

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Gusoskey,
 Petitioner,

vs.

NO: 08WC 49283

Olin Corporation,
 Respondent,

10IWCC0693

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, permanent partial disability, notice, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Arbitrator's Decision, decreasing Petitioner's permanent partial disability award from 25% to 20% loss of use of the right arm pursuant to Section 8(e) of the Act. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$779.31 per week for a period of 10 6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$643.82 per week for a period of 183.20 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of 20% of each hand, 20% of the left arm and 20% of the right arm.

10IWCC0693

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The probable cost of the record to be filed as return to Summons is the sum of \$35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED:

JUL 19 2010

o062310

JFD/jrc

052


Mario Basurto
David L. Gore

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Arguments on June 23, 2010 before a three-member panel of the Commission including members James DeMunno, Mario Basurto and David Gore, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of James DeMunno due to illness on June 28, 2010, a majority of the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire three member panel, but no formal written decision was signed and issued prior to Commissioner DeMunno's illness.

Although I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case, I have reviewed the Decision worksheet showing how Commissioner DeMunno voted in this case, as well as the provisions of the Supreme Court in Zeigler v. Industrial Commission, 51 Ill.2d 137, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.


Kurt Carlson

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GUSOSKEY, ROBERT

Employee/Petitioner

Case# **08WC049283**

OLIN CORPORATION

Employer/Respondent

10TWCC0693

On 06/19/2009, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.29% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

JOSEPH E HOEFERT
ATTORNEY AT LAW PC
1600 WASHINGTON AVENUE
ALTON, IL 62002

0299 KEEFE & DEPAULI
GREGORY S KEITNER
#2 EXECUTIVE DRIVE
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)

COUNTY OF MADISON)

101WCC0693

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)(18)) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ROBERT GUSOSKEY

Employee/Petitioner

Case # 08 WC 49283

v.

OLIN CORPORATION

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Andrew Nalefski**, arbitrator of the Commission, in the city of **Collinsville**, on **5/26/09**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to the respondent?
- F. ☐ Is the petitioner's present condition of ill-being causally related to the injury?
- G. ☐ What were the petitioner's earnings?
- H. ☐ What was the petitioner's age at the time of the accident?
- I. ☐ What was the petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to petitioner reasonable and necessary?
- K. ☒ What amount of compensation is due for temporary total disability?
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon the respondent?
- N. ☐ Is the respondent due any credit?
- O. ☐ Other _____

FINDINGS

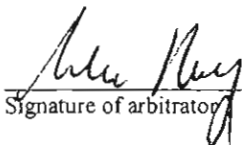
- On 10/30/08, the respondent Olin Corporation *was* operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to the respondent.
- In the year preceding the injury, the petitioner earned \$ 60,786.54; the average weekly wage was \$ 1,168.97.
- At the time of injury, the petitioner was 28 years of age, *single* with 0 children under 18.
- Necessary medical services *have* been provided by the respondent.
- To date, \$ 0 has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ 779.31/week for 10 6/7 weeks, from 11/10/08 through 1/24/09, which is the period of temporary total disability for which compensation is payable. Respondent is entitled to credit of \$3,348.95 previously paid.
- The respondent shall pay the petitioner the sum of \$ 643.82/week for a further period of 195.85 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the loss of 20% of each hand, 20% of the left arm & 25% of the right arm.
- The respondent shall pay the petitioner compensation that has accrued from 10/30/08 through 5/26/09, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ N/A for necessary medical services, as provided in Section 8(a) of the Act.
- The respondent shall pay \$ N/A in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$ N/A in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$ N/A in attorneys' fees, as provided in Section 16 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of arbitrator

6/12/09
Date

JUN 19 2009

101WCC0693

The Arbitrator finds the following facts:

Petitioner has worked for Respondent for 9 years as an Adjuster I. His job involves utilization of hand tools and hand intensive activity.

In 5/08 Petitioner began noticing numbness and tingling in his upper extremities. His symptoms were worse at the end of his shift. Petitioner did not engage in any non-occupational activities involving significant hand use. He testified that because he worked significant overtime, his non-occupational activities were very limited.

Petitioner sought medical treatment with Dr. Kyle Shepperson, an orthopedist, on 8/13/08 complaining of bilateral wrist pain for 3 months of gradual onset. He also complained of a popping in the right elbow. Dr. Shepperson diagnosed right carpal tunnel syndrome and medial epicondylitis. He administered an injection into the elbow. Petitioner testified that Dr. Shepperson did not provide him with a specific diagnosis on 8/13/08 because Dr. Shepperson told him he did not know what the problem was until he received the EMG results. Petitioner testified that the injection provided relief for approximately one week. Dr. Shepperson's notes reflect that he thought that diabetes was causing the carpal tunnel syndrome.

Petitioner continued working and his symptoms continued to worsen so he returned to Dr. Shepperson on 10/22/08. EMG/NCS revealed bilateral carpal and cubital tunnel syndromes. On 10/30/08 Dr. Shepperson diagnosed bilateral carpal tunnel and bilateral cubital tunnel as well as right medial epicondylitis. Petitioner testified that this was the first time he was advised of these diagnoses and that they were work related. Petitioner presented to Respondent's Medical Department on 10/30/08 and told them of Dr. Shepperson's diagnosis and that bilateral upper extremity surgery had been scheduled. Petitioner also advised that the conditions were work related.

On 11/10/08 Dr. Shepperson performed a right carpal tunnel and cubital tunnel release. Dr. Shepperson excused Petitioner from work at that time. A left carpal tunnel and cubital tunnel release were performed on 12/1/08. Petitioner returned to full duty work on 1/25/09. Dr. Shepperson related Petitioner's conditions to his work activities.

Petitioner testified that he did not advise Respondent of his upper extremity condition or problems until 10/30/08. Petitioner testified that prior to his initial visit with Dr. Shepperson on 8/13/08 he associated his upper extremity problems with his employment but was not sure. He stated that Dr. Shepperson told him on 8/13/08 that he did not know what his condition was until after the EMG study on 10/22/08.

Dr. David Brown, an orthopedist, examined Petitioner at Respondent's request on 3/10/09. He opined that Petitioner's upper extremity conditions were causally related to his employment with Respondent.

Petitioner currently experiences decreased grip strength in both hands and a "giving way" sensation in his wrists and numbness with lifting. He also complained of loss of muscle tone in the forearms along with weakness at the elbows and tenderness and numbness in the right elbow. He takes Aleve before going to work. Tool use and overhead work increase his wrist symptoms. Petitioner has not seen Dr. Shepperson since 1/8/09 nor has he received treatment elsewhere for the upper extremity conditions.

Therefore the Arbitrator concludes:

10IWCC0693

1. Petitioner sustained work related repetitive/accumulative trauma injuries on 10/30/08. This is the date that Petitioner was told that his carpal tunnel was work related by a physician. Earlier he had been informed by his physician that he did not know what his condition was. Petitioner is diabetic. Petitioner continued working and his condition worsened. Dr. Shepperson did not conclusively diagnosis Petitioner's condition or share that diagnosis with Petitioner until 10/30/08. Causation is not in dispute. Accident date is disputed.
2. Petitioner is entitled to TTD benefits from 11/10/08 through 1/25/09, a period of 10 6/7 weeks. Respondent is entitled to a credit of \$3,348.95 paid under non-occupational disability.
3. Respondent received timely notice.
4. As a result of his injuries Petitioner has sustained the loss of 20% of each hand, 25% loss of the right arm and 20% of the left arm.