

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

<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

Cesar Rodas,
 Petitioner.

vs.

NO: 07WC 24158

American Body Company, Inc.,
 Respondent,

10IWCC0406

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 nature and extent 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 September 10, 2009 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 \$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: APR 26 2010

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 JFD/jrc
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 James F. McMunno


 Mario Basarito


 David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RODAS, CESAR

Employee/Petitioner

Case# **07WC024158**

10IWCC0406

AMERICAN BODY COMPANY INC

Employer/Respondent

On 09/10/2009, 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 0.22% 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:

1922 SALK, STEVEN B & ASSOC LTD
150 N WACKER DR
SUITE 2570
CHICAGO, IL 60606

2097 GRANT, ROSS & FANNING
KATHLEEN RICCIO
10 S RIVERSIDE PLZ SUITE 1770
CHICAGO, IL 60606

101WCC0406

STATE OF ILLINOIS)
)
COUNTY OF Cook)

- | | |
|-------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input checked="" type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input checked="" type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
REGARDING THE NATURE AND EXTENT OF THE INJURY

Cesar Rodas

Employee Petitioner

v.

American Body Company

Employer Respondent

Case # 07 WC 024158

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 Kurt Carlson, arbitrator of the Commission, in the city of Chicago, on July 31, 2009. The only disputed issue is the nature and extent of the injury. By stipulation, the parties agree on the following items:

- On May 22, 2007, the respondent American Body was operating under and subject to the provisions of the Act.
- On this date, the relationship of employee and employer did exist between the petitioner and respondent.
- On this date, the petitioner sustained accidental 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 \$ 60,575.64, and the average weekly wage was \$ 1,106.56.
- At the time of injury, the petitioner was 41 years of age, *single* with 2 children under 18.
- Necessary medical services have been provided by the respondent.
- The respondent shall pay the petitioner temporary total disability benefits of \$ 737.71/week for 32 weeks, from 05-23-07 through 10-03-07 and 2-11-08 through 05-11-08, which is the period of temporary total disability for which compensation is payable.
- To date, \$ 22,522.56 has been paid for TTD and/or maintenance benefits.

After reviewing all of the evidence presented, the arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

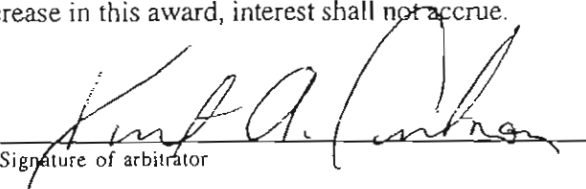
101WCC0406

ORDER

- The respondent shall pay the petitioner the sum of \$ 619.97 /week for a further period of 146.35 weeks, as provided in Sections 8(c), 8(d)(2) & 8(e) of the Act, because the injuries sustained caused 20 weeks disfigurement pursuant to 8(c); 2.5% of a man as a whole pursuant to 8(d)(2) for the post-traumatic headaches; and 45% loss of use of the Petitioner's left arm pursuant to Section 8(e)(10) of the Act.
- The respondent shall pay the petitioner compensation that has accrued from 5/22/07 through 7/31/09 and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay \$ 6,173.50 for medical services, as provided in Section 8(a) of the Act, and the Respondent shall receive credit for the bill of St. Francis Hospital and Health Center, and Dr. Cavero if it paid either

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If this award is reviewed by the Commission, interest of 0.22 % 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

9-09-09
Date

SEP 10 2009

FINDINGS OF FACT

101WCC0406

The parties stipulated that on May 22, 2007 the Petitioner and Respondent were operating under the Illinois Workers Compensation, that the Petitioner sustained accidental injuries out of and in the course of his employment, that the Petitioner's injuries are causally related, and that medical treatment was given within the time limits of the Act. Further, that the Petitioner is 41 years of age, married, with 2 children under 18 years of age, had earnings during the proceeding year of \$65,575.64, and an average weekly wage of \$1,106.56. The parties further stipulated that the Petitioner was temporarily totally disabled from May 23, 2007 through October 3, 2007 and February 11th through May 11, 2008 representing 32 weeks. The Petitioner and Respondent agree that it paid \$22,500 in TTD benefits. Pursuant to Petitioner's Exhibits 6 and 7, the Petitioner claimed \$6,173.50 in unpaid medical pursuant to the fee schedule of the Act. The parties agreed that the Petitioner be awarded said sum for necessary first aid and medical, and that Respondent be given a credit in the event that it paid either the bill of St. Francis Hospital and Health Center for services rendered on May 22, 2007 (PX 6), or Cavero Medical Group in the amount of \$60.00.

