BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H005060

STANLEY R. CHEATEM,
EMPLOYEE **CLAIMANT**

HUSQVARNA OUTDOOR PRODUCTS, INC.,
EMPLOYER **RESPONDENT**

SAFETY NAT'L CASUALTY CORP./
CORVEL ENTERPRISE COMP, INC.,
INSURANCE CARRIER/TPA **RESPONDENT**

OPINION AND ORDER FILED JULY 12, 2023

Hearing conducted before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, on Thursday, April 13, 2023, in Hope, Hempstead County, Arkansas.

The claimant was represented by the Honorable Malcolm A. Simmons, Simmons Law Firm, Little Rock, Pulaski County, Arkansas.

The respondents were represented by the Honorable Edward W. McCorkle, McMillan, McCorkle & Curry, LLP, Arkadelphia, Clark County, Arkansas.

INTRODUCTION

In the prehearing order filed March 1, 2023, the parties agreed to the following stipulations, which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.

2. The employer/employee/carrier-TPA relationship existed at all relevant times including December 19, 2019, when the claimant alleges he sustained a gradual onset work-related injury to his right due to the alleged rapid-repetitive nature of his job duties.

3. The claimant's average weekly wage (AWW) was $460.00, which is sufficient to entitle him to weekly compensation rates of $370.00 for temporary total disability (TTD), and $230.00 for permanent partial disability (PPD) benefits.

4 The respondents have controverted this claim in its entirety.

5. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 7-8). At the hearing the parties also agreed to stipulate that the respondents' private investigator witnesses would testify consistent with the reports the respondents introduced into evidence, and claimant's counsel advised he did want to to cross-examine these particular witnesses. (T. 67-68; 81-82).

Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the claimant sustained a gradual onset compensable injury within the meaning of the Arkansas' Workers' compensation Act (the Act) to his right wrist on December 19, 2019.

2. If the claimant's alleged injury is deemed compensable, the extent to which he is entitled to medical and indemnity benefits.

3. Whether the claimant's attorney is entitled to a controverted fee on these facts. The parties specifically reserve any and all other issues for future litigation and/or determination.

4. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Comms'n. Ex. 1 at 2; T. 7-8).

The claimant contends that on or about December 19, 2019, he was relocated to a new position, line and job that he wasn't used to performing. His right wrist had been irritated for a few weeks before he was moved to the new job, but nothing unusual for the type of work he performed. The claimant contends the newly assigned position caused him to use his right wrist in a more demanding way that really ignited the pain, causing him to request and seek

medical treatment. The plant nurse, Yvonne Moorland, wrapped and rubbed the claimant's right wrist. (Comms'n Ex. 1 at 2-3; T. 82-83; Claimant's Post-Hearing Brief).

The respondents contend the claimant cannot meet his burden of proof pursuant to the Act in demonstrating he sustained a gradual onset injury that culminated in disability as of December 19, 2019. The respondents contend the claimant did not injure his right wrist within the course and scope of his employment and, therefore, he did not sustain a compensable gradual onset injury within the Act's meaning. The respondents contend the relevant medical reports indicate the claimant already had a scapholunate advanced collapse of his right wrist as well as osteoarthritis of his right wrist which are non-compensable conditions/injuries. (Comms'n Ex. 1 at 3; T. 83-86; Respondents' Post-Hearing Brief).The record herein consists of the hearing transcript and any and all exhibits contained therein and/or attached thereto, as well as the parties' blue-backed post-hearing briefs.

STATEMENT OF THE CASE

The claimant, Mr. Stanley R. Cheathem (the claimant), is now 52 years old. He began working at Husqvarna Outdoor Products (Husqvarna) on October 17, 2016, working on an assembly line making small engines, and was assigned to Line 5 on the carousel in the assembly department. His last day working at Husqvarna was July 14, 2020. Sometime around the end of 2017 or the beginning of 2018 the claimant was reassigned to a new job on Line 3, which he testified "was a lot more strenuous" as it required him to torque flywheels and to place the modules on the prouduct units. The claimant testified concerning the details of these job duties at the hearing. The record is devoid of any evidence in rebuttal of the claimant's testimony concerning his job duties. (T. 13-18; 62-66).

