

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

William Rexford,

Petitioner,

10I WCC 0940

vs.

NO: 08 WC 29901

Olin Corporation,

Respondent.

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, causal connection, notice, temporary total disability benefits, medical expenses, and nature and extent, 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.

With regard to the issue of temporary total disability benefits, the Commission hereby vacates the Arbitrator's award of those benefits for the period of July 23, 2009, through September 3, 2009. The Commission finds no off work slips, or medical expert testimony in the record to support Petitioner's claim for temporary total disability benefits during this period. Furthermore, the office notes of Dr. Vest indicate, that as of July 23, 2009, Petitioner was working as a carpenter, putting up countertops.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$ 713.11 per week for a period of 22-1/7 weeks, for the periods of November 19, 2008, through March 3, 2009, and from June 4, 2009, through July 22, 2009, those being the periods 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 \$ 636.15 per week for a period of 228.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent partial disability of the Petitioner to the extent of 20% loss of use of the right hand, 20% loss of use of the left hand, 20% loss of use of the left arm, 35% loss of use of the right arm, and 10% loss of use of the left thumb.

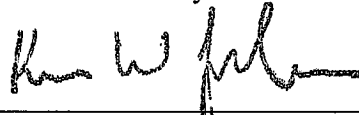
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$ 6,631.00 for medical expenses under §8(a) of the Act.

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

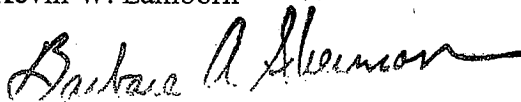
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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.

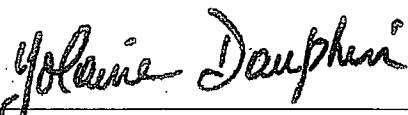
DATED: SEP 24 2010
KWL/kmt
O-08/25/10
42



Kevin W. Lamborn



Barbara A. Sherman



Yolaine Dauphin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

10IWCC0940

Case# 08WC029901

REXFORD, WILLIAM R

Employee/Petitioner

OLIN

Employer/Respondent

On 01/11/2010, 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 0.18% 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:

JOHN HOEFERT

1600 WASHINGTON AVE
ALTON, IL 62002

0299 KEEFE & DEPAULI PC

PATRICK M KEEFE

#2 EXECUTIVE DR

FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)
COUNTY OF MADISON)

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|-------------------------------------|---------------------------------------|
| <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

10IWCC0940

WILLIAM R. REXFORD
Employee/Petitioner

Case # 08 WC 29901

v.
OLIN
Employer/Respondent

Collinsville

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 12/22/09. 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

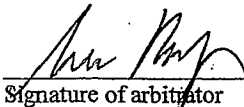
- On 5/28/08, the respondent Olin was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to the respondent.
- In the year preceding the injury, the petitioner earned \$ 55,622.32; the average weekly wage was \$ 1,069.66.
- At the time of injury, the petitioner was 56 years of age, *married* with 0 children under 18.
- Necessary medical services *have not* been provided by the respondent.
- To date, \$ 4,677.82 has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ 713.11/week for 28 weeks, from 11/19/08 through 3/03/09 and 6/3/09 through 9/3/09, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of \$ 636.15/week for a further period of 228.75 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, 35% loss of the right arm and 10% loss of the left thumb.
- The respondent shall pay the petitioner compensation that has accrued from 5/28/08 through 12/22/09, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ 6,631.00 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

1/6/10
Date

JAN 11 2010

THE ARBITRATOR FINDS THE FOLLOWING FACTS:

Petitioner had worked for Respondent for 38 years before retiring on 3/1/09. Petitioner's job classification was an Adjuster I until approximately 15 years ago when he became a Group Leader Adjuster I.

Prior to May, 2008, Petitioner had no outside hobbies that required repetitive use of his upper extremities nor had he previously suffered any injuries to his upper extremities.

Petitioner prepared a self-job description which he testified accurately set forth his job duties while he worked for Respondent. Petitioner testified that the job requirements of an Adjuster I and a Group Leader Adjuster I are essentially identical, the only difference being that a Group Leader Adjuster I performs approximately one hour of paperwork per day. Petitioner testified that as a Group Leader Adjuster I he is required to repetitively use hand tools approximately 30 hours per week in a 40-hour work week. Petitioner testified that the use of hand tools was required of him in very awkward positions and that he used said tools with both hands. Petitioner testified that he was required to flex and extend his elbows and hands repeatedly and was further required to repetitively work above shoulder level.

Petitioner testified that Respondent's Adjuster I Physical Demands Analysis does accurately set forth the job requirements of an Adjuster I. It is noted in this Physical Demands Analysis that an Adjuster I is required to reach, handle and finger objects from 20 to 80 percent of the work shift and is required to reach above shoulder level 20 to 80 percent of the work shift.

Mr. George O'Brien, Respondent's Adjuster I foreman, testified that the machines which Petitioner was required to work on routinely break down. Mr. O'Brien acknowledged that Petitioner is required to use hand tools approximately 3 ½ hours per work shift and that there are days when Petitioner is required to use hand tools the entire work shift. Mr. O'Brien stated that Petitioner was required to repetitively work overhead.

Petitioner first presented himself to Respondent's medical department on 5/29/08 complaining of bilateral wrist pain and right shoulder pain and believed that his problems were caused by repetitive motion at work. On 6/20/08 it was determined by Respondent's medical department that the bilateral hand claim would be accepted under workers' compensation, however, the right shoulder claim would be denied.

Petitioner was seen by Dr. Bruce Vest, an orthopedic surgeon, on 7/8/08 complaining of right shoulder, bilateral hand and arm and left thumb pain. Petitioner was diagnosed with bilateral carpal tunnel, bilateral cubital tunnel, rotator cuff tendonitis of the right shoulder with adhesive capsulitis and degenerative arthritis as well as degenerative arthritis of the CMC joint of the left thumb. Dr. Vest's office submitted this claim for workers' compensation approval for bilateral carpal and cubital tunnel releases but his request was denied. Dr. Vest noted that Petitioner's various diagnoses appeared to be related to repetitive use activities at work.

Petitioner underwent left carpal and cubital tunnel releases on 11/19/08 and the intraoperative findings were consistent with the diagnoses. Dr. Vest excused Petitioner from work effective 11/19/08. Dr. Vest performed right carpal and cubital tunnel releases on Petitioner on 1/21/09 and his intraoperative findings confirmed said diagnoses. On 3/3/09 Dr. Vest's diagnosis was right shoulder rotator cuff syndrome,

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degenerative arthritis and left thumb CMC joint degenerative arthritis. Dr. Vest felt that Petitioner may be a candidate for future injections in the CMC joint and possibly a future CMC arthroplasty in the future. Dr. Vest testified that had Petitioner not retired on 3/1/09 he would have and did keep him off of work until 3/3/09. Dr. Vest opined that Petitioner's right shoulder condition was possibly caused or at least aggravated by his work activity for Respondent.

On 5/26/09 Petitioner returned to Dr. Vest with ongoing right shoulder pain, pain and stiffness in his hands, specifically the left hand, and difficulty touching the left thumb to the left small finger. Petitioner was scheduled for right shoulder surgery.

Petitioner underwent right shoulder surgery on 6/3/09 wherein the intraoperative findings were partial joint side rotator cuff tear, tear of the superior glenoid labrum (Type 1 SLAP lesion), Grade 3 chondromalacia of the humeral head and glenoid, synovitis and adhesive capsulitis.

Dr. Vest opined that Petitioner's job activities were a causative factor relating to Petitioner's bilateral carpal tunnel, bilateral cubital tunnel, tendonitis of the right shoulder and left thumb CMC joint arthritis.

Petitioner was released from treatment by Dr. Vest for his right shoulder condition on 9/3/09. There is an outstanding balance owed Dr. Vest totaling \$6,631.00.

