

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

Patricia Desherlia,  
Petitioner,

**10IWCC0181**

vs.

NO: 07WC6489

Olin Corporation,  
Respondent.

DECISION AND OPINION ON REVIEW

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

After considering the entire record and viewing the job-related video offered by Respondent (RX 5), the Commission corrects the Decision of the Arbitrator.

The Arbitrator summarized his conclusions in three numbered paragraphs on the second page of the Decision. The Commission corrects the Decision by deleting the following findings from the first of these paragraphs: "This Arbitrator is familiar with the relationship between Respondent and Dr. Katz. Dr. Katz's opinions have previously been determined to lack credibility. He has been known to change reports at Respondent's request." The Commission is bound by the record and views the Arbitrator as having ventured outside the record in making these statements.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 24, 2009 is hereby corrected and otherwise affirmed and adopted.

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

X

10IWCC0181

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 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: FEB 23 2010

*Molly C. Mason*  
Molly C. Mason

*Yolaine Dauphin*  
Yolaine Dauphin

Dissent

I respectfully disagree with the Majority's Decision finding a causal connection between Petitioner's bilateral upper extremity conditions and her job duties for Respondent and awarding Petitioner 20% loss of use of each arm and each hand in permanent partial disability benefits. I disagree with the Majority's deference to the opinions of Dr. Vest over Drs. Katz and Brown. Dr. Vest's knowledge of Petitioner's job duties was far more limited than that of Dr. Katz. Dr. Vest testified that Petitioner merely related to him that her job involved "repetitive work". Dr. Vest was provided no further details regarding Petitioner's job until he was given a hypothetical during his deposition and he had never seen her job being performed or reviewed any job analysis, both of which he admitted would help develop a causation opinion. In comparison, Dr. Katz had more first-hand knowledge of Petitioner's specific work duties as he had gone to Respondent's job site and watched the job actually being performed. Similarly, Dr. Brown viewed job videotapes. I further disagree with the Majority's permanency award and believe they should have been reduced. Petitioner testified to no ongoing difficulties and returned to her regular job with no restrictions. Dr. Vest testified that Petitioner had no deficiencies or evidence of residual dysfunction as a result of her conditions. Petitioner's case was tried in March of 2009 and she had last seen a doctor in March of 2007. Such evidence warrants a reduction in the permanency awards for both upper extremities. For these reasons, I dissent.

*Nancy Lindsay*  
Nancy Lindsay

MCM:BJG

0-2/8/10

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ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

DESHERLIA, PATRICIA

Employee/Petitioner

Case#

07WC006489

10IWCC0181

OLIN CORPORATION

Employer/Respondent

On 04/24/2009, 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 0.33% 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:

SMITH MENDENHALL & SELBY  
STEVE SELBY  
10 E 6TH ST  
CHICAGO, IL 60602

299 KEEFE & DEPAULI PC  
AT KEEFE  
2 EXECUTIVE DR  
AIRVIEW HTS, IL 62208

STATE OF ILLINOIS )  
)  
COUNTY OF MADISON )

10IWCC0181

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

**Patricia Desherlia**

Employee/Petitioner

v.

**Olin Corporation**

Employer/Respondent

Case # **07** WC **06489**

**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 **3/27/09**. 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 7/17/06, 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 \$ 44,692.14; the average weekly wage was \$ 876.32.
- At the time of injury, the petitioner was 46 years of age, *single* with 0 children under 18.
- Necessary medical services *have* been provided by the respondent.
- To date, \$ 2,962.05 has been paid by the respondent for TTD and/or maintenance benefits.

## ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ 584.21 week for 11 4/7 weeks, from 12/21/06 through 3/11/07, which is the period of temporary total disability for which compensation is payable. Respondent is entitled to a credit of \$2,962.05.
- The respondent shall pay the petitioner the sum of \$ 525.79 week for a further period of 179 1/2 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 20% loss of the right hand, 20% loss of the left hand, 20% loss of the right arm and 20% loss of the left arm.
- The respondent shall pay the petitioner compensation that has accrued from 7/17/06 through 3/27/09, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ NA for necessary medical services, as provided in Section 8(a) of the Act.
- The respondent shall pay \$ NA in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$ NA in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$ NA 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

7/22/09  
Date

**The Arbitrator finds the following facts:**

Petitioner worked for Respondent for 14 years. In July, 2006, she worked as a strip anneal operator assistant. She testified her job required her to cut banding off bars of copper, pull metal laces out of the copper using pliers, band bars as they came off the line and pick up scrap metal. These bars were 36 inches wide and weighed up to 19,000 lbs. She used both a hand ratchet bander and a pneumatic bander. She said the pneumatic bander vibrated. They ran 17-bars per day. Her arms, hands and wrists hurt when she cut off the bands. She wore braces but it did not help. She said her condition worsened when working with her arms overhead to cut bands. She worked an 8 hr/day with a 20 minute lunch break.

