

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0904601

Thomas Bradley Davis,
Employee/Claimant,
Appellant

vs.

Robert Bosch Corporation, LLC,
Employer,

and

The Phoenix Insurance Company,
Carrier,
Defendants,
Respondents.

Appellate Panel Review held in Columbia, South Carolina on April 16, 2013 per
Notices timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed 7-9, 2013.

Appearances: Claimant/Appellant represented by William L. Smith, II, Esquire of
Columbia, South Carolina.

Defendants/Respondents represented by Franklin D. Guerrero, Esquire of
Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner T. Scott Beck on August 30, 2012 in Anderson, South Carolina. As a result of said hearing, Commissioner Beck issued an Order dated December 27, 2012, from which the Claimant appealed.

The Hearing Commissioner's Decision and Order set forth the following Findings of Fact:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Thomas Bradley Davis as Employee-Claimant and Robert Bosch Corporation, LLC as Employer and The Phoenix Insurance Company as Carrier, Defendants.

2. That the average weekly wage of Employee at the time of the above-described accident was \$1065.84, and his compensation rate was \$681.36.

3. Defendants admit Claimant's bilateral carpal tunnel syndrome and bilateral epicondylitis.

4. Claimant was seen by Dr. Timothy Dew at the Hand Center on July 27, 2009, and Dr. Dew diagnosed Claimant with bilateral lateral epicondylitis and performed steroid injections in Claimant's elbows. (APA 18-19; 114)

5. Claimant returned to Dr. Dew on August 24, 2009, and Dr. Dew indicated that Claimant was not a candidate for any further steroid injections, but that Claimant may be a candidate for lateral epicondyle debridement if his symptoms persisted. (APA 20)

6. On October 5, 2009, Dr. Dew recommended that Claimant undergo tennis elbow release for his bilateral epicondylitis. (APA 21)

7. On October 9, 2009, Claimant underwent a left lateral epicondyle debridement with

partial ostectomy, and on October 23, 2009, Claimant underwent a right lateral epicondyle debridement with partial ostectomy, both performed by Dr. Dew at the Center for Special Surgery. (APA 22; 25)

8. Claimant was seen by Dr. Kyle on December 7, 2009, and it was noted that Claimant's current job was "well within the work restrictions given by Dr. Dew today." (APA 103)

9. Claimant underwent EMG/NCV studies at Piedmont Comprehensive Pain Management Group on December 15, 2009 at the referral of Dr. Kyle. The studies revealed bilateral carpal tunnel syndrome of the wrists, slightly worse on the left, but revealed "no signs of cubital tunnel syndrome." (APA 29)

10. Claimant returned to Dr. Dew following his EMG/NCV studies, and Dr. Dew diagnosed bilateral carpal tunnel syndrome. Dr. Dew indicated that Claimant was a candidate for bilateral carpal tunnel releases. (APA 32)

11. Dr. Dew performed bilateral steroid injections on January 11, 2010. (APA 34)

12. On February 8, 2010, Dr. Dew noted that the injections did not improve Claimant's symptoms and he scheduled Claimant for a comprehensive upper extremity exam (CUEE). (APA 35)

13. Claimant returned to Dr. Dew on March 1, 2010, and Dr. Dew noted that the CUEE revealed abnormal grip strength. Dr. Dew noted that Claimant had exhausted his conservative treatment options and scheduled Claimant for bilateral carpal tunnel releases. (APA 36)

14. Claimant underwent right carpal tunnel release on April 5, 2010, and left carpal tunnel release on May 10, 2010, both performed by Dr. Dew at the Physician Surgery Center at AnMed Health. (APA 37; 115-117; 40)

15. Claimant reached maximum medical improvement for his bilateral carpal tunnel syndrome and bilateral epicondylitis on June 17, 2010. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew. (See also, APA 43)

16. On June 17, 2010, Dr. Dew opined that Claimant had reached MMI for his bilateral carpal tunnel syndrome and bilateral epicondylitis. Dr. Dew assigned Claimant a zero percent (0%) impairment rating and indicated Claimant could return to work without restriction. (APA 43)

17. After completing his October 21, 2010 IME, Dr. Batson noted that Claimant "has been given a zero impairment rating by Dr. Dew for the problems with the carpal tunnel and the tennis elbows and indeed he does not seem to be having any problems with these areas now." (APA 16-17; 110-111)

18. Dr. Dew testified at his February 1, 2011 deposition that Claimant is at MMI for his carpal tunnel syndrome and bilateral epicondylitis. Dr. Dew further testified that Claimant would require no additional treatment, had no permanent impairment, and had no permanent work restrictions on account of the carpal tunnel or bilateral epicondylitis. (A8)

19. I find that Claimant suffers disability resulting from his admitted bilateral carpal tunnel syndrome and bilateral epicondylitis and award five percent (5%) permanent partial disability to each of Claimant's upper extremities. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew.

