

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

John C. Berry,

Petitioner,

vs.

NO: 07WC17341

Olin Corporation,

Respondent.

10IWCC0306

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, medical expenses and permanent 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 August 12, 2009 is hereby affirmed and adopted.

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

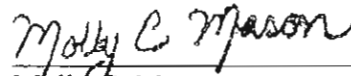
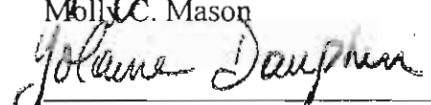
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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

10IWCC0306


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: MAR 24 2010


Molly C. Mason

Yolaine Dauphin

Dissent

I respectfully disagree with the Majority's Decision affirming and adopting the Arbitrator's Decision finding Petitioner sustained work-related injuries "as a result of his hand/arm intensive repetitive job duties". Dr. Rogalsky's office notes and deposition testimony clearly indicate that during the entire time Petitioner treated with him, Petitioner never once attributed his upper extremity complaints to his job duties for Respondent nor did he even mention his job as a source of difficulty or complaints. In its Decision the Majority has specifically found that Petitioner described some of his job duties to Dr. Rogalsky. I disagree with that finding. While Petitioner did testify to doing so, that testimony was not corroborated by either Dr. Rogalsky's medical records or, more importantly, Dr. Rogalsky's testimony. Dr. Rogalsky clearly received no information from Petitioner concerning his job. Thus, the Majority's finding is unsupported by the record. Additionally, Dr. Rogalsky's causation opinion was based upon a hypothetical presented to him by Petitioner's attorney along with the doctor's general knowledge as to what machinists do. He admitted he had never seen a job description or been to Respondent's plant. He assumed Petitioner "used torque wrenches, screwdrivers, other hand-held tools requiring similar use of arms and hands on a daily basis to repair and adjust machines" resulting in carpal tunnel and cubital tunnel syndromes. Dr. Rogalsky lacked an accurate and complete understanding and knowledge of Petitioner's job as an "adjuster". The hypothetical presented to him was not an accurate description of Petitioner's job. As such, Dr. Rogalsky failed to provide a credible causation opinion and, without it, Petitioner failed to meet his burden of proof. For this reason, I respectfully dissent.


Nancy Lindsay

MCM:bjg

0-3/9/10

49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BERRY, JOHN C

Employee/Petitioner

Case# 07WC017341

10TWCC0306

OLIN CORPORATION

Employer/Respondent

On 08/12/2009, 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 0.28% 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:

4620 JOHN WINTERSCHEIDT
219 PIASA
ALTON, IL 62002

0299 KEEFE & DEPAULI
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)
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 checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

John C. Berry
Employee Petitioner

Case # 07 WC 17341

v.
Olin Corporation
Employer/Respondent

10IWCC0306

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 **07/22/09**. 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

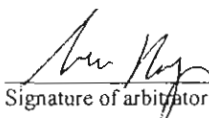
- On 10/02/06, the respondent Olin Corporation *was* operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to the respondent.
- In the year preceding the injury, the petitioner earned \$ 46,312.76; the average weekly wage was \$ 890.63.
- 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 has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ 593.75/week for 18 5/7 weeks, from 01/16/07 through 04/16/07 and 08/04/07 through 09/17/07, which is the period of temporary total disability for which compensation is payable. Respondent is entitled to credit of \$5,632.58.
- The respondent shall pay the petitioner the sum of \$ 534.38/week for a further period of 189.525 weeks, as provided in Section 8(e)9 and 8(e)10 of the Act, because the injuries sustained caused 20% loss of use of the right hand, 20% loss of use of the left hand, 20% loss of use of the left arm and 22 1/2% loss of use of the right arm.
- The respondent shall pay the petitioner compensation that has accrued from 10/02/06 through 07/22/09, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ 265.00 for necessary medical services, as provided in Section 8(a) of the Act.
- 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.

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

AUG 12 2009

8/12/09
Date

The Arbitrator finds the following facts;

Petitioner worked as an Adjuster I for Respondent. He has worked for Respondent for 22 years and has been an adjuster for approximately 12 years. He said his job requires him to repair and maintain machinery. In 2006 he worked 6 days a week. Petitioner testified that he spent on an average 4 hours a day using torque wrenches, allen wrenches, crescent wrenches as well as hammers and screwdrivers. About 30 times a day he would scoop ammunition shells into a hopper. He would dump the hopper when it became full. He said he has to push and pull with his hands and arms. Part of his shift is spent monitoring the machines.

