of the work-relatedness of his injury until after the April 6, 2007, visit with Dr. Ball. Accordingly, respondents are not liable for the payment of workers' compensation benefits to and on behalf of the claimant until notice was provided on or about April 7, 2007. The evidence preponderated that the claimant has remained within his healing period and off work since March 27, 2007, and correspondingly entitled to the payment of temporary total disability benefits. Respondent has controverted the payment of workers compensation benefits in this claim subsequent to April 7, 2007.

While the claimant was released to return to full duty work on July 11, 2006, per his request, he was nevertheless directed to report back to Dr. Ball for recheck in six (6) weeks. Claimant failed to return to Dr. Ball pursuant to the afore. Claimant sought and obtained treatment under the care of his primary care physician in August 2006, and continued receiving medical care under the direction of same or referral therefrom through April 6, 2007. Once the claimant returned to Dr. Ball on April 6, 2007, he thereafter notified respondent of the work-relatedness of his complaints. Respondent controverted the compensability of the claimant's claim subsequent to April 7, 2007.

Ark. Code Ann. §11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. Whether a medical procedure or device is reasonable and necessary is a question of fact. *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The evidence preponderated that the medical treatment rendered to the claimant subsequent to the April 7, 2007, notice to respondent was reasonably necessary in connection to the claimant's compensable injury. Respondent is liable for the payment of the claimant's medical treatment subsequent to April 7, 2007, to include that under the care of Dr. Troxel, Dr. Ball, and Dr. Bindra.

The claimant received short-term disability benefits from March 27, 2007 through July 12, 2007. Pursuant to Ark. Code Ann. §11-9-411 (a) respondent is entitled to a credit for said benefits.

#### **AWARD**

Respondent is herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$329.00, for the period beginning April 7,

2007, and continuing through the end of his healing period, a date to be determined. Said sums accrued shall be paid in lump sum without discount. Respondent may claim credit for sums paid to the claimant pursuant to short-term disability program, in accordance with Ark Code Ann. §11-9-411.

Respondent is further ordered and directed to pay all reasonably necessary hospital, nursing, medical and other apparatus expenses in connection with the claimant's compensable injury of June 6, 2006, and compensable consequence right upper extremity injury subsequent to April 7, 2007, pursuant to Ark. Code Ann. §11-9-508.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted portion of indemnity benefits herein awarded pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**