

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201514

HUEY P. BRADSHAW, EMPLOYEE	CLAIMANT
GEORGIA-PACIFIC CORP., EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MGMT., CARRIER	RESPONDENT

OPINION FILED AUGUST 13, 2007

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

Claimant represented by HONORABLE BILLY J. HUBBELL, Attorney at Law, Crossett, Arkansas.

Respondent represented by HONORABLE ANDREW IVEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals the Administrative Law Judge's October 4, 2006 opinion, finding that he was not entitled to receive medical or temporary total disability benefits because he did not sustain a compensable, work-related injury. More specifically, the Administrative Law Judge found that the claimant failed to prove that he sustained an injury supported by objective medical findings. Based upon a de novo review of the record in its entirety, we find the claimant

suffered a compensable work-related injury, supported by objective medical findings. Therefore, we reverse the Administrative Law Judge's decision.

_____The claimant testified that while in the employment of the Respondent, he sustained an injury to his right wrist and thumb. The claimant began working for Respondents in July 2001, where his job duties included pulling less than a quarter-inch thick plywood from a belt, referred to as an offbearer, and placing it in a buggy. The claimant testified that he worked ten or eleven hours a day pulling wood off of the offbearers, which required him to pull wood "super fast," and place the wood in the buggies. The claimant testified that it took approximately one-thousand pieces of wood to fill a buggy. Additionally, he would fill five to seven buggies per shift. As the claimant is right hand dominant, he used his right hand to perform the required work.

The claimant testified that he began having problems in his right wrist and thumb around the first of October 2001, and that he had never had hand or wrist problems prior to October of 2001. The claimant testified that, initially, his wrist had swollen up and

he was having pain, like his wrist was going to sleep. He also experienced numbness in his fingers. The claimant testified that any activity that required grabbing his thumb and finger gave him pain. The claimant testified that he reported the problems to his supervisor, David McKey, who told him, "You must have changed hands from playing with your old lady," and then told him to get back to work.

The claimant testified that in October of 2001 his pain became severe enough that he went to see his doctor, Dr. Webb, who told him that he would take him off work for three days and then return him to light duty. However, when the claimant returned to work to be assigned to light duty, he was informed that there was not any light-duty work available. Becky Culp, in Human Resources, also informed the claimant that he needed to fill out paperwork. The claimant testified that he took the paperwork to his doctor, who took him off work completely because the Respondents did not have any light-duty work for him.

The Respondents let the claimant go from his employment in 2002, and the claimant has not had steady employment since that time. The claimant testified that

whenever he tries to do something, his wrist swells up. In fact, the claimant testified that he uses a riding lawn mower to mow yards for money, but that he needs someone else to mow his own lawn because it primarily entails weed-eating, which causes his wrist to swell. Additionally, the claimant testified that he only had about six or seven clients per year. The only other actual employment that he has had was with Remco, but the claimant was forced to quit after only three days of work due to the pain and swelling in his wrist. The claimant testified that, occasionally, he will paint someone's house for money.

David McKey, the claimant's supervisor in 2001, testified as a witness for the respondents. McKey corroborated the claimant's testimony in regard to his job duties, which consist of pulling plywood off the offbearer and transferring it to a buggy. Mr. McKey testified that the claimant would probably fill five to six buggies per shift and that each buggy contained approximately five hundred sheets of plywood. However, Mr. McKey also testified that there were five men who would work that job at the same time, and that they would only be working 50% of the time. He testified

that the remaining 50% of their time was spent straightening their buggies.

Mr. McKey also testified that the claimant never reported a work-related injury to him. Mr. McKey's absentee calendar did not show any indication that the claimant was off work due to injury. Mr. McKey testified that the claimant had complained of wrist pain, but that the claimant had informed him that it was not from work. That information did not appear on the absentee calendar, and Mr. McKey testified that he would not have put non-work related injuries on the absentee calendar. Interestingly, Mr. McKey did note in the absentee calendar when the claimant had a toothache, which is presumably non-work related. Additionally, in light of the claimant's testimony that Mr. McKey made a crude joke about why his wrist hurt, Mr. McKey testified that he was not in the habit of making jokes with his employees.

The claimant initially went to see his general physician, Dr. Webb, on October 25, 2001. Although Dr. Webb's medical records are mostly illegible, there are several words which can be unmistakably identified. First, on October 25, 2001, the medical records indicate

(1) "two weeks," (2) "pulling wood," and (3) "wrist." In his deposition, Dr. Moore interpreted Dr. Webb's records as "two weeks, pulling wood, complaint of pain in right arm." Although the medical records are partly illegible, it is clear that the claimant had complained that he had injured his wrist while pulling wood at work.