Petitioner started to experience pain and numbness in his hands and arms up to his elbows in October, 2006. He was treating with Dr. Rogalsky, an orthopedist, for an unrelated problem. On 10/2/06 he told Dr. Rogalsky of his problems with his arms and hands. He described some of his job duties for Dr. Rogalsky. EMG/NCS revealed mild left median neuropathy at the wrist, mild right median neuropathy at the wrist, left ulnar neuropathy, right proximal ulnar nerve neuropathy at the elbow and a right ulnar nerve lesion at the wrist. On 10/6/06 Dr. Rogalsky diagnosed bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Dr. Rogalsky recommended conservative care.

On 10/27/06 Petitioner reported his condition to the medical department at the plant and complained of bilateral wrist and elbow pain. He was given wrist splints.

Petitioner continued performing full duty work with a worsening of his condition. Dr. Rogalsky performed surgery on 1/16/07 which consisted of a left carpal tunnel release and left ulnar nerve release at the elbow. Surgery consisting of a right carpal tunnel release and right ulnar nerve release and transposition at the elbow was done on 3/1/07. Petitioner was off work from 1/16/07 through 4/15/07.

Petitioner testified that after he returned to work he had continued problems with the last two fingers on the right hand. Repeat EMG/NCS showed moderate left ulnar neuropathy at the elbow and mild right ulnar neuropathy at the elbow. Dr. Rogalsky diagnosed a recurrent right cubital tunnel syndrome. He performed a re-exploration and neurolysis of the right ulnar nerve at the elbow on 8/7/07. Petitioner was off work from 8/4/07 through 9/16/07. He was released to return to work without restriction on 9/17/07.

Dr. Rogalsky testified that both the bilateral carpal tunnel and the bilateral cubital tunnel syndromes were related to Petitioner's work at Respondent.

Petitioner was evaluated by Dr. Brown, an orthopedic surgeon, at Respondent's request on 2/5/08. Dr. Brown did an on-site review of Petitioner's job at Respondent's plant. Dr. Brown opined that it was unlikely that Petitioner's job activities would be considered a significant contributing causative factor for carpal tunnel syndrome or

cubital tunnel syndrome. He admitted on cross-examination that it is possible but unlikely that Petitioner's job duties as an adjuster with Respondent could cause, contribute to cause or aggravate carpal tunnel syndrome and cubital tunnel syndrome.

Respondent's Physical Demands Analysis report for the job of Adjuster I reflects frequent but not constant handling and fingering, and frequent but not constant hand control.

Dr. Katz, a physical medicine physician, testified that he was hired by Respondent to inspect as variety of jobs at Respondent's plant, including the adjuster position, for risks associated with carpal tunnel syndrome. He did not examine Petitioner nor review any medical records of Petitioner's treatment. Dr. Katz testified that Petitioner's job posed no risks for either carpal tunnel or cubital tunnel syndrome. He stated that most of his practice involves litigation and at least 50% of his income is derived from medical-legal work.

At trial, Petitioner testified that his hands go numb with repetitive work. He estimated that he has 70% of his strength back in his left hand and 60%-70% in the right hand. His elbows remain extremely tender to touch. He has reduced strength in the elbows. He is working full duty without restriction and that he is able to perform his job without assistance. He has not seen Dr. Rogalsky or any other physician for his hands and arms since he was released on 9/16/07. He does take Tylenol daily for his pain.

Petitioner offered the following medical bills into evidence:

Dr. Rogalsky	\$ 7,107.00
Alton Memorial Hospital	\$12,418.88

Dr. Rogalsky's bill has no balance. Alton Memorial Hospital bill has a balance of \$100.00. Respondent is entitled to credit for any payments and adjustments made under the company-sponsored group health insurance plan.

Therefore the Arbitrator concludes;

1. Petitioner sustained work related injuries as a result of his hand /arm intensive repetitive, accumulative job duties with Respondent, resulting in bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. The opinions of Dr. Rogalsky are more persuasive than those of Respondent's Section 12 examiner, who qualified his causation opinion by saying the job duties were not a "significant" contributing factor. Dr. Katz's opinions are dismissed for what they are.
2. Petitioner is entitled to TTD benefits from 1/16/07 through 4/16/07 and from 8/4/07 through 9/17/07, a period of 18 5/7 weeks. Respondent is entitled to a credit of \$5,632.58 paid in group benefits.