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APPELLATE PANEL
 DECISION AND ORDER
 OF THE
 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
 WCC FILE NO. 1304205

RECEIVED
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 SC Court of Appeals

Kim E. Argo,	CLAIMANT/APPELLANT,
vs.	
Flexible Technologies, Inc.,	EMPLOYER,
and	
Liberty Insurance Corporation,	CARRIER,
	DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina, on December 14, 2015, pursuant to notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed May 6, 2016

APPEARANCES:

Appellant Kim E. Argo, Claimant of Abbeville, South Carolina represented by Stephen B. Samuels.

Defendants/Respondents represented by L. Brenn Watson, Esquire of Willson Jones Carter & Baxley, P.A. in Greenville, South Carolina.

STATEMENT OF THE CASE

Claimant sustained admitted liquid propane burns to his bilateral hands and right forearm on April 18, 2013. Claimant alleged he suffers from bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, and he filed a Form 50, Request for Hearing, seeking a finding of compensability for these conditions. Defendants filed a Form 51, denying compensability of Claimant's alleged bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. A hearing was held before a Single Commissioner on January 22, 2015, to determine the issues in the Forms 50 and 51.

At the hearing, it was Claimant's position that he suffers from bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome arising from the April 18, 2013 work accident, and he sought a finding of compensability for these alleged conditions. In addition, Claimant sought an Order for Claimant's ongoing causally-related medical treatment to be performed by the physicians at the Augusta Burn Center, citing the case of *Martin v. Rapid Plumbing* as authority for the Single Commissioner to designate the authorized treating physician. Lastly, Claimant objected to the introduction of all documents and opinions associated with Dr. Rudisill based on S.C. Code Ann. Sections 42-15-80 and 42-15-95, or in the alternative, Claimant argued the opinions of Dr. Rudisill should be given no weight because Claimant argues the opinions lack foundation.

It was Defendants' position that Claimant's alleged bilateral carpal tunnel syndrome and alleged bilateral cubital tunnel syndrome are not causally-related to the work accident of April 18, 2013, and Defendants sought an Order denying compensability of these alleged conditions. In addition, Defendants requested an Order allowing Defendants to transfer Claimant's care from the Augusta Burn Center to a duly qualified physician in South Carolina, as the Augusta Burn Center is not bound by the South Carolina Workers' Compensation Fee Schedule. Lastly, Defendants

objected to the introduction of Claimant's Exhibits "B" and "C," which consisted of internet articles.

After considering the objections of the parties, the Single Commissioner overruled both parties' objections with regard to the introduction of evidence and allowed the documents submitted from The Hand Center, including Dr. Rudisill's report, and the internet articles into evidence. Subject to the aforementioned objections, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

The parties were heard by Commissioner Barden, on January 22, 2015, in Anderson, South Carolina. On September 11, 2015, the Single Commissioner issued a Decision and Order.

The Single Commissioner made 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 Kim E. Argo as Employee-Claimant and Flexible Technologies, Inc. as Employer and Liberty Insurance Corporation as Carrier, Defendants.
- 2) Claimant's average weekly wage is \$444.13, yielding a compensation rate of \$296.10.
- 3) Claimant sustained admitted liquid propane burn injuries to both hands and his right arm on April 18, 2013 (*See* Claimant's APA #1, pages 1-2; Defendants' APA #8, page 399).
- 4) Claimant alleges that the (a) burns and (b) "posturing" during his recovery from the burns resulted in bilateral carpal tunnel and cubital tunnel syndrome (Commission's file; Hearing Transcript, pages 10-13 and 42-43).
- 5) Claimant's back condition is unrelated to/pre-dates the accident in issue (Hearing Transcript, pages 35-36 and 65-67; Claimant's APA #1, pages 1 and 6; Claimant's APA #4, pages 154-158).
- 6) Claimant does not claim that his pre-existing diabetes was worsened or aggravated by the accident in issue. I base this finding on the record in its entirety.
- 7) Claimant does not claim that his left hand and/or arm were injured through overuse. I base this finding on the record in its entirety.
- 8) Claimant is right hand dominant (Hearing Transcript, page 34; Claimant's APA #1, pages 1 and 3; Defendants' APA #9, page 403).
- 9) Claimant is 53 years of age (Hearing Transcript, page 16).

- 10) According to his résumé, Claimant attended Erskine College for 2½ years, where he took a general liberal arts curriculum. Claimant then attended Piedmont Tech for another year, where he studied business, management, and computer programming. Claimant has undergone training in inventory ticketing, inspection, and shipping (Claimant's APA, page 333; *See also* Hearing Transcript, pages 16-17).
- 11) Claimant's employment history includes work as a (a) bundler and (b) draw frame machine operator (Hearing Transcript, pages 17-18).
- 12) On the date of the accident, Claimant's job with Employer was material handler. This job required Claimant to drive a forklift, to carry materials weighing up to 70 lbs. for 10' distances, and to roll 300- to 400-lb. barrels into a pile (Hearing Transcript, page 19; Claimant's APA #1, page 1; Defendants' APA #10, page 421).
- 13) Although in and of itself dispositive of nothing, Claimant had worked for Employer for almost 20 years on the date of the accident, a factor which does weigh in his favor. However, Claimant's lack of credibility far exceeds and overrides his employment tenure. (Hearing Transcript, pages 38 and 78).
- 14) Based upon his demeanor and the tenor of his testimony at the hearing, Claimant appears to be disappointed and angry with Employer regarding Claimant's initial treatment (or lack thereof) on the date of the accident. After Claimant's hands and right arm were burned and blistering, his testimony--unrefuted at the hearing--was that he approached at least 4 different individuals to take him to the hospital but was denied or put off, even though Claimant was in pain and emphasized the matter of his diabetic and hypertensive conditions. Ultimately, Claimant was taken 20 miles away to a doctor in Greenwood (where Claimant waited 45 minutes for treatment), which doctor then sent Claimant to a wound center where Claimant waited another 45 minutes. By the time the wound center told the Claimant to go to the Burn Center (when Claimant's supervisor offered to drive Claimant), Claimant decided, "No. The way [Employer/co-workers] have been treating me today." that Claimant would rather go home and instead let his mother take him to the Burn Center (Hearing Transcript, pages 22-24; observations of the undersigned).
- 15) Both prior to and after the date of the accident, Claimant is medically documented as morbidly obese; on the date of the accident, Claimant weighed 316 lbs., and is 5'7" - 5'9" in height. His BMI is recorded between 47.2 and 50 (Claimant's APA #1, pages 13, 24, and 77; Claimant's APA #4, pages 138, 142, 144-145, 148, and 150-152; Claimant's APA, page 333; Defendants' APA #5, page 346; Defendants' APA #6, page 352; Defendants' APA #7, page 373; Defendants' APA #11, page 452; Deposition of Dr. Mir, pages 48-49).
- 16) Claimant has an 18-year history of diabetes (a) for which he takes several different medications (the "maximal oral medication," including prior to the date of the accident as well), and (b) which is noted to be often uncontrolled. With an elevated hemoglobin A1c of 11, and blood sugar testing in the 300's on the date of the accident, Claimant's diabetes--per Dr. Mir's description--is "bad" (Hearing Transcript, pages 29 and 38-40; Deposition of Dr. Mir, page 49; Claimant's APA #1, pages 1, 7, and 80; Claimant's APA #4, pages 129, 131, 139, 142, 150, and 161; Defendants' APA #5, page 346; Defendants' APA #6, page 351; Defendants' APA #9, page 403; *See also* Defendants' APA #11, page 450, dated 2009--pre-accident--when it is noted that Claimant's blood sugar is "greater than 200").

