STATE OF ILLINOIS)
) SS.
COUNTY OF WHITESIDE)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [ ] PTD/Fatal denied
- [x] None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gary Bock,

Petitioner,

10IWCC1206

vs. NO: 08 WC 22133

Dixon Direct,

Respondent.

DECISION AND OPINION ON REVIEW

Petitioner appeals Arbitrator Holland's decision, filed on October 9, 2009, finding that Petitioner failed to prove he sustained accidental injuries arising out of and in the course of his employment with Respondent on February 20, 2008. The issues on review are accident, causal connection, medical expenses, temporary total disability benefits, and permanent partial disability benefits. The Commission, after having considered the record, hereby reverses the Arbitrator's decision and finds that Petitioner met his burden in proving he sustained accidental injuries arising out of and in the course of his employment with Respondent on February 20, 2008, and that Petitioner's bilateral cubital tunnel syndrome is causally related to the work accident. The Commission finds that Petitioner is entitled to 20-5/7 weeks of temporary total disability benefits, medical expenses as stated herein, and 101.20 weeks of permanent partial disability benefits representing 20% loss of use of each arm.

X

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1.) Petitioner, a 49 year-old pressman, testified he has been employed by Respondent since 1976. He began working as a third pressman, and worked his way up to first pressman. Six months prior to February 20, 2008, he was assigned to work as a second pressman. Petitioner testified that as a second pressman, he was responsible for changing printing jobs, pre-setting ink, changing and wrapping water ducters, and occasionally changing ink colors. It took four hours or less to set the presses on a simple job, and up to eight hours on a job involving the manual installation of a plow shaft. Petitioner's responsibilities also included manually setting up a fragrant unit, which required lining up a segment, as well as cutting and installing aluminum plate scrapers. Additional job duties included: washing-up on a changeover; changing aluminum plates; moving rollers; installing wheel slitters; assisting with putting rolls of paper through the press; making boxes or jog books; and using wrenches, hammers, and cheater bars.

2.) Petitioner testified that on February 20, 2008, he noticed tingling in the fingers of each hand. He sought medical care at Sterling Rock Falls Clinic with Physician's Assistant Joshua Wade. Petitioner provided a history of bilateral hand numbness, tingling and cramping, right hand greater than left hand. Petitioner further reported a six to twelve month history of symptoms, and stated that he worked as a printing press operator, which required the use of his hands all day. Petitioner had a positive Tinel's and Phalen's test in both wrists, and he was diagnosed with bilateral carpal tunnel syndrome and possible nerve entrapment at the Guyons' canal. Petitioner reported this condition to his supervisor, Bob Knight, on February 21, 2008, and completed an accident report.

3.) On April 11, 2008, Petitioner underwent a Section 12 Examination with Dr. Weiss, pursuant to Respondent's request. Dr. Weiss concluded Petitioner had evidence of multiple peripheral neuropathies involving the median and ulnar nerves of both hands, including carpal tunnel syndrome. Although Dr. Weiss opined the medical documentation did not support a causal connection between Petitioenr's condition of ill-being and his work duties, he further opined that surgery was appropriate for Petitioner's condition, provided it was preceded by electrical studies.

4.) Petitioner underwent an EMG/NCV study of the upper extremities on May 14, 2008, which indicated underlying bilateral entrapment of the ulnar nerve at each elbow consistent with cubital tunnel syndrome, and very mild median nerve entrapment at the right wrist, consistent with very mild carpal tunnel syndrome. The EMG/NCV study was also significant for abnormalities at C7 on the right and left C5 radiculopathy. On June 3, 2008, Petitioner underwent a cervical MRI scan, significant for degenerative changes predominantly at C5-6 and C6-7; an annular tear at C5-6 level; and an annular bulge with extrusion and foraminal narrowing at C6-7.

