

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705738

CHARLES KOSTER,
EMPLOYEE

CLAIMANT

CUSTOM PAK,
SELF-INSURED EMPLOYER

RESPONDENT

TRISSEL, GRAHAM & TOOL, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 2, 2009

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

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

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed March 10, 2008. The administrative law judge found, among other things, that the claimant's right upper extremity complaints were a compensable consequence of an injury to the claimant's left upper extremity. The administrative law judge found that the claimant was temporarily totally disabled beginning March 27, 2007 until

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a date to be determined. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant did not prove he was entitled to additional benefits.

I. HISTORY

Charles Koster, age 43, testified that he had never suffered any prior injury to his right or left elbow or arm. The record indicates, however, that the claimant complained of pain in his right upper extremity in April 1995; the claimant reported that he had bumped his right elbow at work. The claimant participated in several sessions of physical therapy for his right upper extremity. The claimant testified on cross-examination that he could not remember receiving medical treatment for his right elbow. The claimant reported in August 2000 that he had fallen and hurt his right wrist. A physician noted swelling and pain in the claimant's right wrist, and a clinical impression was right wrist sprain.

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The record indicates that the claimant was hired at Custom-Pak on August 23, 2005. The claimant testified on direct examination:

Q. Now can you - describe for me the work you were doing at Custom Pak on or about June of '06.

A. From the first time the arm started hurting?

Q. Well yes, sir. Take us a little bit before that, I guess.

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

Q. And when did you first begin to have some kind of an arm problem?

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

Q. What is that?

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

Q. Does this machine have a, did you have a rate or a quota or anything like that?

A. Yes....I believe it's, I'm not sure but I believe it's 68 seconds, ain't that right on the tubes - ...

Q. Does that mean a part came out every 68 seconds you had to deal with? Is that what that means?

A. Yes.

Q. Okay. And in the course of a day, in an eight-hour shift, so however many minutes that is other than breaks every minute or so, a little over every minute there was a part coming out and you had to manually take the flashing off?

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

Q. And when you testified in your deposition on June 6th, you were pulling a leaf blower tube, is that right?

A. Yeah.

Q. A leaf blower tube and noted pain in your left elbow.

A. Yeah.

Q. Now what's a leaf blower tube?

A. That's what I'm talking about here. The leaf blower tubes, what it is is it falls down. You pull your flash, you trim, you pull your flash, you torch it and then you take it over and you put it in a spin trimmer. You have to push down with both thumbs until the door closes. And it starts spinning. You take it out of there and you put it over here on a cooler and it shrinks it to fit that mower and then you take another tube out of a box and put them together and line them up and make sure they don't wobble or nothing -

The parties stipulated that the employment relationship existed at all pertinent times, including June 6, 2006.

Lynn Curtis, former HR Coordinator for the respondent-

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employer's Arkansas Division, testified that the claimant reported a left elbow problem to her in June 2006, and that medical treatment was provided to the claimant. Dr. Michael Lack, the company physician, examined the claimant on June 6, 2006:

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

Generalized tenderness. There is no swelling or swelling. Forced extension of the wist (sic) causes pain in the lateral epicondyle and forced flexion causes pain in the medial epicondyle.

Dr. Lack assessed left elbow pain and indicated that the claimant's problem was work related. Dr. Lack treated the claimant with a tennis elbow splint and Ibuprofen. Dr. Lack returned the claimant to "Category Three" work on June 6, 2006. The claimant's testimony indicated that he returned to work but "I would try not to use my left arm as much."

Dr. Lack noted on June 13, 2006, "Pt states he still has some pain. The tennis elbow helped but his hand had

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some swelling. No bruising. Pt with point tenderness over medial and lateral epicondyle. Good grip. X-ray normal to be read by the radiologist."

On June 14, 2006, an outside film interpretation of a left-elbow x-ray was negative.

The claimant signed a Custom-Pak Accident Investigation Report on June 14, 2006. The Accident Investigation Report showed a date of accident of "6-6-06/6-13-06." The Report indicated that the claimant was "Performing all necessary functions of job duties; using a torch, pulling flash, using his knife, placing the part in a fixture, and assembling the part together....His left elbow started hurting (sic)."

The claimant signed a Form AR-N, Employee's Notice Of Injury, on June 14, 2006. The claimant reported that there had been an accident on June 6, 2006 and that he had injured his elbow. The cause of injury was: "Performing job function & elbow started to hurt."

