

07WC11274
07WC14501
07WC32304
07WC32417
Page 1

STATE OF ILLINOIS)
) SS.
COUNTY OF COLES)

<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

Tim Oller,

Petitioner,

10IWCC0021

vs.

NO: 07WC11274
07WC14501
07WC32304
07WC32417

International Paper,

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, permanent disability, and medical expenses, 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. The Commission, like the Arbitrator, addresses all four claims in a single Decision.

After considering the entire record and viewing the job videotapes offered by Respondent, the Commission corrects the last sentence of page ten of the Decision to read as follows: "Based upon the foregoing, the Arbitrator finds the injuries sustained by Petitioner resulted in permanent partial disability to the extent of 20% loss of use of the left arm, 17.5% loss of use of the right arm, 18% loss of use of the left hand and 18% loss of use of the right hand." The Commission corrects this sentence so that the Arbitrator's written permanency award will conform to the permanency order on page two of the Decision.

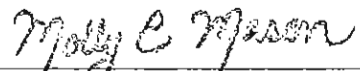
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 6, 2009 is hereby corrected, and otherwise affirmed and adopted.

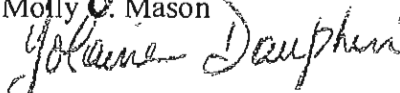
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, by Respondent either directly or through a group policy that falls within the purview of Section 8(j) of the Act. To the extent that 8(j) credit exists, Respondent shall keep Petitioner safe and harmless from any and all claims or liabilities that may be made against him by reason of having received such payments pursuant to Section 8(j) of the Act 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: JAN - 7 2010


Molly C. Mason


Yolaine Dauphin


Nancy Lindsay

NOTICE OF ARBITRATOR DECISION
CORRECTED

10IWCC0021

OLLER, TIM

Employee/Petitioner

Case# **07WC011274**

07WC032304

07WC032417

07WC014501

INTERNATIONAL PAPER

Employer/Respondent

On 04/06/2009, 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 0.42% 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 V BOSHARDY & ASSOCIATES
1610 SOUTH SIXTH ST
SPRINGFIELD, IL 62703

180 EVANS & DIXON, LLC
100 MILLENNIUM EXECUTIVE CTR
15 OLIVE ST
ST LOUIS, MO 63101

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Tim Oller

Employee/Petitioner

Case # 07 WC 11274 / 07 WC 14501

v.

07 WC 32417 / 07 WC 32304International Paper

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 Ruth White, arbitrator of the Commission, in the city of Mattoon, on January 30, 2009. 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 _____

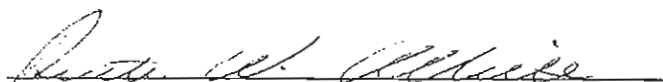
- On September 7, 2005, June 8, 2006, June 19, 2006 and January 27, 2007, the respondent International Paper was operating under and subject to the provisions of the Act.
- On these dates, an employee-employer relationship *did* exist between the petitioner and respondent.
- On these dates, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of these accidents *were* given to the respondent.
- In the year preceding the injury, the petitioner earned \$ 34,515.00; the average weekly wage was \$ 663.75.
- At the time of injury, the petitioner was 39 years of age, *single* with 2 children under 18.
- Necessary medical services *have not* been provided by the respondent.
- To date, \$ 0.00 has been paid by the respondent for TTD benefits. Respondent claims that it has paid \$7191.60 for the time periods March 12, 2007 through June 2, 2007. Petitioner and Respondent stipulated that the Respondent is due a credit for any net short or long term disability payments that it paid to the Petitioner and Respondent is to provide the Petitioner with documentation of any payments made.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ 442.50/week for 35 3/7 weeks, from January 27, 2007 through October 4, 2007, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of \$ 398.25/week for a further period of 168.675 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused permanent and complete disability to the left arm to the extent of 20% thereof (50.6 weeks); of the right arm to the extent of 17.5% thereof (44.275 weeks); of the left hand to the extent of 18% thereof (36.9 weeks); and of the right hand to the extent of 18% thereof (36.9 weeks).
- The respondent shall pay the petitioner compensation that has accrued from September 7, 2005 through January 30, 2009, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ 21,951.40 for necessary medical services, as provided in Section 8(a) of the Act subject to the Fee Schedule. Respondent is entitled to credit for any amounts paid on the awarded bills by Respondent either directly or through a group policy that falls within the purview of Section 8(j) of the Act. To the extent that 8(j) credit exists, Respondent shall keep Petitioner safe and harmless from any and all claims or liabilities that may be made against him by reason of having received such payments pursuant to Section 8(j) of the Act.
- The Petition For Additional Compensation, Penalties and Attorney's Fees is denied.