20. I place great weight on the opinion of Dr. Timothy Dew, with the exception of his opinion on impairment. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew.

21. I specifically decline Claimant's request for an award under S.C. Code Ann. §42-9-20, as I find that Claimant cannot prove any loss of earnings or earning capacity related to his bilateral carpal tunnel syndrome or bilateral epicondylitis. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew.

22. Claimant missed "maybe half a day to a day" following his carpal tunnel surgeries, and he returned to work without restrictions after being released by Dr. Dew. This finding is based on the medical record as a whole, and on Claimant's hearing and deposition testimony. (Hr'g Tr., pp. 18-20)

23. Per Dr. Dew, Claimant has no permanent work restrictions on account of his bilateral carpal tunnel syndrome or bilateral epicondylitis. (APA 43; A8)

24. Dr. Kyle testified that Dr. Dew is in the best position to give an opinion on Claimant's work restrictions, and that he would defer to Dr. Dew as to any permanent restrictions as they relate to the conditions Dr. Dew treated Claimant for. (*Id.* 88:7-10; 106:21 – 107:13)

25. Joel Leonard testified that, if Claimant had no work restrictions with respect to his bilateral carpal tunnel syndrome and bilateral epicondylitis, then Claimant would have no wage loss as a result of those injuries. (Leonard Depo, 57:20 – 58:8).

26. Claimant admitted that he would return to work at Bosch immediately if he was offered a supervisor job. (Hr'g Tr., p. 58)

27. Dr. Robert Brabham opined that Claimant was unable to engage in full-time gainful, competitive employment as a result of the medical conditions resulting from the April 2009 work injuries, but this opinion is directly contradicted by Claimant's own admission that he could, and would, return to work immediately if offered a job. (APA 1-14; Hr'g Tr., p. 58)

28. Claimant failed to carry his burden of proving that his alleged cubital tunnel, bilateral deQuervain's, or CMC synovitis are related to the April 15, 2009 work injury. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew.

29. Claimant's bilateral deQuervain's has been admitted by the second insurance Carrier, Defendant Zurich under WCC# 1022907 for date of injury April 19, 2010.

30. Claimant was not complaining of any thumb pain at the time of his initial visit with Dr. Dew on July 27, 2009. (A4)

31. At the July 27, 2009 visit with Dr. Dew, Claimant did not report any symptoms consistent with CMC joint synovitis or deQuervain's syndrome. (A4)

32. Claimant first complained of symptoms consistent with CMC synovitis to Dr. Dew on April 19, 2010. (A4)

33. Dr. Kyle testified that he would specifically defer to Dr. Dew with regard to Claimant's CMC synovitis condition, because Dr. Kyle testified that the condition is less common and is not something that Dr. Kyle has expertise in. (*Id.* 112:16 – 113:16)

34. Dr. Dew testified that he did not have an opinion as to what may have caused or aggravated Claimant's CMC synovitis on April 19, 2010, because Claimant had not returned to work at that time. (A4-A5)

35. Claimant first complained of symptoms consistent with deQuervain's tenosynovitis to Dr. Dew on October 26, 2010. (A5)

36. Dr. Dew indicated that Claimant's deQuervain's symptoms began in 2010, and that Claimant did not complain of deQuervain's symptoms in 2009. Dr. Dew also testified that he was not aware of the specific activities Claimant was performing at work in 2010, and he would need to

have more specifics on the nature of Claimant's work in order to give an accurate opinion on causation. (A6)

37. Dr. Dew testified that, regardless of what Claimant was doing, Claimant's deQuervain's and CMC synovitis both arose in 2010. He testified that he would need more information before making a statement on causation. (A8)

38. Dr. Dew testified that, if Claimant's CMC synovitis or deQuervain's were caused by his work, it would have been caused between April and October of 2010. Dr. Dew further testified that he cannot say that Claimant's CMC synovitis or deQuervain's are related to Claimant's work in 2009. (A8-A9; A14)

39. Dr. Batson, Claimant's own IME doctor, opined that Claimant's arthritic change of the MP joints of the thumbs as well as most likely the trapeziometacarpal joints was not likely caused by Claimant's work activities. (APA 15; 109)

40. Dr. Batson further indicated that trapeziometacarpal arthritis is the second most common joint affected in the general population with arthritic change. (APA 15)

41. Claimant provided no credible medical evidence that his CMC joint arthritis is causally related to the work injury of April 15, 2009. This finding is based on the record as a whole.