- 17) Lab studies on April 18, 2014 revealed blood glucose levels of 306 and 394 (APA, pages 7, 367). Glucose levels on April 19, 2014, were recorded as 317, 331, 324, 330, 219, 306, and 225 (APA, pages 365-366). Glucose levels on April 20, 2014, were recorded as 262, 289, and 230 (APA, pages 365-366).
- 18) Elevated glucose metabolizes into inositol monophosphate which causes swelling of the nerves and can exacerbate the carpal and cubital tunnels. As far as carpal tunnel causation is concerned, premedical conditions are "very high" on Dr. Mir's list, and associated trauma or injury are factors as well (Deposition of Dr. Mir, pages 10-16 and 54).
- 19) Six months after the date of the accident, Claimant weighed 337 lbs. Claimant's family physician "STRONGLY recommended that we start [Claimant] on insulin—very resistant" [emphasis supplied]. Claimant was referred to "DM teaching" and told to diet and exercise. I give this evidence great weight in my decision (Claimant's APA #4, pages 152-153).
- 20) The year after the date of the accident, Claimant had an appointment with a diabetes specialist, as his diabetes condition was not adequately controlled even though he was on the maximum dose of oral medications. According to medical evidence, Claimant was reluctant to take insulin, and did not go to the appointment (Claimant's APA #1, page 77; Claimant's APA #4, page 161).
- 21) Claimant admits that his burns did not reach his wrist on the left hand; nor did the burns extend anywhere past the wrist on the left hand. (Hearing Transcript, page 42) Claimant further testified that the burns on his left hand were primarily located on the backside of the left hand, not the underside. (*Id.*)
- 22) Claimant testified his burns on the right arm were on his hand, wrist, and up his forearm to the level approximately halfway between his elbow and wrist. (Hearing Transcript, page 43) Claimant admits that the burns did not reach the level of his right elbow. (*Id.*)
- 23) As to the left hand, medical records from the day of/day after the accident note "small blisters" on the dorsal aspect of Claimant's left index and left middle fingers, and the photos taken shortly after the accident show burns to the dorsal side of the hand, thumb, index finger middle finger, and ring finger. Claimant's burn did not extend to his wrist or beyond (Claimant's APA #1, pages 2-3; Claimant's Exhibit #1; Hearing Transcript, pages 42-43).
- 24) As to the left hand, Claimant underwent surgery 2 days later (April 20, 2013), involving debridement of the devitalized tissue and placement of temporary skin substitute or allograft on Claimant's left hand, thumb, index, middle, and ring fingers (Claimant's APA #1, pages 9-10; Defendants' APA #7, pages 358-360; Hearing Transcript, pages 30 and 44).
- 25) Claimant testified his left hand burns were healed by July of 2013, but contends that his alleged trouble with his left wrist area did not begin until the first part of 2014. This discrepancy is not persuasive (Hearing Transcript, pages 45-46)

- 26) As to the left hand, Dr. Mir states that Claimant's left hand burn was a "mild" or "minor" burn injury that "healed very quickly." After the initial surgery/procedure, Claimant required no further surgery/procedure for his left hand/finger burns. **Dr. Mir states Claimant should not have had functional limitations on the left side after a few months from the accident** (Deposition of Dr. Mir, pages 41 and 53-54; medical evidence in its entirety; Hearing Transcript, pages 30-31 and 44).
- 27) As to the left hand, the undersigned could barely see where the burns had occurred. At a distance of approximately 18"-24" (I walked over to Claimant, and leaned over to observe his hands), I only saw some pinker (not red) areas on the top of the 2nd (middle) finger and the index finger (where the blisters apparently were)—as opposed to the rest of the fingers/hand where I saw nothing. Even Claimant admits that his left hand scarring is "minimal." **Claimant did not describe or point to any other scarring on his left hand or fingers other than the small, pinker areas I described at the hearing** (Hearing Transcript, pages 47-48; observations of the undersigned).
- 28) In fact, Claimant was asked whether he had any scarring on his left hand, and he first replied, "No," and he then stated, "It would be minimal." (Hearing Transcript, pages 47-48)
- 29) At the hearing, Claimant laboriously demonstrated as if he could barely move his left hand and fingers, and then only very slowly with the greatest of difficulty. Dr. Mir states it would be "unusual" for someone with a mild burn injury (as Claimant's left hand burn is medically described) to be unable to operate his hand. I do not find impressive Claimant's purported inability at the hearing to remove his compression sleeve with his left hand, as the "demonstration" was more suited for the theater. Needing assistance and pretending to need assistance are two entirely different things (observations of the undersigned; Hearing Transcript, pages 64-65; Deposition of Dr. Mir, page 45).
- 30) As to the left hand, by May 15, 2013—a little less than one month after the date of the accident--Claimant's left hand is no longer mentioned in the sequential notes of the authorized treating physician (Dr. Hassan) in terms of complaints or treatment until approximately one year later. No observation of edema, difficulty with range of motion, pain, etc. is documented or noted; Claimant did not make any complaints regarding his left hand during one year of sequential treatment with Dr. Hassan. Given the nature of Claimant's left hand burn (and his quick recovery therefrom), it is difficult to ignore these records; even Claimant says he can't "recall" whether or not he complained about any left hand problems to his physicians (medical records of Dr. Hassan in their entirety, including but not limited to Claimant's APA #1 in its entirety, including but not limited to pages 21, 22, 27, 41, 44, 48, 51, 59, 62, 65, and 68; Hearing Transcript, pages 44-47 and 51; Deposition of Dr. Mir, pages 38-39).
- 31) As to the left hand, I would similarly have to ignore the records of multiple physical/occupational therapists from two separate therapy providers. I could readily believe that if only one physical therapist had treated Claimant, that particular therapist may have failed to document left hand problems; in fact, Claimant denied problems other than his right wrist/hand after May/June 2013 throughout his physical/occupational therapy for approximately one year--until April 2014. However, even assuming that one entire therapy provider (with multiple therapists) failed to document a left hand problem,

complaint, or concern, the undersigned is confronted with the sequential treatment notes from multiple therapists from another therapy provider, whose sequential notes are likewise devoid (for months) of any complaint of left hand pain, swelling, or other difficulty. Further, these physical/occupational therapists frequently document Claimant's own "subjective/pain" complaints and his "primary concerns/goals" (e.g., "regain full range of motion of his *right* hand and wrist" [emphasis added]). I base this finding on the physical/occupational therapy records in their entirety, including but not limited to Defendants' APA #7, page 377; Defendants' APA #10, pages 413-414, 418-419, 421, 427-428, 432-433, and 435-436; Claimant's #2, pages 83-84, 86, 88, 90-91, 93-95, and 124).

- 32) As to the left hand, Dr. Mir admits that Claimant's carpal tunnel syndrome could "absolutely" be caused by diabetes and obesity alone. He states that the burn "could be" a "contributing" factor, but "can't say more than likely" (Deposition of Dr. Mir, pages 42-43).
- 33) As to the right hand/wrist/arm, Claimant's burns were much more significant than the ones on his left hand. Claimant's right hand/arm had "severe blistering," "full thickness" burns, and the burns were circumferential. Claimant's recovery for his right hand/wrist has not been uneventful or brief. For instance, in February 2014 (10 months after the date of the accident), Claimant had right hand/wrist edema in the fingers and the palm. His scarring is noted to be "pulling" (i.e., "flexion contracture of the medial volar aspect of the right wrist"), such that Claimant underwent a scar contracture release procedure (medical evidence in its entirety, including but not limited to Claimant's APA #1, pages 21, 24, and 57-58; Defendants' APA #5, page 346; Defendants' APA #7, pages 391 and 394-397; Hearing Transcript, pages 43 and 49; Deposition of Dr. Mir, pages 21 and 43-44).
- 34) As to the right hand/wrist/arm, Claimant underwent 6 total surgeries, and as of the date of the hearing still requires another: two days after the accident, Claimant underwent debridement and temporary allograft surgery; one month after the accident, Claimant underwent an auto-grafting procedure to his right forearm using a graft from his left thigh (May 2013). Claimant then underwent three CO2 laser surgeries (August 2013, October 2013, and January 2014), all requiring general anesthesia, for Claimant's "hypertrophic," "hypervascular," "restrictive," and "painful" scars on the right forearm and palm. The sixth surgery was the February 2014 flexion contracture release surgery referenced in the preceding finding of fact (Claimant's APA #1, pages 9-10, 19-20, 46, and 57-58; Defendants' APA #7, pages 358-360, 378-381, and 387; Hearing Transcript, pages 30-31).
- 35) Claimant's right arm burn did not extend to the elbow (medical evidence in its entirety; Hearing Transcript, pages 42-43; Claimant's Exhibit #1).
- 36) On the right hand/arm, numerous medical/physical therapy records document Claimant's fibrosis, edema (sometimes minimal, but sometimes described as "moderate"/"2-plus" and "very edematous"), stiffness, banding/difficulty with range of motion, cold sensitivity, and numbness throughout the course of his recovery. Claimant's edema has waxed and waned. It must be reiterated here that Claimant's left hand, by contrast, had healed and was asymptomatic (medical evidence in its entirety including but not limited to Defendants' APA #10, pages 413, 418, 421, 425, 427-428, 433, 440-443, and 446; Defendants' APA #7, page 375; Claimant's APA #1, pages 3, 24, 27, 29, 32, 41, 43-44, 48, 51, 54-56, 59, 62,

68, and 71; Claimant's APA #2, pages 83-84, 86, 88, 90-91, 93-95, 98, 102, 108-114, 117-118, and 120).

