

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.F705580

RICHARD WILSON, EMPLOYEE	CLAIMANT
SMURFIT STONE CONTAINER, EMPLOYER	RESPONDENT
BROADSPIRE SERVICES, INC., CARRIER	RESPONDENT

OPINION FILED MAY 26, 2009

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

Claimant represented by HONORABLE KENNETH OSBORNE, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE J. LESLIE EVITTS, III, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed July 29, 2008.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 2, 2008, and contained in a pre-hearing order filed April 3, 2008, are hereby accepted as fact.
2. The 13 percent impairment rating is the proper rating for the left wrist in this matter.

3. The claimant failed to prove by a preponderance of the evidence that the ratings to his hand and elbow were associated with his work related injury.

4. No controverted benefits were awarded in this matter that could entitle the claimant's attorney to a fee.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

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. Based upon a de novo review of the record, I find that the claimant is entitled to an impairment rating of 41% to his upper extremity as assessed by his treating physician.

At the time of his injury, the claimant was employed as a forklift driver. While maneuvering his forklift through the respondent-employer's facility, the power steering failed, and the steering wheel twisted the claimant's wrist and hand. The claimant testified that he notified his employer on the date of the injury, but was not sent to the doctor at that time. However, during the evening, his wrist and hand became increasingly painful and he sought medical treatment from the emergency room at St. Mary's Hospital in Rogers, Arkansas. Initial emergency room reports indicate the claimant was complaining of "pain left hand and wrist started today." Another section regarding location of injury has the left hand circled. The form also notes the claimant had tenderness and swelling to his left hand. A chart in which patients are requested to color in the injured body part has the back of the claimant's left hand delineated. Another section of the evaluation documents indicates a clinical

impression that the claimant was suffering from a contusion to the left wrist and hand.

The following day, the claimant explained his ailment to his employer and was referred to Dr. Konstantin Berestnev, a general practitioner in Lowell, Arkansas. Following his visit with the claimant, Dr. Berestnev wrote a letter dated February 7, 2006, in which he noted the claimant's left wrist was swollen, primarily in the projection of the right "ulnocollateral" ligament. The doctor further stated the claimant had pain on palpitation of this ligament. Dr. Berestnev prescribed the claimant medication and directed him to undergo physical therapy. When Dr. Berestnev's treatment of the claimant was unsuccessful in resolving the claimant's pain, he was eventually referred to Dr. Brian Benafield, a Fayetteville orthopedic surgeon. Dr. Benafield saw the claimant on May 10, 2006. In his report of that date, he diagnosed the claimant as suffering from a torn TFCC (triangular fibrocartilage complex) and possible lunotriquetral ligament tear with associated ulnar sided wrist cyst. Eventually, Dr. Benafield performed surgery on the claimant's wrist in an attempt to correct the problem.

The dispute in this case arose after the permanent impairment assessment Dr. Benafield performed at the respondent's request. The assessment measured the loss of mobility the injury

caused to the claimant's fingers, hand, and wrist. According to the assessment, the claimant's injury caused a loss of mobility in his fingers and hands equal to a 35% impairment and a loss of wrist mobility equal to a 13% impairment. When those impairments were combined, the result was a 41% impairment to the claimant's upper extremity. In a letter to Dr. Benafield from the respondent, the doctor was asked about the claimant's impairment rating in a fill-in-the-blank questionnaire. The relevant question in the letter asked: "What is the appropriate impairment rating as a result of the work injury to the left wrist?" In response, Dr. Benafield filled in the blanks indicating the impairment was 41% to the upper extremity and 25% to the whole person. Dr. Benafield's signature was dated November 30, 2006.

A follow-up letter was then sent to Dr. Benafield by the respondent, indicating the previous impairment rating had included impairment to the claimant's hand. The letter stated: "What is the impairment rating to the wrist only?" In response, Dr. Benafield once again filled in the blank indicating the claimant had a 13% impairment to the wrist and a 25% impairment to his whole body. Dr. Benafield's signature was dated January 10, 2007.

The respondent accepted a 13% impairment as a result of the claimant's injury, and paid PPD benefits accordingly.

However, I believe the claimant's actual impairment is 41% to the claimant's upper extremity, as Dr. Benafield originally opined. I believe the majority, by affirming and adopting the Administrative Law Judge, has misinterpreted the nature of the claimant's injury and have erroneously reduced the impairment rating from what it should have been.