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

April 2, 2009
Date

APR 6 2009

In support of the Arbitrator's findings on the issue of "C. Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?" the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

On September 7, 2005, the Petitioner was employed in the distribution department for the Respondent and has been so employed for the previous eighteen years. Respondent manufactures paper products for the food industry. Petitioner works twelve hour shifts and works thirty six hours one week and forty eight hours the next.

The Petitioner testified regarding the repetitious nature of his work activities as they related to his hands and arms. The Respondent offered the testimony of the Petitioner's supervisor, Jeff Gregg, as well as videotapes allegedly demonstrating the Petitioner's work activities.

The Petitioner first began working for the Respondent in 1988 and was assigned to a "loop" line which required him to grasp, lift, and stack boxes of product weighing between three pounds and thirty-seven pounds off of a conveyor. Petitioner testified that most of the boxes were in the mid range of fifteen to twenty pounds, and that he would stack two thousand to three thousand boxes per day. A videotape of a "loop" area was admitted into evidence; however, the "loop" area depicted in the videotape was not the same loop area in which the Petitioner worked.

In 1995, the Petitioner was promoted to a 'Grade IV' position and began working as a clamp fork truck driver. About ninety-eight percent of Petitioner's day beginning in 1995 involved driving the clamp fork truck, and two percent of his day would involve hand picking boxes to complete orders. A clamp fork truck driver manipulates four levers which operate clamps. Petitioner would maneuver the clamp truck and the clamps to grab cases, or boxes, fifty to one hundred at a time, and transport and load these boxes onto trailers for delivery. Petitioner described that the clamp fork truck had a steering wheel which he was constantly turning with his left hand and arm, as well as his left index and ring finger. The Petitioner demonstrated that his hand and arm would rotate in a circular motion as he was turning the steering wheel. With his right hand, Petitioner operated the set of four hydraulic levers which he described as requiring him to constantly manipulate throughout his entire shift. Petitioner would lay the palm area of his right hand on the levers and move them around. Petitioner's arms were held in a bent position while operating the truck. Although additional duties, as discussed below, were occasionally added to the Petitioner's responsibilities, he continued to operate the clamp truck through the date of accidents at issue here.

Beginning in 1997, the Petitioner was required to provide breaks to another 'Group IV' leader working on a 'loop' line for about two and a half hours of the day. Between 2000 and 2002, Petitioner was assigned additional duties in "servicing the press room" for two hours per day which required him to lift boxes and cut open the boxes using a safety knife.

From 2002 through 2005 in addition to Petitioner's clamp fork truck duties, the Petitioner was assigned to perform 'scrubbing' activities. The parties agreed that the scrubbing activities took less than twenty percent of the Petitioner's work day. Petitioner and Respondent's

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witnesses described that the floor of the warehouse would become soiled from clamp fork truck wheel marks, and other debris, and the floors would have to be cleaned. In cleaning this area, Petitioner sat on a scrubber vehicle that he would drive up and down the polished concrete aisles, and the scrubber would remove any loose dirt that could be easily removed. A videotape showed a scrubber in operation and it was operated by steering with the right and left hand. Operation of the scrubber was not hand intensive. Petitioner stated that he used a different machine than that pictured on the video and he would sometimes have to lean out the side of the scrubber, supporting his body by leaning on the palm of his hand.

