

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
Sherri Crain,
Petitioner,

vs.
OLIN,
Respondent,

NO: 08 WC 45073

10IWCC0888

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 accident, temporary total disability, permanent partial disability, causal connection, medical expenses, penalties and fees 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 December 7, 2009 is hereby affirmed and adopted.

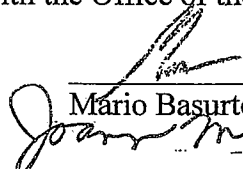
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

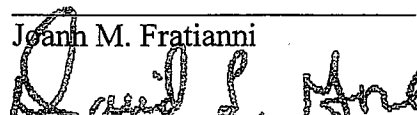
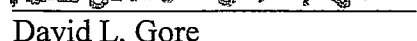
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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:
MB/mam
o:8/26/10
43

SEP 10 2010


Mario Basurto


Joann M. Fratianni

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CRAIN, SHERRI

Employee/Petitioner

Case# **08WC045073**

10IWCC0888

OLIN

Employer/Respondent

On 12/07/2009, 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 0.15% 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:

JOSEPH E HOFERT
1600 WASHINGTON AVE
ALTON, IL 62002

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

STATE OF ILLINOIS)

COUNTY OF MADISON)

10I WCC 0888

<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**

Sherry Crain

Employee/Petitioner

Case # **08** WC **45073**

v.

Collinsville

Olin

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 **Andrew Nalefski**, arbitrator of the Commission, in the city of **Collinsville**, on **11/17/09**. 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 _____

10TWCC0888

FINDINGS


- On 9/11/08, the respondent Olin 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 \$ 49,509.40; the average weekly wage was \$ 879.72.
- At the time of injury, the petitioner was 38 years of age, *married* with 1 children under 18.
- Necessary medical services *have not* been provided by the respondent.
- To date, \$ 426.65 has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ 586.48/week for 8-6/7 weeks, from 9/23/08-9/26/08 through 10/8/08-10/12/08, and from 3/26/09 through 5/17/09, which is the period of temporary total disability for which compensation is payable. Respondent is entitled to credit of \$426.65 paid in TTD benefits and \$2,611.11 paid in group disability benefits.
- The respondent shall pay the petitioner the sum of \$ 527.83/week for a further period of 193.45 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 22.5% loss of each hand and 20% loss of each arm.
- The respondent shall pay the petitioner compensation that has accrued from 9/11/08 through 11/17/09, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ 5,345.00 for necessary medical services, as provided in Section 8(a) of the Act.
- The respondent shall pay \$ 3,834.71 in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$ 810 in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$ 1,533.84 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

12/2/09
Date

10IWCC0888

The Arbitrator finds the following facts:

Petitioner has been employed by Respondent for over 9 years. Her job includes the inspection of bullets as they run on a small assembly line to be sure that they are all pointed in the correct direction and to fill in any missing holes in the assembly line with a new product. Scrap cartridges need to be removed and occasionally the machine will jam, necessitating the poking a cartridge out with a screwdriver. Once the trays were full she would pack them into a box and stamp the box.

Petitioner prepared a job description which she gave to Dr. Dehghan, her physician.

Petitioner reviewed 2 videos prepared by Respondent, one of the Thiele Packer Job and the other of the Center-Fire Loader/packer Job. Petitioner prepared and submitted a list of discrepancies between the videos and her regular job duties.

Prior to July 2008 Petitioner had never sustained any specific injury to her wrists or elbows. She testified to having no hobbies or outside activities.

Petitioner began experiencing symptoms in her hands and elbows in July 2008. She went to Respondent's medical department and was given splints to wear at work. NCS of 8/27/08 were reported as showing mild bilateral carpal tunnel syndrome and mild bilateral cubital tunnel syndrome. Respondent sent Petitioner to Dr. Mitchell Rotman, an orthopedist. Dr. Rotman examined Petitioner on 9/11/08 and opined that petitioner exhibited symptoms consistent with bilateral carpal tunnel syndrome and questionable cubital tunnel syndrome. He noted that her hand intensive work activities while doing overtime "not to surprising" caused her symptoms. He recommended surgical intervention for the hands, hoping that the elbow symptoms would clear. Dr. Rotman performed a right carpal tunnel release surgery on 9/24/08 and a left carpal tunnel release on 10/8/08. She was discharged from Dr. Rotman's care and was released for full duty work on 12/4/08.

