

STATE OF ILLINOIS        )  
                                  ) SS.  
COUNTY OF JEFFERSON    )

<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

Brian Dickey,  
Petitioner,

vs.

NO: 05 WC 27574  
05 WC 33761  
09IWCC0929

Continental Tire of North America,  
Respondent.

CORRECTED 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, medical expenses, temporary total disability, mileage, and permanent partial disability 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 October 29, 2007 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.

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Bond for 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 28 2009

o-08/26/09

pwr/wj

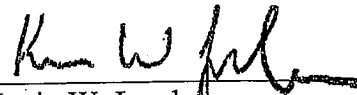
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Paul W. Rink



Barbara A. Sherman



Kevin W. Lamborn

05WC27574  
05WC33761  
09IWCC0929

STATE OF ILLINOIS            )  
                                      )ss   BEFORE THE ILLINOIS WORKERS'  
COUNTY OF JEFFERSON    )   COMPENSATION COMMISSION

Brian Dickey  
Petitioner,

vs.

NO. 05WC 27574  
05WC 33761  
09IWCC 0929

Continental Tire of North America  
Respondent,

ORDER OF RECALL UNDER SECTION 19(F)

The Commission on its own Motion, under Section 19(f) of the Illinois Workers' Compensation Act recalls the Commission's Decision dated September 17, 2009, due to a clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated September 17, 2009, is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

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 therefore and deposited with the Office of the Secretary of the Commission.

DATED: SEP 28 2009

PWR/jrc  
68



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Paul W. Rink

ILLINOIS WORKERS' COMPENSATION COMMISSION  
**NOTICE OF ARBITRATOR DECISION**

**DICKEY, BRIAN**

Employee/Petitioner

Case# **05WC027574**

05WC033761

**CONTINENTAL TIRE OF NORTH AMERICA**

Employer/Respondent

**09IWCC0929**

On 10/29/2007, 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 3.99% 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  
4495 N ILLINOIS ST  
SUITE E  
BELLEVILLE, IL 62226

0693 FEIRICH MAGER GREEN & RYAN  
2001 W MAIN ST  
PO BOX 1570  
CARBONDALE, IL 62903

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**BRIAN DICKEY,**

Employee/Petitioner

Case # **05 WC 27574 - D/A: 05/17/05**

v.

**05 WC 33761 - D/A: 07/22/05**

**CONTINENTAL TIRE NORTH AMERICA, INC.**

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 **Jeffery Tobin**, arbitrator of the Commission, in the city of **Mt. Vernon**, on **September 19, 2007**. 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 **Mileage Expenses; failure to comply with Section 12**

## FINDINGS

09IWCC0929

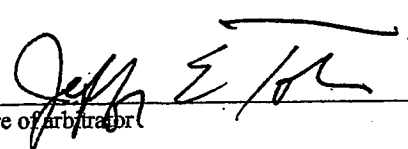
- On 05/17/2005 & 07/22/2005, the respondent Continental Tire North America, Inc. was operating under and subject to the provisions of the Act.
- On these dates, an employee-employer relationship *did* exist between the petitioner and respondent.
- On these dates, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of these accidents *was* given to the respondent.
- The parties stipulated that the petitioner's average weekly wage was \$ 828.76.
- At the time of injury, the petitioner was 42 years of age, *single* with 2 children under 18.
- Necessary medical services *have in part* been provided by the respondent.
- To date, \$ 9,075.88 has been paid by the respondent for TTD and/or maintenance benefits.
- To date, \$ 1,731.79 in group, non-occupational disability benefits have been paid by respondent.

## ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ 552.51/week for 22- 6/7 weeks, from 03/02/2006 through 06/19/2006, 03/12/2007 through 03/22/2007, and 06/14/2007 through 07/25/2007 which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of \$ 497.26/week for a further period of 240.625 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 20% permanent partial disability to the right hand, 40% permanent partial disability to the right arm, 20% permanent partial disability to the left hand, and 27.5% permanent partial disability to the left arm.
- The respondent shall pay the petitioner compensation that has accrued from 05/17/2005 through 09/19/2007, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ 64,550.79 for necessary medical services, as provided in Section 8(a) of the Act. The respondent shall pay the further sum of \$ 3,013.39 for travel expenses while seeking medical treatment. The parties stipulate that the respondent shall have credit for any of the awarded medical that it previously paid.

**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 of 3.99% 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 arbitrator10/23/07  
Date

OCT 29 2007

**The Arbitrator hereby finds the following facts regarding all disputed issues:**

Two cases were consolidated for hearing by agreement of the parties wherein the petitioner alleges repetitive trauma injuries affecting his bilateral arms and hands. Respondent disputes accident and causal relationship as it relates to petitioner's shoulder conditions. The issues are reflected accordingly on the Request for Hearing form. (Arb. Ex. #1)

Petitioner, a 42-year-old palletizer, has been employed with Continental Tire North America, Inc. continuously since May 16, 1984 at the respondent's tire manufacturing plant in Mt. Vernon, Illinois. His job duties as a palletizer required that he lift 30 to 50 pound tires and stack them on pallets chest high. During an eight-hour period, the petitioner would lift approximately 800 tires.

Petitioner testified that on May 17, 2005, he experienced increased pain in both of his elbows and shoulders while lifting tires at his work. He reported the problem to his supervisor. A written incident report was prepared.

On July 22, 2005, petitioner experienced increased pain in both of his hands and elbows while performing his job duties as a palletizer for the respondent. A second incident report was prepared.

On May 16, 2005, petitioner was seen by his personal physician, Donald Elder, M.D., for pain he was experiencing in his left arm and shoulder. Dr. Elder noted a prominent knot on the left lateral epicondyle and diagnosed shoulder tendonitis and elbow tendonitis. He recommended an x-ray of the left shoulder and elbow, which were performed at Crossroads Community Hospital on May 19, 2005. On May 19, 2005, petitioner was examined by the plant physician and was provided with an elbow strap and wrist support. Petitioner was sent for physical therapy at Work-Fit, a physical therapy facility located at the respondent's plant where he was seen from May 24, 2005 through June 20, 2005.

Because of continued problems and difficulties, Dr. Elder referred petitioner to Kenneth Tuan, M.D., an orthopedist. On May 23, 2005, Dr. Tuan examined the petitioner and noted lateral shoulder and lateral elbow pain. He found positive impingement signs in both shoulders of Neer's and Hawkins'. Dr. Tuan diagnosed impingement in the left shoulder and left tennis elbow.

On July 25, 2005, the respondent sent petitioner for a Section 12 examination with Michael Nogalski, M.D. an orthopedist in St. Louis, Missouri, with regard to petitioner's bilateral shoulder and elbow complaints. According to Dr. Nogalski's report, the petitioner was experiencing pain in his left shoulder and left elbow. In addition, Dr. Nogalski noted right shoulder pain, which was not as significant as the left shoulder pain. Dr. Nogalski recommended an injection for epicondylitis. On August 15, 2005, Dr. Nogalski prepared a report indicating that petitioner's left lateral epicondylitis could be reasonably attributed to his work activities as a palletizer.

On August 10, 2005, petitioner sought further treatment with Khash Dehghan, a plastic surgeon in Edwardsville, Illinois. On that date, Dr. Dehghan found a positive Phalen's and median nerve compression tests over both carpal tunnels. In addition, he found increased numbness and tingling in the petitioner's small and ring fingers bilaterally. Dr. Dehghan ordered a nerve conduction study and injected petitioner's left lateral epicondyle.