When the tire marks were too thick and stuck so that they could not be removed by the scrubber, the Petitioner would get off of the scrubber and use a wallpaper scraper mounted on the end of the broomstick to manually scrape the dirt and tire tracks from the floor. A chemical solution was applied to the tire tracks to loosen the dirt. The videotape prepared by the Respondent showed a worker spraying an area of the floor, and using the scraper as described, to gently remove any accumulated tire tracks. In the videotape, not much force is seen being exerted by the worker. The Petitioner, however, testified that the tire tracks were sometimes so difficult to remove that he would have to push down with lateral pressure onto the broomstick handle with a great amount of force to scrape and remove the tire tracks. Petitioner would have to scrape so hard, and for such a length of time, that his hands would become tired and he would have to switch from having his left hand down below on the broom handle to having his right hand down below, with the opposite hand holding the broom handle towards the top end of the broom handle. The Petitioner described that between 2002 and 2005, when he was performing the scrubbing and scraping duties, he estimated he would spend between one hour to three hours a day using the scrubber and, of that time period, perhaps thirty minutes to an hour using the scraper to remove the accumulated dust and tire marks. There were some days when Petitioner would scrape as long as three to four hours, but other days it would be just thirty minutes to one hour.

Petitioner also described that between 2001 and 2003 additional duties were added to his existing duties of operating the clamp fork truck, and the scraper and scrubber duties, in that he was sometimes asked to fill in at the plastics department which required him to lift and stack boxes weighing twenty to thirty-five pounds. He estimated that he would lift two hundred to four hundred each time when he was working in the plastics department.

The Petitioner testified that he might also have to work in the 'tunnel' on occasion. In the tunnel Petitioner would transfer cases from one conveyor belt to another, either through lifting and carrying the boxes four to five feet to the other conveyor, or sliding the boxes along a transfer conveyor. A videotape of this position was also offered into evidence by the Respondent. The Petitioner testified that the activity depicted on the video was not the same speed at which he worked and that he described the boxes as being continuously transferred from one conveyor to another and that the rate was "merciless".

Petitioner testified that he had four fifteen minute breaks every day, and one twenty-five to thirty minute break for lunch. Petitioner explained that no matter his duties he used his hands and arms constantly when working.

The Petitioner plays musical instruments, such as a guitar and a piano, and weight lifts on his personal time. Petitioner estimated that he might play musical instruments thirty-five to seventy minutes per day and stated that he played in a band in the early 90's and plays with his son occasionally. Petitioner never experienced any symptoms when playing his guitar or piano. Petitioner also described that prior to the accident date the Petitioner would weight lift two to three times per week for ten to forty minutes each time, lifting free weights, and bench press between one hundred to one hundred and eighty pounds.

Petitioner began to notice numbness in his left wrist and notified Respondent of this condition in September of 2005. Respondent referred the Petitioner to Lincoln Trail Occupational Health and Dr. Todd Garner. (P.X.3) On September 7, 2005, Petitioner told Dr. Garner that he was unaware of any specific history of trauma but that about a week before he was picking and stacking thirty pound boxes when his symptoms began. Petitioner described that he was having difficulty gripping with his middle and ring fingers and complained of intermittent numbness and tingling that awakened him at night, every night. Dr. Garner examined the Petitioner and noted positive Tinel's in all of the fingers of the left hand and that the Petitioner's forearm compression tests evoked a similar response. (P.X.3) Dr. Garner advised the Petitioner that his left wrist and hand pain was secondary to overuse and that the Petitioner had tendonitis of the wrist and hand. Dr. Garner prescribed the Petitioner a home exercise program, ice and over the counter medications. (P.X.3) Petitioner returned to Dr. Garner on September 19, 2005 noting slight improvement in his left wrist and hand tendonitis. On September 27, 2005, the Petitioner returned to Dr. Garner noting continued improvement with his left hand and wrist tendonitis and that he only had rare intermittent paraesthesias in all of the fingers of the left hand. Petitioner described to Dr. Garner that he tried to do a little bit more at work in lifting a thirty-five pound box and felt some pain in the palm of his hand. (P.X.3) Dr. Garner released the Petitioner to return to work without restrictions and the Petitioner testified that he did so. (P.X.3)

On June 8, 2006, the Petitioner was working in the tunnel when he was attempting to free a jammed box and pulled the box with both of his arms, and when he did so, he struck his left elbow on a conveyor metal railing behind him. Petitioner reported this incident to his employer and was sent to Dr. Todd Garner again on June 9, 2006. (P.X.3) On examination, Dr. Garner noted moderate swelling of the olecranon bursa and diagnosed the Petitioner with a left elbow olecranon bursitis and advised the Petitioner that he could return to work without restrictions. (P.X.3)