Petitioner testified that the surgeries helped her hands "somewhat" but she continued with symptoms.

Petitioner testified that after returning to work she began experiencing symptoms in her elbows, forearms and hands into her fingers. She came under the care of Dr. Dehghan, a hand surgeon, on 1/13/09. As indicated earlier, Petitioner prepared a detailed job description for Dr. Dehghan. His diagnosis was bilateral cubital tunnel syndrome with possible recurrent bilateral carpal tunnel syndrome. He gave Petitioner elbow splints. A repeat EMG/NCS of the upper extremities on 2/18/09 was normal. After conservative treatment failed Petitioner underwent surgery on 3/26/09 which consisted of a right cubital tunnel release and later a left cubital tunnel release with anterior subcutaneous transposition of the ulnar nerve on 4/9/09. Dr. Dehghan causally related Petitioner's bilateral cubital tunnel to her job duties with Respondent, as described by Petitioner in her own words and by her demonstrating some of the activities.

She was authorized off work from 3/26/09 through 5/17/09. She returned to full duty work on 5/18/09.

Respondent had Petitioner examined by Dr. Strege, an orthopedist, on 4/29/09. Dr. Strege stated that the Petitioner told him that her work activities seemed to make the elbows more symptomatic. He did not believe that Petitioner's work activities caused the cubital tunnel syndrome or made the condition worse. Rather, it was his feeling that the work activities would have "brought on some of the symptoms" or caused increased symptoms. He testified that he based his opinion on causation primarily on the DVD submitted by Respondent. Dr. Strege later reviewed the self-prepared job description of Petitioner. This did not change his opinion. He agreed that the bilateral elbow releases were warranted.

10IWCC0888

At arbitration Petitioner testified that she has bilateral palm numbness and tingling at the surgical sites. She complained of loss of grip strength bilaterally and a decrease of range of motion with flexion at both wrists. She complained of numbness and tingling in all her fingers. She has numbness and tingling at both surgical sites at the elbows. She has pain on the inside aspect of both elbows. She takes over the counter medication for both her hand and elbow complaints.

Respondent accepted liability for the bilateral carpal tunnel syndrome as work related. Respondent paid some TTD benefits totaling \$426.65 and medical benefits.

Therefore the Arbitrator concludes:

1. Petitioner's bilateral cubital tunnel syndrome and subsequent surgery is related to her repetitive work activities with Respondent. This is based on the opinions of Dr. Dehghan and the opinions of Respondent's examiner (who repeatedly testified that her work activities caused or increased her symptoms).
2. Petitioner is entitled to TTD benefits from 9/23/08 through 9/26/08 and from 10/5/08 through 10/12/08, a period of 1 3/7 weeks for the carpal tunnel condition. Petitioner is entitled to TTD benefits from 3/26/09 through 5/17/09, a period of 7 3/7 weeks for the cubital tunnel condition. Respondent is entitled to credit of \$426.65 previously paid on the carpal tunnel claim and is entitled to Section 8(j) credit of \$2,611.11 paid in group non-occupational disability.
3. Respondent shall pay the balance of Dr. Dehghan's bill of \$5,345.00, subject to the medical fee schedule. Respondent is entitled to credit for amounts previously paid.
4. As a result of her repetitive bilateral upper extremity work activities Petitioner has sustained the loss of 22 1/2% of each hand along with the loss of 20% of each arm.
5. Respondent shall pay \$2,672.50 (50% of the unpaid medical expenses) plus \$1162.21 (50% of the unpaid TTD after deducting credit for TTD paid and group disability paid) in Section 19(k) penalties. Respondent shall pay \$810.00 (27 times \$30/day) in Section 19(l) penalties. Respondent shall pay \$1,533.84 in Section 16 attorney fees. Respondent's conduct in not paying all the TTD due in the accepted carpal tunnel aspect and not paying TTD in the cubital tunnel aspect is unreasonable and vexatious. Respondent's own examiner repeatedly testified that Petitioner's work activities caused and/or made Petitioner's worse. Respondent's reliance on his position that the work can create symptoms without contributing or advancing the underlying condition is a difference without any distinction.