42. Claimant's alleged cubital tunnel syndrome did not surface until Dr. Dew's August 16, 2011 record. (APA 49)

43. EMG/NCV studies at Piedmont Comprehensive Pain Management Group on December 15, 2009 revealed "no signs of cubital tunnel syndrome." (APA 29)

44. Claimant did not provide any medical opinion on causation related to his alleged cubital tunnel syndrome.

45. The record is void of any medical evidence linking Claimant's alleged cubital tunnel syndrome to the April 15, 2009 work accident, to Claimant's bilateral carpal tunnel syndrome and bilateral epicondylitis, or to Claimant's repetitive work with Defendant Employer.

46. Claimant's request for future medical care is denied. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew. (See also, APA 43; A8)

The Hearing Commissioner's Decision and Order set forth the following Conclusions of Law:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Defendants admit Claimant's bilateral carpal tunnel syndrome and bilateral epicondylitis.
3. Under § 42-15-60, Claimant reached maximum medical improvement for his bilateral carpal tunnel syndrome and bilateral epicondylitis on June 17, 2010. This finding is based on the medical record as a whole, on Claimant's deposition testimony, and on the deposition testimony of Dr. Timothy Dew. (See also, APA 43; A8)
4. Under § 42-9-30, Claimant suffered five percent (5%) permanent partial disability to each of his upper extremities.
5. Under § 42-1-160 and § 42-1-172, Claimant failed to carry his burden of proving that his alleged cubital tunnel, bilateral deQuervain's, or CMC are related to the April 15, 2009 work injury.
6. Under § 42-15-60, Claimant's request for future medical care is denied. This finding is based on the medical record as a whole, on Claimant's deposition testimony, and on the

deposition testimony of Dr. Timothy Dew. (See also, APA 43; A8)

Within the statutory period, the Claimant filed an Application for Review alleging the following assignments of error:

1. Did the Single Commissioner err in his Decision and Order in failing to combine the claims of WCC File No. 0904601 and 102907 when the greater weight and preponderance of evidence showed that these were successive repetitive trauma disorders sustained in the same employment which combined to produce a loss of wage earning capacity?

2. Did the Single Commissioner err in his Finding of Fact No 8 in finding that claimant was seen by Dr. Kyle on December 7, 2009 and Dr. Kyle noted that claimant's current job was well within the work restrictions given by Dr. Dew today when the greater weight and preponderance of evidence show that those work restrictions changed thereafter as claimant was unable to perform that work?

3. Did the Single Commissioner err in his Finding of Fact No. 15 in finding that claimant reached maximum medical improvement for his bilateral carpal tunnel syndrome and bilateral epicondylitis on June 17, 2010 when the greater weight and preponderance of evidence showed that claimant continued to have problems from these conditions and continued to need medical care for these conditions as well as other causally related conditions after that date?

4. Did the Single Commissioner err in his Finding of Fact No. 16 in finding that Dr. Dew opined claimant had reached maximum medical improvement for bilateral carpal tunnel syndrome and bilateral epicondylitis with a zero impairment rating and indications that claimant could return to work without restrictions when the greater weight and preponderance of evidence showed that claimant had not reached maximum medical improvement, and could not return to work without restrictions and had a greater degree of impairment?

5. Did the Single Commissioner err in his Finding of Fact No. 17 in finding that Dr. Batson noted that claimant was not having problems with his carpal tunnel syndrome and tennis elbows when the greater weight and preponderance of evidence showed that claimant continued to have problems after that date?

6. Did the Single Commissioner err in his Finding of Fact No. 18 in finding that Dr. Dew testified that claimant had reached maximum medical improvement in his deposition when the greater weight and preponderance of evidence showed that claimant needed additional medical care, had permanent impairment, and had work restrictions?