On June 19, 2006, the Petitioner returned to Dr. Garner noting that his left elbow was pain free from the June 8, 2006 accident but that he felt a foreign body at the left elbow. Petitioner also complained to Dr. Garner of intermittent numbness and tingling in the left upper extremity. (P.X.3) Dr. Garner examined the Petitioner and noted good grip, pinch and intrinsic strength. Dr. Garner felt that the olecranon bursa had resolved entirely and that the foreign body the Petitioner was referring to was synovial frond. Dr. Garner diagnosed the Petitioner with a left elbow abrasion, olecranon bursitis resolved and synovial frond of the left olecranon bursa. Dr. Garner also diagnosed the Petitioner as suffering from paraesthesias of the left upper extremity with difficulty opposing the thumb and small finger and elevated latencies in the median distribution at the left wrist by nerve page screening. Dr. Garner suspected early carpal tunnel syndrome and advised that an EMG with NCV might be recommended if the symptoms failed to subside. (P.X.3) Petitioner returned to Dr. Garner on July 3, 2006 at which time the Petitioner

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was complaining of an unusual sensation in his small finger in that he felt that it wanted to deviate laterally. (P.X.3) The Petitioner also advised Dr. Garner that he had occasional right wrist symptoms and that he awakened nocturnally with numbness and tingling and that he would like to have something more done about the problem. On examination, Dr. Garner noted positive Tinel's and positive forearm compression test on the left and positive forearm compression test on the right. Dr. Garner diagnosed the Petitioner with a left carpal tunnel syndrome, intermittent paraesthesias in the right upper extremity and, to rule out compressive neuropathy, he arranged for an EMG/NCV with Dr. Allen Devleschoward. (P.X.3) Petitioner underwent the EMG/NCV on July 14, 2006 and it showed moderately severe to severe changes at the left median nerve through the carpal tunnel and mild early electrical changes in the right median nerve through the carpal tunnel. Ulnar neuropathies were not seen. (P.X.3)

The Petitioner testified that after these visits with Dr. Garner, he was sent to Dr. James Kohlmann for an independent medical evaluation. (R.X.4) Dr. Kohlmann examined the Petitioner for the Respondent on August 15, 2006. Dr. Kohlmann noted that the Petitioner was a clamp truck driver who had a history of pain in his hands since lifting boxes in September of 2005 and that the symptoms had resolved but that Petitioner had intermittent hand pain since that time. Dr. Kohlmann noted that as of August 15, 2006 the Petitioner's only activity at work involved driving the clamp fork truck and that he lifted occasionally. Dr. Kohlmann conducted a physical examination, reviewed the EMG findings and diagnosed the Petitioner with bilateral carpal tunnel syndrome with a minimally symptomatic left hand and clinical evidence of cubital tunnel syndrome but unsupported by EMG. He recommended continuing with conservative treatment including non-steroidal anti-inflammatory medications. (R.X.4)

The Petitioner testified that he continued to notice worsening of his hand symptoms as time went on and finally sought care on his own from Dr. Patrick Stewart. Petitioner first saw Dr. Stewart on January 26, 2007 where he described his work activity to the doctor. (P.X.5) Petitioner also described to Dr. Stewart that he had noted numbness and tingling but it worsened significantly in September of 2005 when he was lifting and moving boxes at work. (P.X.5) Dr. Stewart examined the Petitioner's right and left upper extremities, reviewed the electrodiagnostic and EMG study completed by Dr. Devleschoward and diagnosed the Petitioner with bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome and an avulsive olecranon osteophyte of the left elbow. (P.X.5) Dr. Stewart placed the Petitioner in elbow pads, placed him on work restrictions and asked the Petitioner to return to see him. (P.X.5) On February 14, 2007 Petitioner returned to Dr. Garner noting that the Petitioner continued to develop paraesthesias in the ring and small fingers at night and his symptoms persisted. Dr. Garner carried the same diagnosis and recommended the Petitioner have a repeat EMG study. Petitioner testified he was sent to Dr. Sajjan Nemani for an EMG.