5.) On June 12, 2008, Dr. Vinje examined Petitioner and recommended ulnar nerve transpositions. On June 25, 2008, Dr. Vinje performed a left ulnar nerve transposition, and on September 2, 2009, a right ulnar nerve transposition. Dr. Vinje kept Petitioner off work from June 12, 2008, through November 3, 2008. On April 6, 2009, Dr. Vinje discharged Petitioner from care at maximum medical improvement, but noted Petitioner had continued mild numbness in his left little finger, and slightly more numbness in the right little finger. Petitioner's examination was significant for decreased grip strength.

6.) Dr. Vinje testified that during Petitioner's office visit of July 28, 2008, Petitioner reported his work duties involved repetitive flexion and extension of the elbows. Dr. Vinje admitted his understanding of Petitioner's job duties was consistent with the mechanism of injury to cause the surgical findings, and that the surgical procedures performed were related to Petitioner' condition of ill-being and work duties as described to him.

7.) Petitioner testified he presently experiences a little bit of numbness in his fingers once in a while, and that he has some weakness in both hands.

8.) Jeff Gascogne testified he began working for Respondent as a packer in August 1985, and worked his way up to plant manager. He has performed the 2nd pressman job, and he admitted the job duties require continual flexion and extension of the elbows when inspecting product, as well as gripping and lifting of products and material. He further admitted a second pressman might use a lead hammer, wrenches, pallet jacks, Allen wrenches, screwdrivers, and a cheater bar.

The Commission hereby reverses the Arbitrator's decision and finds that Petitioner has met his burden in establishing he sustained accidental injuries arising out of and in the course of his employment with Respondent on February 20, 2008, and that his bilateral cubital tunnel condition is causally related to his work. The Commission finds the physical examination findings of Dr. Weiss, the positive EMG/NCV study, Petitioner's testimony as to his job duties, and the job description testimony provided by Jeff Gascigone, all support a finding that Petitioner's current condition of ill-being, bilateral cubital tunnel syndrome, arose out of and in the course of his employment with Respondent.

The Commission concludes that Petitioner has met his burden in proving he sustained accidental injuries arising out of and in the course of his employment with Respondent, and that his cubital tunnel syndrome is causally related to the accident of February 20, 2008.

The Commission concludes that Petitioner is entitled to 20-5/7 weeks of temporary total disability benefits, representing a period from June 12, 2008, through November 3, 2008. Respondent agreed to the period of temporary total disability and disputed liability only.

The Commission also concludes that Petitioner is entitled to medical expenses in the sum of $36,052.25, pursuant to the medical fee schedule.

Lastly, the Commission concludes that Petitioner is entitled to 101.20 weeks of permanent partial disability benefits representing a 20% loss of use of each of Petitioner's arms.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision, filed on October 9, 2009, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $655.66 per week for a period of 20-5/7 weeks, for the period of June 12, 2008, through November 3, 2008, that having been the period of temporary total incapacity for work under § 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $590.09 per week for a period of 101.20 weeks, as provided in § 8(e) of the Act, for the reason that the injuries sustained caused 20% loss of use of Petitioner's right arm, and 20% loss of use of Petitioner's left arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $36,052.25 for medical expenses under § 8(a) of the Act.

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 8 2010
KWL/kmt
O-8/24/10
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Yolaine Dauphin

Yolaine Dauphin

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Arguments on August 24, 2010, before a three member panel of the Commission including members Barbara A. Sherman, Yolaine Dauphin and Kevin W. Lamborn, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of member Barbara A. Sherman on October 25, 2010, a majority of the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire three member panel, but no formal written decision was signed and issued prior to member Barbara Sherman's departure.

Although I was not a member of the panel in question at the time of Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case, I have reviewed the Decision worksheet showing how member Barbara A. Sherman voted in this case, as well as the provisions of the Supreme Court in Zeigler v. Industrial Commission, 51 Ill.2d 342, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

David L. Gore

David L. Gore

DISSENT

I respectfully dissent from the decision of the majority. Arbitrator Holland's findings are both thorough and well reasoned. This decision is correct and should be affirmed

Kevin W. Lamborn