7. Did the Single Commissioner err in his Finding of Fact No. 19 in finding that claimant had a 5% permanent partial disability to each of his upper extremities when the greater weight and preponderance of evidence showed that claimant had not reached maximum medical improvement, had sustained permanent loss of wage earning capacity, and/or had a greater degree of each of permanent disability to each upper extremity?

8. Did the Single Commissioner err in his Finding of Fact No. 20 in placing great weight on the opinion of Dr. Timothy Dew when the greater weight and preponderance of evidence showed that claimant was not at maximum medical improvement, needed further medical care, and had sustained permanent wage loss?

9. Did the Single Commissioner err in his Finding of Fact No. 21 in refusing to make an award under Section 42-9-20 and find wage loss when the greater weight and preponderance of evidence show that claimant proved a loss of wage earning capacity related to his bilateral carpal tunnel syndrome, bilateral epicondylitis, as well as other conditions sustained while working for defendants?

10. Did the Single Commissioner err in his finding that claimant missed a half a day

of work following his carpal tunnel surgeries when the greater weight and preponderance of evidence showed this to be true but the distinction is that claimant was never able to return to full duty work following that time and had great difficulty in performing his duties following his carpal tunnel surgeries?

11. Did the Single Commissioner err in his Finding of Fact No. 23 in finding that claimant had no permanent work restrictions on account of bilateral carpal tunnel syndrome or bilateral epicondylitis when the greater weight and preponderance of evidence show that claimant had sustained permanent work restrictions and a loss of wage earning capacity as a result of bilateral carpal tunnel syndrome and bilateral epicondylitis?

12. Did the Single Commissioner err in his Finding of Fact No. 24 in finding that Dr. Kyle deferred to Dr. Dew as to any permanent restrictions when the greater weight and preponderance of evidence showed that Dr. Kyle did in fact provide opinions as to permanent restrictions?

13. Did the Single Commissioner err in his Finding of Fact No. 25 in finding that Joel Leonard testified if claimant had no work restrictions with respect to the bilateral carpal tunnel syndrome and bilateral epicondylitis then he would have no wage loss as a result of those injuries when the greater weight and preponderance of evidence showed that Joel Leonard did in fact testify that there was wage loss?

14. Did the Single Commissioner err in his Finding of Fact No. 26 in finding that claimant admitted he would return to work at Bosch immediately if he was offered a supervisors job when that statement may well be true but fails to state that Bosch had not offered such a job and claimant indicated that he would attempt to perform the job and that there was no guarantee

that he could perform such a the job?

15. Did the Single Commissioner err in his Finding of Fact No. 27 in interpreting the opinion of Dr. Brabham as being contradicted by the claimant's testimony which states he would attempt to return to work rather than he could return to work if offered a job and fails to take into consideration the opinions regarding the permanent loss of wage earning capacity?

16. Did the Single Commissioner err in his Finding of Fact No. 28 in finding that claimant failed to carry his burden of proving that his cubital tunnel syndrome, bilateral deQuervains, or CMC synovitis are related to the April 15, 2009 work accident when the greater weight and preponderance of evidence show that these conditions were related to his work injury and that the Single Commissioner failed to combine the two claims which resulted in a loss of wage earning capacity?

17. Did the Single Commissioner err in his Finding of Fact No. 30 in finding that claimant was not complaining of any thumb pain at the time of his initial visit with Dr. Dew on July 27, 2009 appointment when the greater weight and preponderance of evidence shows that claimant was in fact complaining of thumb pain at that time?

18. Did the Single Commissioner err in his Finding of Fact No. 31 in finding at the July 27, 2009 appointment with Dr. Dew claimant did not report any symptoms consistent with CMC joint arthritis or deQuervains when the greater weight and preponderance of evidence showed that claimant was complaining of such symptoms?

19. Did the Single Commissioner err in his Finding of Fact No. 32 in finding claimant first complained of symptoms consistent with CMC synovitis to Dr. Dew on April 19, 2010 when the greater weight and preponderance of evidence showed that claimant complained of those symptoms prior to that time?

20. Did the Single Commissioner err in his Finding of Fact No. 33 in finding that Dr. Kyle indicated that he would defer to Dr. Dew with regard to claimant's CMC synovitis condition when the greater weight and preponderance of evidence showed that Dr. Kyle did in fact provide an opinion?

21. Did the Single Commissioner err in his Finding of Fact No. 34 in finding that Dr. Dew testified that he did not have an opinion as to what may have caused or aggravated claimant's CMC synovitis on April 19, 2010 when the greater weight and preponderance of evidence showed that Dr. Dew did provide such an opinion?