Steve Lynn, an R.N.P. in the office of Dr. John F. Ball, examined the claimant on June 28, 2006:

40 yom seen in consultation for Dr. Michael Lack with CC involving L lateral elbow pain. This began on June 6th while "pulling flash." Reports he reported this to his supervisor. He saw Dr.

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Lack and was placed on a course of PT. Describes having some iontophoresis done and now he has some black spots in the pigment of the skin over the area and has also developed medial epicondyle pain. Reports that his hand goes numb and tingles about 3 x a day and may last for 30-45 minutes or so. He tried a tennis elbow brace on both arms and that seemed to make his R arm hurt worse but the workplace required that he continue to wear it because it was listed as one of his restrictions for work. Does feel the brace helps the L elbow somewhat.

Over all, the symptoms have been staying about the same. He's been on restricted duty....

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

Mr. Lynn's impression was "Medial and lateral epicondylitis, L elbow. Dr. Ball reviewed the findings with the patient. The XRS that were sent along with the pt, 3 views, of the elbow are normal. Reviewed with the patient that this problem can be hard to get over, especially in someone who continues to do repetitive gripping. Beyond what has been done, we offered to inject the elbow but he needs to try to rest his arms as much as he can. This could develop into a condition where he might possibly need surgery....He's given a note that he does not need to wear the brace on the R elbow. He should continue light duty."

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Mr. Lynn performed an injection into the claimant's left lateral epicondyle.

Dr. Ball reported on July 11, 2006, "On examination, he has full ROM. He has much less tenderness over the lateral epicondyle. He still has some tenderness directly over the medial epicondyle. I discussed the possibility of an injection in the medial epicondyle but he said he would prefer to defer that for the present. He would like to try to go back to his regular duty and he was released to do that assuming he doesn't have significant recurrence of symptoms as he adds more stress to his elbow."

Dr. Ball signed a form on July 11, 2006 returning the claimant to regular duty, no restrictions on July 12, 2006. Dr. Lack signed the following note on July 11, 2006: "Charles Koster has been released to full duty by Dr. Ball on 07-11-06."

On August 16, 2006, the claimant began treating for right elbow pain with his family physician at Troxel Medical Clinic.

The claimant testified that he became a "floor person" for the respondents in February 2007: "One week you'll drive

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a forklift taking care of getting your hardware, which consists of latches and handles and everything out to the floor to the other people on the machines. And one week you would be back on your machine....they would switch you back and forth."

The claimant signed a Custom-Pak Employee Request For Family Medical Leave (FMLA), requesting leave for the start date March 27, 2007. The claimant indicated on the Request that his health condition was personal and was not work related. Lynn Curtis testified, "just out of the blue he came into the office and said that he needed FMLA papers and short-term disability papers....He took those papers and away he went. But he never really, he didn't want to talk about it. He didn't explain it to me."

The record contains a Certificate To Return To Work from Troxel Medical Clinic, dated March 28, 2007. It was noted on the Certificate, "Can return after further testing ... please excuse from 3-27-07 -?"

A Certification Of Health Care Provider (Family Medical Leave Act Of 1993) was entered on April 3, 2007. A representative of Troxel Medical Clinic indicated on the

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Certification that the employee needed Family and Medical Leave for a personal illness which was not work related.

The claimant testified that he began receiving short-term disability in about April 2007.

Steve Lynn in Dr. Ball's office reported on April 6, 2007, "Mr. Koster comes in today with complaints involving the L forearm and elbow. Actually, both elbows bother him....Medial epicondyle has some mild tenderness. Lateral epicondyle is tender. Full ROM of the elbow. We discussed his work history and he's been at the current job for about a year and a half. Symptoms seemed to start after he'd been working there for about 6 months....Have recommended NCV testing of his upper extremities and return visit after that."

The record indicates that Dr. John F. Ball signed a Disability Claim Form on April 6, 2007 with the diagnosis, "Cumulative Trauma, Nerve Entrapment Both Arms." Dr. Ball wrote that the "Subjective symptoms" were "Pain, swelling, numbness both arms." Dr. Ball checked a box indicating that the claimant's injury did not arise out of his employment. Dr. Ball signed a note on April 6, 2007 releasing the

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claimant from work until the claimant's next appointment on April 25, 2007.