On October 29, 2001, Dr. Webb's medical records clearly prescribed Vioxx for the claimant and limited him to light duty. Additionally, not only did Dr. Webb include "tendinitis wrist" in the claimant's November 7, 2001 medical records, but he filled out the Georgia Pacific Form. On the Georgia Pacific Form, Dr. Webb noted that the claimant had "Tendinitis Wrist" and did not check the box indicating that his condition was chronic requiring treatment. Additionally, Dr. Moore deciphered Dr. Webb's November 7, 2001 medical records as stating that the claimant complained of a tender wrist. Dr. Webb referred the claimant to Physical Therapist, B.C. Lowery, and to Orthopaedic surgeon, Dr. Timothy D. Spires, Sr. The claimant was treated by Dr. Webb until April 11, 2002.

The claimant's initial visit with Physical Therapist, B.C. Lowery, occurred March 4, 2002. Lowery made several notations of objective findings, including an inflammation of the right brochioradialis, extensor carpi radialis longus, and supinator. Lowery noted that the claimant had ulnar deviation in his right wrist with pain at end range of passive flex on dorsal surface of wrist and pain with active flex. Lowery specifically noted that the claimant had inflammation of the right hand and forearm and decreased and painful range of motion. Particularly, Lowery noted that the claimant had decreased grip strength in his right hand. Lowery's primary diagnosis was that the claimant demonstrated signs and symptoms consistent with De Quervain's disease and with inflammation of the superficial branch radial nerve.

The claimant treated with Lowery through April, 2002, when Lowery's medical notes state that the claimant demonstrated signs and symptoms consistent with right wrist tendinitis and early signs of carpal tunnel syndrome. Lowery also noted that the claimant reported pain in both an active range of motion test and a passive range of motion test in his right wrist.

The claimant's initial visit with Dr. Spires was on April 18, 2002. On the Patient History Questionnaire, the claimant filled in blanks on the form, stating that his thumb and wrist started causing his problems around October 10, 2001, due to repetitive work. It appears that the claimant also noted that he was placed on light duty. The claimant also wrote on the form that his occupation was pulling wood.

Dr. Spires' medical notes from April 18, 2002, indicate that the claimant performs repetitive work and had been placed on light duty, but was unable to return to work. Dr. Spires noted that the swelling in the claimant's thumb had diminished with physical therapy, but that he was still having discomfort. In a physical exam, Dr. Spires noted that the claimant had full range of motion in his wrist and all digits. Dr. Spires noted a positive Finkelstein and negative Tinel's at the carpal tunnel. Dr. Spires also noted that the claimant had tenderness in the first dorsal compartment. As such, Dr. Spires diagnosed the claimant as having tendinitis in the right wrist and gave him injections and a splint. Dr. Spires also commented in regard to whether or not the claimant could "return to work very

soon." Although several typed words are marked through and handwritten words are written into the statement, it appears that Dr. Spire's notation reads "that with the duration of symptoms, it was unrealistic to expect the claimant to return to work very soon." This is consistent with his later recommendation that the claimant have surgery to release the first dorsal compartment.

On May 16, 2002, Dr. Spires again met with the claimant and diagnosed the claimant as having Right De Quervain's Syndrome, despite noting that his thumb was 50% improved. He also gave the claimant Celebrex. On August 1, 2002, the claimant's last visit with Dr. Spires, the medical notes indicate that the claimant was 70% improved and the only problem is when the claimant does something heavy. Dr. Spires noted that the claimant still had De Quervain's, but that it was much improved. Dr. Spires continued the claimant on Celebrex and indicated that he could perform activities as tolerated.

In a letter dated March 10, 2006, Dr. Spires wrote:

It is my opinion that Mr. Bradshaw's de Quervain's syndrome was due to repetitive trauma from his work at Georgia-Pacific in October of 2001. This is based on subjective history and objective findings of tenderness in the first dorsal compartment and positive Finkelstein's of his right wrist. The patient could still have symptoms from the de Quervain's syndrome that began at Georgia-Pacific. At his last visit almost four years ago in my office, he still had subjective complaints with heavy lifting and he could benefit from surgical intervention in the form of a release of the first dorsal compartment of his wrist for control of symptoms. These are based on a reasonable degree of certainty.