- 37) Claimant's nerve conduction studies do not show that Claimant suffers from cubital tunnel syndrome. Nor did Dr. Rudisill's exam reveal cubital tunnel syndrome. Dr. Mir diagnosed bilateral cubital tunnel (based upon his examination), and states that NCVs are *40% false negative*. In other words, more than 50% of the time, the negative result is the true (accurate) result. However, because of the backdrop of (a) a relatively mild left hand burn injury (in that it healed quickly with no documented sequelae, and Dr. Mir terms the left hand injury as "mild" and "minor"); (b) a claimant who presents to the undersigned as **though he cannot (or can barely) move his hand/fingers**, calling into question the legitimacy of his testimony generally; (c) the fact that there are no complaints to the left hand for almost one year; (d) Claimant's escalating weight and uncontrolled and chronic diabetes (such that Claimant has been encouraged to consider insulin and has been referred to an endocrinologist, an appointment, according to Dr. Mir's notes, Claimant did not keep); and (e) the fact that there was no "posturing" documented until Dr. Mir mentioned it as a possibility over one year later, I give greater weight to the opinions of Dr. Rudisill and Dr. Fox as to cubital tunnel. Further, after diluting his own written causation opinion (upon questioning by Defendants' counsel), Dr. Mir (upon Claimant's counsel's questioning) reiterates the viability of his written opinion; however, Dr. Mir then reverts to the answers he gave Defendants' counsel. Therefore, I give the greatest weight to the treatment notes prior to Dr. Mir's treatment—which began more than one year after the date of the accident (Defendants' APA #8; Defendants' APA #9; Claimant's APA #1, pages 74 and 77; Hearing Transcript, pages 62 and 67; Deposition of Dr. Mir, *e.g.*, pages 41, 53-54, and 66-76).
- 38) Claimant's nerve conduction studies show bilateral carpal tunnel, right worse than left (Defendants' APA #8, page 399; Claimant's APA #1, page 77; Deposition of Dr. Mir, pages 38, 47-48, 66, and 79).
- 39) As Claimant only has a preponderance burden to meet—not a clear and convincing standard—I find that he has presented sufficient evidence to meet his burden with regard to right sided carpal tunnel syndrome. I base this finding primarily on the **treatment records** documenting the severity and circumferential nature of Claimant's right arm burns as to his wrist and hand, his protracted treatment/recovery (including multiple surgeries), Claimant's consistent complaints including but not limited to objectively documented contracture, fibrosis, and swelling, as well as pain and other difficulties, which all dovetail with Dr. Mir's testimony that the periodic swelling and fibrosis Claimant has experienced further restricts the tunnels. **Dr. Rudisill admits that Claimant's carpal tunnel syndrome could be caused by Claimant's burns if he had significant hand swelling; Dr. Rudisill has no opinion as to whether the swelling was significant enough, as Dr. Rudisill did not review all the records** (Defendants' APA #9; Defendants' APA #9; Deposition of Dr. Mir, pages 17-18, 21, 44, 47, and 49-50; Claimant's APA #3, page 126).
- 40) As the burn/scarring on Claimant's left hand did not and does not extend to or reach his wrist, I do not find Claimant's left side carpal tunnel syndrome compensable. At most, the left hand burn was a *contributing* cause, but not the predominant or even an equal cause as

compared with Claimant's chronic diabetes, morbid obesity, and elevated A1c levels (Dr. Mir: "I could say that [the left hand burn] could be a contributing factor, but.....can't say more than likely"); further, Dr. Mir states that Claimant's left carpal tunnel syndrome could "absolutely" be caused by Claimant's diabetes and obesity. Because of all the evidence before me, I find that *even if* the burn was in fact a contributing factor, *Nawwa* applies, such that the left sided carpal tunnel syndrome is not compensable. I find that there was no posturing until the possibility of posturing was mentioned to Claimant by Dr. Mir more than one year after the accident—well after Claimant's left hand had healed with no sequelae (Deposition of Dr. Mir, pages 41-43, 45, and 48-53).

- 41) During cross-examination, Claimant testified that when he first saw Dr. Mir, he believed the doctor mentioned to Claimant that he suspected Claimant's condition occurred as a result of "posturing" while Claimant was recovering. Claimant answered, "Yes," when asked, "And [Dr. Mir] showed you what posturing was?" Claimant was asked if the way he was sitting at his deposition and at the hearing was "posturing." He testified he did not know if it was posturing. (Hearing Transcript, pages 61-62)
- 42) Although it would be optimal in a workers' compensation case for any physician who renders an opinion (such as Dr. Rudisill) to review all the records instead of a portion of them (or at least to identify exactly which records were considered), **Dr. Mir admits that he also did not review prior records--including months of treatment and physical/occupational therapy records--and** was simply asked to see Claimant for the first time more than 1 year after the date of the accident, and to formulate an opinion based upon the examination. While many prior records were brought to Dr. Mir's attention at his deposition, I find that Dr. Mir has not seen the entire picture that a person reviewing the entire record would see; nor did Dr. Mir observe Claimant present himself as though he cannot move his left hand. Although Dr. Rudisill only evaluated Claimant once, Dr. Mir has evaluated/treated Claimant only twice, and was "not present throughout [Claimant's] whole burn case." As far as surgical procedures are concerned, Dr. Mir admits "I'm not aware of what he had done and I don't remember what he had done," Dr. Mir was simply asked to "take a look at this patient" (Claimant's APA #1, pages 68 and 74-80; Deposition of Dr. Mir, pages 4, 22, 24, 33, and 45-46).
- 43) I find that Dr. Rudisill's report is properly before me, and therefore, Claimant's objection as to its inclusion in the record is overruled. However, even discounting Dr. Rudisill's causation opinion, which was based in part on Dr. Rudisill's review of some records, I still find compelling his clinical examination showing a lack of effort: Dr. Rudisill's clinical impression dovetails with the "demonstration" the undersigned observed at the hearing where Claimant acted as if he can move neither hand; and when asked, only with the very greatest of effort.
- 44) In addition to his presentation at the hearing, Claimant further damaged his credibility when he testified, for reasons only known to Claimant, that Dr. Rudisill did not touch him during Dr. Rudisill's exam. Dr. Rudisill's records, including but not limited to the documentation of Tinel's and Phalen's testing, refute Claimant's testimony (Defendants' APA #9; Hearing Transcript, pages 37-38).

45) Consistent with Dr. Rudisill's notation of a lack of effort by Claimant, Claimant's hand grip strength testing during the course of his treatment was quite inconsistent. Claimant's grip strength was noted at the following levels during his treatment:

- June 18, 2013: right grip strength was 45 pounds and left grip strength was 85 pounds (APA, pages 412-413);
- August 21, 2013: right grip strength was 25-30 pounds (a 15-20 pound decrease in two months)(APA, page 382);
- August 23, 2013: right grip strength was 12 pounds (approx. 50% decrease in two days) and left grip strength was 27 pounds (a 58 pound decrease in just over two months)(APA, page 419);
- October 30, 2013: right grip strength was 10 pounds (down two pounds) and left grip strength was 16 pounds (down 11 pounds)(APA, pages 420-425);
- February 19, 2014: right grip strength was 20 pounds (twice what it was in October) and left grip strength was 70 pounds (a 54 pound increase since October)(APA, page 390);
- July 7, 2014: right hand grip strength was two pounds (APA, p. 442).

Claimant was asked to explain the inconsistencies in his grip strength testing, and he stated, "I don't know. All I can tell you is it's been progressively getting worse since the accident." (Hearing Transcript pages 52-56) Claimant was then asked to explain the sudden increase in his grip strength testing in February of 2014, and he testified the physical therapists "most certainly" got the testing wrong. (Hearing Transcript, p. 56).