Dr. Lack examined the claimant on April 10, 2007 and assessed "Lateral Epicondylitis, Bilateral." Dr. Lack indicated that the claimant would remain off work "(Per personal physician's directive 4/6/07)."

The claimant signed another Form AR-N, Employee's Notice Of Injury, on April 16, 2007. The claimant indicated that he had informed the employer on April 6, 2007 that there had been an accident. The claimant wrote that he had injured his arm and that the cause of injury was soreness and pain in both arms.

A Nerve Conduction Study was done on April 16, 2007, with the following conclusion read by Dr. Ron South:

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

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Dr. South stated the following conclusion following Motor Nerve Conduction studies on April 23, 2007: "1.) The nerve conduction studies of the ulnar nerve bilaterally did not reveal any evidence of an entrapment neuropathy or of a peripheral neuropathy." Dr. South's impression was "Normal nerve conduction studies of the ulnar nerve bilaterally."

The claimant continued to follow up with Steve Lynn and Dr. Ball continued to keep the claimant off work.

Dr. Randy R. Bindra, UAMS Orthopaedic Surgery Clinic, wrote to Dr. Ball on June 11, 2007:

This gentleman appears to have bilateral upper extremity pain which has been present since June 2006 when it was first reported. At that time, he was about 8 months into his job working as a packer. He complains of bilateral elbow pain, first started off more on the left, now appears to be on the right. According to him, you have given him 3 steroids injections on the left, 1 on the right. None of them have given him any relief whatsoever.

CLINICAL EXAM:

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

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carpal tunnel syndrome. I reviewed his nerve conduction studies and, in view of the lack of clinical findings, I do not think his problem is one of nerve compression. Unfortunately, his symptoms are not localized enough for lateral epicondylitis. With the lack of response to injection, I do not think surgery will provide him any benefit. I have arranged for him to have a bone scan to see if there is any increased uptake in the elbows, and I have also asked him to bring his x-rays of the elbows with him at the next visit so that I can review them.

A whole-body bone scan was done on July 9, 2007, with the following findings:

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

There is evidence of dental disease with some increase in radiotracer uptake related to the left maxilla. Degenerative changes are present in the shoulders, knees, ankles, and cervical spine.

IMPRESSION:
DEGENERATIVE CHANGES NOTED IN THE ELBOWS
BILATERALLY, ALSO DEGENERATIVE CHANGES NOTED OTHER
JOINTS AS DESCRIBED ABOVE.

The claimant testified that his employment was terminated on or about July 10, 2007.

The claimant followed up with Dr. Bindra on July 16, 2007:

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This gentleman has bilateral upper extremity pain which started in June 2006 which is now 13 months ago.

His problem started eight months ago. He reported at work. He works as a packer.

He has had three steroid injections on the left, one on the right over the lateral aspect of the elbow, and he has had no relief from any of those. At his last visit on 6/11/07, I noted this gentleman had global tenderness around his elbows with no obvious localized findings. I did not find positive provocative tests for epicondylitis. He had brought nerve conduction studies with him which suggested bilateral mild carpal tunnel syndrome and no ulnar nerve problems. Clinically, he does not have any signs suggestive of carpal tunnel syndrome.

I arranged a whole body bone scan and brought him back with the reports today.

I reviewed the films myself. These were done on 7/9/07. I did not find any significant increased uptake at the elbows on either side. They reported degenerative changes in the elbows bilaterally and in the other joints as described above.

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

Dr. Bindra's impression was "Bilateral elbow pain; unknown etiology." Dr. Bindra planned an MRI study of the claimant's right elbow and stated, "I have explained to this gentleman if the MRI scan fails to show any significant pathology or any surgical correctable pathology then he may need to be put on a chronic pain management program, and I will not be able to help him."

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An MRI of the claimant's right elbow was taken on July 19, 2007, with the following findings:

The alignment is anatomic. There is no fracture. On the T2-weighted images, there is some slightly increased signal intensity seen in the lateral epicondyle. There is also increased signal intensity seen in the common extensor tendon. There is no significant effusion. In the radial head, there is a small focus of decreased signal intensity on both T1 and T2-weighted images, probably due to a bone island. Radial and ulnar collateral ligaments are intact.