Petitioner went to the company medical department on 7/17/06 complaining of pain in her elbows and hands, which was getting worse, especially with pulling/pushing the copper. Petitioner was given splints to wear. On 7/18/06 Petitioner was interviewed by Steve Fahey, Respondent's safety director. Petitioner was told that her claim was accepted as compensable. Petitioner asked to see Dr. Vest, an orthopedist since 1991. Respondent agreed and an appointment was scheduled for 8/14/06.

On 8/14/06 Dr. Vest diagnosed bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Respondent authorized NCS and physical therapy. NCS were positive for bilateral carpal tunnel and bilateral cubital tunnel. Injections provided little relief. Dr. Vest recommended surgery on 11/21/06.

On 12/1/06 Respondent denied the claim based on a report from Dr. Katz wherein he indicated that he did not find any risk factors in the strip anneal operator job for either carpal tunnel syndrome or ulnar neuropathy. Dr. Katz did an on-sight inspection of various jobs at Respondent. He based his opinion on a belief that required a baseline threshold number of repetitions with a certain amount of force over a certain amount of time. Dr. Katz is boarded in physical medicine and rehabilitation, in electrodiagnosis and as an independent medical examiner. He testified that 1/4 of his business consists of performing exams for employers, 1/4 interpreting electrodiagnostic studies and 1/2 treating patients. He has no hospital privileges and does not perform surgery. Dr. Katz testified that Respondent is responsible for a significant portion of his business. Dr. Katz stated that Petitioner was exposed to repeated flexion/extension and vibrations while performing her job.

Dr. Vest performed a left carpal tunnel release and left cubital tunnel release with ulnar nerve transposition on 12/21/06. He performed a right carpal tunnel release and right cubital tunnel release without ulnar nerve transposition on 1/12/07. He last saw Petitioner on 3/9/07. He released her to return to her regular without restriction.

Petitioner testified that she still has some fatigue in her arms. She is no longer working for Respondent. She is not working anywhere at the present time.

Dr. Vest testified that the work activities described could cause or aggravate carpal tunnel syndrome and cubital tunnel syndrome. He ruled out any underlying systemic diseases as causative of her condition. Dr. Vest said he had not observed the job, he had not done any type of on-site analysis of her work activities and he had not done any measurements or analysis of repetitions.

Dr. David Brown, an orthopedic hand surgeon, did a records review at Respondent's request. He reviewed a job video of Petitioner's job. He did not think that Petitioner's job duties had any significant risk factors for either carpal tunnel syndrome or cubital tunnel syndrome.

A Physical Demand Analysis report for Petitioner's job as #9 Strip Anneal Asst. Operator showed there to be infrequent lifting of weights from one to 20 pounds. Stitches were pulled out of strips with pliers four or five times per day. Bars were banded with a pneumatic bander or manually with a ratchet, 8-10 bars per day. Metal was pulled from the machine one time every two or three weeks. Reaching and handling was done on a frequent basis. Left hand control, right hand control and two hand control was done on a frequent basis. The Arbitrator reviewed the job video.

The parties stipulated that Petitioner was off work from 12/21/06 through 3/11/07, a period of 11 4/7 weeks, and that Respondent paid \$2,962.05 in group, non-occupational disability benefits for which Respondent is entitled to credit under Section 8(j)

**Therefore the Arbitrator concludes:**

1. Petitioner sustained work-related injuries to both hands and elbows as a result of her hand/arm intensive work performed at respondent. This is based on her credible testimony and the opinions of Dr. Vest. His opinions are more persuasive than those of Respondent's retained experts. This Arbitrator is familiar with the relationship between Respondent and Dr. Katz. Dr. Katz's opinions have previously been determined to lack credibility. He has been known to change reports at respondent's requests. He bases his opinions on a study which our Courts have held, since 2005, do not apply as there is no magical formula to quantify movements. Hines Precisions Components v Illinois Industrial Commission 356 Ill. App 3d 186, 825 N.E.2d 773 (2005). This claim was initially accepted by Respondent and later denied after it retained Dr. Katz.
2. Petitioner is entitled to TTD benefits from 12/21/06 through 3/11/07, a period of 11 4/7 weeks. Respondent is entitled to a Section 8(j) credit of \$2,962.05.
3. As a result of her injuries Petitioner has sustained the loss of 20% of the right hand, 20% of the left hand, 20% of the right arm and 20% of the left arm.