22. Did the Single Commissioner err in his Finding of Fact No. 35 in finding that claimant first complained of symptoms consistent with deQuervains tennis synovitis to Dr. Dew on October 26, 2010 when the greater weight and preponderance of evidence showed claimant had made such complaints prior to that time?

23. Did the Single Commissioner err in his Finding of Fact No. 36 in finding that Dr. Dew indicated claimant's DeQuervains symptoms began in 2010 and that claimant did not complain in 2009 and that Dr. Dew was unaware of the specific activities claimant was performing at work in 2010 when the greater weight and preponderance of evidence showed claimant's symptoms began prior to that time and Dr. Dew responded to questions involving a hypothetical regarding work activities in 2010?

24. Did the Single Commissioner err in his Finding of Fact No. 37 in finding that Dr. Dew testified that regardless of what claimant was doing his deQuervains and CMC synovitis arose in 2010 when the greater weight and preponderance, of evidence showed that those symptoms arose prior to that time and Dr. Dew provide an opinion on causation?

25. Did the Single Commissioner err that Dr. Dew testified that he could not say

whether the claimant's CMC synovitis or deQuervains were related to his work in 2009 when the greater weight and preponderance of evidence showed that those conditions were caused by his work in 2009?

26. Did the Single Commissioner err in his Finding of Fact No. 41 in finding that claimant provided no credible medical evidence that his CMC joint arthritis was causally related to his work injury of April 15, 2009 when the greater weight and preponderance of evidence showed that claimant's CMC joint arthritis was causally related to his work injury of April 15, 2009?

27. Did the Single Commissioner err in his Finding of Fact No. 42 in finding claimant's cubital tunnel syndrome did not surface until Dr. Dew's August 16, 2011 record the when greater weight and preponderance of evidence showed claimant was already complaining of such problems?

28. Did the Single Commissioner err in his Finding of Fact No. 43 in relying on the EMG nerve conduction studies done at Piedmont Comprehensive Pain Group on December 15, 2009 to show no signs of cubital tunnel syndrome when the greater weight and preponderance of evidence shows that the test was not specifically designed to reveal cubital tunnel syndrome?

29. Did the Single Commissioner err in finding that claimant did not provide any medical opinion on causation when the greater weight and preponderance of evidence showed that claimant's cubital tunnel syndrome was causally related to his on job injury?

30. Did the Single Commissioner err in his Finding of Fact No. 45 in finding that there was no evidence linking the cubital tunnel syndrome to the April 15, 2009 work accident when the greater weight and preponderance of evidence showed that claimant's cubital tunnel syndrome was caused by his work accident?

31. Did the Single Commissioner err in his Finding of Fact No. 46 in denying claimant's request for further medical care when the greater weight and preponderance of evidence showed that claimant was in need of additional treatment related to his on the job injury?

32. Did the Single Commissioner err in his Conclusion of Law No. 3 in finding claimant reached maximum medical improvement for his bilateral carpal tunnel syndrome and bilateral epicondylitis on June 17, 2010 when the greater weight and preponderance of evidence showed that claimant had not reached maximum medical improvement on June 17, 2010?

33. Did the Single Commissioner err in his Conclusion of Law No. 4 in awarding a 5% permanent partial disability to each of his upper extremities when the greater weight and preponderance of evidence showed claimant had not reached maximum medical improvement, claimant had sustained a permanent loss of wage earning capacity, and/or claimant suffered a greater degree of permanent partial disability?

34. Did the Single Commissioner err in his Conclusion of Law No. 5 in finding that claimant failed to carry his burden of proof in that his cubital tunnel, bilateral deQuervains, or CMC arthritis are related to his April 15, 2009 work injury when the greater weight and preponderance of evidence showed that these conditions were related to his work injury?

35. Did the Single Commissioner err in his Conclusion of Law No. 6 in denying claimant's request for future medical care when the greater weight and preponderance of evidence showed that claimant had not reached maximum medical improvement and was in need of further medical care?

36. Did the Single Commissioner err in his Order and Award in finding that claimant had reached maximum medical improvement on June 17, 2010 and had sustained a 5%

permanent partial disability to each of his upper extremities when the greater weight and preponderance of evidence showed claimant had not reached maximum medical improvement, had a permanent loss of wage earning capacity, and/or had a greater degree of permanent partial disability?

37. Did the Single Commissioner err in his Order and Award in finding that claimant failed to carry his burden of proving that the cubital tunnel, bilateral deQuervains, or CMC arthritis were related to his April 15, 2009 work injury when the greater weight and preponderance of evidence showed that these conditions were caused by his work injury?

38. Did the Single Commissioner err in his Order and Award in finding that claimant was not entitled to benefits for loss of earnings capacity and future medical benefits related to the April 15, 2009 work injury when the greater weight and preponderance of evidence showed that claimant was in need of additional medical care and had sustained a permanent loss of wage earning capacity?

39. Did the Single Commissioner err in his Order and Award in failing to combine the claims and consider the bilateral deQuervains synovitis, CMC joint arthritis, and cubital tunnel syndrome and award a permanent loss of wage earning capacity?

Copies of the Claimant's alleged assignments of error were furnished to all interested parties prior to oral argument presented before the Appellate Panel on April 16, 2013.

Pursuant to S.C. Code Ann. § 42-17-50 (1985), the Appellate Panel reviewed the Award and weighed the evidence in the record as presented at the initial hearing. The Panel also considered all issues raised in the briefs of the Appellant and Respondents. The Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Thomas Bradley Davis as Employee-Claimant and Robert Bosch Corporation, LLC as Employer and The Phoenix Insurance Company as Carrier, Defendants.

2. That the average weekly wage of Employee at the time of the above-described accident was \$1065.84, and his compensation rate was \$681.36.

3. Defendants admit Claimant's bilateral carpal tunnel syndrome and bilateral epicondylitis.

4. Claimant was seen by Dr. Timothy Dew at the Hand Center on July 27, 2009, and Dr. Dew diagnosed Claimant with bilateral lateral epicondylitis and performed steroid injections in Claimant's elbows. (APA 18-19; 114)

5. Claimant returned to Dr. Dew on August 24, 2009, and Dr. Dew indicated that Claimant was not a candidate for any further steroid injections, but that Claimant may be a candidate for lateral epicondyle debridement if his symptoms persisted. (APA 20)

6. On October 5, 2009, Dr. Dew recommended that Claimant undergo tennis elbow release for his bilateral epicondylitis. (APA 21)

7. On October 9, 2009, Claimant underwent a left lateral epicondyle debridement with partial ostectomy, and on October 23, 2009, Claimant underwent a right lateral epicondyle debridement with partial ostectomy, both performed by Dr. Dew at the Center for Special Surgery. (APA 22; 25)

8. Claimant was seen by Dr. Kyle on December 7, 2009, and it was noted that

Claimant's current job was "well within the work restrictions given by Dr. Dew today." (APA 103)

9. Claimant underwent EMG/NCV studies at Piedmont Comprehensive Pain Management Group on December 15, 2009 at the referral of Dr. Kyle. The studies revealed bilateral carpal tunnel syndrome of the wrists, slightly worse on the left, but revealed "no signs of cubital tunnel syndrome." (APA 29)

10. Claimant returned to Dr. Dew following his EMG/NCV studies, and Dr. Dew diagnosed bilateral carpal tunnel syndrome. Dr. Dew indicated that Claimant was a candidate for bilateral carpal tunnel releases. (APA 32)

11. Dr. Dew performed bilateral steroid injections on January 11, 2010. (APA 34)

12. On February 8, 2010, Dr. Dew noted that the injections did not improve Claimant's symptoms and he scheduled Claimant for a comprehensive upper extremity exam (CUEE). (APA 35)

13. Claimant returned to Dr. Dew on March 1, 2010, and Dr. Dew noted that the CUEE revealed abnormal grip strength. Dr. Dew noted that Claimant had exhausted his conservative treatment options and scheduled Claimant for bilateral carpal tunnel releases. (APA 36)

14. Claimant underwent right carpal tunnel release on April 5, 2010, and left carpal tunnel release on May 10, 2010, both performed by Dr. Dew at the Physician Surgery Center at AnMed Health. (APA 37; 115-117; 40)

15. Claimant reached maximum medical improvement for his bilateral carpal tunnel syndrome and bilateral epicondylitis on June 17, 2010. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew. (See also, APA 43)

16. On June 17, 2010, Dr. Dew opined that Claimant had reached MMI for his bilateral carpal tunnel syndrome and bilateral epicondylitis. Dr. Dew assigned Claimant a zero percent (0%) impairment rating and indicated Claimant could return to work without restriction. (APA 43)