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

ADDENDUM: On further review, it looks like there is partial detachment of the common extensor tendon from the lateral epicondyle. There is also abnormal signal and appears to be detachment of the radial collateral ligament as well.

The claimant testified that, in about September 2007, he worked for approximately one month at Lord's Ranch childcare facility. The claimant testified that he had not worked for any other employer.

A pre-hearing order was filed on November 6, 2007. The claimant contended that he sustained a compensable injury to his arms. The respondents contended, among other things, that the claimant's elbow problems were not related to the claimant's employment.

An administrative law judge scheduled a hearing on the issues of "compensability (temporary total disability and medical benefits) and controverted attorney fees."

A hearing was held on January 18, 2008. Counsel for the respondents stated at that time, "we did accept and pay as a medical only, a left elbow injury....we did pay all the medical bills of Dr. Lack and also Dr. Ball from the left elbow problem back in June of 2006." The claimant contended that his right elbow condition was a compensable consequence of the left elbow injury.

An administrative law judge found, among other things, that the claimant's right upper extremity complaints were a compensable consequence of the June 6, 2006 injury. The administrative law judge found that the claimant was temporarily totally disabled beginning March 27, 2007 until a date to be determined. The respondents appeal to the Full Commission.

II. ADJUDICATION

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from

that injury. *McDonald Equipment Co. v. Turner*, 26 Ark. App. 264, 766 S.W.2d 936 (1989). 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), citing *Bearden Lumber Co. v. Bond*, 7 Ark. App. 65, 644 S.W.2d 321 (1983). The determination of whether the causal connection exists is a question of fact for the Commission to determine. *Carter v. Flintrol, Inc.*, 19 Ark. App. 317, 720 S.W.2d 337 (1986).

In the present matter, the Full Commission finds that the claimant did not prove his right elbow problems were a compensable condition. The claimant began working for the respondent-employer in August 2005. The parties stipulated that the employment relationship existed on June 6, 2006. The record indicates that the respondents began providing benefits to the claimant for a reported left elbow problem. The claimant reported that his left elbow began burning after "pulling flash" at work. The claimant treated with Dr. Lack and Dr. Ball. A member of Dr. Ball's staff noted in June 2006 that a tennis elbow brace made the claimant's right arm hurt. The claimant was therefore given a note

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indicating that he did not need to wear a brace on the right elbow. The claimant was returned to full work duty on July 11, 2006.

The claimant began treating for right elbow pain with his family physician at Troxel Medical Clinic on August 16, 2006. The claimant testified that his work duties changed in February 2007. The claimant testified that he would alternate week-to-week between driving a forklift and operating machinery. The record does not demonstrate that the claimant's right elbow symptoms were a compensable consequence of his work-related left elbow complaints. The claimant requested Family Medical Leave on March 27, 2007. The claimant reported, however, that his right elbow condition was personal and was not related to his work. A representative of Troxel Medical Clinic reported on April 3, 2007 that the claimant's condition was not work-related. Dr. Ball diagnosed cumulative trauma with nerve entrapment on April 6, 2007. Dr. Ball indicated, however, that this condition did not arise out of the claimant's employment.

The claimant began treating with Dr. Bindra at UAMS on June 11, 2007. A bone scan in July 2007 showed degenerative

changes in the claimant's elbows bilaterally. Dr. Bindra did not opine that this bilateral degenerative condition was related to the claimant's work for the respondent-employer. Dr. Bindra instead opined that the claimant's bilateral elbow pain was of "unknown etiology." Finally, an MRI of the claimant's right elbow on July 19, 2007 showed "a partial detachment of the common extensor tendon from the lateral epicondyle. There is also abnormal signal and appears to be detachment from the radial collateral ligament as well." The record does not demonstrate that the findings shown on the MRI were causally related to the claimant's work duties for the respondents. Nor does the evidence show that the findings on the MRI were the result of a compensable consequence of the claimant's left arm complaints.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove that his right upper extremity complaints were a compensable consequence of an injury to the claimant's left upper extremity. The Full Commission finds that the claimant did not prove he was entitled to additional benefits from the

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respondents. We therefore reverse the administrative law judge's opinion, and this claim is denied and dismissed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents

DISSENTING OPINION

I must respectfully dissent from the majority opinion. I find, as did the Administrative Law Judge, that the claimant sustained compensable right and left upper extremity injuries while working for the respondent employer. Specifically, I find that the claimant sustained a specific incident injury to the left upper extremity on June 6, 2006, and a right upper extremity injury as a compensable consequence of the first injury, and therefore I must respectfully dissent.