According to the hearing record the claimant sustained a work-related injury to his left hand – specifically, his left thumb, which was "locking" and hurting – in July 2018. The medical records from this time period reveal the claimant made no complaints of right wrist pain. Orthopedic surgeon Dr. Brian Norton of Speciality Orthopaedics diagnosed the claimant with "stenosing tenosynovitis" of his left thumb, which Dr. Norton opined was work-related. (Claimant's Exhibit 2 at 15; 11-15). Dr. Norton performed an A1 pulley release to correct this condition. The respondents accepted this left hand/thumb injury as compensable, and paid both medical and indemnity benefits. The claimant testified this 2018 compensable injury to his left thumb "was resolved" as of the date of the subject hearing date. (T. 19; Responds.' Brief at 1).

In January, 2020, the claimant first signed a Form AR-N alleging a right wrist injury. On July 3, 2020, he filed a second Form AR-N with the Commission alleging he had injured his "Right wrist" on "12-12-2019", which he attributed to the rapid and repetitive nature of the job duties he was performing at that time, described in detail in his hearing testimony. (CX1 at 1-2; T. 13-18; 66; 62-66). The record reveals the claimant did complain of right wrist pain to the Husqvarna nurse at various times between January 23, 2020 through February 6, 2020, and he received first aid. (Respondents' Exhibit 2 at 1). The claimant testified he visited the nurses's station some nine (9) times between January 8, 2020 through July 14, 2020, and he said, "one of these was I was [sic] sent there unnecessarily to be treated." (T. 29) (Bracketed material added).

The claimant continued to work at Husqvarna until July 14, 2020, when Husqvarna required him to stop working until he received a medical release stating he could return to work. (T. 29; RX3). Thereafter, the claimant did not ever return to work at Husqvarna.

On October 9, 2020, the claimant applied for unemployment benefits. On the unemployment benefits application form he represented subject to the applicable penalties of making false statements that he was available immediately for full-time work that he had no disabilities that would prevent him from performing his normal job duties. (RX3; T. 44-45).

On October 14, 2020 – some three (3) months after he last worked at Husqvarna – the did claimant did receive a release to return to work from an Advanced Practice Registered Nurse (APRN) at Cabun Rural Health Services. The release stated he could, "return to work on 10/15/2020 with the following restrictions: no use of hand held power tools with his right hand, no lifting of 5 pounds or more with the right hand, and must wear brace/splint with any activity." (RX2 at 2).

The same day, October 14, 2020, the claimant sought medical attention for his right wrist pain at the Hope Medical Center. At that time he was diagnosed with chronic pain of his right wrist; osteoarthritis of his right wrist, "of an unspecified type", and tendonitis of is right wrist. (RX2 at 4; 3-5). On October 15, 2020, the claimant reported back to the Husqvarna nurse's station and presented the release and work restriction note to the licensed practical nurse (LPN) on duty, Ms. Autumn Murillo; however, because of the work restrictions he did not return to work, and left the premises. (RX2 at 6).

Relevant medical records from October 28, 2020 through September 1, 2021 – particularly those of orthopedic surgeons Drs. Brian Norton of Arkansas Speciality Orthopaedics, and G. Thomas Frazier of the University of Arkansas for Medical Sciences (UAMS) – repeatedly note the claimant's complaints of "chronic wrist pain", as well as his "unspecified osteoarthritis type", and an injury to his right scapholunate ligament "with no instability." (*See, e.g.,* RX2 at 8; 7-45). There exists no medical opinion in the record stated

within a reasonable degree of medical certainty these conditions were caused by the claimant's work duties at Husqvarna. The UAMS medical records of Dr. Lori George reveal the claimant has hypertension, and Type 2 diabetes mellitus with hypoglycemia but he is not insulin dependent. (RX2 at 48-68).