On November 17, 2005, the respondent sent petitioner for a Section 12 examination with Anthony Sudekum, M.D. with regard to petitioner's bilateral upper extremity symptoms. Dr. Sudekum referred petitioner to Dr. Daniel Phillips, a neurologist in St. Louis, for a nerve conduction study. The nerve conduction study, which was performed on November 17, 2005, revealed bilateral carpal tunnel syndrome, worse on the right than the left, as well as bilateral cubital tunnel syndrome. Dr. Sudekum recommended conservative measures. In his report, dated November 17, 2005, Dr. Sudekum states that with regard to Mr. Dickey's work activities at Continental Tire North America, Inc., "...it is my opinion, with a reasonable degree of medical certainty, that his left lateral epicondylitis and bilateral upper extremity peripheral neuropathies, including possible carpal and cubital tunnel syndrome, are casually related, at least in part, to his employment activities there."

On March 2, 2006, Dr. Dehghan performed a left carpal tunnel release and left cubital tunnel release at Anderson Hospital. Following surgery, Dr. Dehghan recommended that the petitioner remain off from work.

On March 10, 2006, petitioner was seen by George A. Paletta, Jr., M.D., an orthopedist, in St. Louis, Missouri. Dr. Paletta diagnosed probable distal clavicle osteolysis secondary to repetitive overuse. Dr. Paletta recommended an MRI of petitioner's shoulder, which was performed on March 21, 2006 at Imaging Partners of Missouri, revealing findings consistent with osteolysis of the distal clavicle and significant edema of the distal clavicle with cystic change.

On March 30, 2006, Dr. Dehghan performed a right carpal tunnel release and right cubital tunnel release at Anderson Hospital. Thereafter, Dr. Dehghan recommended the petitioner remain off from work.

On April 18, 2006, Dr. Paletta saw the petitioner and noted a positive cross-body adduction test and O'Brien's sign at the AC joint. Dr. Paletta stated in his report, "...I believe his injury is related to his repetitive work activities." Thereafter, he recommended surgical intervention.

On May 4, 2006, Dr. Paletta performed a right shoulder diagnostic arthroscopy, SLAP repair of type II SLAP lesion, debridement and excision of paralabral cyst, distal clavicle excision or Mumford procedure, and decompression and bursectomy at Timberlake Surgery Center. Following surgery, Dr. Paletta recommended the petitioner remain off from work. Dr. Paletta testified that both the distal clavicle osteolysis and the SLAP tear in petitioner's right shoulder were causally related to his work activities (Paletta depo pg 14).

On July 25, 2006, the petitioner returned to Dr. Dehghan with increased left lateral elbow tenderness. On examination, Dr. Dehghan found tenderness with resisted extension of his left hand. Thereafter, Dr. Dehghan recommended surgical intervention for left lateral epicondylitis.



On September 8, 2006, the respondent sent petitioner for another Section 12 examination with Anthony Sudekum, M.D. Dr. Sudekum diagnosed symptoms consistent with left lateral epicondylitis and recommended an MRI scan of the left elbow. He further stated in his report, "It is my opinion, with a reasonable degree of medical certainty, that Mr. Dickey's left lateral epicondylitis is causally related, at least in part, to his employment activities at Continental Tire of North America."

On December 12, 2006, Dr. Nogalski prepared a report stating, "In my opinion, with a reasonable degree of medical certainty, that Mr. Dickey's left lateral epicondylitis and left radial collateral ligament tear were present when he underwent surgical treatment by Dr. Dehghan for bilateral carpal and cubital tunnel syndrome.... It is likely, in my opinion, that Mr. Dickey's work activities at Continental Tire of North America were not the primary cause of the radial collateral ligament rupture, but I feel that his work there was the primary causal factor in the etiology of the left lateral epicondylitis and common extensor tendon tear."

On March 12, 2007, Dr. Dehghan performed a left lateral epicondylectomy and fasciectomy at Anderson Hospital. Following surgery, Dr. Dehghan recommend that the petitioner remain off from work. On June 14, 2007, Dr. Dehghan performed a right lateral epicondylectomy and fasciectomy at Anderson Hospital. Thereafter, petitioner continued to follow up with Dr. Dehghan for further care and treatment.