The issue in dispute is the nature and extent of the Petitioner's injuries.

The Petitioner, 41 years of age on the date of the accident, was employed by the Respondent for 17 years before the date of accident in the position of trailer repair welder. In that position, the Petitioner did welding of parts, installed lift gates and engaged in regular lifting of up to 100 lbs. Petitioner was employed full time, working a regular work week of 60 hours per week.

Prior to the accident, the Petitioner had no history of illness or injury with respect to his left arm. The Petitioner did not have a scar above his left eyebrow. The Petitioner did acknowledge a history of headaches prior to the accident which he described as less intense and controlled by one excedrin.

On May 22, 2007 at approximately 10:30 a.m., the Petitioner was on a ladder approximately 8 feet off the ground. The ladder slid, and he lost his balance and fell with the length of his body, approximately 13 feet upon a cement floor. The Petitioner struck his left arm and head on the cement. The Petitioner noticed blood on his forehead above his left eye, and pain in his head and neck. The Petitioner was taken to St. Francis Hospital and Health Center where he was diagnosed with a left elbow dislocation, head contusion, neck strain and a laceration above his left eye. At St. Francis Hospital, the Petitioner received a closed reduction of the left elbow and a CT scan was taken after complaints of neck pain and headaches after the injury (PX 1).

The Petitioner was next seen once by Dr. Cavero of the Cavero Medical Group on May 24, 2007 (PX 2) for his injury. Thereafter, the Petitioner came under the care and treatment of Dr. Robert Goldberg from May 25, 2007 through September 22, 2008.

Dr. Goldberg's medical report of May 25, 2007 (PX 3) noted a 3 to 4 cm laceration above the Petitioner's left eyebrow. The Arbitrator having the opportunity to have seen and observe the laceration finds that the Petitioner sustained a scar above his left eyebrow approximately 3 to 4 cm in length which is raised and approximately 3/8th of an inch in width. At the time of the initial examination, the Petitioner was in a left fiberglass 90 degree arm splint following the left elbow dislocation. Dr. Goldberg noted the diminished left ulnar nerve function, indicated electric diagnostic testing would be

ordered if the ulnar nerve function does not recover, and prescribed progressive physical therapy. On May 30, 2007 due to continuing headache complaints, Dr. Goldberg referred the Plaintiff to Dr. Chappidi whom the Petitioner saw the same day (PX 4). Dr. Chappidi notes that the Petitioner reported headaches at a number 9 level on a 1 to 10 scale for the past 8 days since the accident. Further, that the headaches last 6 hours and are associated with nausea, photo and phonophobia. Consistent with his testimony the Petitioner disclosed a history of headaches for the prior 2 years which were less intense, less frequent and not associated with sensory sensitivity and were decreased with Excedrin. Dr. Chappidi diagnosed post traumatic migraine headaches.

In Dr. Goldberg's progress notes (PX 3) of July 2, 2007, it was noted that the Petitioner's left shoulder presented progressive pain for two (2) to four (4) weeks. Dr. Goldberg noted that having a dislocated elbow the Petitioner did not do any overhead lifting with his left arm or shoulder. When used Dr. Goldberg noted that the Petitioner's left shoulder was positive for impingement and diagnosed left shoulder impingement syndrome. The Petitioner had an MRI of the shoulder, and Dr. Goldberg diagnosed left shoulder impingement secondary to work injury of 5/22/07. The Petitioner's impingement syndrome was treated conservatively with injections and physical therapy. Petitioner continued to note consistent pain in his left shoulder, and left elbow pain during activities including pain after cortisone injections. On December 5, 2007, Dr. Goldberg notes decreased shoulder pain but increasing elbow pain and on December 5, 2007 diagnosed left elbow medial epicondylitis. Dr. Goldberg further noted paresthesias in the Petitioner's left hand, particularly when working and further diagnosed left cubital tunnel syndrome. Dr. Goldberg recommended a cubital tunnel release and anterior

ulnar nerve transposition which was performed on February 28, 2008 at Illinois Masonic Hospital (PX 3 & 5). According to the operative report, the Petitioner had a left cubital tunnel release and anterior ulnar nerve subcutaneous transposition.