In addition, I do not feel that the problems I addressed were related to carpal tunnel syndrome and I would not attribute carpal tunnel syndrome to the Georgia-Pacific repetitive injury conditions.

On September 13, 2003, the claimant filed an AR-C Form with the Arkansas Worker's Compensation Commission. Where the form asks the claimant to

identify the part of the body injured and cause of the injury, the claimant filled in that he suffers from carpal tunnel syndrome as a result of pulling wood at his employment.

The claimant testified that in August of 2004, he aggravated his condition in a car accident. The claimant testified that another driver ran a red light, causing the collision. In the accident, the claimant hit his hand on the steering wheel, which ultimately inflamed his wrist.

On July 28, 2005, the claimant was seen by neurologist Dr. Shailesh C. Vora for a Nerve Conduction Study (EMG). Dr. Vora noted that the claimant's chief complaint was right hand tingling, numbness, and pain. The EMG report identified the claimant's right median motor nerve as prolonged, the right ulnar sensory fifth digit as prolonged, and the right median and ulnar mid palm sensory across the wrist as being prolonged. Essentially, the study was abnormal. Dr. Vora diagnosed the claimant as having (1) right side carpal tunnel, (2) right median motor sensory distal neuropathy, (3) right ulnar sensory distal neuropathy, and (4) right ulnar and radial motor proximal response absent, which may be

because of conduction block or technical difficulty. Dr. Vora recommended that the claimant avoid repetitive movement of the right hand and use a Volar splint. She also recommended an orthopedic referral for the release of right side carpal tunnel syndrome.

On February 9, 2006, Dr. Moore provided an Independent Medical Evaluation, finding that the claimant's clinical history and physical examination were most consistent with a right De Quervain's syndrome. Dr. Moore noted that he could not find anywhere in Dr. Spires medical records where the claimant complained of numbness in his fingers. Dr. Moore also reviewed the physical therapist's notes, which indicated a positive Phalen's test. However, Dr. Moore failed to make any mention of the inflammation that the physical therapist observed.

Additionally, in the Independent Medical Evaluation, Dr. Moore also reviewed Dr. Vora's medical diagnosis and noted that it was confusing because the claimant's clinical history and physical examination were not consistent with right ulnar sensory distal neuropathy or carpal tunnel syndrome. Dr. Moore goes on to state that the ulnar and radial nerves appeared

normal. Dr. Moore opines that the claimant should have another EMG study performed to determine whether the claimant has carpal tunnel syndrome. Although citing the claimant's job duties and the time of onset of the injury, Dr. Moore determined if, in fact, the claimant did suffer from carpal tunnel, that he could not relate the claimant's injury to his work activities at Georgia Pacific. However, in a correction letter written on February 28, 2006, Dr. Moore noted that the claimant's physical examination was consistent with right De Quervain's syndrome and that in his medical opinion, it could be related to the claimant's work activities.

The Administrative Law Judge found that the claimant did not satisfy the statutory requirement of Ark. Code Ann. § 11-9-102(4)(D), where a "compensable injury must be established by medical evidence supported by objective findings" in regard to his work-related hand and wrist injury. The Administrative Law Judge found that the claimant suffered from De Quervain's syndrome, which was based upon the subjective Finkelstein test. Although there is clearly a dispute over the extent of the client's injury, it is evident that the claimant has shown objective signs of a work-

related injury in the form of De Quervain's and carpal tunnel syndrome.

Existence of an injury is supported by objective evidence such as every doctors' diagnosis of De Quervain's syndrome related to the claimant's work, as well as documented by the physical therapist's notation of right hand and wrist inflammation, and an EMG test, which revealed several abnormalities consistent with carpal tunnel syndrome.

"Compensable injury" is defined at Ark. Code Ann. § 11-9-102(4) (A) (Supp. 2005), provides in part:

(i) An accidental injury causing internal or external physical harm to the body... arising out of and in the course of his employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence.

(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 and repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition.

Arkansas Workers' Compensation law further provides, compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4) (D). Furthermore, objective findings are those finding which cannot come within the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16) (A) (i).

_____To establish a gradual onset injury other than carpal tunnel syndrome, the claimant is required to show that his work was rapid and repetitive and the major cause of his injury. In this instance, the claimant has met both criteria. The Claimant's job duties included pulling less than a quarter-inch thick plywood from a belt, referred to as an offbearer, and placing it in a buggy. Mr. McKey testified that each cart held approximately five hundred sheets of plywood. As such, the minimum amount of wood that the claimant could have "pulled" each day was around 2,500 sheets of wood. The claimant testified that he pulled closer to 6,000 sheets

of wood each day. Either way, it is evident that the claimant was making the same motion very quickly and several thousand times a day. Additionally, the claimant was moving and straightening wood while there were lapses in time during the work day. As such, the claimant's job duties consisted of rapid and repetitive motion, which ultimately injured his wrist.