On July 26, 2007, the petitioner was examined a fourth time by Dr. Sudekum at the request of the respondent. Dr. Sudekum stated in his report that the petitioner reached maximum medical improvement. On August 29, 2007, the petitioner was seen by Dr. Dehghan and was released from Dr. Dehghan's care.

The petitioner testified that he was initially kept off from work at the recommendation of Dr. Dehghan from March 2, 2006 through May 4, 2006. Following May 4, 2006, the petitioner was kept off from work at the recommendation of Dr. Paletta until June 19, 2006. The petitioner also remained off from work at the recommendation of Dr. Dehghan from March 12, 2007 through March 22, 2007 and from June 14, 2007 through July 25, 2007.

Petitioner testified that he chose to treat with Dr. Dehghan because he was a plastic surgeon, he was a specialist, and he was recommended by his co-workers. Petitioner chose Dr. Paletta because of his reputation as being a team physician for the St. Louis Cardinals baseball team and at the recommendation of his co-workers.

Respondent asserts that Petitioner unreasonably refused to attend a Section 12 exam with Dr. Nogalsky. Respondent argues that the Petitioner should have submitted to an exam after Dr. Paletta's recommendation for right shoulder surgery was made in April 2006. Respondent's exhibit # 4 indicates that Petitioner's attorney declined to make Petitioner available for a section 12 exam with Dr. Milne, not Dr. Nogalsky, on a date which is unclear from a review of the record. It is noted that exhibit # 4 was faxed to Respondent's attorney on the same day that Petitioner was having the surgery performed by Dr. Paletta, May 4, 2006. Dr. Nogalsky did testify that such an exam would have been helpful prior to May 4, 2006 when Dr. Paletta performed the surgery. Petitioner's office visit note of January 23, 2006 with Dr. Tuan indicates that right shoulder surgery was a possibility.

There was insufficient evidence presented by Respondent, under the circumstances surrounding this particular issue, for the Arbitrator to find that the Petitioner refused to submit himself for exam or unnecessarily obstructed same. As previously noted, the record was unclear as to the date the Section 12 was set. Dr. Nogalsky's testimony does not address the reference to Dr. Milne performing the Section 12 in issue. The record was unclear as to when notice of the proposed Section 12 was provided to Petitioner, only that it may have been as late as May 4, 2006, the day of surgery. The record was also insufficient to make a determination if the Section 12 was set for a time and place which was reasonably convenient to Petitioner as required by Section 12. The record was also insufficient to make a determination if the required expense check was sent to Petitioner at the same time of the notice of the exam.

Petitioner continues to have problems and difficulties with both of his hands. He has difficulty gripping and grasping. He has a loss of grip strength. He has difficulty using hand tools such as a screwdriver or hammer and drops things. He also has difficulty writing because of his hand pain.

With regard to petitioner's elbows, he testified that he has experienced a loss of strength and a limit in his range of motion. He notes he has difficulty riding a bike, throwing a baseball, or wrestling with his sons who are ages five and eight. When he takes his sons fishing, he notices he has difficulty casting because of his elbow pain. He describes his elbow pain as being constant and experiences shooting pains in his elbows at times. He testified that his left elbow pain is worse than his right.

With regard to his bilateral shoulder condition, petitioner testified he was having extreme pain and difficulties with his right arm prior to the surgery which was performed by Dr. Paletta. He testified that his arm had gotten progressively worse since his original injury date. He testified that his pain was constant and that he could hardly move his left arm before surgery. He noticed a significant amount of relief following the surgery performed by Dr. Paletta.

Although his left shoulder has improved significantly following the surgery performed by Dr. Paletta, petitioner continues to have difficulty lifting, pushing, or pulling with the use of his right arm. He has difficulty with anything that requires overhead lifting. He also noted a significant amount of difficulty when painting overhead.