Petitioner was seen by Dr. Mitchell Rotman, an orthopedic surgeon, on 9/22/08 at the request of Respondent. It is noted that in the prior few years Dr. Rotman has performed approximately 10 to 20 such examinations at the request of Respondent. It is noted that over 90 percent of Dr. Rotman's legal evaluations are requested by Defendants, defense attorneys or insurance companies. Dr. Rotman opined that

Petitioner's job activities would not be considered a causative factor for carpal tunnel, cubital tunnel, right shoulder arthritis or left thumb CMC joint arthritis. In arriving at his medical causation opinions, Dr. Rotman relied solely on Petitioner's description of his job duties. Dr. Rotman had not reviewed Respondent's Physical Demands Analysis nor a video demonstration reflecting Petitioner's job duty requirements. Dr. Rotman testified that if Petitioner is required to empty bullet pans, empty shell pans, empty tote pans and use hand tools more than once every three minutes for up to one hour at a time he was not aware of such when he prepared his report. Dr. Rotman testified that if Petitioner is required to perform these activities this might change his aggravation opinions. Dr. Rotman testified that if Petitioner is required to reach, handle and finger objects up to 80 percent of the time, that he was not aware of that in addressing his medical causation opinions in this case. Dr. Rotman testified that if Petitioner is required to reach above shoulder level up to 80 percent of time that he was not aware of such in addressing medical causation in this case. Dr. Rotman testified that if Petitioner's work duties involved vibration as an essential part of his job that he was not aware of such and that this could affect his aggravation opinions herein. It is noted that the Physical Demands Analysis of an Adjuster I requires Petitioner to perform all of the above referenced activities.

Dr. Rotman prepared a supplemental report at the request of Respondent dated 5/11/09. In this report, Dr. Rotman indicated that he had reviewed the Physical Demands Analysis for a Production Group Leader I at the request of Respondent. Dr. Rotman stated that upon review of the Physical Demands Analysis, his opinions had not changed. It is noted that in the Physical Demands Analysis for a Production Group Leader I, a

worker is required to perform any duties of an Adjuster I. Dr. Rotman testified that he did not realize that an Adjuster I and a Group Leader Adjuster I were separate jobs. Dr. Rotman testified that he was unaware how often Petitioner was required to perform Adjuster I duties or what job duties are required of an Adjuster I. Dr. Rotman testified that he would have preferred to have seen a Physical Demands Analysis reflecting the job requirements of an Adjuster I in preparing his medical causation opinions.

Currently, Petitioner complains of stiffness, numbness and a loss of strength bilaterally in his hands. Petitioner complains of sensitivity and numbness in his elbows, especially upon placing his elbows on a hard surface. Petitioner complains of right shoulder pain coupled with a loss of strength. Petitioner complains of left thumb pain on the outside of the base of thumb with difficulty in grabbing or holding objects. Petitioner currently takes two Aleve every day for these various conditions. Petitioner used to enjoy bow hunting with a compound bow every day of the season which he is no longer able to do because he is not able to pull back the string to his bow.

THEREFORE THE ARBITRATOR CONCLUDES:

Petitioner sustained accidental injuries arising out of and in the course of his repetitive and accumulative work activities with Respondent.

Petitioner's present conditions of ill-being of both hands, both elbows, his right shoulder and his left thumb are causally related to his hand/arm intensive work activities. The

opinions of Petitioner's treating physician are more persuasive than those of Respondent's retained medical examiner.

Petitioner is entitled to TTD benefits from 11/19/08 through 3/3/09 and 6/3/09 through 9/3/09, a period of 28 weeks. Respondent is entitled to credit of \$4,677 previously paid. He was authorized off work by his physician for these periods.

Respondent shall pay Petitioner \$6,631.00 for necessary medical services, that being the balance owed Orthopedic & Sports Medicine Clinic, subject to the medical fee schedule.

As a result of his work injuries petitioner has sustained the loss of 20% of each hand, 20% loss of the left arm, 35% of the right arm and 10% of the left thumb.