Particularly, Lowery noted that the claimant had decreased grip strength in his right hand. Lowery's primary diagnosis was that the claimant demonstrated signs and symptoms consistent with De Quervain's disease and with inflammation of the superficial branch radial nerve. Even Dr. Moore opined that inflammation of the hand would be consistent with De Quervain's. As such, Lowery's diagnosis of De Quervain's syndrome is consistent with the findings of Dr. Webb, Dr. Spires, and Dr. Moore.

The respondents argue that Lowery is a physical therapist, not a licensed physician, and, therefore, cannot make an objective medical finding. However, it has been determined by Arkansas Courts that findings made by the physical therapist are objective findings. Continental Express, Inc. v. Freeman, 339

Ark. 142, 4 S.W.3d 124 (1999); See also Estridge v. Waste Management, 343 Ark. 276 (2000), 33 S.W.3d 167.

Lowery's finding that the claimant demonstrated signs and symptoms consistent with right wrist tendinitis and early signs of carpal tunnel syndrome is supported by objective medical evidence as Lowery noted that the claimant's right wrist and hand was inflamed. To overlook these findings would be to arbitrarily dismiss these objective findings. Additionally, Lowery noted that the claimant's right wrist and hand was also swollen. These findings would be consistent with De Quervain's and carpal tunnel syndrome.

Further objective medical findings were made by Dr. Webb and Dr. Spires. First, not only did Dr. Webb include "tendinitis wrist" in the claimant's November 7, 2001 medical records, but he filled out the Georgia Pacific Form. On the Georgia Pacific Form, Dr. Webb noted that the claimant had "Tendinitis Wrist" and did not check the box indicating that his condition was chronic.

Additionally, each and every medical record from Dr. Spires noted that the claimant suffered from De Quervain's syndrome. In fact, Dr. Spires' opinion,

which was based upon a reasonable degree of certainty, was that the claimant could benefit from surgical intervention in the form of a release of the first dorsal compartment of his wrist for control of symptoms.

In fact, even the respondent's own witness found that the claimant suffered from De Quervain's from his work. Dr. Moore provided an Independent Medical Evaluation, finding that the claimant's clinical history and physical examination were most consistent with a right De Quervain's syndrome. Dr. Moore noted that the claimant had a positive Phalen's test and a negative Tinel's test. Though Dr. Moore failed to make any mention of the right hand and wrist inflammation that the physical therapist observed, he found that the claimant's physical condition was consistent with right De Quervain's syndrome and was related to his work activities.

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 the present case, there is no physician who opined that the claimant did not suffer from De Quervain's. We find, in this instance, that to find otherwise would conflict with every other physician's opinion. It would, therefore, be arbitrary to dismiss the medical opinions which find that the claimant suffers from De Quervain's syndrome.

The respondents make the erroneous argument that the many medical opinions which state that the claimant suffers from De Quervain's syndrome is not supported by objective medical findings. The respondents note that the Finkelstein test, which is used to diagnose tendinitis, is a subjective test because it comes under the voluntary control of the claimant. Although it is irrefutably true that the legislature has required medical evidence supported by objective findings to establish a compensable injury, it does not follow that such evidence is required to establish each and every element of compensability. See

Singleton v. City of Pine Bluff, ___ Ark. App. ___, ___ S.W.3d ___ (2006); see also Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

Although the Finkelstein test itself may be subjective, Dr. Webb, Dr. Spires, Dr. Moore and Dr. Lowery all opined that the claimant suffered from De Quervain's syndrome, and the injury is supported by objective medical findings as noted by the physical therapist. It would be arbitrary to dismiss the expert medical opinions offered by all these physicians. It is notable that even Dr. Moore stated that the claimant suffered from De Quervain's syndrome, and such testimony cannot be arbitrarily dismissed.

We further find that the claimant's injury was directly caused by his work. The claimant testified that he began feeling pain in his hand and wrist and he reported the pain to his supervisor, Mr. McKey. The claimant specifically remembered telling Mr. McKey because Mr. McKey made a crude joke and sent him back to work. A few days later, the claimant sought medical treatment for his hand and wrist and was diagnosed as having a tendinitis. The claimant testified that he had never had pain in his hand or wrist prior to working for

the respondents, and, in fact, there were no medical records which indicated that the claimant had ever suffered any previous hand or wrist problem prior to working for the respondents.