The Petitioner returned to work on May 12, 2008 with a 15 lbs. lifting and pulling restriction and to avoid repetitive work (PX3). The Petitioner continued physical therapy and his restrictions were gradually increased until September 22, 2008 at which time he was released at maximum medical improvement with no restrictions.

Currently, the Petitioner continues to complain of headaches two (2) to three (3) times per week for which he takes three 200 mg tablets of Excedrin. The Petitioner testified that prior to the accident his headaches were less severe and that they were controllable with one Excedrin. Before the accident, the Petitioner described the headaches as a three (3) to four (4) and now a seven (7) to eight (8) on a scale of one (1) to ten (10) with ten (10) being the worst. The Petitioner further testified that he notices pain and discomfort at this job if he attempts to lift anything over fifty (50) lbs. and asks for assistance which his employer provides. The Petitioner specified that he has difficulty and can no longer lift alone tubes or aluminum sheets at work. The Petitioner notes pain and discomfort when he lifts with his left arm in general. The Petitioner complains of continued pain in his left arm and elbow, and that it is extremely sensitive to touch. Additionally, it is painful in cold weather and with changes in the weather.

The Petitioner also testified to changes in his lifestyle since the accident. Specifically, the Petitioner testified that he has difficulty spending time around his family due to frequent headaches and noise and that he goes in his bedroom and closes the

door. Prior to the accident, the Petitioner led an active lifestyle engaging in activities such as playing basketball, volleyball, swimming and exercising including doing push-ups. The Petitioner no longer engages in these activities since the accident except for swimming. Petitioner testified he still swims but it is not the same.

CONCLUSIONS OF LAW

With respect to nature and extent of injury, the Arbitrator finds as follows.

The Arbitrator finds the Petitioner sustained a laceration above his left eyebrow, approximately 3 to 4 cm and 3/8th of an inch in thickness. The scar is raised and readily observable and based on the fact that it is in a prominent area on the Petitioner face above his left eyebrow. The Arbitrator awards the Petitioner twenty (20) weeks of permanency pursuant to section 8 (c) of the Act for his disfigurement.

The Arbitrator further finds that the Petitioner sustained a dislocated left elbow and underwent a closed reduction and casting at St. Francis Hospital and Health Center. Further, with respect to the Petitioner's left arm, that he sustained left shoulder impingement syndrome which was treated conservatively with injections and physical therapy, and left cubital tunnel syndrome and left medial epicondylitis. That condition was treated with surgery to wit: a left cubital tunnel release and anterior ulnar subcutaneous transposition. Post surgery he had further physical therapy until reaching maximum medical improvement. For these reasons, and the Petitioner's continuing issues with his left arm, and altered life style the Arbitrator awards the Petitioner **forty five (45) percent loss of use of his left arm pursuant to 8 (e)(10) of the Act.**

Finally, having heard Petitioner's testimony, and having observed Petitioner's demeanor, the Arbitrator finds the Petitioner credible. The Arbitrator does not view the

Petitioner as a person who would over state his complaints or exaggerate. The Petitioner sustained a substantial impact to left arm, and his head and immediately reported neck and head pain at St. Francis Hospital as well as left elbow pain. The unrebutted medical opinion of Dr. Chappidi is that the Petitioner sustained post traumatic migraine headaches. The Arbitrator finds the Petitioner credible and adopts his testimony which is consistent with history and medical records of Dr. Goldberg and Dr. Chappidi. Accordingly, the Arbitrator finds that the Petitioner continues to have post traumatic migraine headaches which have only diminished to a 6 to 7 as described by the Petitioner. **The Arbitrator awards the Petitioner 2.5% of a man for said post traumatic migraine headaches pursuant to section 8d(2) of the Act..**