In a clinic note of February 5, 2021, the claimant told his medical provider at Hope Family Practice Center that his right wrist pain was, "…intermittent and only becomes bothersome at night, first thing in the morning, or when he is trying to perform twisting and gripping manuevers with his right hand/wrist." (RX2 at 8). The claimant testified he did not want to undergo the wrist fusion surgery to repair his right wrist scapholunate dissociation condition his treating orthopedic surgeon has recommended to correct the right wrist deformity, and that he has no outstanding medical bills at this time because he has health insurance. (T. 64-65).

The claimant further testified his current self-employment activities include some minimal barber/hair-cutting (in the past he attend and graduate from cosmetology school), raising and selling pit bull dogs, and some Gospel preaching. (T. 44-61). The claimant's testimony in this regard is consistent with the respondents' private investigators' eyewitness reports, and other evidence of record. (T. 46-61; RX1 at 12; RX1A, the thumbdrive; RX1B at 1-3; RX1C at 1-8).

Ms. Kristie Skinner and Ms. Carol Kissman testified on the respondents' behalf. Ms. Skinner testified that she works in Husqvarna's human resources (HR) department. Ms. Skinner testified she sent a letter to the claimant dated July 15, 2020, which stated the physical requirements of his job, and requesting that she provide him with some documentation from a health care provider as to what his physical limitations and restrictions, if any, were at that time.

(RX8). Ms. Skinner then identified a nurse's note dated 10/15/2020 from Ms. Autumn Murillo discussed above. She said that after the claimant presented her with this note, she did not contact him and he never contacted her. (RX9). (T. 68-76).

Ms. Kissman, who was not employed by Husqvarna at the time of the hearing, testified she was the HR manager for workers' compensation, but had retired in 2020. She explained that before her 2020 retirement she was transitioning out of her position, and that she still works for Husqvarna on a part-time basis. Although she testified she had not been a part of the investigation, she said she was aware that Husqvarna had conducted an investigation of the claimant's alleged right wrist injury and determine it was not work-related. She also testified concerning the claimant's normal work hours, apparently disputing the claimant worked as many hours as he said he did, especially in December since that is a slow time for Husqvarna. (T. 77-81).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof has established it by a preponderance of the evidence. ***Ark. Code Ann***. § 11-9-704(c)(2) (2023 Lexis Replacement). The claimant has the burden of proving by a preponderance of the evidence he is entitled to benefits. *Stone v. Patel,* 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). ***Ark. Code Ann.*** Section 11-9-704(c)(3) (2023 Lexis Repl.) states that the ALJ, the Commission, and the courts "shall strictly construe" the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers Coop. v. Biles,* 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). In determining whether the claimant has met

his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party**.** ***Ark. Code Ann***. § 11-9-704(c)(4) (2023 Lexis Repl.); *Gencorp Polymer Products v. Landers,* 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover,* 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardees***,** 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc*., 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles, supra*.

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps***.**, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

Gradual Onset Compensable Injuries

With respect to an alleged gradual onset compensable injury ***Ark. Code Ann.*** § 11-9-102(4)(A) (2023 Lexis Repl.) defines "compensable injury" as follows:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence; *if* the injury is:

(iii) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

(Bracketed material, and emphasis added).

The test for determining whether an injury is caused by rapid repetitive motion is two (2)-pronged: (1) the task must be repetitive, and (2) the repetitive motion must be rapid. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998). Multiple tasks involving different movements can be considered together to satisfy the "repetitive element" of rapid repetitive motion. *Id*.

Just as in the case of any other compensable injury, an alleged gradual onset compensable injury must be established by medical evidence supported by objective findings. ***Ark. Code Ann.*** § 11-9-102(4)(D); ***Ark. Code Ann.*** § 11-9-102(16). "Objective findings" are defined as findings which cannot come under the voluntary control of the patient. ***Ark. Code Ann***. § 11-9-102(16)(A); *Long v. Wal-Mart Stores, Inc*., 98 Ark. App. 70, at 80 250 S.W.3d 263, at 272 (Ark. App. 2007). Objective findings specifically exclude such subjective complaints or findings as pain, straight-leg-raising tests, and range-of-motion (ROM) tests since they all are subjective in nature and subject to the claimant's voluntary control or manipulation. *See, Burks v. RIC, Inc*., 2010 Ark. App. 862 (Ark. App. 2010).

