

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F808614

LONZO ALLEN,  
EMPLOYEE

CLAIMANT

KOPPERS INDUSTRIES, INC.,  
EMPLOYER

RESPONDENT

NATIONAL UNION FIRE INSURANCE,  
INSURANCE CARRIER

RESPONDENT

**ORDER FILED MARCH 30, 2010**

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

Claimant represented by the HONORABLE BRITT C. JOHNSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter comes on for review before the Commission on respondent's Motion for Reconsideration. The respondent asserts that the Commission's February 25, 2010 Opinion does not address the respondent's objective findings defense, which the respondent properly raised on appeal. After our consideration of respondent's motion and all other matters properly before the Commission, we find that respondent's motion should be granted.

In order for an injury to be compensable under Arkansas Workers' Compensation law, the claimant must show medical evidence of an injury, supported by objective findings. Ark. Code

Ann. §11-9-102(4) (D). Objective findings are defined as findings that cannot come under the voluntary control of the patient.

Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999).

Here, the medical evidence regarding the claimant's cubital tunnel syndrome is contained in a report from Dr. David Rhodes, dated September 25, 2008:

PHYSICAL EXAM: LEFT UPPER EXTREMITY: There is a positive Tinel's sign over the cubital tunnel that is worse than on his previous exam. Positive elbow flexion test. Sensation intact in the median nerve distribution. Decreased in the ulnar nerve distribution.

Tinel's testing does not produce objective findings. Duke v. Regis Hairstylists, 55 Ark. App. 327, 935 S.W. 2d 600 (1996). Upon reconsideration, the Commission finds that a positive elbow flexion test is not an objective finding, nor is decreased sensation in the ulnar nerve. The claimant has failed to present objective findings of cubital tunnel syndrome and therefore his cubital tunnel syndrome claim must fail. The Full Commission's February 25, 2010 Opinion awarding benefits for cubital tunnel syndrome is hereby modified to deny benefits for cubital tunnel syndrome.

The Full Commission's February 25, 2010 determination that the claimant sustained a compensable carpal tunnel syndrome injury is not being reconsidered, and the February 25, 2010 Opinion and Order stands regarding the claimant's compensable

carpal tunnel syndrome injury.

\_\_\_\_\_ IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs.

**CONCURRING OPINION**

\_\_\_\_\_ Without conceding that the claimant's carpal tunnel syndrome is compensable, I concur with the finding that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable cubital tunnel syndrome injury.

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KAREN H. MCKINNEY, Commissioner