

STATE OF ILLINOIS)
) SS.
 COUNTY OF JEFFERSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Scott Lamont,
 Petitioner,

vs.

NO: 08 WC 54612

Continental Tire North America,
 Respondent,

11IWCC0979DECISION 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 medical expenses, temporary total disability, causal connection, failure to attend IME and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 20, 2011 is hereby affirmed and adopted.

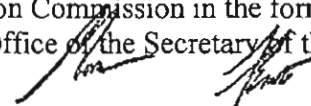
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$51,000.00. 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: OCT - 7 2011

MB/mam
 o:9/29/11
 43


 Mario Basurto


 James F. DeMunno


 David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LAMONT, SCOTT

Employee/Petitioner

Case# 08WC054612

11IWCC0979

CONTINENTAL TIRE NORTH AMERICA

Employer/Respondent

On 1/20/2011, 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:

1459 LEVENHAGEN, T FRITZ PC
MICHAEL L KNEPPER
4495 N LINCOLN ST SUITE E
SWANSEA, IL 62226

0693 FEIRICH MAGER GREEN & RYAN
KEVIN MECHLER
2001 W MAIN ST
CARBONDALE, IL 62903

11IWCC0979

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Scott Lamont

Employee/Petitioner

v.

Continental Tire North America

Employer/Respondent

Case # **08 WC 54612**

Consolidated cases: **N/A**

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 **Jennifer Teague**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **December 8, 2010**. 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 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 Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other **Failure to attend a exam with Dr. Peeples**

11IWCC0979

FINDINGS

On November 13, 2008, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$44,744.44**; the average weekly wage was **\$860.47**.

On the date of accident, Petitioner was **41** years of age, *married* with **2** children under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$2,681.82** that has been paid for non-occupational disability benefits.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$573.67/week for 10 weeks, commencing October 19, 2009 through December 27, 2009, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from November 13, 2008 through December 8, 2010, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay the medical bills in Petitioner's Exhibit 1 in accordance with the provisions of the Medical Fee Schedule or pursuant to any contractual arrangements Respondent may have with said medical providers. Respondent shall receive credit for all amounts paid and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$516.28/week for 56.925 weeks, because the injuries sustained caused the 22.5% loss of the left arm, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$516.28/week for 35.875 weeks, because the injuries sustained caused the 17.5% loss of the left hand, as provided in Section 8(e) 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

January 11, 2011

Date

JAN 20 2011

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The Arbitrator hereby makes the following Findings of Fact:

Petitioner is a 41 year old processing crew member who has been employed by Respondent since April of 1997. Prior to performing his job as a processing crew member, Petitioner worked as a loading stock trucker at Respondent's tire factory. Petitioner's job duties required that he push and pull cassettes and lift 20 foot long pieces of ply, or scrap rubber, off the side of machines. He would then hang these scraps on a tree and pull the scraps of rubber apart by hand. His job required that he pull 4 scraps of rubber apart every 5 to 10 minutes.

On November 13, 2008 while performing his job duties Petitioner experienced a sharp stabbing pain in his left elbow. On that same day, he reported his injury to Health Services at Respondent's factory. The December 2, 2008 report from Work-Fit states that Petitioner began a new job about a month and a half before which required him to push and pull cassettes. It was at that point that his left elbow and hand really started to bother him.

Respondent stipulated that Petitioner's current conditions of ill-being are causally connected to his injury of November 13, 2008.

On December 17, 2008 Petitioner saw Dr. Khash Dehghan. Dr. Dehghan had previously treated Petitioner for similar complaints affecting his right upper extremity in 2006. Dr. Dehghan found a positive Tinel's and median compression tests over the left carpal tunnel, positive Tinel's over the left cubital tunnel, increased numbness and tingling with flexion of the elbow and compression over the cubital tunnel, and tenderness to palpation over the left lateral epicondyle. Dr. Dehghan injected the left lateral epicondyle area and provided Petitioner with a wrist cock-up splint and an elbow splint. Dr. Dehghan also prescribed anti-inflammatory medications and recommended a nerve conduction study at Mt. Vernon Neurology.

Instead, Respondent scheduled Petitioner for an EMG and nerve conduction study through One Call Medical with Dr. Sajjan Nemani which was performed on January 12, 2009. According to Dr. Nemani's report, the EMG and nerve conduction studies in the left upper extremity were within normal limits.

On February 16, 2009, Respondent sent Petitioner for a Section 12 examination Dr. Anthony Sudekum. Dr. Sudekum's report from that date noted positive Tinel's at the left wrist and left elbow as well as positive Phalen's at the left wrist and left elbow. Dr. Sudekum recommended an MRI scan of the elbow and another EMG and nerve conduction study.

On March 11, 2009, Petitioner called Dr. Dehghan and discussed Dr. Sudekum's recommendations. Dr. Dehghan agreed to schedule the testing recommended by Dr. Sudekum.

On March 31, 2009, Petitioner underwent an MRI of the left elbow at Indiana MRI of Evansville, LLC. The report shows indication of subcutaneous edema on the posterior lateral aspect of the elbow joint. There was no evidence of any muscle tear or injury. There was some evidence of edema on the posterior margin of the radial collateral ligament. The ligament itself was intact.

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On April 1, 2009, Petitioner underwent a second nerve conduction study with Dr. Tomasz Kosierkiewicz in Mt. Vernon, Illinois. This test revealed mild carpal tunnel syndrome, evidence of a sensory motor, primarily axonal ulnar mononeuropathy at the proximal Guyon canal on the left, prolonged distal latencies in the radial nerve on the left indicative of a posterior interosseous nerve neuropathy of a mild posterior interosseous mononeuropathy on the left. Petitioner did not undergo an EMG at that time as he did not agree to it.

On June 9, 2009, Petitioner returned to Dr. Dehghan and discussed the results of the testing. Petitioner's left upper extremity symptoms had not improved and he requested surgery be scheduled.

On July 6, 2009, Dr. Sudekum issued a supplemental report which addressed these tests. He stated that the MRI did not reveal any significant pathology effecting the medial or lateral epicondyle tendons or ligaments which would justify surgical treatment for medical or lateral epicondylitis.

Dr. Sudekum also discussed the nerve conduction study performed by Dr. Kosierkiewicz. He felt it was inconsistent with the study previously performed by Dr. Nemani. He discussed certain peculiarities with the description of the results and with Dr. Kosierkiewicz's findings. He noted the absence of EMG testing. To resolve these discrepancies Dr. Sudekum suggested a third electro diagnostic test which would also include the EMG testing that had been originally recommended but not performed by Dr. Kosierkiewicz.

Petitioner's symptoms persisted and surgery was scheduled for Monday, October 19, 2009.

Respondent arranged for the testing to take place with Dr. David Peeples in St. Louis on Friday, October 16, 2009. Respondent authored a letter to Petitioner at his home address conveying the information regarding the exam and including a check for travel expenses in the amount of \$169.40. The letter was dated Tuesday, October 13, 2009.

The notice Respondent provided to the Petitioner for the testing was admitted at arbitration as Respondent's Exhibit #4. Petitioner admitted receiving the notice in advance of the exam. He also admitted receiving travel expense of \$169.40 as described in the notice. Petitioner did not attend the exam. At arbitration he explained he had already decided to have surgery. He said he had to take his parents to the doctor in Evansville, Indiana on that date and hesitated to reschedule.

On October 19, 2009, Petitioner underwent surgery with Dr. Dehghan at Edwardsville Surgery Center. According to the operative report, Dr. Dehghan testified that he observed a severely injected and compressed median nerve as well as fascial bands overlying the Guyon's canal and that his intraoperative findings were consistent the his preoperative diagnosis. Dr. Dehghan performed a left carpal tunnel release, left cubital tunnel release, left Guyon canal release, left lateral epicondylectomy and fasciectomy.

Petitioner was instructed to remain off work by Dr. Dehghan. On October 28, 2009 Petitioner reported that the numbness and tingling in his left hand had completely resolved since the operation.

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Dr. Dehghan recommended Petitioner remain off work and prescribed physical therapy. Petitioner attended physical therapy at Therapeutic Solutions from November 5, 2009 through December 23, 2009.

On November 1, 2009, Dr. Dehghan moved his medical practice to the state of Washington and Petitioner continued to follow-up with Dr. Dehghan's partner, Dr. Michael Beatty. On November 19, 2009, Dr. Beatty recommended Petitioner continue with elbow therapy and remain off work.

On December 2, 2009, Dr. Sudekum re-examined Petitioner at the request of Respondent. Dr. Sudekum noted Petitioner continued to make a very good recovery from his surgeries and had good strength, range of motion and sensation in both upper extremities. He released Petitioner to return to work without restrictions.

On December 10, 2009, Dr. Beatty recommended two additional weeks of therapy and noted that petitioner could return to work without restrictions beginning December 28, 2009.

Petitioner testified that he remained completely off from work beginning October 19, 2009 through December 27, 2009 at the recommendations of Dr. Dehghan and Dr. Beatty. Petitioner testified that during this period he did not receive payment of his temporary total disability benefits. He did receive short term disability benefits. Petitioner was never contacted by Respondent following his second appointment with Dr. Sudekum and told that he was to return to work.

Dr. Dehghan testified that he diagnosed Petitioner with left carpal tunnel syndrome, left cubital tunnel syndrome, and left lateral epicondylitis. He further testified that the surgery and other treatments he recommended and provided to Petitioner were reasonable and necessary. He believed that the work Petitioner performed for Respondent contributed to and aggravated his left upper extremity conditions. Dr. Dehghan testified that 10-15% of nerve conduction velocity and EMG studies produce a false negative. Dr. Dehghan testified that the most important thing for the diagnosis of patients is the history and physical examination, the clinical picture, not the nerve conduction velocity test.