With respect to a gradual onset injury caused by rapid repetitive motion the resulting condition is compensable *only if* the alleged compensable injury is the "major cause" of the disability or need for treatment. ***Ark. Code Ann***. § 11-9-102(4)(E)(ii); *Medlin v. Wal-Mart Stores, Inc.*, 64 Ark. App. 17, 977 S.W.2d 239 (1998). "Major cause" means greater than fifty

percent (50%) of the cause. ***Ark. Code Ann***. § 11-9-102(4)(E)(ii); *Lowe's Home Ctrs., Inc. v. Pope*, 482 S.W.3d 723 (Ark. App. 2016). The "major cause" requirement may be established by the fact *the claimant was asymptomatic prior to an incident, and then became symptomatic and required medical treatment after the incident*. *Parker v. Atlantic Research Corp*., 87 Ark. App. 145, 189 S.W.3d 449 (Ark. App. 2004) (Emphasis added).

Both the claimant's and respondents' attorneys did an excellent job trying their cases, and their post-hearing letter briefs were most informative and helpful in assisting this ALJ in rendering the opinion and order herein. And based on the applicable law as applied to the facts of this case I am compelled to find the claimant has met his burden of proof in demonstrating his gradual onset right wrist injury which he reported via Form AR-Ns filed both in January 2020, and July The respondents correctly cite the applicable law in their post-hearing brief, which is consistent with that set forth above. As the respondents note, in *Parker vs. Atlantic Research Corp.,* 87 Ark. App. 145, 152, 187 S.W. 3d 449 (Ark. App. 2004), the Arkansas Court of Appeals explained: "Where, as in the case before us, a rapid repetitive motion injury is argued to be an aggravation of a pre-existing condition, the claimant must prove by a preponderance of evidence that the injury: 1) arose out of and in the course of her employment; 2) caused internal or external physical harm to the body requiring medical services; 3) was caused by rapid repetitive motion; 4) was the major cause of the disability or the need for treatment; and 5) was established by medical evidence supported by objective findings."

In the same paragraph the *Parker* court goes on to cite two (2) other precedents, *High Capacity Prods. v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (Ark. App. 1998), and *Tyson Foods, Inc. v. Griffin*, 61 Ark. App. 222, 966 S.W.2d 914 (Ark. App. 1998), both of which affirmed the Commission's findings and held that, as in *Parker*, "the claimant's employment activities in the form of rapid repetitive movement had aggravated his degenerative

osteoarthritis in the area of his hands and wrists, and that his condition of carpal tunnel syndrome and aggravation of his preexisting degenerative arthritis constituted the major cause of his need for ongoing medical treatment." Consequently, the *Parker* case is the oft-cited precedent standing for the proposition that the Act's "major cause" requirement may be established by the fact *the claimant was asymptomatic prior to an incident, and then became symptomatic and required medical treatment after the incident.*

In the case at bar, it is beyond reasonable dispute the job duties the claimant was performing at Husqvarna before and during December of 2019 were rapid and repetitive in nature. (T. 13-18; 62-66). In fact, as the claimant's attorney points out in his post-hearing brief, there exists no testimony in the record to the contrary. Moreover, the respondents' citing of the spot-on *Parker* precedent frames the threshold issue to be decided as whether the claimant's rapid repetitive motion job duties aggravated his obviously preexisting osteoarthritis and scapholunate dissociation conditions in his right wrist.

The fact the preponderance of the evidence in the record demonstrates the claimant's right wrist condition was *asymptomatic before* he reported the subject work-related incident, and *then became symptomatic and required medical treatment after* the reported incident meets the requirement set forth in *Parker*, *et al*, compels a finding the claimant's right wrist injury constitutes a gradual onset compensable injury within the Act's meaning. (Note: Scapholunate dissociation is a condition, usually caused by an injury, where the small bones of the wrist – the scaphoid and lunate – move out of alignment. This is often the result of damage to the scapholunate interosseous ligament which holds these small bones in place. *See, e.g.,* https://my.clevelandclinic.or/health/diseases23444-scapholunate-dissociation#diagnosis-and-tests).

Of course, this ruling entitles the claimant to, among other possibly applicable benefits, payment of his medical bills and related expenses, and indemnity benefits. However, the claimant testified that after considering all hos options, and the risks and possible outcomes of the right wrist fusion surgery his treating orthopedic surgeon recommended, he did not wish nor intend to have it, and was not requesting the respondents to pay for this surgery at the subject hearing. (T. 64). The claimant also testified he has no outstanding medical bills at this time since his private health insurance has paid for all his medical bills, apparently both those related to treatment of his right wrist, as well as those related to his non-work-related conditions such as his diabetes and hypertension.

Moreover, there is insufficient evidence in the record to determine whether, and if so to what extent, the claimant is entitled to indemnity benefits, specifically at this time temporary total disability (TTD) benefits. In fact, the record reveals the claimant has remained active and working on his own, self-employed, although he has not returned to work at Husqvarna since he last worked there on July 14, 2020. ***Ark. Code Ann***. Section 11-9-411 (2023 Lexis Repl.) gives the respondents the right to take a dollar-for-dollar credit/off-set against any disability or unemployment benefits any third-party(ies) paid to the claimant. *See also*, ***Ark. Code Ann.*** Section 11-9-506 (2023 Lexis Repl.). The record reveals the claimant applied for unemployment benefits and represented on the application he signed on October 9, 2020, among other things, that he had no physical disabilities that would prevent him from performing his normal job duties.

Consequently, this ALJ is unable to specifically determine the extent to which, if any, the claimant is entitled to medical benefits and related expenses, and indemnity benefits – specifically TTD benefits – based on the record before me at this time.

Therefore, for all the aforementioned reasons, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.

2. The stipulations contained in the prehearing order filed March 1, 2023, which the parties affirmed on the record at the hearing, hereby are accepted as facts.

3. The claimant has met his burden of proof in demonstrating his job duties at Husqvarna constitute rapid repetitive motion. *See*, *Parker*; *High Capacity Prods.; and Tyson Foods, Inc., supra.*

4. The claimant has met his burden of proof in demonstrating his rapid repetitive job duties were the "major cause" of his disability or need for medical treatment of his right wrist.

5. The preponderance of the evidence in the record establishes the claimant's rapid repetitive job duties aggravated his obviously preexisting osteoarthritis and scapholunate dissociation conditions since these conditions were asymptomatic prior to performing the subject rapid repetitive job duties and became symptomatic and required medical treatment thereafter. *See, Parker; High Capacity Prods.; and Tyson's Foods, Inc., supra.*

6. Pursuant to ***Ark. Code Ann***. Section 11-9-508 the claimant is entitled to payment of all his reasonably necessary medical and other expenses related to his compensable right wrist injury.

7. The record before the ALJ is insufficient to deternine the extent of TTD benefits, if any, to which the claimant is entitled based on his compensable right wrist injury.

8. The claimant's attorney is entitled to a controverted fee.

AWARD

The respondents are hereby directed to pay benefits in accordance with the "Findings of Fact and Conclusions of Law" set forth above. All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to ***Ark. Code Ann.*** Section 11-9-809, and *Couch v. First State Bank of Newport,* 49 Ark. App. 102, 898 S.W.2d 57 (Ark. App. 1995); *Burlington Indus., et al v. Pickett,* 64 Ark. App. 67, 983 S.W.2d 126 (Ark. App. 1998); and *Hartford Fire Ins. Co. v. Sauer,* 358 Ark. 89, 186 S.W.3d 229 (2004).

If they have not already done so the respondents hereby are ordered to pay the court reporter's invoice within twenty (20) days of their receipt of this opinion and order.

IT IS SO ORDERED.

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Mike Pickens
Administrative Law Judge