

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. E610008, F305577 and F305578

CLIFFORD SMITH,
EMPLOYEE

CLAIMANT

COOPER TIRE & RUBBER CO.,
EMPLOYER

RESPONDENT

CROCKETT ADJUSTMENT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 16, 2005

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by the HONORABLE GREGORY R. GILES,
Attorney at Law, Texarkana, Arkansas.

Respondents represented by the HONORABLE WILLIAM G. BULLOCK,
Attorney at Law, Texarkana, Arkansas.

Decision of Administrative Law Judge: Affirmed in part and
reversed in part.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals
an administrative law judge's opinion filed January 21,
2005. The administrative law judge found, among other
things, that the claimant proved he sustained "a compensable
injury in the form of bilateral carpal tunnel as well as
right ulnar nerve problems." The administrative law judge
found that the claimant was "entitled to an additional 3

percent permanent partial impairment as a result of his compensable injuries." The administrative law judge found that the claimant did not prove he sustained a compensable left rotator cuff injury. The administrative law judge found that the claimant proved he was entitled to temporary total disability compensation from June 6, 2001 until February 14, 2002, and from February 11, 2003 until September 12, 2003.

After reviewing the entire record *de novo*, the Full Commission affirms in part and reverses in part the opinion of the administrative law judge. The Full Commission finds that the claimant proved he sustained an additional 3% anatomical impairment as a result of his recurrent neck injury. The Full Commission finds that the claimant did not prove he sustained a compensable bilateral carpal tunnel injury or a compensable right ulnar nerve injury. We find that the claimant did not prove he sustained a compensable injury to his left rotator cuff. Finally, the Full Commission finds that the claimant proved he was entitled to temporary total disability from June 6, 2001 until February 14, 2002.

I. HISTORY

Clifford Tyrone Smith, age 43, testified that he became employed with Cooper Tire & Rubber Company in July 1980. The parties have stipulated that the claimant sustained "compensable neck injuries and left ulnar nerve injuries" on February 21, 1996. The claimant testified that he "felt a burning going down my neck" after pushing a tire rack on February 21, 1996.

The claimant filled out a Form AR-N, Employee's Notice Of Injury, on February 21, 1996. The claimant stated that he had injured his neck while "pushing odd tire rack away from tire conveyer." An emergency department record on the date of injury indicated that the claimant complained of pain from his left shoulder to his neck. The claimant was diagnosed with "acute myalgia, strain."

The claimant again sought emergency treatment on July 17, 1996. The emergency department record indicated that the claimant complained of neck pain, and numbness in his hands and legs. The record indicates that the claimant was treated conservatively and was placed on bedrest.

The claimant began treating with Dr. Guy O. Danielson, III on August 26, 1996. Dr. Danielson gave the following impression: "I think that Mr. Smith has a significant

mechanical neck pain component, probably this is discogenic pain. I suspect the C5-6 level was the most predominant pain generator. I also think he has a probable left ulnar neuropathy."

On December 10, 1996, Dr. Danielson performed an anterior cervical discectomy and fusion at C4-5 and C5-6, and a left ulnar nerve decompression at the elbow. The parties have stipulated that the claimant was assigned and was paid a 16% impairment rating to the left ulnar nerve.

In March 1997, Dr. Danielson indicated that he planned to perform a laminectomy at L5-S1. It was indicated on July 21, 1997 that the claimant was "status post L5-S1 bilateral lumbar laminectomy." The parties have stipulated that "all claimant's lower back issues are not work-related and there are no claims for benefits associated with any lumbar complaints."

The claimant testified that he returned to work in December 1997. "I was having pain but I was able to do the job," he testified.

An administrative law judge filed an opinion on February 3, 1999. The administrative law judge found, in pertinent part:

4. On February 21, 1996, the claimant sustained an injury arising out of and in the course of his employment, to his cervical spine and ulnar neuropathy.

5. The claimant was temporarily totally disabled for the periods beginning July 18, 1996 and continuing through July 21, 1997.

6. The claimant's healing period ended July 21, 1997.

7. The claimant has a permanent physical impairment in the amount of 10% to the body as a whole.

8. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of February 21, 1996.

The Full Commission affirmed and adopted the administrative law judge's decision on July 15, 1999. The parties have stipulated that, pursuant to the administrative law judge's February 3, 1999 decision, the claimant reached maximum medical improvement on July 21, 1997. The parties stipulated that the claimant sustained a 10% whole-body impairment rating as a result of his "compensable neck injuries."

The claimant testified that he eventually became a "1-DR tire builder" for the respondent-employer:

A. It was a job where I was constantly during my period of time while I was working, taking steel belts and putting them on the belt drum and constantly cutting the belts and applying a piece of tread to those belts once they were cut and mashing them down and taking them off the air ring and putting them onto the conveyor line.

Q. Now, you are moving your hands there in front of you but we can't tell on the record what you were doing with your left hand or your right hand in that job. Tell us what you were having to do as you described that with your left hand first.

A. Okay. I would have to initially take my left hand and grab the first belt of the tire that goes on the belt drum and put it on the belt drum. Once it does the once around as we call it, I would have to lift it up and then take my right hand with a hot knife and cut the belt.

Q. Was this a process that you were repetitively doing?

A. Yes, sir, all during the time that I was on that particular job for that day....

Q. And it looks like then in September of 2000 you went to see Dr. Ditsch with some swelling in your left wrist. Do you recall that?

A. Yes, sir, I remember it.

Q. Tell us what happened.

A. I had temporarily left 1-DR tire building and had went to what you call first stage tire building I believe, if I've got the time frame right, and in between the first stage tire building I was considered disqualified on that job so I was kind of in limbo and didn't have a permanent job right then so they sent me back to the spray booth on what they call the truck tire line. While stacking one of the large truck tires, I hurt my wrist.

The claimant presented to Dr. Craig Ditsch on September 25, 2000: "Mr. Smith is in with a history that he was lifting tires and moving them laterally. He was in a

particular area that he apparently doesn't do much. This was on the 23rd. He developed pain in the ulnar styloid area of his left wrist...." No fractures or dislocations were seen on x-rays, and Dr. Ditsch placed the claimant in a cock-up splint and returned him to restricted work duty. An x-ray taken on September 25, 2000 showed soft tissue swelling of the wrist without evidence of a fracture.

On October 6, 2000, the claimant was assessed with "Wrist tendonitis, resolved." A physician returned the claimant back to regular duty.

The parties stipulated that, on March 11, 2001, the claimant was working in the job classification of "1-DR tire builder." The parties stipulated that the claimant had been working in the job classification of 1-DR tire builder for approximately three years and 6 months.

The parties have stipulated that "on March 11, 2001, claimant sustained a recurrence of the neck symptoms from the original February 21, 1996, compensable injury." The claimant signed a WCC Form N on March 11, 2001. The claimant described the cause of injury as, "A reoccurring pain in the neck area."

The parties have stipulated that the claimant was paid temporary total disability compensation following the March 11, 2001 recurrence.

The claimant returned to Dr. Danielson on March 12, 2001. Dr. Danielson noted that the claimant "began to have difficulty with his right shoulder approximately seven months ago which has progressed and has become apparent in his neck over the last one and a half months." Dr. Danielson's impression was "A. Neck pain with right arm radiculopathy possibly secondary to discogenic pain. B. Probable solid anterior cervical fusion at C4-5 and C5-6." Dr. Danielson recommended additional diagnostic testing and put the claimant on limited duty with no lifting over 12 pounds.

Dr. Danielson reported in April 2001, "The MRI scan was done at Mother Frances Hospital on 3/24/01. I have reviewed the study along with the report. I agree with the radiologist that there is small disc protrusions anteriorly at C3-4 and a central and right-sided disc protrusion at C6-7 which is a little bit larger. Plain films show a definitely solid fusion at C4-5 and a probably solid fusion at C5-6."

Dr. Danielson recommended additional diagnostic testing.

The record indicates that Dr. Barry D. Baskin performed an independent medical evaluation on April 26, 2001 and stated, "My suggestion would be to get this gentleman back down here for EMG and nerve conduction (sic) studies of the cervical paraspinal muscles in both upper extremities. If these studies turn out to be normal, then I would certainly not pursue any further work-up of his neck. He would benefit probably from some physical therapy, home exercise program and eventually return to work on regular duties. The EMG I think is an important test at this point based on his questionable radicular symptoms. I would not recommend discography at this time."

Dr. Aaron Calodney performed discography and summarized on May 17, 2001, "It appears that Mr. Smith has a single level symptomatic disc disruption below his cervical fusion at C6-7 with a normal C2-3 disc and a minimally degenerative C3-4 disc without pain production."

Dr. Baskin stated on June 6, 2001, "I do think that this gentleman could be able to resume some work at Cooper Tire. He may need to be on some sort of modified duty...."

The claimant testified that he did not return to work at that time, "Because Dr. Greenspan would not send me back to work and at the same time I was hurting and could not go back to work....My neck, my shoulders, my arms was all hurting."

The parties have stipulated that temporary total disability compensation was terminated after June 6, 2001.

On June 27, 2001, Dr. Danielson recommended surgery at C6-7.

Dr. Baskin noted on August 30, 2001, "I would like to get Mr. Smith seen for EMG nerve conduction studies. Dr. Danielson's office can arrange this if he would like or I would be happy to do it. If there is no evidence of entrapment neuropathies and the patient continues to have radicular pain, then I think he could be considered a candidate for anterior discectomy and fusion. Mr. Smith seems to be very sincere in his pain complaints and he has been very consistent with me. I have no reason to suspect secondary gain. This gentleman seems to want to get his neck fixed and get back to work. He states his pain is still just as severe as when I saw him previously."

Dr. Baskin indicated on or about September 13, 2001 that the claimant could resume restricted light duty.

The claimant presented to Dr. Jonathan Blau on November 15, 2001. The claimant complained of "Bilateral hand numbness on the right involving all fingers, on the left involving ulnar distribution." Dr. Blau's impression included, "Bilateral carpal tunnel syndromes, mild and asymptomatic on the left, moderate on the right."

The claimant agreed at hearing that, when he was diagnosed with bilateral carpal tunnel syndrome, he had not been working since on or about March 12, 2001.

Dr. Danielson assessed "HNP C6-7" on February 14, 2002. Dr. Danielson planned an "anterior cervical fusion, C6 through 7, remove hardware at C5-6." Surgery was carried out on February 14, 2002.

The parties have stipulated that temporary total disability compensation was reinstated on or about February 14, 2002.

Dr. Danielson noted on August 14, 2002, "Previous workup has included an EMG of the upper extremities which was done by Dr. Blau on 11-15-01. That study showed bilateral carpal tunnel syndrome, mild on the left and

moderate on the right; bilateral ulnar nerve compressions in a patient who has had previous ulnar nerve decompression on the left side; and bilateral radial sensory neuropathies, mild to moderate of unclear etiology." Dr. Danielson gave the following impression: "A. Low back and bilateral leg pain secondary to recurrent HNP. B. Right carpal tunnel syndrome and right ulnar neuropathy with compression of the elbow." Dr. Danielson recommended, "Because of an increase in his upper extremity symptoms, I am going to ask my staff to notify the insurance company that we would like to proceed with a carpal tunnel release and ulnar nerve decompression at the elbow on the right side. Hopefully, this can be done in the near future."

The parties have stipulated that temporary total disability compensation was paid until September 11, 2002. The parties have stipulated that "on September 11, 2002, claimant reached maximum medical improvement as a result of the recurrence of symptoms which occurred on March 11, 2001."

On October 8, 2002, Dr. Danielson performed a "redo lumbar laminectomy with possible posterior lumbar interbody fusion at L5-S1."

Dr. Danielson performed a "division of left carpal tunnel ligament" on February 11, 2003.

Dr. Danielson performed the following operation on April 1, 2003: "1. Right ulnar nerve decompression at the elbow. 2. Right carpal tunnel ligament division."

The claimant testified that he returned to work, a light-duty position, on September 13, 2003. The claimant also testified, however, that he continued to have problems with his left shoulder. The claimant related his left-shoulder difficulties back to the 1996 compensable injury.

An MRI scan of the claimant's left shoulder was taken on March 17, 2004, with the following impression:

"Impingement of the supraspinatus tendon by the acromion. Appears to be a distal tear in the supraspinatus tendon."

The claimant presented to Dr. John F. Walker on March 25, 2004:

Mr. Smith was seen in consultation regarding his left shoulder. He has a problem in his left shoulder since February of 1996, but only recently has it gotten worse. There is pain with overhead motion, difficulty with abduction. Presently, he is on light duty because of multiple surgeries including ulnar nerve transposition and carpal tunnel problems. He has had two cervical spine surgeries and also two lumbar spine surgeries....

Dr. Walker's impression was "Torn rotator cuff, left shoulder with impingement....I plan to do a decompression of his left shoulder and repair of his rotator cuff."

A pre-hearing order was filed on March 26, 2004. The claimant contended, among other things, that he was entitled to temporary total disability compensation "from on or about June 7, 2001 until February of 2002 when Respondents reinstated his TTD benefits," and the claimant contended that he was entitled to temporary total disability "from on or about February 11, 2003 until on or about September 12, 2003 when he returned to work[.]" The claimant contended that he was entitled to temporary total disability from April 1, 2004 through April 18, 2004 in relation to treatment for his left rotator cuff. The claimant contended that he had sustained bilateral carpal tunnel injuries and a right ulnar nerve injury which had occurred "either as a compensable consequence associated with his compensable neck injuries, or represent separate and new compensable injuries which have occurred as a result of the rapid repetitive nature of the job[.]" The claimant contended that he was entitled to reasonably necessary medical treatment for his carpal tunnel complaints and right ulnar nerve condition.

The claimant contended that he was entitled to additional permanent partial disability benefits in excess of the 10% impairment rating accepted by the respondents based on the claimant's neck surgery. The claimant contended that he was entitled to permanent partial disability benefits as a result of the alleged compensable carpal tunnel injuries, right ulnar nerve, and the compensable left ulnar nerve.

The respondents contended, among other things, that the claimant could not prove his neck conditions or related treatments were reasonably necessary. The respondents contended that the claimant could not prove his carpal tunnel syndrome or related treatment was compensable. The respondents contended that the claimant could not prove the medical bills and treatments he had were reasonably necessary. The respondents contended that "the disability period(s) claimant has sustained, if any beyond the periods of TTD paid by respondents were not incurred as the result of a compensable injury." The respondents contended that if the claimant received an award of benefits, then they were entitled to an offset pursuant to Ark. Code Ann. §11-9-411.

The parties eventually agreed to litigate the following issues:

1. Unpaid TTD. Claimant's entitlement to additional temporary total disability benefits during the period from on or about June 6, 2001 until February, 2002 when Respondents reinstated the TTD benefits and started paying on Claimant's behalf; Also, whether Claimant is entitled to any additional temporary total disability for the period from on or about February 11, 2003 until on or about September 12, 2003 when he returned to work on a light duty basis. (The second period of unpaid TTD is in association with Claimant's treatment for his carpal tunnel and right ulnar nerve.)
2. Whether Claimant is entitled to additional permanent partial disability benefits associated with his neck injuries after reaching MMI on September 10, 2002 following his recurrence of symptoms which occurred on March 11, 2001 by letter report dated February 13, 2003, Dr. Aaron Calodney has assigned the Claimant an additional 12% rating.
3. Whether the medical treatment Claimant has had for his carpal tunnel complaints and right ulnar nerve have been reasonable, necessary and as a result of his compensable neck injuries, or as a result of his work related activities. Claimant had surgery for the left carpal tunnel on February 11, 2003 and surgery on the right carpal tunnel and right ulnar nerve on April 1, 2003.
4. Whether Claimant is entitled to permanent impairment benefits associated with the bilateral carpal tunnel syndrome and bilateral ulnar nerve injuries.

Meanwhile, the claimant testified that he underwent left-shoulder surgery on April 1, 2004. On April 7, 2004, Dr. Danielson noted that the claimant had undergone surgery on his left shoulder. The claimant testified that he returned to light duty on or about April 18, 2004.

The parties deposed Dr. Calodney on May 10, 2004. The claimant's attorney questioned Dr. Calodney:

Q. Is there any way, as you sit here today in 2004, looking back to these symptoms that he complained of in 1996, are you able to tell us, within a reasonable degree of medical certainty, whether the left shoulder tear is a compensable consequence of the 1996 work-related injury which occurred when he was pushing on a rack of tires that had no wheels, for better - some simple summary of how he initially complained of his injuries?

A. In the absence of any specific information of an intervening injury to the left shoulder, given what sounds like a fairly continuous thread of information suggesting some complaints related to the left scapular or shoulder girdle area, it would be my opinion that, more likely than not, the rotator cuff tear is related to the 1996 injury....

Q. Doctor, I'll ask you to assume for me, as it's been awarded and previously found, that the left ulnar nerve was part and parcel of the February 1996 injury. As you sit here today, would you have an opinion with regard, within a reasonable degree of medical certainty, as to the relationship to the right ulnar nerve and its relationship to the '96 accident or the March of 2001 recurrence?

A. Yes.

Q. And subsequent neck surgery?

A. My opinion is that, based upon reasonable medical probability, the right ulnar nerve entrapment neuropathy is also directly related to the 1996 injury....

II. ADJUDICATION

A. Recurrence/Anatomical Impairment

The parties stipulated that the claimant sustained a compensable neck injury in February 1996. Dr. Danielson subsequently performed an anterior cervical discectomy and fusion at C4-5 and C5-6. Following an administrative law judge's opinion in February 1999, the parties stipulated that the claimant sustained a 10% whole-body impairment rating as a result of his compensable neck injury.

The parties have stipulated that "on March 11, 2001, claimant sustained a recurrence of the neck symptoms from the original February 21, 1996, compensable injury." A recurrence is not a new injury but merely another period of incapacitation resulting from a previous injury. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. Weldon v. Pierce Bros. Constr., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

An injured worker must prove by a preponderance of the evidence that he is entitled to an award for a permanent physical impairment. Weber v. Best Western of Arkadelphia, Workers' Compensation Commission F100472 (Nov. 20, 2003).

Pursuant to Ark. Code Ann. §11-9-522(g), the Legislature directed the Commission to adopt an impairment rating guide to be used in assessing anatomical impairment. The Commission therefore established Rule 34, which adopted the Guides to the Evaluation of Permanent Impairment (4th ed. 1993) published by the American Medical Association.

In February 2002, Dr. Danielson performed a cervical fusion at C6-7 and removal of hardware at C5-6. Pursuant to the Guides, Table 75 II, the claimant would be entitled to an additional 2% impairment for the removal of hardware at C5-6, a second operation. The claimant is entitled to an additional 1% for the fusion surgery at C6-7. The Full Commission therefore affirms the administrative law judge's finding that the claimant was entitled to "an additional 3 percent permanent partial impairment as a result of his compensable cervical injuries."

The parties stipulated that the claimant sustained a compensable "left ulnar nerve injury" in February 1996. The parties stipulated that the claimant was subsequently assigned and was paid a 16% impairment rating to the left ulnar nerve. There is no probative evidence of record

indicating that the claimant has sustained any additional anatomical impairment to his left ulnar nerve.

B. Bilateral Carpal Tunnel/Right Ulnar Nerve

Ark. Code Ann. §11-9-102(4) (A) defines "compensable injury":

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this

definition[.]

Since carpal tunnel syndrome is recognized as a gradual-onset injury, it is not necessary that an employee prove an alleged carpal tunnel injury was caused by rapid repetitive motion. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). The claimant's burden of proof shall be a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102(4) (E) (ii).

The administrative law judge found in the present matter that the claimant proved "he sustained a compensable injury in the form of bilateral carpal tunnel as well as right ulnar nerve problems while working for the respondent." The Full Commission reverses this finding.

The parties' stipulations indicate that the claimant became a tire builder for the respondents in about 1999. The claimant described this work as requiring "constant" and "repetitive" use of his hands to build tires. The record indicates that the claimant reported developing pain in his left wrist while lifting and moving tires on September 25, 2000. An x-ray on September 25, 2000 showed soft tissue swelling of the claimant's left wrist. However, by October 6, 2000, the claimant was assessed with "Wrist tendonitis, resolved." A physician returned the claimant back to regular duty.

The record demonstrates that the claimant did not again report symptoms with his upper extremities until over one year later, on November 15, 2001. Dr. Blau assessed on that date, "Bilateral carpal tunnel syndromes, mild and asymptomatic on the left, moderate on the right." The claimant agreed at the hearing that he had not worked since

March 12, 2001. The claimant did not leave work as a result of alleged upper extremity problems. Rather, the claimant left work because of pain associated with the recurrence of his neck injury. At the time he was assessed as having bilateral carpal tunnel syndrome, the claimant had not performed any work duties for the respondents in over six months. The Full Commission therefore finds that the claimant did not prove he sustained bilateral carpal tunnel syndrome arising out of and in the course of his employment with the respondents.

As for the alleged right ulnar nerve injury, the claimant must prove that this condition was caused by rapid repetitive motion. Ark. Code Ann. §11-9-102(4) (A) (ii) (a), *supra*. The standard for interpreting "rapid repetitive motion" is a two-pronged test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. See, Malone v. Texarkana Pub. Schs., 333 Ark. 343, 969 S.W.2d 644 (1998). In the present matter, even if the claimant's work duties were repetitive, the record does not indicate that the claimant's tasks at work were performed rapidly. The Full Commission finds that the claimant did not prove he sustained a right ulnar nerve injury as the

result of rapid repetitive motion. Nor did the claimant prove that his right ulnar nerve condition arose out of and in the course of his employment with the respondents. The claimant therefore did not prove he was entitled to the April 2003 surgery performed by Dr. Danielson, the "right ulnar nerve decompression at the elbow."

C. Left Rotator Cuff Tear

The administrative law judge found that the claimant failed to prove that his left rotator cuff tear was a result of the claimant's 1996 compensable cervical injury. The Full Commission affirms this finding. If an injury is compensable, 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). The basic test is whether there is a causal connection between the two episodes. Jeter v. B.R. McGinty Mechanical, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

The parties stipulated that the instant claimant sustained a compensable neck injury and a compensable left ulnar nerve injury in February 1996. Although the claimant did complain of pain "from his left shoulder to his neck," there is no evidence before the Commission demonstrating

that the claimant injured his shoulder at the time of the neck injury. The claimant testified that he felt pain in his neck, not his shoulder, at the time of the compensable injury. The treating physician, Dr. Danielson, did not opine that the claimant had injured his left shoulder. Dr. Danielson instead treated the claimant's neck and left ulnar nerve. The claimant began complaining of pain in his right shoulder in 2001.

In March 2004, over eight years after the compensable injury to the claimant's neck, and MRI showed impingement and a distal tear in the claimant's left shoulder. There is no probative evidence before the Commission demonstrating that this condition was a natural consequence of or was causally connected to the 1996 compensable injury. The claimant underwent left shoulder surgery in 2004. Dr. Calodney testified at deposition that the alleged left-shoulder injury was causally related to the 1996 neck injury. The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002). The Full Commission in the present matter determines that it would require speculation

and conjecture to causally link the claimant's 2004 shoulder surgery to the his 1996 neck injury. Conjecture and speculation cannot be permitted to supply the place of proof. Dena Constr. Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). The Full Commission affirms the finding of the administrative law judge.

D. Temporary Disability

Finally, the administrative law judge found that the claimant proved he was entitled to additional temporary total disability from June 6, 2001 to February 14, 2002. The Full Commission affirms this finding. Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

The present claimant sustained a compensable neck injury in February 1996. The claimant sustained a compensable recurrence on March 11, 2001. The parties stipulated that the respondents began paying temporary total disability following the March 11, 2001 recurrence. We recognize that Dr. Baskin attempted to return the claimant to modified work on June 6, 2001. The claimant testified,

however, that Dr. Baskin did not inform him of this modified return to work release. The respondents stopped paying temporary total disability after June 6, 2001.

Nevertheless, on June 27, 2001, Dr. Danielson recommended surgery at C6-7. The Full Commission finds that the claimant remained within a healing period for his compensable recurrence at the time the respondents ceased paying temporary total disability compensation on June 6, 2001. Because of the claimant's surgical condition as a result of his compensable recurrence, the Full Commission finds that the claimant was physically unable to perform even modified work activities at that time. We therefore find that the claimant remained within a healing period and was totally incapacitated to earn wages at the time the respondents cut him off on June 6, 2001. We also note that the respondents resumed temporary total disability on February 14, 2002, the date of neck surgery. This is further evidence that the claimant remained within a healing period and was totally incapacitated to earn wages. The Full Commission therefore affirms the administrative law judge's finding, "The claimant has proven by a preponderance of the evidence that he is entitled to additional temporary

total disability from June 6, 2001, until February 14, 2002."

The administrative law judge awarded another period of temporary disability beginning February 11, 2003. The Full Commission does not affirm this finding. Since we have determined that the claimant's bilateral carpal tunnel syndrome and right ulnar nerve condition was not compensable, the claimant did not prove he was entitled to additional temporary total disability beginning on February 11, 2003.

Based on our *de novo* review of the entire record, the Full Commission affirms in part and reverses in part the opinion of the administrative law judge. The Full Commission finds that the claimant proved he sustained an additional 3% anatomical impairment as a result of his recurrent neck injury. We find that the claimant did not prove he sustained a compensable bilateral carpal tunnel injury or a compensable right ulnar nerve injury. The claimant therefore did not prove he sustained impairment ratings pursuant to these conditions, nor did the claimant prove he was entitled to an additional impairment rating for his compensable left ulnar nerve injury. We find that the

claimant did not prove he sustained a compensable injury to his left rotator cuff, nor did the claimant prove he sustained a compensable injury to his left rotator cuff as a compensable consequence of his 1996 compensable neck injury. The Full Commission finds that the claimant proved he was entitled to temporary total disability compensation from June 6, 2001 until February 14, 2002.

The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(a) (Repl. 1996). For prevailing in part on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of two-hundred fifty dollars (\$250), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

Commissioner Turner concurs and dissents.

CONCURRING AND DISSENTING OPINION

I concur with the Majority's decision awarding the claimant a 3% impairment and awarding him temporary total disability benefits for the time period of June 6, 2001 to February 14, 2002. However, I must respectfully

dissent from the portion of the decision finding that the claimant did not sustain compensable injuries in the form of bilateral carpal tunnel syndrom, injuries to his right ulnar nerve, and a tear in his rotator cuff. I must also dissent from the portion of the decision denying the claimant temporary total disability benefits from the time period of February 11, 2003 to September 13, 2003.

_____ The Majority finds that the claimant's carpal tunnel syndrome did not arise in the course of employment, noting that there was a lapse in time between the time in which the claimant worked and when he was diagnosed. With regards to the claimant's right ulnar nerve injury, the Majority opines that the claimant's job was not rapid in nature or causally related, and that therefore the claim should be denied. I find that the preponderance of the evidence indicates that the claimant's job duties are the cause for his carpal tunnel syndrome and right ulnar nerve injury.

In my opinion, the claimant's job was both rapid and repetitive in nature.

The claimant described his job duties as follows:

A It was a job where I was constantly during my period of time while I was working, taking steel belts and putting them on the belt drum and constantly cutting the belts and applying a piece of tread to those belts once they were cut and mashing them down and taking them off the air ring and putting them onto the conveyor line.

Q Now, you are moving your hands there in front of you but we can't tell on the record what you were doing with your left hand or your right hand in that job. Tell us what you were having to do as you described that with your left hand first.

A Okay. I would have to initially take my left hand and grab the first belt of the tire that goes on the belt drum and put it on the belt drum. Once it does the once around as we call it, I would have to lift it up and then take my right hand with a hot knife and cut the belt.

Q Was this a process that you were repetitively doing?

A Yes, sir, all during that time that I was on that particular job for that day.

Q Is tire building a production type job?

A Yes, sir. That's correct.

The claimant went on to testify that he built between 400 to 575 tires per 12 hour shift. This equates to producing between 33 and 48 tires per hour.

The Court has previously determined that an injury caused by rapid and repetitive motion must be evidenced by tasks that are repetitive and that the repetitive motion itself must be performed rapidly. Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1998). The Court has further indicated that multiple tasks may be considered together in determining whether the repetitive requirement is met. Baysinger v. Air Systems, Inc., 55 Ark. 174, 934 S.W.2d 230 (1996). However, the Court has also determined that in instances where the duties or tasks are separated by intervals that are several minutes long, the work is not rapid and repetitive. Lay v. United Parcel Service, 58 Ark. App. 35, 944 S.W.2d 867.

The Court has also determined that a worker who used an air gun to attach bolts at the rate of one per fifteen seconds would be sufficient to constitute

rapid and repetitive motion. See High Capacity Prods. v. Moore, 61 Ark. App. 1, 962 S.W.2d 831 (1998).

Additionally, the Court has awarded benefits when a worker performed repetitive motions at the rate of 115 to 120 times per day with 1.5 minute intervals between. See Boyd v. Dana Corp., 62 Ark. App. 78, 966 S.W.2d 946 (1998). However, the Court has held that a custodian did not perform rapid repetitive motions, despite repeating motions, because the movements in completing the tasks were different and were separated in time. See Malone, supra.

Furthermore, the Arkansas Court of Appeals has previously determined that, "it is a matter of common sense that reasonable minds would expect work on an assembly line to move at a swift or quick pace."

In this situation, I find that the claimant worked on a job that was in an "assembly line" and, that when considering his job duties as a whole, his job was both rapid and repetitive in nature. There is nothing in the record to indicate that the claimant's work was not continuous in nature. Likewise, it is evident by

the number of units the claimant produced that his work was rapid.

With regard to the Majority's contention that the claimant did not show causation, I note that Dr. Calodney expressed his opinion that the claimant's right ulnar nerve problem was directly caused by his work. Furthermore, I note the claimant had already sustained an admittedly compensable left ulnar nerve injury which was accepted as compensable, which supports a finding that his work also caused an injury to his right ulnar nerve.

The Majority heavily relies on the fact that the claimant did not work between March and November 2001 in supporting their argument that the claimant's carpal tunnel syndrome and right ulnar nerve conditions are not compensable. However, in my opinion, the medical records indicate that his conditions are causally related. First, I note that as early as July 17, 1996, the claimant began complaining of numbness in his arms and legs. On July 17, 1996, an emergency room report reflects such a complaint. A doctor's note from August 26, 1996 also indicates that the claimant

complained of pain, weakness, and numbness throughout his left arm. A doctor's note from October 14, 1996 indicates that a test on September 18, 1996 showed ulnar nerve compression at the claimant's elbow. On October 30, 1996, the claimant complained of right arm pain extending to his elbow. The claimant subsequently had left ulnar nerve surgery on December 10, 1996.

The claimant again complained of pain in his right wrist on April 17, 1998. The claimant attributed this to twisting his wrist while stacking a large tire at work. The claimant again reported an injury to his wrist on September 23, 2000. This was also related to lifting tires a work. A doctor's note from the same date indicates the claimant's injury was marked by "soft tissue swelling".

On March 11, 2001, the claimant again complained he had recurring pain in his neck area. He indicated that it was due to taking truck tires off air drums and indicated the injury was one that kept recurring. On the same date, a note from Dr. Guy Danielson indicates,

He reports neck pain with radiation into the right shoulder to the

fingers, mainly the thumb, index, and middle finger. He characterizes the pain as a constant pin and needle aching, stabbing sensation. The pain is worse with working.

However, Dr. Danielson also indicated that the claimant's right arm pain was, "possible secondary to discogenic pain."

Though the Majority does not specifically address the respondent's argument that the claimant's injuries were caused by extracurricular activity, I find it important to address that issue to show that the claimant's injuries were not caused by non-work related activities during the time in which he was not working. A doctor's note from March 15, 2001 also indicates the claimant reported an increase in pain since falling asleep on his floor on "Tuesday night". While the respondents would assert that the claimant's falling asleep on the floor caused his injury, I note that March 12, 2001, the date the claimant reported his injury was on a Monday, while that Tuesday was March 13. This indicates the claimant had already sustained the injury prior to falling asleep on the floor. Furthermore, while the respondent would assert this acted as an

independent intervening cause, there is no evidence that the claimant's actions were not a natural and probable consequence of his condition or that his actions unreasonable, given his condition.

The respondent further argues that the claimant's participation in sports or in playing guitar are the cause of the claimant's injuries. I note, that there was no testimony regarding the regularity in which the claimant engaged in these activities. I also note that there is no evidence that the claimant was not forthcoming about these activities or indicating that the claimant sustained any injuries that would cause his injuries. Therefore, in my opinion, the testimony of Dr. Calodney and Dr. Danielson should not be dismissed in order to conclude the claimant sustained some unknown injury causing his carpal tunnel syndrome and right ulnar nerve injury.

Additionally, the medical records indicate the claimant's physicians believed his problems to be attributable to the 1996 injury. Dr. Danielson opined that the claimant's carpal tunnel syndrome was caused by his job. Similarly, Dr. Calodney opined that the

claimant's right ulnar nerve problem was caused by his work. The Full Commission recognizes that medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B). Expert opinions based on "could," "may," or "possibly" lack the definiteness required to prove causal connection. Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000). However, where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001). However, the Commission is not free to arbitrarily disregard any expert medical opinion. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W. 3d 760 (2001).

In my opinion, the opinions offered by Dr. Calodney and Dr. Danielson both indicate that the claimant's conditions were caused by the claimant's 1996 injury. Though the Majority argues that there was a

lapse of six months during 2001 between the time the claimant worked and when he was diagnosed, in my opinion, that rationale is not sufficient basis to reject the opinions of the claimant's two treating physicians. Furthermore, I note that the record indicates that any delay in the claimant's diagnosis was likely due to confusing symptoms of his right ulnar nerve and carpal tunnel problems with his back injuries.

On May 17, 2001, the claimant underwent an independent medical examination. The examination notes that the claimant was originally injured in February 1996. It also indicates,

This gentleman also was found to have at the time of his original injury possible cubital tunnel syndrome and had left ulnar decompression at the same time of his previous surgery back in December of 1996. This gentleman complains again of pain in the neck, and he has occasionally some numbness in the right hand, second, third, fourth, and fifth fingers.

The doctor further indicated the claimant might have carpal tunnel syndrome and recommended he undergo an EMG. This indicates that the claimant had ongoing symptoms consistent with those associated with carpal

tunnel syndrome and that the injury related back to his original injury in 1996.

On August 30, 2001, Dr. Barry Baskin reported,

Mr. Smith is a nice gentleman who has had continued pain from his neck, down the right shoulder and right arm. He has not had electrodiagnostic studies, which I had suggested previously. I still think these would be of benefit in determining if his parathesias particularly are due to an entrapment neuropathy, i.e., ulnar or median nerve, or if they are radicular in nature from his apparent right paracentral C6-7 disc protrusion versus herniation.

On May 15, 2003, Dr. Danielson indicated,

Prior to doing the anterior cervical fusion, EMGs were performed on November 15, 2001 which showed bilateral carpal tunnel syndrome, bilateral ulnar nerve compression with residual left C3 changes, and bilateral radial sensory neuropathies. The opinion of Dr. Blau, who performed the tests, is that he doubted it was a generalized peripheral neuropathy and stated it may represent a chronic or repetitive use injury without frank compression. It was noted that your symptoms did not change after the anterior cervical fusion at C6-7, ulnar nerve compression, and carpal tunnel syndrome bilaterally. You have been holding off on surgery since there might be improvement with this after the neck fusion is

complete, but we still thought that further surgery might be necessary if you did not get relief.

The note goes on to indicate,

Carpal tunnel release was scheduled for the left and performed on February 11, 2003. This was followed by carpal tunnel release on the right and ulnar nerve decompression on the right on April 1, 2003. It is believed that these surgeries were done for carpal tunnel syndrome and ulnar nerve compression secondary to repetitive work injuries that you sustained while working your job at Cooper Tire Company.

Furthermore, Dr. Calodney testified that he believed that the claimant's ulnar nerve symptoms and cervical back problems would have symptoms that would be difficult to distinguish from one another. He also stated that he believed the claimant's ulnar nerve condition would make it more difficult to identify in the claimant's situation, and that he believed within a "reasonable medical probability" that the claimant's ulnar nerve condition was directly related to his injury back in 1996.

Ultimately, the record is full of various medical reports indicating that the claimant

consistently complained of pain in both arms shortly after the onset of his injury in 1996. Additionally, the claimant's work was factory work and is both rapid and repetitive in nature. Furthermore, Dr. Calodney indicated the claimant's ulnar nerve problem was directly related to his work injury from 1996. Likewise, Dr. Danielson opined that the claimant's bilateral carpal tunnel syndrome and ulnar nerve problems were directly related to his admittedly compensable injury in 1996. Accordingly, I believe the Majority should have affirmed the portion of the Administrative Law Judge's decision which awarded benefits for the claimant's bilateral carpal tunnel syndrome and ulnar nerve problems.

The Majority also finds that the claimant did not sustain a compensable injury to his left rotator cuff. I find that the claimant did sustain a compensable injury in the form of a tear to his left rotator cuff, and that the injury resulted from his admittedly compensable injury in 1996.

The claimant consistently complained of problems with his shoulder from the time of the accident

until diagnosed. Additionally, the medical records indicate that because of the claimant's ongoing back problems, he did not receive treatment for his shoulder as though it were the primary area of injury. Though it admittedly did take a substantial period of time for the claimant's rotator cuff tear to be diagnosed, I find that it is more probable than not the rotator cuff tear was directly related to his admittedly compensable injury in 1996. Accordingly, I find that the portion of the Administrative Law Judge's decision denying the claimant suffered a compensable injury to his left rotator cuff should have been reversed by the Majority.

It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263(1962). While medical evidence is not required to show a causal connection, claimant must show proof by a

preponderance of the evidence. Wal-Mart Stores Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

The evidence indicates the claimant sought medical attention on the day the accident occurred and he complained of shoulder pain. The emergency room note completed on February 21, 1996 indicates, "Starting having pain left shoulder up into left neck." This document is signed by the claimant. Another note from the same day indicates the claimant complained of pain from the base of his neck to his shoulder and noted tenderness in his trapezius muscle.

_____ In March and April 1996, the claimant again complained of complaints around his trapezius muscle, shoulder, and left scapular area. On June 3, 1996, the claimant indicated that rotating his back hurt his left shoulder. The claimant complained of pain yet again in July 1996 and was apparently so concerned that on July 1, 1996, he asked for an x-ray of his shoulder. Despite this, no MRI or further testing was taken of his shoulder. These records indicate the consistency and persistence of the claimant from the onset of his initial injury that he did sustain an injury to his

shoulder at the time of the admittedly compensable injury in 1996.

The evidence further indicates that the claimant's condition was likely confused with his ongoing back injuries. A doctor's note from May 16, 2001 from Mother Frances Hospital indicates that the claimant had a history of neck and shoulder pain. However, a doctor's note from February 5, 2004, is perhaps most illustrative. The note indicates that the claimant,

continues to have left shoulder pain. This has been present off and on for many years and he has always been told that after his neck surgery it would go away, but I do not think he has ever been worked up for primary shoulder pathology.

On March 25, 2004, Dr. Danielson, the doctor who was responsible for treating the claimant from the onset of his initial injuries indicated, "He has a problem in his left shoulder since February of 1996." The note also indicates that an MRI revealed that the claimant had a small tear in his rotator cuff. Since Dr. Danielson was the doctor that was primarily responsible for treating the claimant, he was familiar

with the claimant and his various ailments. His notes from February and March are particularly important because they illustrate that despite the claimant's ongoing complaints of pain in his shoulder throughout the years, he was never treated for his shoulder. This was due to the doctor's belief that the claimant's back was the cause of his problems. However, it was ultimately concluded that the claimant did have a rotator cuff tear. Since the claimant had ongoing pain in his shoulder and other things such as tenderness in his shoulder from 1996 on, one can only assume that the claimant did, in fact, suffer the injury in 1996.

While the respondent asserts that the claimant played sports and that Dr. Calodney asserted that there could be various reasons for the claimant's torn rotator cuff, the fact remains that the onset of the claimant's pain and ongoing problems with his shoulder started in 1996-not at some other identified time period. Furthermore, Dr. Calodney did state that, given the information he had, it appeared the claimant's injury was work related. He indicated,

A. In the absence of any specific information of an intervening injury

to the left shoulder, given what sounds like a fairly continuous thread of information suggesting some complaints related to the left scapular or shoulder girdle area, it would be my opinion, that more likely than not, the rotator cuff tear is related to the 1996 injury. Though the claimant did play sports and

suffered broken fingers due to his activity, there is nothing in the record to indicate that his extracurricular activities caused any injury to his shoulder. Nor is there any evidence to indicate that he failed to disclose any injuries he sustained while involved in those extracurricular activities. To now assert that he suffered such an injury without evidence would amount to impermissible speculation and conjecture on the part of this Commission.

For the aforementioned reasons, I respectfully concur and dissent.

SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs, in part, and dissents, in part.

CONCURRING & DISSENTING OPINION

I must respectfully concur in part with and dissent in part from the majority opinion. Specifically, I concur with the findings that the claimant proved he sustained an additional 3% anatomical impairment as a result of his recurrent neck injury and that the claimant did not prove he sustained compensable bilateral carpal tunnel syndrome, right ulnar nerve injury, or left rotator cuff injury. However, I must respectfully dissent from the finding that the claimant has proven entitlement to additional temporary total disability benefits from June 6, 2001, through February 14, 2002.

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. K II Constr. Co. v. Crabtree, 78 Ark. App. 222, 79 S.W.3d 414 (2002). When an injured employee is totally incapacitated from earning wages and remains in his healing period, he is entitled to temporary total disability. Id. The healing

period is statutorily defined as that period for healing of an injury resulting from an accident. Dallas County Hosp. V. Daniels, 74 Ark. App. 177, 47 S.W.3d 283 (2001). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. Crabtree, supra. The question of when the healing period has ended is a factual determination for the Commission.

The healing period is defined as that period for healing of the injury that continues until the employee is as far restored as the permanent character of the injury will permit. Arkansas Highway & Transp. Dept. v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. The persistence of pain may not in and of itself prevent a finding that the healing period is over, provided that the underlying condition

has stabilized. Id.; Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. McWilliams, supra; J.A. Riggs Tractor v. Etzkorn, 30 Ark. App. 200, 785 S.W.2d 51 (1990). The determination of when the healing period ends is a factual determination to be made by the Commission. McWilliams, Parker, supra. In Pallazollo v. Nelms Chevrolet, 46 Ark. App. 130, 877 S.W.2d 938 (1994), the Court of Appeals stated that in order to be entitled to temporary total disability compensation for an unscheduled injury, a claimant must prove that he remained within his healing period and that he suffered a total incapacity to earn wages (citing Arkansas State Highway & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981)).

The evidence demonstrates that the claimant was paid temporary total disability benefits from March 11, 2001, through June 6, 2001, for the recurrence of his neck injury. In my opinion, the claimant's inability to work after June 6, 2001, did not result from this

recurrence, but from other non-work related issues. Once the claimant's healing period resumed and he was taken off work for his February 14, 2002, surgery, the respondents resumed payment of temporary total disability benefits.

The medical evidence demonstrates that Dr. Barry Baskin issued the claimant two separate return to work slips for light duty during this time. On June 6, 2001, Dr. Baskin wrote a letter advising that, after reviewing the claimant's records, he felt that the claimant could resume working for the respondent employer at modified duty. Dr. Baskin wrote a second letter on September 13, 2001, to the same affect. However, he reduced the claimant's lifting restrictions from 35 to 15 pounds.

The majority finds that since Dr. Danielson recommended surgery on June 27, 2001, the claimant remained both within his healing period and totally incapacitated from earning wages. However, I cannot agree that the claimant's condition prior to surgery rendered him totally incapacitated from earning wages. Moreover, Dr. Danielson did not remove the claimant from

work or restrict the claimant's work activities. What rendered him incapacitated was the fact that he had surgery. The fact that the claimant was hurting is not sufficient under Arkansas law to justify a refusal to return to work. Furthermore, I am not persuaded by the claimant's argument that Dr. Greenspan did not release the claimant to return to work after the claimant received the return to work from Dr. Baskins. However, the record demonstrates that Dr. Greenspan did not treat the claimant after March 15, 2001, when he issued the claimant an off work slip but it was only for one month. After the claimant underwent a diskogram on April 13, 2001, Dr. Greenspan extended the claimant's off work status for an unspecified period of time. However, the record demonstrates that Dr. Greenspan did not see nor treat the claimant at anytime after that date.

After considering the evidence that the claimant was released to return to work and that he did not return to work, as well as, the fact the claimant was having other medical problems not associated with a compensable injury, I find that the claimant is not entitled to temporary total disability benefits for the

period June 6, 2001, through February 14, 2002.
Accordingly, I must dissent from this finding.

KAREN H. MCKINNEY, Commissioner