46) Also consistent with Dr. Rudisill's notation of a lack of effort by Claimant, occupational/physical therapists noted the following:

- November 26, 2013: "Pt requires encouragement to perform at maximum level." (APA, page 426)
- June 2, 2014: "Pt reports difficulty performing driving of forklift at work but he is able to drive his personal automobile." (APA, page 433)
- July 23, 2014: "Therapist observed Pt demonstrating less interaction and eye contact with others. Pt unable to answer question concerning medical condition and procedures on this date. ... Results of ROM measurements were questionable 2° inconsistent [with] varied responses." (APA, page 448)

47) I considered Dr. Mir's written causation opinion--that notwithstanding Claimant's pre-existing chronic diabetes and morbid obesity, Claimant developed further nerve compression because of his injury, swelling, trauma, and the fibrosis to the surrounding structures--persuasive as only applied to right carpal tunnel syndrome. I base this finding on my review of the complete treatment records pre-dating Dr. Mir's first record and Dr. Mir's deposition testimony (Claimant's APA #1, page 80).

- 48) Claimant's APA, Exhibit B is not evidence as to Claimant's particular case, but was written by an authorized treating physician (Dr. Hassan), who states in the article that the most common cause of carpal tunnel syndrome is a congenital predisposition--the carpal tunnel is simply narrower in some people than in others. However, injury causing fluid retention (edema) and fibrosis can result in carpal tunnel syndrome. Of those in the study, 11% were from chemical burns (57% were thermal and 32% electrical). Most carpal tunnel syndrome cases developed within 5 months of the burn injury, and then because of excessive edema in circumferential burns. This article contains nothing about cubital tunnel.
- 49) I considered Claimant's APA, Exhibit C (Wayne State School of medicine), which states that nerve compression usually occurs from increased pressure within the carpal tunnel; edema can lead to compression neuropathy. However, even discounting or disregarding this article, Dr. Mir says virtually the same thing in his deposition.
- 50) Dr. Mir's testimony is very equivocal. For instance, on pages 50-52 of his deposition, he testifies that he can only say that as to carpal tunnel syndrome, the burns (including the right side) are a contributing factor, he cannot answer the question of whether "it's more than likely, or greater than 50% a contributing factor," and he cannot opine as the percentage which is diabetes, the burn, etc., and can only say that the burns are one factor among many. As to cubital tunnel on pages 55-57, he admits that it is "unlikely" that Claimant's left side burn itself caused or contributed to cubital tunnel syndrome, that the post-burn recovery process "could" have exacerbated his condition, and that Claimant could have "absolutely" developed cubital tunnel without the burn injury. Dr. Mir then states that he "suspects" ("surmises, speculates") that posturing was the cause, but does not know specifically; he goes on to say that he suspects the position was a contributing, exacerbating factor. However, he believes that diabetes and obesity are "major contributing factors" (Deposition of Dr. Mir in its entirety, including but not limited to pages 57-62 and 66-70). After this "multi-factorial" testimony, Dr. Mir reverses himself upon Claimant's counsel's questioning, stating that he stands by his written opinion based essentially upon the facts that (a) there is no pre-existing evidence of carpal or cubital tunnel in prior records, (b) no muscle wasting was observed until after Claimant was burned, and (c) he is shown a photo of Claimant "posturing." However, Dr. Mir states that posturing occurs during recovery when patients have pain/swelling/fibrosis, which I find would only apply to the right side for any extended period; Claimant's left hand pain ended relatively quickly, and it is difficult to see any residual scarring on Claimant's left hand. After Dr. Mir subsequently re-adopts his written causation opinion, he then re-adopts the answers he gave Defendants' counsel. Reviewing his deposition in its entirety--along with the very important treatment notes and the opinions of Drs. Fox and Rudisill--I find that Dr. Mir's causation opinion is persuasive and compelling as to right carpal tunnel syndrome only (Deposition of Dr. Mir, pages 65-75, 77-78, and 81-83).
- 51) I considered the fact that Claimant has bilateral muscle loss/wasting, primarily on the right side. However, Claimant has not worked in years, and his chronic diabetes/weight/need for insulin have not abated (Deposition of Dr. Mir, page 47; record in its entirety).

- 52) This decision is not to say that Claimant does not have left carpal tunnel syndrome. However, he does not meet his burden of proof, as at most his burn is but one causative factor. **I primarily rely on the treatment records for approximately one year after the date of the accident.** This is the most compelling evidence.
- 53) The undersigned sympathizes with Claimant in that the significance of his burns on the date of the accident was not--at least initially--fully appreciated/understood by Employer or by Claimant's co-workers; Claimant experienced a delay in treatment on the date of the accident while he was in pain and concerned about his diabetes and other medical conditions; he was finally sent to multiple providers only to wait for treatment until his mother and he drove to the Augusta Burn Center. This may or may not be the motivation of Claimant—who served Employer for 20 years--to pretend to the undersigned that he cannot essentially move his hands or fingers on either hand or at least without monumental effort.
- 54) For the reasons set forth herein, and also based on the record in its entirety, including the medical evidence and Exhibits submitted at the hearing, the deposition transcripts of Claimant and his physicians, the testimony of the hearing witnesses, the APA Submissions of the parties, the pictures in evidence, and the observations of Claimant by the Undersigned during the hearing, I find that Claimant's alleged left carpal tunnel syndrome and left cubital tunnel syndrome are not compensable.
- 55) For the reasons set forth herein, and also based on the record in its entirety, including the medical evidence and Exhibits submitted at the hearing, the deposition transcripts of Claimant and his physicians, the testimony of the hearing witnesses, the APA Submissions of the parties, the pictures in evidence, and the observations of Claimant by the Undersigned during the hearing, I find that Claimant's alleged right cubital tunnel syndrome is not compensable.
- 56) For the reasons set forth herein, and also based on the record in its entirety, including the medical evidence and Exhibits submitted at the hearing, the deposition transcripts of Claimant and his physicians, the testimony of the hearing witnesses, the APA Submissions of the parties, the pictures in evidence, and the observations of Claimant by the Undersigned during the hearing, I find that Claimant's right carpal tunnel syndrome is compensable.
- 57) Defendants are to provide Claimant with treatment for right carpal tunnel syndrome until he reaches maximum medical improvement. According to Drs. Hassan and Mir, a local hand surgeon is appropriate (Claimant's APA #1, page 71; Claimant's APA, page 209; Deposition of Dr. Mir, page 62).
- 58) Claimant's Z-plasty surgery may be performed by a qualified specialist in South Carolina. If no qualified South Carolina surgeon is willing to perform the procedure, Dr. Mir is hereby authorized to perform it (Deposition of Dr. Mir, pages 62-64).
- 59) Permanency is premature.
- 60) So that there is no confusion, and for purposes of an accurate record, the date of Dr. Mir's deposition is incorrectly noted on the front cover of the deposition transcript as "2014," and instead should be "2015." I base this finding on the last page of the deposition, as well as

on page 4, in which Dr. Mir is advised that the 2015 hearing before the undersigned is scheduled for "tomorrow."

The Single Commissioner made 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) Under § 42-1-160, § 42-15-60, and *Nawa v. Wackenhut*, Claimant's alleged left carpal tunnel syndrome and left cubital tunnel syndrome are not causally-related to the work accident of April 18, 2013.
- 3) Under § 42-1-160 and § 42-15-60, Claimant's alleged right cubital tunnel syndrome is not causally-related to the work accident of April 18, 2013.
- 4) Under § 42-1-160, § 42-15-60, and Reg. 67-609, Claimant's right carpal tunnel syndrome is causally-related to the work accident of April 18, 2013, and Claimant is entitled to medical treatment related to his right carpal tunnel syndrome, to be provided by a local (South Carolina) and qualified specialist designated by Defendants.
- 5) Under § 42-15-60 and Reg. 67-609, Claimant is entitled to ongoing medical treatment related to his burn injuries, to include a Z-plasty procedure, to be provided by a local (South Carolina) and qualified specialist designated by Defendants. If no qualified specialist in South Carolina is willing to perform the Z-plasty, Dr. Mir is authorized to perform the same.
- 6) Under § 42-15-60, permanency is premature.

On September 23, 2015, Claimant timely appealed the Single Commissioner's Decision and Order via filing of a Form 30, Request for Commission Review, asserting the following exceptions to the Single Commissioner's September 11, 2015 Decision and Order:

- 1) Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant is not entitled to carpal tunnel surgery and cubital tunnel surgery for his left hand and arm as ordered by the authorized treating physician at the Burn Center.
- 2) Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant is not entitled to cubital tunnel surgery for his right hand and arm as ordered by the authorized treating physician at the Burn Center.
- 3) Whether the Single Commissioner erred as a matter of fact and law in disregarding the expert opinion of the treating hand surgeon, Dr. Mir.