17. After completing his October 21, 2010 IME, Dr. Batson noted that Claimant "has been given a zero impairment rating by Dr. Dew for the problems with the carpal tunnel and the tennis elbows and indeed he does not seem to be having any problems with these areas now." (APA 16-17; 110-111)

18. Dr. Dew testified at his February 1, 2011 deposition that Claimant is at MMI for his carpal tunnel syndrome and bilateral epicondylitis. Dr. Dew further testified that Claimant would require no additional treatment, had no permanent impairment, and had no permanent work restrictions on account of the carpal tunnel or bilateral epicondylitis. (A8)

19. I find that Claimant suffers disability resulting from his admitted bilateral carpal tunnel syndrome and bilateral epicondylitis and award five percent (5%) permanent partial disability to each of Claimant's upper extremities. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew.

20. I place great weight on the opinion of Dr. Timothy Dew, with the exception of his opinion on impairment. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew.

21. I specifically decline Claimant's request for an award under S.C. Code Ann. §42-9-20, as I find that Claimant cannot prove any loss of earnings or earning capacity related to his bilateral carpal tunnel syndrome or bilateral epicondylitis. This finding is based on the medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition

testimony of Dr. Timothy Dew.

22. Claimant missed “maybe half a day to a day” following his carpal tunnel surgeries, and he returned to work without restrictions after being released by Dr. Dew. This finding is based on the medical record as a whole, and on Claimant’s hearing and deposition testimony. (Hr’g Tr., pp. 18-20)

23. Per Dr. Dew, Claimant has no permanent work restrictions on account of his bilateral carpal tunnel syndrome or bilateral epicondylitis. (APA 43; A8)

24. Dr. Kyle testified that Dr. Dew is in the best position to give an opinion on Claimant’s work restrictions, and that he would defer to Dr. Dew as to any permanent restrictions as they relate to the conditions Dr. Dew treated Claimant for. (*Id.* 88:7-10; 106:21 – 107:13)

25. Joel Leonard testified that, if Claimant had no work restrictions with respect to his bilateral carpal tunnel syndrome and bilateral epicondylitis, then Claimant would have no wage loss as a result of those injuries. (Leonard Depo, 57:20 – 58:8).

26. Claimant admitted that he would return to work at Bosch immediately if he was offered a supervisor job. (Hr’g Tr., p. 58)

27. Dr. Robert Brabham opined that Claimant was unable to engage in full-time gainful, competitive employment as a result of the medical conditions resulting from the April 2009 work injuries, but this opinion is directly contradicted by Claimant’s own admission that he could, and would, return to work immediately if offered a job. (APA 1-14; Hr’g Tr., p. 58)

28. Claimant failed to carry his burden of proving that his alleged cubital tunnel, bilateral deQuervain’s, or CMC synovitis are related to the April 15, 2009 work injury. This finding is based on the medical record as a whole, on Claimant’s hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew.

29. Claimant's bilateral deQuervain's has been admitted by the second insurance Carrier, Defendant Zurich under WCC# 1022907 for date of injury April 19, 2010.

30. Claimant was not complaining of any thumb pain at the time of his initial visit with Dr. Dew on July 27, 2009. (A4)

31. At the July 27, 2009 visit with Dr. Dew, Claimant did not report any symptoms consistent with CMC joint synovitis or deQuervain's syndrome. (A4)

32. Claimant first complained of symptoms consistent with CMC synovitis to Dr. Dew on April 19, 2010. (A4)

33. Dr. Kyle testified that he would specifically defer to Dr. Dew with regard to Claimant's CMC synovitis condition, because Dr. Kyle testified that the condition is less common and is not something that Dr. Kyle has expertise in. (*Id.* 112:16 – 113:16)

34. Dr. Dew testified that he did not have an opinion as to what may have caused or aggravated Claimant's CMC synovitis on April 19, 2010, because Claimant had not returned to work at that time. (A4-A5)

35. Claimant first complained of symptoms consistent with deQuervain's tenosynovitis to Dr. Dew on October 26, 2010. (A5)

36. Dr. Dew indicated that Claimant's deQuervain's symptoms began in 2010, and that Claimant did not complain of deQuervain's symptoms in 2009. Dr. Dew also testified that he was not aware of the specific activities Claimant was performing at work in 2010, and he would need to have more specifics on the nature of Claimant's work in order to give an accurate opinion on causation. (A6)