For the claimant to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must

establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Here, the claimant sustained a specific incident injury to his left elbow on June 6, 2006 while "pulling flash." The claimant initially complained of a burning sensation and later soreness. The claimant reported the injury to his supervisor and was sent to the respondent's designated medical provider, Dr. Michael Lack. Dr. Lack treated the claimant's symptoms with Ibuprofen and a tennis elbow splint and released the claimant to limited job duties. The claimant followed-up with Dr. Lack on June 13, 2006. On this date

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the chart note indicates the presence of swelling in the claimant's left hand and point tenderness over the medial and lateral epicondyle. On June 26, 2006, Dr. Lack stated: "(Patient) has been attending physical therapy as recommended and taking ibuprofen as directed. (Patient) says the pain is not any better." Dr. Lack also provided a tennis elbow brace for the claimant's right arm. Dr. Lack's report states: "RESTRICTIONS: WEAR SPLINT/BRACE AT WORK." After this visit, Dr. Lack referred the claimant to an orthopedist, Dr. John Ball. On June 28, 2006, Dr. Ball's nurse, Steve Lynn stated:

40 yom seen in consultation for Dr. Michael Lack with CC involving L lateral elbow pain. This began on June 6th while "pulling flash." Reports he reported this to his supervisor. He saw Dr. Lack and was placed on a course of PT. Describes having some iontophoresis done and now he has some black spots in the pigment of the skin over the area and has also developed medial epicondyle pain. Reports that his hand goes numb and tingles about 3 x a day and may last for 30-45 minutes or so. He tried a tennis elbow brace on both arms and that seemed to make his R arm hurt worse but the workplace required that he continue to wear it because it was listed as one of his restrictions for work.

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Does feel the brace helps the L
elbow somewhat...

Dr. Ball's office note of June 28, 2006 indicates that the claimant was assessed as having medial and lateral epicondylitis of the left elbow and was treated with a steroid injection. The claimant was also advised to rest his arms as much as he can. Dr. Ball stated: "This could develop into a condition where he might possibly need surgery." The claimant was continued on light duty and advised to come back for a re-check in two weeks.

On July 11, 2006 the claimant returned to Dr. Ball's office. The physical examination of the claimant's left elbow disclosed that he was much less tender over the lateral epicondyle; however, he still had some tenderness directly over the medial epicondyle. Further treatment was offered to the claimant in the form of an injection in the medial epicondyle; however, the claimant declined the injection. Dr. Ball stated: "he would like to try to go back to his regular duty and was released to do that assuming he doesn't have significant recurrence of symptoms as he adds more stress to the elbow". The July 11, 2006, office note of

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Dr. Ball also reflects that a routine recheck should be done in about six weeks.

The claimant did not return to Dr. Ball. Instead, on August 16, 2006, he went to see Dr. Roger Troxel, for complaints of pain in his right elbow. On November 30, 2006, the claimant went to Dr. Troxel for left arm pain, and on February 20, 2007, for bilateral elbow pain. Although the claimant was still receiving medical treatment for his upper extremity complaints, albeit under the care of and at the direction of Dr. Troxel, the claimant continued performing his regular job duties until March 27, 2007, the day before Dr. Troxel referred the claimant back to Dr. Ball.

On April 6, 2007, Steve Lynn, Dr. Ball's nurse, stated:

Mr. Koster comes in today with complaints involving the L forearm and elbow. Actually both elbows bother him. He tends to lose the grip in his L hand. He has some previous problems with the upper extremities and seemed to have gotten better but when he had an exacerbation, he states he couldn't afford to lose his job and had to return to work. He feels that he's now in a better position with his

benefits to get this looked into. Reviewed his work activities and he's brought in his job descriptions. When he does a particular activity which he calls "pulling flash," he describes repetitive stress to his arms. He notes that even when it is easy type work, it is hard on his arms. He's been off since March 27th related to his arm pain and swelling...

The claimant's treatment plan was outlined as follows:

Have recommended NCV testing of his upper extremities and return visit after that. He states that Dr. Troxel has prescribed some Mobic and Hydrocodone for him and also gave him a steroid pack. The steroids didn't seem to help much. The pain has not been as bad since he's been off work. Dr. Troxel had him off work until he was seen here. We'll get the nerve testing and see him back here after that has been done.