- 4) Whether the Single Commissioner erred as a matter of fact and law in admitting Dr. Rudisill's reports, questionnaires and opinions into evidence when the opinions were obtained in violation of Section 42-15-95 which requires mandatory exclusion of such evidence.
- 5) Whether the Single Commissioner erred as a matter of fact and law in making the conclusory finding that "I find that Dr. Rudisill's report is properly before me, and therefore, Claimant's objection to its inclusion is overruled," when the evidence conclusively showed Defendants' nurse case manager engaged in illegal ex parte communication with the doctor in violation of Sections 42-15-80 and 42-15-95.
- 6) Whether the Single Commissioner erred as a matter of fact and law in making arbitrary and capricious credibility findings based on "sit and squirm" jurisprudence.
- 7) Whether the Single Commissioner erred as a matter of fact and law in failing to require that Claimant's surgeries be performed at The Burn Center, as these doctors are his authorized treating physicians; the doctors are qualified to perform the surgeries; and Defendants have failed to authorize or designate an alternative surgeon to perform these surgeries.
- 8) Whether the Single Commissioner erred as a matter of fact and law in giving any weight to Dr. Rudisill's opinions as they lacked foundation and had been manipulated by the nurse case manager.
- 9) Whether the Single Commissioner erred as a matter of fact and law in misapplying *Nawa v. Wackenhut* in that the medical evidence, particularly the opinions of Dr. Mir, confirms that Claimant's bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome are causally related to the burn injuries, a finding the Commissioner herself makes wherein she states "he does not meet his burden of proof, as at most his burn is but one causative factor."
- 10) Whether the Single Commissioner erred as a matter of fact and law in attributing Claimant's bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome to pre-existing obesity and diabetes when such a finding is not supported by substantial evidence.
- 11) Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant's weakness and inability to remove his compression sleeve without the assistance of his mother *when asked to do so by defense counsel on cross-examination* was "poor acting" rather than a real life demonstration of the objective weakness due to muscle wasting caused by his burn injuries, per the opinion of Dr. Mir.

Oral arguments were heard by the undersigned Commissioners of the Appellate Panel on December 14, 2015. The Appellate Panel hereby fully affirms the September 11, 2015 Decision and Order of the Single Commissioner and makes the following Findings of Fact and Conclusions of Law.

APPELLATE PANEL FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, FIND THE FOLLOWING AS FACTS:

- 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 Kim E. Argo as Employee-Claimant and Flexible Technologies, Inc. as Employer and Liberty Insurance Corporation as Carrier, Defendants.
- 2) Claimant's average weekly wage is \$444.13, yielding a compensation rate of \$296.10.
- 3) Claimant sustained admitted liquid propane burn injuries to both hands and his right arm on April 18, 2013 (See Claimant's APA #1, pages 1-2; Defendants' APA #8, page 399).
- 4) Claimant alleges that the (a) burns and (b) "posturing" during his recovery from the burns resulted in bilateral carpal tunnel and cubital tunnel syndrome (Commission's file; Hearing Transcript, pages 10-13 and 42-43).
- 5) Claimant's back condition is unrelated to/pre-dates the accident in issue (Hearing Transcript, pages 35-36 and 65-67; Claimant's APA #1, pages 1 and 6; Claimant's APA #4, pages 154-158).
- 6) Claimant does not claim that his pre-existing diabetes was worsened or aggravated by the accident in issue. We base this finding on the record in its entirety.
- 7) Claimant does not claim that his left hand and/or arm were injured through overuse. We base this finding on the record in its entirety.
- 8) Claimant is right hand dominant (Hearing Transcript, page 34; Claimant's APA #1, pages 1 and 3; Defendants' APA #9, page 403).
- 9) Claimant is 53 years of age (Hearing Transcript, page 16).
- 10) According to his résumé, Claimant attended Erskine College for 2½ years, where he took a general liberal arts curriculum. Claimant then attended Piedmont Tech for another year, where he studied business, management, and computer programming. Claimant has

undergone training in inventory ticketing, inspection, and shipping (Claimant's APA, page 333; *See also* Hearing Transcript, pages 16-17).

- 11) Claimant's employment history includes work as a (a) bundler and (b) draw frame machine operator (Hearing Transcript, pages 17-18).
- 12) On the date of the accident, Claimant's job with Employer was material handler. This job required Claimant to drive a forklift, to carry materials weighing up to 70 lbs. for 10' distances, and to roll 300- to 400-lb. barrels into a pile (Hearing Transcript, page 19; Claimant's APA #1, page 1; Defendants' APA #10, page 421).
- 13) Although in and of itself dispositive of nothing, Claimant had worked for Employer for almost 20 years on the date of the accident, a factor which does weigh in his favor. However, Claimant's lack of credibility far exceeds and overrides his employment tenure. (Hearing Transcript, pages 38 and 78).
- 14) Based upon his demeanor and the tenor of his testimony at the hearing, Claimant appears to be disappointed and angry with Employer regarding Claimant's initial treatment (or lack thereof) on the date of the accident. After Claimant's hands and right arm were burned and blistering, his testimony--unrefuted at the hearing--was that he approached at least 4 different individuals to take him to the hospital but was denied or put off, even though Claimant was in pain and emphasized the matter of his diabetic and hypertensive conditions. Ultimately, Claimant was taken 20 miles away to a doctor in Greenwood (where Claimant waited 45 minutes for treatment), which doctor then sent Claimant to a wound center where Claimant waited another 45 minutes. By the time the wound center told the Claimant to go to the Burn Center (when Claimant's supervisor offered to drive Claimant), Claimant decided, "No. The way [Employer/co-workers] have been treating me today." that Claimant would rather go home and instead let his mother take him to the Burn Center (Hearing Transcript, pages 22-24; observations of the Single Commissioner).
- 15) Both prior to and after the date of the accident, Claimant is medically documented as morbidly obese; on the date of the accident, Claimant weighed 316 lbs., and is 5'7" - 5'9" in height. His BMI is recorded between 47.2 and 50 (Claimant's APA #1, pages 13, 24, and 77; Claimant's APA #4, pages 138, 142, 144-145, 148, and 150-152; Claimant's APA, page 333; Defendants' APA #5, page 346; Defendants' APA #6, page 352; Defendants' APA #7, page 373; Defendants' APA #11, page 452; Deposition of Dr. Mir, pages 48-49).
- 16) Claimant has an 18-year history of diabetes (a) for which he takes several different medications (the "maximal oral medication," including prior to the date of the accident as well), and (b) which is noted to be often uncontrolled. With an elevated hemoglobin A1c of 11, and blood sugar testing in the 300's on the date of the accident, Claimant's diabetes--per Dr. Mir's description--is "bad" (Hearing Transcript, pages 29 and 38-40; Deposition of Dr. Mir, page 49; Claimant's APA #1, pages 1, 7, and 80; Claimant's APA #4, pages 129, 131, 139, 142, 150, and 161; Defendants' APA #5, page 346; Defendants' APA #6, page 351; Defendants' APA #9, page 403; *See also* Defendants' APA #11, page 450, dated 2009--pre-accident--when it is noted that Claimant's blood sugar is "greater than 200").
- 17) Lab studies on April 18, 2014 revealed blood glucose levels of 306 and 394 (APA, pages 7, 367). Glucose levels on April 19, 2014, were recorded as 317, 331, 324, 330, 219, 306, and

225 (APA, pages 365-366). Glucose levels on April 20, 2014, were recorded as 262, 289, and 230 (APA, pages 365-366).

- 18) Elevated glucose metabolizes into inositol monophosphate which causes swelling of the nerves and can exacerbate the carpal and cubital tunnels. As far as carpal tunnel causation is concerned, premedical conditions are "very high" on Dr. Mir's list, and associated trauma or injury are factors as well (Deposition of Dr. Mir, pages 10-16 and 54).
- 19) Six months after the date of the accident, Claimant weighed 337 lbs. Claimant's family physician "STRONGLY recommended that we start [Claimant] on insulin—very resistant" [emphasis supplied]. Claimant was referred to "DM teaching" and told to diet and exercise. We give this evidence great weight in my decision (Claimant's APA #4, pages 152-153).
- 20) The year after the date of the accident, Claimant had an appointment with a diabetes specialist, as his diabetes condition was not adequately controlled even though he was on the maximum dose of oral medications. According to medical evidence, Claimant was reluctant to take insulin, and did not go to the appointment (Claimant's APA #1, page 77; Claimant's APA #4, page 161).
- 21) Claimant admits that his burns did not reach his wrist on the left hand; nor did the burns extend anywhere past the wrist on the left hand. (Hearing Transcript, page 42) Claimant further testified that the burns on his left hand were primarily located on the backside of the left hand, not the underside. (*Id.*)
- 22) Claimant testified his burns on the right arm were on his hand, wrist, and up his forearm to the level approximately halfway between his elbow and wrist. (Hearing Transcript, page 43) Claimant admits that the burns did not reach the level of his right elbow. (*Id.*)
- 23) As to the left hand, medical records from the day of/day after the accident note "small blisters" on the dorsal aspect of Claimant's left index and left middle fingers, and the photos taken shortly after the accident show burns to the dorsal side of the hand, thumb, index finger middle finger, and ring finger. Claimant's burn did not extend to his wrist or beyond (Claimant's APA #1, pages 2-3; Claimant's Exhibit #1; Hearing Transcript, pages 42-43).
- 24) As to the left hand, Claimant underwent surgery 2 days later (April 20, 2013), involving debridement of the devitalized tissue and placement of temporary skin substitute or allograft on Claimant's left hand, thumb, index, middle, and ring fingers (Claimant's APA #1, pages 9-10; Defendants' APA #7, pages 358-360; Hearing Transcript, pages 30 and 44).
- 25) Claimant testified his left hand burns were healed by July of 2013, but contends that his alleged trouble with his left wrist area did not begin until the first part of 2014. This discrepancy is not persuasive (Hearing Transcript, pages 45-46)
- 26) As to the left hand, Dr. Mir states that Claimant's left hand burn was a "mild" or "minor" burn injury that "healed very quickly." After the initial surgery/procedure, Claimant required no further surgery/procedure for his left hand/finger burns. **Dr. Mir states Claimant should not have had functional limitations on the left side after a few**

months from the accident (Deposition of Dr. Mir, pages 41 and 53-54; medical evidence in its entirety; Hearing Transcript, pages 30-31 and 44).

- 27) As to the left hand, the Single Commissioner indicated she could barely see where the burns had occurred. At a distance of approximately 18"-24" (the Single Commissioner walked over to Claimant, and leaned over to observe his hands), the Single Commissioner only saw some pinker (not red) areas on the top of the 2nd (middle) finger and the index finger (where the blisters apparently were)—as opposed to the rest of the fingers/hand where the Single Commissioner saw nothing. Even Claimant admits that his left hand scarring is "minimal." **Claimant did not describe or point to any other scarring on his left hand or fingers other than the small, pinker areas the Single Commissioner described at the hearing** and in her Decision and Order dated September 11, 2015 (Hearing Transcript, pages 47-48; observations of the Single Commissioner). Claimant was not present for the Appellate Panel Hearing.
- 28) In fact, Claimant was asked whether he had any scarring on his left hand, and he first replied, "No," and he then stated, "It would be minimal." (Hearing Transcript, pages 47-48)
- 29) At the hearing, Claimant laboriously demonstrated as if he could barely move his left hand and fingers, and then only very slowly with the greatest of difficulty. Dr. Mir states it would be "unusual" for someone with a mild burn injury (as Claimant's left hand burn is medically described) to be unable to operate his hand. We do not find impressive Claimant's purported inability at the hearing to remove his compression sleeve with his left hand, as the "demonstration" was more suited for the theater. Needing assistance and pretending to need assistance are two entirely different things (observations of the Single Commissioner; Hearing Transcript, pages 64-65; Deposition of Dr. Mir, page 45).
- 30) As to the left hand, by May 15, 2013—a little less than one month after the date of the accident—Claimant's left hand is no longer mentioned in the sequential notes of the authorized treating physician (Dr. Hassan) in terms of complaints or treatment until approximately one year later. No observation of edema, difficulty with range of motion, pain, etc. is documented or noted; Claimant did not make any complaints regarding his left hand during one year of sequential treatment with Dr. Hassan. Given the nature of Claimant's left hand burn (and his quick recovery therefrom), it is difficult to ignore these records; even Claimant says he can't "recall" whether or not he complained about any left hand problems to his physicians (medical records of Dr. Hassan in their entirety, including but not limited to Claimant's APA #1 in its entirety, including but not limited to pages 21, 22, 27, 41, 44, 48, 51, 59, 62, 65, and 68; Hearing Transcript, pages 44-47 and 51; Deposition of Dr. Mir, pages 38-39).
- 31) As to the left hand, we would similarly have to ignore the records of multiple physical/occupational therapists from two separate therapy providers. We could readily believe that if only one physical therapist had treated Claimant, that particular therapist may have failed to document left hand problems; in fact, Claimant denied problems other than his right wrist/hand after May/June 2013 throughout his physical/occupational therapy for approximately one year—until April 2014. However, even assuming that one entire therapy provider (with multiple therapists) failed to document a left hand problem, complaint, or concern, we are confronted with the

sequential treatment notes from multiple therapists from another therapy provider, whose sequential notes are likewise devoid (for months) of any complaint of left hand pain, swelling, or other difficulty. Further, these physical/occupational therapists frequently document Claimant's own "subjective/pain" complaints and his "primary concerns/goals" (e.g., "regain full range of motion of his *right* hand and wrist" [emphasis added]). We base this finding on the physical/occupational therapy records in their entirety, including but not limited to Defendants' APA #7, page 377; Defendants' APA #10, pages 413-414, 418-419, 421, 427-428, 432-433, and 435-436; Claimant's #2, pages 83-84, 86, 88, 90-91, 93-95, and 124).

- 32) As to the left hand, Dr. Mir admits that Claimant's carpal tunnel syndrome could "absolutely" be caused by diabetes and obesity alone. He states that the burn "could be" a "contributing" factor, but "can't say more than likely" (Deposition of Dr. Mir, pages 42-43).
- 33) As to the right hand/wrist/arm, Claimant's burns were much more significant than the ones on his left hand. Claimant's right hand/arm had "severe blistering," "full thickness" burns, and the burns were circumferential. Claimant's recovery for his right hand/wrist has not been uneventful or brief. For instance, in February 2014 (10 months after the date of the accident), Claimant had right hand/wrist edema in the fingers and the palm. His scarring is noted to be "pulling" (i.e., "flexion contracture of the medial volar aspect of the right wrist"), such that Claimant underwent a scar contracture release procedure (medical evidence in its entirety, including but not limited to Claimant's APA #1, pages 21, 24, and 57-58; Defendants' APA #5, page 346; Defendants' APA #7, pages 391 and 394-397; Hearing Transcript, pages 43 and 49; Deposition of Dr. Mir, pages 21 and 43-44).
- 34) As to the right hand/wrist/arm, Claimant underwent 6 total surgeries, and as of the date of the hearing still requires another: two days after the accident, Claimant underwent debridement and temporary allograft surgery; one month after the accident, Claimant underwent an auto-grafting procedure to his right forearm using a graft from his left thigh (May 2013). Claimant then underwent three CO2 laser surgeries (August 2013, October 2013, and January 2014), all requiring general anesthesia, for Claimant's "hypertrophic," "hypervascular," "restrictive," and "painful" scars on the right forearm and palm. The sixth surgery was the February 2014 flexion contracture release surgery referenced in the preceding finding of fact (Claimant's APA #1, pages 9-10, 19-20, 46, and 57-58; Defendants' APA #7, pages 358-360, 378-381, and 387; Hearing Transcript, pages 30-31).
- 35) Claimant's right arm burn did not extend to the elbow (medical evidence in its entirety; Hearing Transcript, pages 42-43; Claimant's Exhibit #1).
- 36) On the right hand/arm, numerous medical/physical therapy records document Claimant's fibrosis, edema (sometimes minimal, but sometimes described as "moderate"/"2-plus" and "very edematous"), stiffness, banding/difficulty with range of motion, cold sensitivity, and numbness throughout the course of his recovery. Claimant's edema has waxed and waned. It must be reiterated here that Claimant's left hand, by contrast, had healed and was asymptomatic (medical evidence in its entirety including but not limited to Defendants' APA #10, pages 413, 418, 421, 425, 427-428, 433, 440-443, and 446; Defendants' APA #7, page 375; Claimant's APA #1, pages 3, 24, 27, 29, 32, 41, 43-44, 48, 51, 54-56, 59, 62,

68, and 71; Claimant's APA #2, pages 83-84, 86, 88, 90-91, 93-95, 98, 102, 108-114, 117-118, and 120).