Additionally, the claimant reported his injury initially to Dr. Webb, as evidenced by Dr. Webb's medical notes that the claimant was "pulling wood." The claimant reported pulling wood as the cause of his injury to every treating physician. As such, it is evident that the claimant's injury occurred in the course of his employment and is the major cause of his disability or need for medical treatment.

Even though the claimant definitely suffers from De Quervain's syndrome, the evidence shows that he also suffers from carpal tunnel syndrome, as shown by several objective medical findings. In April, 2002, Lowery's medical notes state that the claimant demonstrated signs and symptoms consistent with right wrist tendinitis and early signs of carpal tunnel syndrome. Lowery also noted that the claimant reported pain in both an active range of motion test and a passive range of motion test in his right wrist. Notably, Lowery also noted swelling in the claimant's

hand and forearm, which are consistent with carpal tunnel syndrome.

Additionally, the EMG identified the claimant's right median motor nerve as prolonged, the right ulnar sensory fifth digit as prolonged, and the right median and ulnar mid palm sensory across the wrist as being prolonged. Essentially, the study was abnormal. In light of this finding, Dr. Vora diagnosed the claimant as having right side carpal tunnel syndrome and recommended an orthopedic referral for the release of right side carpal tunnel.

We find that the Administrative Law Judge arbitrarily dismissed the objective findings of the EMG, citing a notation in Dr. Vora's report of, "Right ulnar and radial motor proximal response absent, which may be because of conduction block or technical difficulty." The Administrative Law Judge errs in determining that one possible difficulty in the testing should cause the entire test to be completely disregarded. In fact, if Dr. Vora had felt that the entire EMG was completely inaccurate, it is more likely that it would have been mentioned in the report. Rather, Dr. Vora noted that the study was abnormal and was consistent with carpal

tunnel syndrome. Dr. Vora was apparently so confident with the EMG test results, that she recommended that the claimant have surgery. In fact, the EMG results are consistent with Lowery's primary diagnosis was that the claimant demonstrated signs and symptoms consistent with De Quervain's disease and with inflammation of the superficial branch radial nerve. Lowery made several notations of objective findings, including an inflammation of the right brachioradialis, extensor carpi radialis longus, and supinator, which are consistent with symptoms related to carpal tunnel syndrome. In fact, Lowery's medical notes state that the claimant demonstrated signs and symptoms consistent with right wrist tendinitis and early signs of carpal tunnel syndrome.

The respondents also argue that the claimant failed to establish that his employment required rapid and repetitive motion to show compensable carpal tunnel syndrome. Since the claimant asserts that he sustained a work-related gradual onset of carpal tunnel syndrome, the claimant is not required under the provisions of Act 796 of 1993 to establish that his work duties required rapid repetitive motion in order to establish the

compensability of his carpal tunnel syndrome injury. See Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998). However, the claimant must still prove that he sustained a carpal tunnel syndrome injury arising out of and in the course of employment, that a work-related injury is the major cause of his disability or need for medical treatment, and the compensable injury must be established by objective medical findings. Id.

We find that the claimant suffered from De Quervain's and carpal tunnel syndrome, as the objective medical findings indicate. Not only did Dr. Webb, Dr. Spires, and Dr. Moore all find that the claimant suffered from De Quervain's syndrome, which was attributable to his work, but Lowery observed inflammation in the claimant's right wrist and hand, which is consistent with De Quervain's symptoms. Accordingly, Dr. Spires opined that the claimant would need surgery for his De Quervain's. In addition to objective findings for De Quervain's syndrome, EMG results show and Lowery's observations corroborate that the claimant was suffering from carpal tunnel syndrome as well. As the claimant had not suffered any hand or

wrist pain or sustained an injury prior to working for the respondents, it is clear that the claimant's injury is compensable. As such, the claimant met his burden of proving the existence of injury with evidence of objective medical findings.

The respondents argue that the claimant did not establish that his injury arose out of and in the course of employment, citing the claimant's credibility. The respondents rely solely on Mr. McKey's inconsistent testimony. The claimant's personnel file does not reflect that he reported his injury to respondents. Mr. McKey testified that if the claimant had been injured, his records would have reflected it. Mr. McKey also testified that the claimant never reported a work-related injury to him.

Mr. McKey's absentee calendar did not show any indication that the claimant was off work due to injury. Mr. McKey testified that the claimant had complained of wrist pain, but that the claimant had informed him that it was not from work. That information did not appear on the absentee calendar, and Mr. McKey testified that he would not have put non-work related injuries on the absentee calendar. Interestingly, Mr. McKey did note in

the absentee calendar when the claimant had a toothache, which is presumably non-work related. It is evident that Mr. McKey personally chose which information to include in the personnel file. Additionally, in light on the claimant's testimony that Mr. McKey made a crude joke about why his wrist hurt, Mr. McKey testified that he was not in the habit of making jokes with his employees. We find it unlikely that the claimant would have recalled such a crude joke had it not been said.

Additionally, Mr. McKey testified that the claimant would probably fill five to six buggies per shift and that each buggy contained approximately five hundred sheets of plywood. However, Mr. McKey also testified that there were five men who would work that job at the same time, and that they would only be working 50% of the time. He testified that the remaining 50% of their time was spent straightening their buggies. We find it nearly impossible to believe Mr. McKey's testimony that the respondents employ five men to perform the same job, at the same time, but are only actually working 50% of the time.

Furthermore, Mr. McKey testified that the claimant injured his wrist while fixing his wife's car.

This is entirely inconsistent with all the objective medical findings presented and with the history noted in the medical records. It is impossible to develop tendinitis or carpal tunnel from fixing a car once, and the claimant did not report an injury when he came to work after fixing the car. The fact that the respondents even suggest that the injury occurred while fixing a car is sheer speculation unsupported by either medical evidence or the claimant's own testimony that he did not injure himself while fixing the car.

Additionally, the claimant reported the injury as a work-related injury to each of the treating physicians. As such, we give little weight to Mr. McKey's testimony. We further find that the claimant's injury did occur within the scope of employment, as previously discussed.

_____The respondents also argue that the claimant must have injured his arm prior to working for the respondents or in the 2004 car accident. The respondents argue that the claimant had manual labor jobs where he most likely injured himself. The respondents cite the claimant's work for a construction company and electronics store at least twenty years earlier. However, the claimant testified that he worked

as a salesman at Montgomery Ward for twelve years before becoming employed by the respondents. Additionally, the claimant experienced no pain in his wrist prior to his employment with respondents. As such, the respondents' argument is erroneous.

The respondents further argue that the 2004 car accident was the leading cause in the claimant's injury. This argument is inconsistent, as the claimant had been diagnosed with right tendinitis or early carpal tunnel syndrome by three different doctors prior to the car accident. In fact, the claimant filed the AR-C Form in 2003, before the car accident took place. As such, this argument is without merit. In sum, we find that the claimant sustained a compensable injury in the form of De Quervain's syndrome and carpal tunnel syndrome.

We also find the claimant is entitled to reasonable and necessary medical treatment for his De Quervain's and carpal tunnel syndrome. Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms

resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); and See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). As the objective medical findings prove that the claimant sustained a compensable injury, and the treatment that the claimant is seeking is to treat those conditions, we find the claimant is entitled to reasonable and necessary medical treatment.

The claimant also requested temporary total disability benefits for the time period of October 25, 2001 to a date to be determined. A claimant who has suffered a scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work. Ark. Code Ann. § 11-9-521(a) (Repl. 2002); Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for the healing of an injury that continues until the underlying condition causing the disability has become stable and nothing in the way of treatment

will improve that condition. Farmers Cooperative v. Biles, 77 Ark. App. 1, 69 S.W.3d 899 (2002) citing, Carrol General Hospital v. Green, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The healing period has not ended so long as treatment is administered for healing and alleviation of the condition and continues until the employee is as far restored as the permanent character of the injury will permit. Milligan v. West Tree Serv., 57 Ark. App. 14, 941 S.W.2d 434, 946 S.W. 2d 697 (1997), citing, Arkansas Highway & Transp. Dep't v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993). The determination of when the healing period has ended is a factual determination for the Commission. Carrol, see, supra, citing, Harvest Foods v. Washam, 52 Ark. App. 72, 914 S.W.2d 776 (1996).

It is evident that the claimant is within his healing period. All of his doctors agree that the claimant suffers from De Quervain's syndrome. The De Quervain's has not stabilized, as is evidenced by Dr. Moore's 2006 opinion that the claimant suffered from De Quervains' which is attributable to his work for the respondents. In fact, in 2006, Dr. Spires recommended that the claimant undergo surgery because his symptoms

had not resolved. Likewise, and as previously discussed, the claimant has symptoms consistent with carpal tunnel syndrome, and Dr. Moore has requested additional testing for the claimant's carpal tunnel syndrome, indicating that condition also places the claimant within his healing period.

The respondents argue that the claimant returned to work and is, therefore, barred from receiving temporary total disability benefits. This Commission has previously held that an unsuccessful attempt at work does not affect eligibility for temporary total disability benefits. Willaby v. Beverly Healthcare, Full Workers' Compensation Commission Opinion filed June 28, 2007, (F306079, F406144, F509749); citing Morgan v. Quick Lay Pipe, Full Workers' Compensation Commission Opinion filed June 16, 2006, (F409390). The respondent's argument is analogous to that made in Farmers Coop. v. Biles, 77 Ark. App. 1, 69 S.W.3d 899 (2002), where the employer argued that the employee's attempts to continue working constituted a return to work. We find the reasoning in Biles to be applicable in this case as well:

Construction of the Workers'
Compensation Act must be done in

light of the express purpose of that legislation, which is "to pay timely temporary and permanent disability benefits to all legitimately injured workers who suffer an injury or disease arising out of and in the course of their employment, to pay reasonable and necessary medical expenses resulting therefrom, and then to return the worker to the work force." Ark. Code Ann. § 11-9-101(b) (Repl. 1996). In light of the legislative purpose, it would be ludicrous to assume that the legislature sought to penalize workers who sustain scheduled injuries, or to deter such workers from making a good-faith effort to return to the work force following such an injury. Section 11-9-521(a)'s brief reference to temporary disability benefits merely establishes the right of a worker who has sustained a scheduled injury to such benefits, and was clearly not intended to bar additional temporary total disability benefits following an unsuccessful attempt to return to the workforce. See Roberson v. Waste Management, 58 Ark. App. 11, 944 S.W.2d 858 (1997).

"Return to work" is not defined by the Act, and we think it would be a gross perversion of the purpose of the Workers' Compensation Act to hold that appellee "returned to work" pursuant to § 11-9-521(a) by continuing to report to work following his injury. In our view, appellee never left work. Appellee could not leave work - without being terminated for absenteeism - until he had been evaluated by a physician

and given an off-work slip. Appellee requested medical care and evaluation, but appellant refused to provide it. No reasonable construction of the term "return to work" would permit an employer to coerce an injured worker to abandon his claim to temporary disability benefits by denying him reasonable and necessary medical treatment for an admittedly compensable injury. Id.

In the present case, the claimant has not been able to return to work, though he has had several unsuccessful attempts. He attempted to work for Remco, but was only able to complete three days of work due to the pain and swelling in his wrist. Additionally, he has been able to mow a few yards using a riding lawn mower, but so far has only had six or seven clients per year. Likewise, he has been able to do some painting for money, but has not been able to hold down a job due to the pain and swelling in his wrist. The claimant testified that has not received wages other than for these few days of work, nor have the respondents provided any evidence to refute that testimony. As in Biles, the minimal amount of work that he has been able to perform does not constitute a return to work. Accordingly, it is evident the claimant remained in his

healing period and has been unable to work from October 2001 until a date yet to be determined.

For the aforementioned reasons, we find that claimant met his burden of proving the existence of injury with evidence of objective medical findings. The claimant is, therefore, awarded medical and temporary total disability benefits. As such, we reverse the Administrative Law Judge's decision.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. §11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. §11-8-715 (Repl. 1996) with Ark. Code Ann. §11-9-715 (2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code. Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant has established the compensability of his claim with objective medical findings. The majority equates the diagnoses of De Quervain's syndrome and tendinitis wrist to objective medical findings. A diagnosis and a finding are not equivalent.

A compensable injury must be established by medical evidence supported by objective findings, and medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. See, Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Id. Therefore, in order to prove a compensable injury, a claimant must

prove, among other things, a causal relationship between his employment and the injury. McMillan v. U.S. Motors 59 Ark. App. 85, 953 S.W.2d 907 (1997). Objective medical evidence is necessary to establish the existence and extent of an injury, but not essential to establish the causal relationship between the injury and a work-related accident. Horticare Landscape Mgt. V. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002); Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999); Wal-Mart Stores v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001). Moreover, objective medical evidence is not essential to establish the causal relationship between the injury where objective medical evidence established the injury's existence, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident. See, Wal-Mart Stores, Inc. v. VanWagner, supra; Wal-Mart v. Leach, supra. In Liaromatis v. Baxter Co. Regional Hosp., ___ Ark. App. ___, ___ S.W.3d. ___ (CA 05-1096, May 24, 2006), the Court disagreed with the claimant's argument that the medical evidence must merely establish the existence of the injury. The question, stated the Court, is not whether there are new objective findings, but whether

there is a new compensable injury. Id. It is the injury for which appellant seeks benefits that must be proved with objective medical findings. Id.

Objective findings are defined at Ark. Code Ann. § 11-9-102(16)(A)(i) as those findings which cannot come under the voluntary control of the patient. When the Commission determines physical or anatomical impairment, complaints of pain, straight-leg raising tests, or active range of motion tests shall not be considered objective findings. Ark. Code Ann. §11-9-102(16)(A)(ii)(a)&(b). The onset of pain does not satisfy our statutory criteria for benefits. Test results that are based upon the patient's description of the sensations produced by various stimuli are clearly under the voluntary control of the patient and therefore, by statutory definition, do not constitute objective findings. Duke v. Regis Hair Stylists, 55 Ark. 327, 935 S.W.2d 600 (1996). Further, medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. Objective medical evidence is not essential to establish the causal relationship between the injury and a work-related accident where objective medical

evidence establishes the extent and existence of the injury, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident. McDonald, supra.

In Cox v. CFSI Temporary Employment, 57 Ark. App. 310, 944 S.W.2d 856 (1997) the claimant was diagnosed with a lumbar strain. This diagnosis without supporting objective medical findings was not sufficient to support a finding of compensability. See also Lockett v. Cooper Tire & Rubber Co., Full Commission Opinion filed June 25, 2005 (F212591); Meister v. Safety Kleen Corp., Full Commission Opinion filed May 18, 1998 (E616200) (rev'd on court finding objective findings on x-ray that supported the diagnosis 339 Ark. 91, 3 S.W.3d 320 (1999)).

The issue in the present claim is not whether the claimant has been correctly diagnosed with De Quervain's syndrome. Rather, the issue is whether the claimant's diagnosis of De Quervain's syndrome is supported by objective medical findings. I find that it is not. De Quervain's is defined in Dorland's Illustrated Medical Dictionary 28th Ed. as "painful tenosynovitis due to relative narrowness of the common

tendon sheath of the abductor pollicis longus and the extensor pollicis brevis." The record is void of any objective medical findings relative to either the abductor pollicis longus or the extensor pollicis brevis muscles. At best, the medical records reflect that the claimant tested positive on the Finkelstein's test which explicitly comes under the voluntary control of the patient and is conducted by moving the claimant's fist to the wrist and seeking a pain response. Likewise, tenderness or tendinitis of the wrist is both subject to the claimant's voluntary control and a diagnosis not an objective finding.

In finding that the claimant has met his burden of proof, the majority relies upon the diagnosis and the findings of "inflammation of the right brachioradialis extensor, carpi radialis longus and supinator" as made by claimant's physical therapist Gary Lowery. However, I note that these muscle groups are located in the upper one-half of the forearm near the elbow, not near the wrist. Moreover, these muscles have not been linked by any of the claimant's treating physicians as the muscles associated with the diagnosis of De Quervain's syndrome. The claimant has been

described as morbidly obese. Mr. Lowery did not indicate or elaborate on how he detected swelling on this morbidly obese patient when the claimant's treating physicians did not. Furthermore, Mr. Lowery "found" inflammation of the superficial branch of the radial nerve, a finding not made by the claimant's treating physicians. I simply do not find a physical therapist to have the training or expertise to render a finding of inflammation of the nerves. Tests run by a physical therapist might produce findings consistent with nerve disorders or nerve inflammation, but a physical therapist simply is not trained to render such a conclusive finding. Given the discrepancies between the location of the inflammation and the diagnosis involving the wrist, as well as Mr. Lowery's lack of expertise to render such a finding, and his failure to distinguish between objective and subjective findings, I find all of his findings suspect. Therefore I cannot accord them any weight.

Without the finding of inflammation as rendered by Mr. Lowery, the record is void of any objective medical findings supportive of a diagnosis of De Quervain's syndrome. The only objective medical findings

in the record consist of the EMG/nerve conduction study performed by Dr. Vora. His tests were consistent with carpal tunnel syndrome, not De Quervain's syndrome. Accordingly, I cannot find that the claimant has proven by a preponderance of the evidence that he sustained right De Quervain's syndrome that is supported by objective medical findings. Therefore, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner