

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 22, 2007, is modified as stated herein and all else is affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$495.84 per week for a period of 208.63 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of the left arm to the extent of 40% thereof, the right arm to the extent of 22.5% thereof, the left hand to the extent of 15% thereof, and the right hand to the extent of 17.5% thereof pursuant to Section 8(e).


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to credit in the amount of \$991.68. In addition, Respondent is entitled to credit in the amount of \$1,157.81 for Petitioner's prior settlement of 2½% of the right hand pursuant to Section 8(e) under 95 WC 12603.

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


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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The probable cost of the record to be filed as return to Summons is the sum of \$35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: DEC 4 2009
o-7/28/09
NL/ma
46



Molly C. Mason



Yolaine Dauphin

Concurrence and Dissent

I concur in all aspects of the Majority's Decision except for its findings with regard to Petitioner's right elbow. Petitioner's right arm surgery (a cubital tunnel release) was neither reasonable nor necessary. A diagnosis of right cubital tunnel syndrome based upon objective testing was never rendered nor did Petitioner undergo any conservative care prior to surgery. He

testified at arbitration that the surgery only provided some relief. Dr. Pruitt examined Petitioner and found no objective evidence of cubital tunnel syndrome. He credibly testified that conservative care was appropriate rather than surgery. For this reason, I dissent.

A handwritten signature in cursive script, reading "Nancy Lindsay". The signature is written in dark ink and is positioned above a horizontal line.

Nancy Lindsay

NOTICE OF ARBITRATOR DECISION

TRUMAN SELLERS

Employee/Petitioner

Case# **05WC026361**

05WC026366

09IWCC1292

CONTINENTAL TIRE NA

Employer/Respondent

On 10/22/2007, 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 4.22% 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:

1312 BEMENT & STUBBLEFIELD
PO BOX 23926
BELLEVILLE, IL 62223

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISIONTRUMAN SELLERS

Employee/Petitioner

Case # 05 WC 26361

v.

05-WC-26366CONTINENTAL TIRE N.A.

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. X Other reasonableness and necessity of surgery on petitioner's right arm

FINDINGS

09I WCC 1292

- On **November 7, 2004**, the respondent **Continental Tire North America** 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 these accidents **was** given to the respondent.
- In the year preceding the injury, the petitioner earned \$ **42,972.80**; the average weekly wage was \$ **826.40**.
- At the time of injury, the petitioner was **36** years of age, **married** with **5** children under 18.
- Necessary medical services **have** been provided by the respondent.
- To date, \$ **No Issue** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ **No Issue**/week for **N/A** weeks, from ____ to ____, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of \$ **495.84**/week for a further period of **228.75 (less credit of 4.75 weeks right hand)** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **20% loss of the use of each hand, 25% loss of the use of his right arm and 40% loss of the use of his left arm. Respondent is entitled to credit for 2-1/2% right hand previously paid.**
- The respondent shall pay the petitioner compensation that has accrued from **11/07/04** through **9/19/07**, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ **all medical has been paid** for necessary medical services, as provided in Section 8(a) of the Act. Petitioner's right arm surgery was reasonable. (*see findings)
- The respondent shall pay \$ **-0-** in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$ **-0-** in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$ **-0-** in attorneys' fees, as provided in Section 16 of the Act.

By stipulation of the parties, this decision encompasses all prior dates of hand, elbow, shoulder and arm injuries and Respondent is entitled to credit for \$991.68 PPD 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 **4.22%** 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

10/15/07
Date

OCT 22 2007

The Arbitrator finds the following facts regarding all disputed issues:

The issues for this claim are the nature and extent and the reasonableness of the right elbow/cubital tunnel surgery. The petitioner at the time of his accident was a 36-year-old individual who was involved with the manufacturing of tires with the respondent. The petitioner had bilateral carpal tunnel syndrome, bilateral elbow pain and left shoulder pain. Dr. Frank Lee performed left carpal tunnel syndrome, left cubital tunnel syndrome and an acromioclavicular joint injection on June 23, 2005. On August 5, 2005 Dr. Lee performed an arthroscopic surgery to the left shoulder with subacromial decompression and distal clavicular resection. On December 15, 2005, Dr. Lee performed right carpal tunnel and cubital tunnel release with medial triceps resection. There was a left shoulder injection on March 17, 2006. Due to continued problems with his left shoulder, Dr. Lee performed an AC joint ligament reinforcement on May 11, 2006.

Dr. Lee testified that the petitioner had continued complaints and failed conservative care. Dr. Lee testified that the petitioner's work was a cause of the condition and that the surgery was reasonable and necessary. The respondent had the petitioner examined by Dr. Donald Pruitt. Dr. Pruitt testified that he believes conservative care was necessary for the right elbow but that he would not have operated on the right arm at this time. He did not testify that surgery was unreasonable or unnecessary. He would have preferred a more conservative course of care. Greater weight is given to the opinions of petitioner's treating physician, Dr. Lee. The Arbitrator finds that the surgery was reasonable and necessary.

The petitioner has loss of grip strength in both hands with some numbness throughout his hands. He has lost some grip strength and has tenderness at the base of his hand on each side near the site of the scar. He drops things with both hands. He has tenderness and pain on the elbow at the incision site. He has pain in parts of his forearm and periodic numbness into his small and ring fingers on both sides. He has a loss of strength in both arms, with increasing pain with activity. The surgeries for the elbows did reduce numbness and sensitivity.

The petitioner has a painful knot on the top of the left shoulder. The left shoulder pops, tingles and burns. He has loss of range of motion. He is unable to raise his hands above shoulder height and unable to lift items more than a few pounds. He is unable to reach around to do such things as wash his back. The Section 12 physician, Dr. Cantrell reported that the petitioner should avoid repetitive overhead work, that he avoid lifting greater than 15 pounds in an overhead position, and that he avoid lifting greater than 15 pounds with his left arm in an outstretched position. (R.X. #3, p. 5) He takes pain medication twice a day.

Therefore the Arbitrator concludes:

1. Petitioner sustained 20% loss of the use of each hand, 25% loss of the use of his right arm and 40% loss of the use of his left arm.
2. The right arm/elbow surgery was reasonable and necessary.
3. Respondent is entitled to credit for 2-1/2% right hand which it previously paid out.