- 37) Claimant's nerve conduction studies do not show that Claimant suffers from cubital tunnel syndrome. Nor did Dr. Rudisill's exam reveal cubital tunnel syndrome. Dr. Mir diagnosed bilateral cubital tunnel (based upon his examination), and states that NCVs are *40% false negative*. In other words, more than 50% of the time, the negative result is the true (accurate) result. However, because of the backdrop of (a) a relatively mild left hand burn injury (in that it healed quickly with no documented sequelae, and Dr. Mir terms the left hand injury as "mild" and "minor"); (b) a claimant who presents to the undersigned as **though he cannot (or can barely) move his hand/fingers**, calling into question the legitimacy of his testimony generally; (c) the fact that there are no complaints to the left hand for almost one year; (d) Claimant's escalating weight and uncontrolled and chronic diabetes (such that Claimant has been encouraged to consider insulin and has been referred to an endocrinologist, an appointment, according to Dr. Mir's notes, Claimant did not keep); and (e) the fact that there was no "posturing" documented until Dr. Mir mentioned it as a possibility over one year later, we give greater weight to the opinions of Dr. Rudisill and Dr. Fox as to cubital tunnel. Further, after diluting his own written causation opinion (upon questioning by Defendants' counsel), Dr. Mir (upon Claimant's counsel's questioning) reiterates the viability of his written opinion; however, Dr. Mir then reverts to the answers he gave Defendants' counsel. Therefore, we give the greatest weight to the treatment notes prior to Dr. Mir's treatment—which began more than one year after the date of the accident (Defendants' APA #8; Defendants' APA #9; Claimant's APA #1, pages 74 and 77; Hearing Transcript, pages 62 and 67; Deposition of Dr. Mir, e.g., pages 41, 53-54, and 66-76).
- 38) Claimant's nerve conduction studies show bilateral carpal tunnel, right worse than left (Defendants' APA #8, page 399; Claimant's APA #1, page 77; Deposition of Dr. Mir, pages 38, 47-48, 66, and 79).
- 39) As Claimant only has a preponderance burden to meet—not a clear and convincing standard—we find that he has presented sufficient evidence to meet his burden with regard to right sided carpal tunnel syndrome. We base this finding primarily on the **treatment records** documenting the severity and circumferential nature of Claimant's right arm burns as to his wrist and hand, his protracted treatment/recovery (including multiple surgeries), Claimant's consistent complaints including but not limited to objectively documented contracture, fibrosis, and swelling, as well as pain and other difficulties, which all dovetail with Dr. Mir's testimony that the periodic swelling and fibrosis Claimant has experienced further restricts the tunnels. **Dr. Rudisill admits that Claimant's carpal tunnel syndrome could be caused by Claimant's burns if he had significant hand swelling; Dr. Rudisill has no opinion as to whether the swelling was significant enough, as Dr. Rudisill did not review all the records** (Defendants' APA #9; Defendants' APA #9; Deposition of Dr. Mir, pages 17-18, 21, 44, 47, and 49-50; Claimant's APA #3, page 126).
- 40) As the burn/scarring on Claimant's left hand did not and does not extend to or reach his wrist, we do not find Claimant's left side carpal tunnel syndrome compensable. At most, the left hand burn was a *contributing* cause, but not the predominant or even an equal cause

as compared with Claimant's chronic diabetes, morbid obesity, and elevated A1c levels (Dr. Mir: "I could say that [the left hand burn] could be a contributing factor, but.....can't say more than likely"); further, Dr. Mir states that Claimant's left carpal tunnel syndrome could "absolutely" be caused by Claimant's diabetes and obesity. Because of all the evidence before us, we find that *even if* the burn was in fact a contributing factor, *Nawa* applies, such that the left sided carpal tunnel syndrome is not compensable. We find that there was no posturing until the possibility of posturing was mentioned to Claimant by Dr. Mir more than one year after the accident—well after Claimant's left hand had healed with no sequelae (Deposition of Dr. Mir, pages 41-43, 45, and 48-53).

- 41) During cross-examination, Claimant testified that when he first saw Dr. Mir, he believed the doctor mentioned to Claimant that he suspected Claimant's condition occurred as a result of "posturing" while Claimant was recovering. Claimant answered, "Yes," when asked, "And [Dr. Mir] showed you what posturing was?" Claimant was asked if the way he was sitting at his deposition and at the hearing was "posturing." He testified he did not know if it was posturing. (Hearing Transcript, pages 61-62)
- 42) Although it would be optimal in a workers' compensation case for any physician who renders an opinion (such as Dr. Rudisill) to review all the records instead of a portion of them (or at least to identify exactly which records were considered), **Dr. Mir admits that he also did not review prior records—including months of treatment and physical/occupational therapy records--and** was simply asked to see Claimant for the first time more than 1 year after the date of the accident, and to formulate an opinion based upon the examination. While many prior records were brought to Dr. Mir's attention at his deposition, we find that Dr. Mir has not seen the entire picture that a person reviewing the entire record would see; nor did Dr. Mir observe Claimant present himself as though he cannot move his left hand. Although Dr. Rudisill only evaluated Claimant once, Dr. Mir has evaluated/treated Claimant only twice, and was "not present throughout [Claimant's] whole burn case." As far as surgical procedures are concerned, Dr. Mir admits "I'm not aware of what he had done and I don't remember what he had done." Dr. Mir was simply asked to "take a look at this patient" (Claimant's APA #1, pages 68 and 74-80; Deposition of Dr. Mir, pages 4, 22, 24, 33, and 45-46).
- 43) We find that Dr. Rudisill's report is properly before us, and therefore, Claimant's objection as to its inclusion in the record is overruled. However, even discounting Dr. Rudisill's causation opinion, which was based in part on Dr. Rudisill's review of some records, we still find compelling his clinical examination showing a lack of effort; Dr. Rudisill's clinical impression dovetails with the "demonstration" the undersigned observed at the hearing where Claimant acted as if he can move neither hand; and when asked, only with the very greatest of effort.
- 44) In addition to his presentation at the hearing, Claimant further damaged his credibility when he testified, for reasons only known to Claimant, that Dr. Rudisill did not touch him during Dr. Rudisill's exam. Dr. Rudisill's records, including but not limited to the documentation of Tinel's and Phalen's testing, refute Claimant's testimony (Defendants' APA #9; Hearing Transcript, pages 37-38).

- 45) Consistent with Dr. Rudisill's notation of a lack of effort by Claimant, Claimant's hand grip strength testing during the course of his treatment was quite inconsistent. Claimant's grip strength was noted at the following levels during his treatment:
- June 18, 2013: right grip strength was 45 pounds and left grip strength was 85 pounds (APA, pages 412-413);
 - August 21, 2013: right grip strength was 25-30 pounds (a 15-20 pound decrease in two months)(APA, page 382);
 - August 23, 2013: right grip strength was 12 pounds (approx. 50% decrease in two days) and left grip strength was 27 pounds (a 58 pound decrease in just over two months)(APA, page 419);
 - October 30, 2013: right grip strength was 10 pounds (down two pounds) and left grip strength was 16 pounds (down 11 pounds)(APA, pages 420-425);
 - February 19, 2014: right grip strength was 20 pounds (twice what it was in October) and left grip strength was 70 pounds (a 54 pound increase since October)(APA, page 390);
 - July 7, 2014: right hand grip strength was two pounds (APA, p. 442).

Claimant was asked to explain the inconsistencies in his grip strength testing, and he stated, "I don't know. All I can tell you is it's been progressively getting worse since the accident." (Hearing Transcript pages 52-56) Claimant was then asked to explain the sudden increase in his grip strength testing in February of 2014, and he testified the physical therapists "most certainly" got the testing wrong. (Hearing Transcript, p. 56).

- 46) Also consistent with Dr. Rudisill's notation of a lack of effort by Claimant, occupational/physical therapists noted the following:
- November 26, 2013: "Pt requires encouragement to perform at maximum level." (APA, page 426)
 - June 2, 2014: "Pt reports difficulty performing driving of forklift at work but he is able to drive his personal automobile." (APA, page 433)
 - July 23, 2014: "Therapist observed Pt demonstrating less interaction and eye contact with others. Pt unable to answer question concerning medical condition and procedures on this date. ... Results of ROM measurements were questionable 2° inconsistent [with] varied responses." (APA, page 448)
- 47) We considered Dr. Mir's written causation opinion--that notwithstanding Claimant's pre-existing chronic diabetes and morbid obesity, Claimant developed further nerve compression because of his injury, swelling, trauma, and the fibrosis to the surrounding structures--persuasive as only applied to right carpal tunnel syndrome. We base this finding on our review of the complete treatment records pre-dating Dr. Mir's first record and Dr. Mir's deposition testimony (Claimant's APA #1, page 80).

- 48) Claimant's APA, Exhibit B is not evidence as to Claimant's particular case, but was written by an authorized treating physician (Dr. Hassan), who states in the article that the most common cause of carpal tunnel syndrome is a congenital predisposition--the carpal tunnel is simply narrower in some people than in others. However, injury causing fluid retention (edema) and fibrosis can result in carpal tunnel syndrome. Of those in the study, 11% were from chemical burns (57% were thermal and 32% electrical). Most carpal tunnel syndrome cases developed within 5 months of the burn injury, and then because of excessive edema in circumferential burns. This article contains nothing about cubital tunnel.
- 49) We considered Claimant's APA, Exhibit C (Wayne State School of medicine), which states that nerve compression usually occurs from increased pressure within the carpal tunnel; edema can lead to compression neuropathy. However, even discounting or disregarding this article, Dr. Mir says virtually the same thing in his deposition.
- 50) Dr. Mir's testimony is very equivocal. For instance, on pages 50-52 of his deposition, he testifies that he can only say that as to carpal tunnel syndrome, the burns (including the right side) are a contributing factor, he cannot answer the question of whether "it's more than likely, or greater than 50% a contributing factor." and he cannot opine as the percentage which is diabetes, the burn, etc., and can only say that the burns are one factor among many. As to cubital tunnel on pages 55-57, he admits that it is "unlikely" that Claimant's left side burn itself caused or contributed to cubital tunnel syndrome, that the post-burn recovery process "could" have exacerbated his condition, and that Claimant could have "absolutely" developed cubital tunnel without the burn injury. Dr. Mir then states that he "suspects" ("surmises, speculates") that posturing was the cause, but does not know specifically; he goes on to say that he suspects the position was a contributing, exacerbating factor. However, he believes that diabetes and obesity are "major contributing factors" (Deposition of Dr. Mir in its entirety, including but not limited to pages 57-62 and 66-70). After this "multi-factorial" testimony, Dr. Mir reverses himself upon Claimant's counsel's questioning, stating that he stands by his written opinion based essentially upon the facts that (a) there is no pre-existing evidence of carpal or cubital tunnel in prior records, (b) no muscle wasting was observed until after Claimant was burned, and (c) he is shown a photo of Claimant "posturing." However, Dr. Mir states that posturing occurs during recovery when patients have pain/swelling/fibrosis, which we find would only apply to the right side for any extended period; Claimant's left hand pain ended relatively quickly, and it is difficult to see any residual scarring on Claimant's left hand. After Dr. Mir subsequently re-adopts his written causation opinion, he then re-adopts the answers he gave Defendants' counsel. Reviewing his deposition in its entirety--along with the very important treatment notes and the opinions of Drs. Fox and Rudisill--we find that Dr. Mir's causation opinion is persuasive and compelling as to right carpal tunnel syndrome only (Deposition of Dr. Mir, pages 65-75, 77-78, and 81-83).
- 51) We considered the fact that Claimant has bilateral muscle loss/wasting, primarily on the right side. However, Claimant has not worked in years, and his chronic diabetes/weight/need for insulin have not abated (Deposition of Dr. Mir, page 47; record in its entirety).

- 52) This decision is not to say that Claimant does not have left carpal tunnel syndrome. However, he does not meet his burden of proof, as at most his burn is but one causative factor. **We primarily rely on the treatment records for approximately one year after the date of the accident.** This is the most compelling evidence.
- 53) The undersigned Commissioners sympathize with Claimant in that the significance of his burns on the date of the accident was not--at least initially--fully appreciated/understood by Employer or by Claimant's co-workers; Claimant experienced a delay in treatment on the date of the accident while he was in pain and concerned about his diabetes and other medical conditions; he was finally sent to multiple providers only to wait for treatment until his mother and he drove to the Augusta Burn Center. This may or may not be the motivation of Claimant—who served Employer for 20 years--to pretend that he cannot essentially move his hands or fingers on either hand or at least without monumental effort.
- 54) For the reasons set forth herein, and also based on the record in its entirety, including the medical evidence and Exhibits submitted at the hearing, the deposition transcripts of Claimant and his physicians, the testimony of the hearing witnesses, the APA Submissions of the parties, and the pictures in evidence, we find that Claimant's alleged left carpal tunnel syndrome and left cubital tunnel syndrome are not compensable.
- 55) For the reasons set forth herein, and also based on the record in its entirety, including the medical evidence and Exhibits submitted at the hearing, the deposition transcripts of Claimant and his physicians, the testimony of the hearing witnesses, the APA Submissions of the parties, and the pictures in evidence, we find that Claimant's alleged right cubital tunnel syndrome is not compensable.
- 56) For the reasons set forth herein, and also based on the record in its entirety, including the medical evidence and Exhibits submitted at the hearing, the deposition transcripts of Claimant and his physicians, the testimony of the hearing witnesses, the APA Submissions of the parties, the pictures in evidence, we find that Claimant's right carpal tunnel syndrome is compensable.
- 57) Defendants are to provide Claimant with treatment for right carpal tunnel syndrome until he reaches maximum medical improvement. According to Drs. Hassan and Mir, a local hand surgeon is appropriate (Claimant's APA #1, page 71; Claimant's APA, page 209; Deposition of Dr. Mir, page 62).
- 58) Claimant's Z-plasty surgery may be performed by a qualified specialist in South Carolina. If no qualified South Carolina surgeon is willing to perform the procedure, Dr. Mir is hereby authorized to perform it (Deposition of Dr. Mir, pages 62-64).
- 59) Permanency is premature.
- 60) So that there is no confusion, and for purposes of an accurate record, the date of Dr. Mir's deposition is incorrectly noted on the front cover of the deposition transcript as "2014," and instead should be "2015." We base this finding on the last page of the deposition, as well as on page 4, in which Dr. Mir is advised that the 2015 hearing before the undersigned is scheduled for "tomorrow."

APPELLATE PANEL CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws,

WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS 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) Under § 42-1-160, § 42-15-60, and *Nawa v. Wackenhut*, Claimant's alleged left carpal tunnel syndrome and left cubital tunnel syndrome are not causally-related to the work accident of April 18, 2013.
- 3) Under § 42-1-160 and § 42-15-60, Claimant's alleged right cubital tunnel syndrome is not causally-related to the work accident of April 18, 2013.
- 4) Under § 42-1-160, § 42-15-60, and Reg. 67-609, Claimant's right carpal tunnel syndrome is causally-related to the work accident of April 18, 2013, and Claimant is entitled to medical treatment related to his right carpal tunnel syndrome, to be provided by a local (South Carolina) and qualified specialist designated by Defendants.
- 5) Under § 42-15-60 and Reg. 67-609, Claimant is entitled to ongoing medical treatment related to his burn injuries, to include a Z-plasty procedure, to be provided by a local (South Carolina) and qualified specialist designated by Defendants. If no qualified specialist in South Carolina is willing to perform the Z-plasty, Dr. Mir is authorized to perform the same.
- 6) Under § 42-15-60, permanency is premature.

APPELLATE PANEL ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that Claimant's alleged left carpal tunnel and left cubital tunnel syndrome are not causally-related to the work accident of April 18, 2013. Compensability of these alleged conditions is denied.

IT IS FURTHER ORDERED that Claimant's alleged right cubital tunnel syndrome is not causally-related to the work accident of April 18, 2013. Compensability of this alleged condition is denied.

IT IS FURTHER ORDERED that Claimant's right carpal tunnel syndrome is causally-related to the work accident of April 18, 2013.


IT IS FURTHER ORDERED that Claimant is entitled to medical treatment related to his right carpal tunnel syndrome, to be provided by a local (South Carolina) and qualified specialist designated by Defendants, and Claimant is entitled to ongoing medical treatment related to his burn injuries, to include a Z-plasty procedure, to be provided by a local (South Carolina) and qualified specialist designated by Defendants. If no qualified specialist in South Carolina is willing to perform the Z-plasty, Dr. Mir is authorized to perform the same.

No hearing costs are assessed in this instance.

THE DECISION AND ORDER OF THE SINGLE COMMISSIONER DATED SEPTEMBER 11, 2015 IS HEREBY AFFIRMED IN TOTAL.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Aisha G. Taylor, Commissioner



F. Scott Beck, Commissioner



Avery B. Wilkerson, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on May 6, 2016