Petitioner has had no prior or subsequent injuries to his hands or arms. He has had no other workers' compensation claims.

**Therefore, the Arbitrator concludes:**

1. Petitioner's conditions of ill being affecting his shoulders are causally related to the work activities petitioner performed for the respondent on May 17, 2005. Greater weight is given to the testimony of petitioner's treating orthopedic surgeon.
2. As a result of the injuries sustained in the accidents of May 17, 2005 and July 22, 2005, petitioner has been temporarily totally disabled from March 2, 2006 through May 4, 2006, March 12, 2007 through March 22, 2007, and from June 14, 2007 through July 25, 2007.

3. As a result of the accidents of May 17, 2005 and July 22, 2005, the petitioner sustained 20% permanent partial disability to the right hand (41 weeks), 40% permanent partial disability to the right arm (94 weeks), 20% permanent partial disability to the left hand (41 weeks), and 27.5% permanent partial disability to the left arm (64.625 weeks). It is noted that the second date of accident involves increased weeks of compensation for the hands. (7/20/05 through 11/15/05)
4. The medical bills totaling \$64,550.79 are reasonable, necessary and causally related to the petitioner's work-related injuries. The following bills are hereby awarded:

<u>Medical Provider(s) / Dates of Service</u>	<u>Amount</u>
Donald Elder, M.D. 05/26/05-02/13/06	\$ 122.00
Heartland Radiology Associates 05/19/05	91.00
Orthopaedic Center of Southern Illinois 05/23/05-01/23/06 (Tuan)	792.00
05/24/06-09/25/06 (Physical Rehab Center)	4,191.00

<u>Medical Provider(s) / Dates of Service</u>	<u>Amount</u>
Khash Dehghan, M.D. 08/10/05-08/29/07	\$ 67.09
Anderson Hospital 06/14/07	3,614.86
Comprehensive Neurological 08/18/05-10/13/05	1,380.00
George A. Paletta, Jr., M.D. 03/10/06-11/07/06	12,617.50
Imaging Partners of Missouri 03/20/06-03/28/07	5,390.00
Timberlake Surgery Center 05/04/06	26,464.14
Premier Anesthesia 05/04/06	1,425.00
Pain Rehab Products, Inc. 05/04/06	185.00

Barnes-Jewish West County Hospital 09/26/06	128.00
Physical Rehab Works/NovaCare 10/05/06-11/01/06	7,800.00
Anthony Sudekum, M.D. 07/26/07	<u>283.20</u>
Total Amount of Medical Bills	\$64,550.79

Medical bills incurred after February 1, 2006 shall be paid by respondent in accordance with the Medical Fee Schedule. Medical bills incurred prior to February 1, 2006 shall be paid in their entirety. Respondent shall receive credit for all amounts previously paid. Petitioner's benefits are not reduced for failure to comply with Section 12 due to Respondent's lack of evidence of same.

5. The reasonable expense incurred for travel or transportation to obtain medical treatment is an expense incidental to treatment necessary for the physical rehabilitation of the petitioner. These are expenses that petitioner would not have had if he had not sustained a work-related injury. As such, the petitioner traveled 6,080 miles for his medical care and treatment. The Arbitrator finds that the mileage is a reasonable and necessary expense incidental to her physical rehabilitation. The Arbitrator awards 6,080 miles, which equals \$3,013.39 as calculated below:

<u>Dates of Rates</u>	<u>Rate</u>	<u>Miles</u>	<u>Amount</u>
07/01/05 thru 06/30/06	.405	2,965	\$1,200.82
07/01/06 thru 06/30/07	.445	2,705	1,203.72
07/01/07 thru present	.485	<u>410</u>	<u>198.85</u>
Total		6,080	\$3,013.39

Respondent shall receive credit for all amounts previously paid through its self-insured workers' compensation program or its group insurance plan.