On March 21, 2007, Dr. Sajjan Nemani performed an EMG/NCV study which was interpreted as showing moderate bilateral carpal tunnel syndrome, left worse than right, and moderate bilateral ulnar neuropathy at the elbow on the left. (P.X.7)

The Arbitrator finds the Petitioner has carried his burden of proving that his job involved the repeated use of his arms and hands in the performance of his duties. The Petitioner testified credibly. The Respondent did not offer evidence which refuted the Petitioner's description of his job activities. The Arbitrator finds that Petitioner's left hand condition manifested on September

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7, 2005 but resulted in no permanent disability and that said condition was later aggravated by further repetitive trauma accidents. The Arbitrator further finds that Petitioner sustained an accidental injury to his left olecranon resulting in a oleocranon osteophyte on June 8, 2006. The Arbitrator also finds that the Petitioner has carried his burden of proving that he sustained repetitive trauma injuries to his left and right hand on June 19, 2006. However, the credible medical evidence indicates that the conditions diagnosed by Dr. Kohlmann worsened over the next six months, causing the Petitioner to seek additional care on his own with Dr. Stewart on January 27, 2007. On that date, the Petitioner's condition was diagnosed as bilateral carpal tunnel and bilateral cubital tunnel syndromes. Therefore, the Arbitrator finds that the accident date for the Petitioner's bilateral carpal tunnel and bilateral cubital syndrome is January 27, 2007.

In support of the Arbitrator's findings on the issue of "F. Is the petitioner's present condition of ill-being causally related to the injury?" the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

Dr. Stewart testified in this matter and his deposition transcripts were admitted as Petitioner's Exhibit 8 and 10. Dr. Stewart testified that he x-rayed the Petitioner's left elbow and noted a small piece of bone had broken free and Petitioner had an avulsive osteophyte of his left elbow. (P.X.8, p.9) After the EMG, Dr. Stewart diagnosed the Petitioner as having bilateral carpal tunnel and cubital tunnel syndrome. (P.X.8, p.15) Dr. Stewart recommended surgery to relieve the pressure from both the median nerves at the wrists and ulnar nerves at the elbows. (P.X.8, p.15-16) Authorization for the surgeries was requested by the Petitioner. Dr. Stewart testified that a denial letter from Petitioner's workers' compensation insurance carrier was received. (P.X.8, p.16)

Petitioner's job duties were described to Dr. Stewart and it was his opinion that the Petitioner's work activity was a contributing factor in the development of his bilateral median neuropathy or carpal tunnel syndrome and ulnar neuropathy or cubital tunnel syndrome. (P.X.8, p.19-23) Dr. Stewart testified that the Petitioner actually wrote down his work activities for Dr. Stewart and he also asked the Petitioner specifically about the activities the Petitioner performed outside of work. (P.X. 8, p. 23) It was Dr. Stewart's understanding that the Petitioner performed his scraping activities along with the clamp fork truck driving activities. (P.X.8, p.27-28)

Dr. Stewart did not believe any activity of daily living would cause compression of the median nerves or an aggravation of symptoms. (P.X.8, p.28) Dr. Stewart also agreed that carpal and cubital tunnel can arise in people who do not have repetitive jobs and this is an idiopathic condition. (P.X.8, p.29) Dr. Stewart conceded that both outside activities and work activities might contribute together to the development of bilateral ulnar and median neuropathy and there was no way to scientifically determine to what extent each activity contributed to the development of the problem. (P.X.8, p.34)

Dr. Stewart felt the bumping of Petitioner's elbow on June 8, 2006 could have been the cause of his olecranon bursitis. (P.X.8, p.32)

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Dr. Kohlmann stated in his independent medical evaluation that the Petitioner's carpal tunnel and clinical cubital tunnel were not work related. Dr. Kohlmann did not believe the Petitioner's work duties were repetitive and his condition was caused by his activities at home and his age. (R.X.4)