37. Dr. Dew testified that, regardless of what Claimant was doing, Claimant's deQuervain's and CMC synovitis both arose in 2010. He testified that he would need more

information before making a statement on causation. (A8)

38. Dr. Dew testified that, if Claimant's CMC synovitis or deQuervain's were caused by his work, it would have been caused between April and October of 2010. Dr. Dew further testified that he cannot say that Claimant's CMC synovitis or deQuervain's are related to Claimant's work in 2009. (A8-A9; A14)

39. Dr. Batson, Claimant's own IME doctor, opined that Claimant's arthritic change of the MP joints of the thumbs as well as most likely the trapeziometacarpal joints was not likely caused by Claimant's work activities. (APA 15; 109)

40. Dr. Batson further indicated that trapeziometacarpal arthritis is the second most common joint affected in the general population with arthritic change. (APA 15)

41. Claimant provided no credible medical evidence that his CMC joint arthritis is causally related to the work injury of April 15, 2009. This finding is based on the record as a whole.

42. Claimant's alleged cubital tunnel syndrome did not surface until Dr. Dew's August 16, 2011 record. (APA 49)

43. EMG/NCV studies at Piedmont Comprehensive Pain Management Group on December 15, 2009 revealed "no signs of cubital tunnel syndrome." (APA 29)

44. Claimant did not provide any medical opinion on causation related to his alleged cubital tunnel syndrome.

45. The record is void of any medical evidence linking Claimant's alleged cubital tunnel syndrome to the April 15, 2009 work accident, to Claimant's bilateral carpal tunnel syndrome and bilateral epicondylitis, or to Claimant's repetitive work with Defendant Employer.

46. Claimant's request for future medical care is denied. This finding is based on the

medical record as a whole, on Claimant's hearing and deposition testimony, and on the deposition testimony of Dr. Timothy Dew. (See also, APA 43; A8)

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-50, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Defendants admit Claimant's bilateral carpal tunnel syndrome and bilateral epicondylitis.

3. Under § 42-15-60, Claimant reached maximum medical improvement for his bilateral carpal tunnel syndrome and bilateral epicondylitis on June 17, 2010. This finding is based on the medical record as a whole, on Claimant's deposition testimony, and on the deposition testimony of Dr. Timothy Dew. (See also, APA 43; A8)

4. Under § 42-9-30, Claimant suffered five percent (5%) permanent partial disability to each of his upper extremities.

5. Under § 42-1-160 and § 42-1-172, Claimant failed to carry his burden of proving that his alleged cubital tunnel, bilateral deQuervain's, or CMC are related to the April 15, 2009 work injury.

6. Under § 42-15-60, Claimant's request for future medical care is denied. This finding is based on the medical record as a whole, on Claimant's deposition testimony, and on the deposition testimony of Dr. Timothy Dew. (See also, APA 43; A8)

After careful review in this case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined the Order of the Hearing Commissioner is hereby

AFFIRMED IN FULL. The Findings of Fact and Conclusions of Law found in the Hearing Commissioner's Decision and Order, as specified above, are hereby AFFIRMED IN FULL.

ORDER

IT IS HEREBY ORDERED that the Order of the Single Commissioner from which this appeal has been taken is hereby AFFIRMED IN FULL.

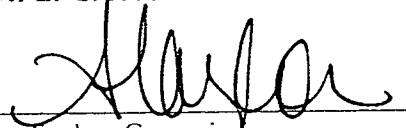
IT IS FURTHER ORDERED that Claimant reached maximum medical improvement for his bilateral carpal tunnel syndrome and bilateral epicondylitis on June 17, 2010, and that Claimant suffered five percent (5%) permanent partial disability to his bilateral upper extremities as result of those injuries.

IT IS FURTHER ORDERED that Claimant failed to carry his burden of proving that his alleged cubital tunnel, bilateral deQuervain's, or CMC are related to the April 15, 2009 work injury.

IT IS FURTHER ORDERED that Claimant is entitled to no benefits for loss of earnings and no future medical benefits related to the April 15, 2009 work injury.

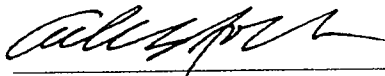
IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Aisha Taylor, Commissioner
For the Appellate Panel

Concur:



Andrea C. Roche, Commissioner



Gene McCaskill, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Valerie Deller on July 9, 2013

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SC Court of Appeals