Respondent also obtained a supplemental report from Dr. Sudekum dated February 1, 2010. Dr. Sudekum confirmed Petitioner was capable of full unrestricted duty as of December 2, 2009. Further, Dr. Sudekum explained the surgeries performed by Dr. Dehghan were not necessary in the absence of definitive objective evidence indicating that the conditions existed. He reiterated that the third electro diagnostic test was necessary because of the inconsistencies in the initial two tests performed two months apart and the absence of EMG testing in Dr. Kosierkiewicz's study. He described the more complete test performed by Dr. Nemani which did not reveal any electro diagnostic evidence of peripheral neuropathy. Since the previous tests were equivocal, he felt it was important to investigate further before proceeding surgery.

Dr. Sudekum also discussed these opinions at his deposition. Dr. Sudekum specifically indicated that he did not feel the surgery was reasonable or necessary because a diagnosis had not been established. He indicated that there was no reason for the hurry. He stated that the absence of an additional nerve conduction study with an EMG made it virtually impossible to make a verifiable diagnosis of neuropathy prior to surgery. He stated that a post-surgical test would not have been

appropriate because the results would always be effected by the surgical field. Finally, he stated that a typical patient who had the procedure such as Petitioner could go back to light duty after one week and full unrestricted duty at 6 weeks.

Dr. Sudekum stated that there was no significant risk to the petitioner for him to have a third electro diagnostic test. Dr. Sudekum could not make a causation opinion because he could not make a diagnosis in the absence of the testing he felt was necessary to evaluate Petitioner's condition.

Dr. Sudekum testified that he was never able to make a final diagnosis for Petitioner. Dr. Sudekum also testified that false negative findings occur on nerve conduction studies in patients who actually have carpal tunnel and cubital tunnel syndrome. Dr. Sudekum testified that he has performed carpal tunnel and cubital tunnel surgeries on patients who have a normal finding on a nerve conduction study. Dr. Sudekum testified that reasonable minds within the medical field could differ as to whether or not a certain course of treatment would benefit a given patient.

Dr. Sudekum and Dr. Dehghan both testified that Petitioner had completed conservative measures including physical therapy, injections, anti-inflammatory medication, and night-time splinting without significant improvement before undergoing surgery with Dr. Dehghan. Both doctors testified that Petitioner's symptoms improved following the surgery performed by Dr. Dehghan.

Petitioner testified that he continues to have some problems and difficulties as a result of his injury. He testified that the grip in his left hand is weaker. At work, where he was previously able to use one hand to perform a task, now he must use both hands. He has noticed a decrease in strength in his wrist. Petitioner testified that he has returned to the same job he performed prior to his injury and is earning the same amount of money.

Therefore, the Arbitrator concludes:

1. The medical treatment incurred by Petitioner, including the surgery performed by Dr. Dehghan was reasonable and necessary to cure and relieve his conditions of ill being. Petitioner attempted conservative treatment for eleven months and did not experience relief in his symptoms. Dr. Dehghan observed compression during surgery which was released. Thereafter, Petitioner experienced a significant relief in symptoms which allowed him to return to work full duty.

Respondent shall pay the medical expenses set forth in Petitioner's Exhibit 1 in accordance with the provisions of the Medical Fee Schedule or pursuant to any contractual arrangement Respondent may have with said medical provider. Respondent shall receive credit for all amounts previously paid.

2. Respondent contends that Petitioner's failure to attend the third EMG recommended by Dr. Sudekum negates Respondent's liability for the surgery performed by Dr. Dehghan on October 19, 2009.

The Arbitrator notes that the surgeries performed by Dr. Dehghan were not surgeries of any emergency nature. A review of the records reflects that when requested, Petitioner cooperated in

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attending prior scheduled Section 12 exams with Dr. Sudekum. Additionally, Petitioner complied with undergoing additional testing when requested by Dr. Sudekum. During this period of time, Petitioner continued to treat conservatively, and his condition failed to improve.

On July 6, 2009 Dr. Sudekum requested the additional testing. The evidence reflects Respondent waited three months before scheduling the testing recommended by Dr. Sudekum. Further, the letter was mailed to Petitioner on the 13th, and the testing was scheduled on the 16th. Assuming the mail was timely, Petitioner had 48 hours (or less) notification of the testing.

Petitioner testified he notified Respondent of his inability to attend the exam as soon as he received the letter.

Petitioner's failure to attend the exam does not negate Respondent's liability for Petitioner's surgery. The Arbitrator finds Respondent put forth no evidence showing why there was a delay of over 90 days in scheduling the EMG. Additionally, the notice to the Petitioner was not timely and at the very least lacked courtesy.

Failure to attend, in this instance, does not bar Petitioner's claim or preclude Respondent's liability for surgery.

3. Petitioner was temporally totally disabled from October 19, 2009 through December 27, 2009. Respondent shall receive credit for all amounts previously paid.

The Arbitrator finds it significant to note that Respondent tendered no evidence that Petitioner was put on notice that he was to return to work after December 2, 2009.

4. As a result of the accident of November 13, 2008, Petitioner sustained 22 1/2% permanent partial disability to left arm and 17 1/2% permanent partial disability to the left hand.