The Petitioner was sent for an independent medical evaluation by the Respondent on May 15, 2007. At this time, the Petitioner was receiving no benefits and his claim had been denied. The deposition of Dr. Patrick Stewart took place on July 8, 2008 and the Respondent's independent medical evaluation report from Dr. Robert Baltera was not provided to Petitioner's counsel. The Petitioner objected to Dr. Baltera's deposition and opinions and that objection was made at Dr. Baltera's evidence deposition. (R.X.1, p.3-4) The Petitioner had requested videotapes that Dr. Baltera relied upon in developing a causation opinion and requested of the Respondent that those videotapes be made available for Dr. Stewart's deposition of July 17, 2007. The Respondent failed to do so. However, the Respondent did pay for Dr. Stewart's deposition and his deposition was taken again on July 8, 2008. The transcript of the second Dr. Stewart deposition was admitted as Petitioner's Exhibit 10. Inasmuch as Dr. Stewart has now been allowed to view the videotape and comment upon the same, the Arbitrator finds the Respondent's failure to produce the videotape prior to the first Stewart deposition has been cured and admits Dr. Baltera's report and deposition.

Dr. Baltera testified that the Petitioner's exam was consistent with what was felt to be carpal tunnel syndrome, cubital tunnel syndrome and olecranon bursitis on the left side. (R.X.1, p.8) Dr. Baltera stated that the videotape that was provided to him did not represent a large amount of the work the Petitioner did. (R.X.1, p.9-10) It was Dr. Baltera's opinion that the Petitioner did not have any history of medical conditions or diseases that was relevant to his diagnosis and the Petitioner's piano playing was not contributing to his current symptoms. (R.X.1, p.11) Dr. Baltera did not have an opinion regarding work-relatedness because the videotapes provided to him at the time were not the jobs the Petitioner claimed to have been doing the majority of the time. (R.X.1, p.12) It was Dr. Baltera's opinion to a reasonable degree of medical certainty that the activities, or types of activities, which were significant in causing carpal tunnel in an industrial setting was controversial. (R.X.1, p.12) Dr. Baltera noted that there were several reports which suggested a combination of forceful grasping and high repetition to be a causative factor but a combination of high force and high repetition had also been associated with carpal tunnel syndrome. (R.X.1, p.12-13) Dr. Baltera stated that high force is not defined in the articles, and would be subjective, but that OSHA describes repetitious work as over five hundred repetitions per shift. (R.X.1, p.13)

Dr. Baltera reviewed a second DVD which included the Petitioner's supervisor describing that the Petitioner worked on the scrubber and scraped ten to twenty percent of his typical workday, but that eighty to ninety percent of the time the Petitioner was involved in loading and unloading trucks. (R.X.1, p.14-15) Dr. Baltera did not believe the scrubber position involved a high degree of repetition, or force, but the scraping position did involve some repetitious scraping. (R.X.1, p.15) It was Dr. Baltera's opinion to a reasonable degree of medical certainty that the Petitioner's carpal tunnel syndrome and cubital tunnel syndrome were not caused by or aggravated by the activities viewed on the videotape.

Dr. Baltera admitted that the Petitioner did not have any systemic causes or known systemic causes of carpal tunnel syndrome. (R.X.1, p.22) When asking the Petitioner about his job activities he performed in 2005 and 2006, Petitioner told Dr. Baltera that between 2005 and 2006, about twenty five percent of his time was spent on the clamp fork truck, two percent of his time was spent in the tunnel, three percent of his time was spent in the loop department and seventy percent of his time was operating the scrubber. (R.X.1, p.24) Dr. Baltera was unaware of whether the Petitioner's work activities changed during the course of his employment with the Respondent over the previous nineteen years. (R.X.1, p.25) Dr. Baltera acknowledged that if the Petitioner's work activities differed from what he saw on the videotape then his opinion on causation would change. (R.X.1, p.27)