The Administrative Law Judge based his opinion on his understanding of what part of the claimant's body was injured. The Administrative Law Judge emphasized the claimant's injury was described as being to his wrist, stating: "the only in depth reporting" relating to the claimant's hand injury was the impairment evaluation. His conclusion was the only impairment the claimant would be entitled to was based on injuries to his wrist. In my opinion, the Administrative Law Judge's decision, affirmed and adopted by the majority, displays a lack of understanding as to the specific nature of the claimant's injury and the anatomy of the claimant's hand and arm.

In the first place, the Administrative Law Judge is incorrect in his conclusion there is no reporting of hand injuries. As outlined above, the claimant initially reported his injury as being to the hand. The emergency room intake documents characterized the claimant as having a hand injury. Clearly, this is "in depth" reporting about an injury to the hand.

The Administrative Law Judge is also incorrect in describing this condition as a wrist injury. In fact, the injury was not to the wrist structure, but was to the lunotriquetral ligament, the ulnar ligament, and what Dr. Benafield described as the "TFCC" which is a small piece of cartilage and ligaments on the little finger side of the wrist connecting the little finger to the forearm bone. The anatomic purpose of the injured ligaments and TFCC is to allow movement of the fingers and hand. Obviously, an injury to this part of the wrist will affect the claimant's ability to use his hand and fingers.

The claimant's impairment rating was reduced because the Administrative Law Judge believed the only impairment which could be assessed was to the specific body part injured. However, that premise is clearly flawed. An injured worker is entitled to permanent disability benefits based upon the degree the injury impaired his body function. In this case, the injury was to the ligaments and other soft tissue which pass through the claimant's wrist and allow movement of his fingers. The injury to this part of the claimant's body caused an impairment to the function of his wrist, hand, and forearm. To attempt to limit the claimant's impairment only to the wrist is obviously incorrect. The claimant should be awarded permanent disability benefits to the degree the injury permanently impairs the function of his body. In this

case, the injury to the claimant's ulnar ligament and tendon, the lunotriquetral ligament, and the TFCC, has caused the claimant to suffer an impairment in the way his arm functions. Therefore, the impairment rating should be to the parts of his body affected, as rated by Dr. Benafield.

I believe it is also significant that Dr. Benafield's expertise in this area is unquestioned. Dr. Berestnev was unable to treat the claimant's problem and he made a referral to an orthopedic specialist. Initially, the claimant saw Dr. Kris Hanby, of the Ozark Orthopedic and Sports Medicine Clinic. After examining the claimant, Dr. Hanby characterized the claimant's injury as "a complex wrist injury" and stated the claimant would need to see one of his "upper extremity partners." The partner in this case was Dr. Benafield, who specializes in injuries to the hands and wrists. Obviously, Dr. Benafield understood the full effects of the type of injury sustained by the claimant and fully evaluated the degree of impairment he suffered. Because of the doctor's understanding of the nature of the claimant's injury, he considered the effects the surgical repair of the claimant's torn ligaments and tendon had on the movement of his hand and fingers. The claimant is entitled to receive permanent disability benefits to the full extent his injury impaired his bodily function.

When the respondent initially requested an impairment rating from Dr. Benafield, he was asked to assess the appropriate impairment rating resulting from the claimant's work injury. This was the correct question to be asked, and Dr. Benafield provided the appropriate answer. That is, the damage to the claimant's ligaments, tendons, and other connective tissues caused him to sustain a 41% impairment to his upper extremity. In making this assessment, Dr. Benafield used his expertise in human anatomy and determined the injury had caused a loss of function to that degree to the claimant's arm. This Commission should not be substituting its medical judgment for that of Dr. Benafield, a Board Certified orthopedic surgeon. I believe his expertise in this area is far greater than ours, and his determination as to the effect of the injury on the claimant's hands, wrists, and arms, should not be overturned.

In reviewing the medical reports relating to the evaluation by Dr. Benafield, it is apparent the doctor did a thorough examination and used the system outlined by the American Medical Association Guides to the Evaluation of Permanent Impairment, Fourth Edition. This is exactly what the doctor was supposed to do, and this rating guide has been adopted by this Commission as the official method of evaluating impairment resulting from job-related injuries. I see no reason to deviate

from the guide and the doctor's evaluation of the claimant's injury. I, therefore, find that the claimant is entitled to permanent partial disability benefits based upon a 41% impairment to his upper extremity.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner