

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F703943

MICHAEL BURKS,  
EMPLOYEE

CLAIMANT

R I C, INC.,  
EMPLOYER

RESPONDENT

BRIDGEFIELD CASUALTY INS. COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 12, 2010

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

Claimant represented by the HONORABLE EDWARD W.  
McCORKLE, Attorney at Law, Arkadelphia, Arkansas.

Respondents represented by the HONORABLE MICHAEL E.  
RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed September 23, 2009. In  
said order, the Administrative Law Judge made the  
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including April 9, 2007.

3. At the time of the claimant's injury, he earned an average weekly wage of \$857.65, which entitles him to a weekly compensation rate of \$504.00 for temporary total disability; and his permanent partial disability rate is \$378.00.
4. The claimant sustained an injury to his right hand, when it was crushed. His third and fourth fingers were severed and his thumb was severely injured, requiring two screws.
5. This claim for additional benefits has been controverted in its entirety.
6. The claimant failed to prove by a preponderance of the evidence that he suffered a 30% sensory impairment to his right thumb as a result of his compensable injury.

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.

Therefore we affirm and adopt the September 23, 2009 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.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I would award the claimant the 30% permanent anatomical impairment rating to his thumb.

The claimant suffered a significant compensable injury to his right hand, in which his fingers were crushed in a machine. His ring finger, little finger and thumb were almost completely severed from his hand. Surgery successfully reattached the digits to his hand, but the claimant testified that he has not regained full function of those digits. A permanent impairment rating was assessed for each damaged digit, but only a 3% rating was accepted on the claimant's thumb. The 30% rating to the thumb for sensory deficit was not accepted by the carrier. The majority has denied this impairment rating, because it

was based solely upon the claimant's perception of touch stimuli.

It is incomprehensible that the claimant could suffer such a severe injury to his thumb, in a clearly compensable incident, resulting in permanent damage to his touch sense and only be entitled to a 3% rating, despite a doctor's assessment of a rating ten times that amount. Entire classes of injuries are excluded from coverage by the Arkansas Workers' Compensation Act, under the majority's analysis, without any scientific justification. The justification is merely cost-savings, without regard to the legitimate needs of and damage to the employee.

The Arkansas Workers' Compensation Act requires that a finding of permanent anatomical impairment must be supported by objective findings, which are defined as "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. Section 11-9-704(c)(1)(B) and 11-9-102(16)(A)(i).

The rating for sensory deficit conforms to the fourth edition of the American Medical Association's Guides to Permanent Impairment. Dr. Varela assessed the impairment rating after repeated two-point discrimination testing "to assess the accuracy of the

sensory deficits." The claimant was found to be "anesthetic over the radial border of the length of the thumb." The testing was performed repeatedly, which would provide confirmation of consistent results. The claimant could not be expected to anticipate and mimic a sensory deficit specific to the radial border of the length of thumb in repeated tests, especially when the testing was performed outside his vision with no prompting. Furthermore, Dr. Varela's testing and observations are not within the control of the claimant. His observations and findings are objective.

I find that the testing was not within the voluntary control of the claimant, and I would award the 30% anatomical impairment rating for sensory deficit in his thumb.

For the foregoing reasons, I must respectfully dissent from the majority opinion.

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PHILIP A. HOOD, Commissioner