Dr. Stewart was given the opportunity to view the videotape in a subsequent deposition of July 8, 2008. Dr. Stewart viewed all of the videotapes and made detailed notes. Dr. Stewart recalled that one of the videotapes included the Petitioner's supervisor, Jeff Gregg, who described that the Petitioner would be on the clamp fork truck and loading and unloading trailers eighty to ninety percent of the time and that the scrubbing was done the remainder of the time in combination with other areas. (P.X.10, p.7) Dr. Stewart also noted that when scrubbing, a five hundred square foot area would be scrubbed, and the scrubbing would be done from an hour to perhaps as much as three, four, or five hours per day. (P.X.10, p.8) The Arbitrator notes that Dr. Stewart in his testimony described in great detail the videotapes and DVD's that were offered by the Respondent. (P.X.10, p.7-14) Dr. Stewart testified that none of the activities viewed on the DVD's changed his opinions. (P.X.10, p.14-15)

The Arbitrator finds that the Respondent failed to establish that the any of the Petitioner's non-work activities contributed to his bilateral carpal and cubital tunnel conditions.

Based upon the foregoing, the Arbitrator finds that Petitioner's olecranon osteophyte is causally related to the work accident of June 8, 2006. The Arbitrator further adopts the opinions of Dr. Patrick Stewart and finds that the Petitioner's bilateral carpal and cubital tunnel syndrome were causally related to his work accident of January 27, 2007.

In support of the Arbitrator's findings on the issue of (J) Were the medical services that were provided to the petitioner reasonable and necessary?, the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

The reasonableness and necessity of the Petitioner's medical care was not disputed by the Respondent. Having found in the Petitioner's favor on the issues of accident and causation, the Arbitrator finds the Petitioner's medical expenses as submitted in Petitioner's Exhibit 7 are causally related to the accidents at issue here and orders the Respondent to pay the same subject to the fee schedule.

Southern IL Hand Center	1/26/07-11/21/07	\$13,044.40
Effingham Ambulatory Surgery Center	7/9/07-8/15/07	\$ 8,907.00
	TOTAL:	\$21,951.40

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In support of the Arbitrator's findings on the issue of (K) What amount of compensation is due for Temporary Total Disability?, the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

The Petitioner testified, and the medical records confirm, the Petitioner was placed on restricted duty on January 27, 2007. (P.X.5) Petitioner testified that he brought his light duty restriction into work and was advised by his supervisor that they could not accommodate his light duty restrictions. This testimony was un-rebutted. Dr. Stewart completely removed the Petitioner from work after his surgery. (P.X.5) Petitioner was released to return to work without restrictions on October 4, 2007. (P.X. 5) Accordingly, the Arbitrator finds the Petitioner has carried his burden of proving that he was temporarily and totally disabled from his employment from January 27, 2007 through October 4, 2007. (P.X.5)

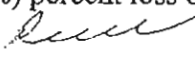
The Arbitrator notes that Petitioner and Respondent stipulated that the Respondent is due a credit for any net short or long term disability payments that it paid to the Petitioner and Respondent is to provide the Petitioner with documentation of any payments made.

In support of the Arbitrator's findings on the issue of (L). What is the nature and extent of the injury? the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

A left carpal and cubital tunnel release was performed by Dr. Stewart on July 9, 2007. (P.X.5) On August 15, 2007, the Petitioner underwent a right carpal and cubital tunnel release. (P.X.5)

Petitioner was released to return to work and returned to work at the same position without restrictions. Petitioner notices that he continues to have a bump on his left elbow, both of his hands get fatigued when he is driving a car and there is stiffness in his hands. Petitioner continues to experience pain in both of his elbows and he can distinguish from the pain resulting from the nodule on his left elbow. Petitioner also notices he has a tingling feeling when he lays his elbows on the table and he has trouble getting his fingers to do what he wants them to do.

Based upon the foregoing, the Arbitrator finds the injuries sustained permanent partial disability by the Petitioner caused twenty-five (20%) percent loss of use of the left arm, twenty (17.5%) percent loss of use of the right arm, twenty (18%) percent loss of use of the left hand, and twenty (18%) percent loss of use of the right hand. 

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In support of the Arbitrator's findings on the issue of (M). Should penalties or fees be imposed upon the respondent? the Arbitrator finds the following facts:

The findings of fact stated in other parts of this decision are adopted and incorporated by reference here.

This is a complicated fact situation involving four alleged accident dates only one of which is obvious. Petitioner ultimately prevailed; however, Respondent was not wrong to raise defenses. Legitimate issues of liability are in dispute. An award of penalties and attorney's fees is not appropriate at this time.