On April 7, 2007 the claimant formally notified the respondent of his claim for workers' compensation benefits related to his bilateral upper extremity injuries. On April 10, 2007, the respondent sent the claimant back to Dr. Lack, who noted the treatment measures already undertaken by Dr. Troxel and Dr. Ball, and scheduled a NCV with Dr. South. Dr. Lack

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also noted that the claimant's personal physician had directed the claimant to remain off work.

The claimant saw Dr. Ball again on April 25, 2007. In the report from this visit, Steve Lynn, Dr. Ball's nurse, stated:

Mr. Koster returns with his cumulative trauma and tendinitis of his hands. After last visit, he was sent for NCV testing. The report was reviewed and showed some mild carpal tunnel syndrome. It was read as showing the ulnar and radial studies being unremarkable and that given the patient's symptoms of elbow pain, they wanted to do segmental studies....

Dr. Ball referred the claimant to Dr. Randy Bindra at UAMS. On June 11, 2007, Dr. Bindra wrote:

IMPRESSION

Possible bilateral lateral epicondylitis.

PLAN:

A review of the patient's past records, his treatment history, and investigations done outside, this does not seem to be following a pattern of lateral epicondylitis, however, deeping the diagnosis in mind, we would investigate further in the form of a bone scan which will be scheduled today. We will also review his old x-rays when he comes for his next visit. Meanwhile,

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we have advised him to continue his elbow exercises. We will see him back after his bone scan.

On July 16, 2007, Dr. Bindra stated:

IMPRESSION/PLAN:

Bilateral elbow pain; unknown etiology

...I obtained cervical spine radiographs. They do show some reduced joint space in the lower levels of the cervical spine but no osteophytes or significant degenerative changes to suggest any pathology there that may explain the elbow pain. I have, hence, arranged for him to have an MRI study of his right elbow, and I will see him with the results of that.

An MRI of the claimant's right elbow was taken on July 19, 2007. The MRI report states:

FINDINGS: The alignment is anatomic. There is no fracture. On the T2-weighted images, there is some slightly increased signal intensity seen in the lateral epicondyle. There is also increased signal intensity seen in the common extensor tendon. There is not significant effusion. In the radial head, there is a small focus of decreased signal intensity on both T1 and T2-weighted images, probably due to a bone island. Radial and ulnar collateral ligaments are intact.

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

ADDENDUM: On further review, it looks like there is partial detachment of the common extensor tendon from the lateral epicondyle. There is also abnormal signal and appears to be detachment of the radial collateral ligament as well.

Based on the above, I find that the claimant has met his burden of proof. On June 6, 2006 the claimant reported a left elbow injury incurred while "pulling flash." On June 14, 2006, the claimant completed a Form AR-N. The claimant was referred to respondent's designated medical provider, Dr. Lack, and ultimately came under the care of Dr. Ball, an orthopedic physician, who released the claimant to return to regular-duty work on July 11, 2006, assuming that he did not have, according to Dr. Ball: "significant recurrence of symptoms as he adds more stress to the elbow". The claimant's right elbow complaints which resulted in the August 16, 2006, visit to Dr. Troxel, are a compensable consequence of the left elbow injury. When an employee sustains a compensable injury, then every natural consequence of that injury is

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

Here, the claimant, who is right-hand dominant, sustained an injury to his left upper extremity, within the course and scope of his employment on or about June 6, 2006. While treating for the left upper extremity injury, due to increased use and improper bracing, the claimant's right upper extremity was injured as well. Employers may be liable for injuries resulting from medical treatment obtained in response to a work-related injury. See Air Compressor Equipment Co. v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The claimant was required to wear a tennis elbow brace on his right elbow, which caused symptoms, as a requirement of his light-duty restriction.

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Additionally, the evidence clearly shows that the claimant favored his left arm after his July 11, 2006 light duty release, thereby placing greater stress on the right upper extremity.

In conclusion, I find that the preponderance of the evidence of record shows that the claimant sustained compensable right and left upper extremity injuries while working for the respondent employer. Specifically, I find that the claimant sustained a specific incident injury to the left upper extremity on June 6, 2006, and a right upper extremity injury as a compensable consequence of the first injury.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner