

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.:H010767**

**LASHERRA V. BELL, EMPLOYEE**

**CLAIMANT**

**UTC RAILCAB REPAIR SERVICES, LLC,  
EMPLOYER**

**RESPONDENT**

**INDEMINITY INS. CO. OF NORTH AMERICA/  
CONSTITUTION STATE SERVICES, LLC,  
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR  
(TPA)**

**RESPONDENT**

**OPINION FILED NOVEMBER 1, 2022**

Hearing before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

The Claimant represented by Mr. Aaron L. Martin, Attorney at Law, Fayetteville, Arkansas.

The Respondents represented by Ms. Laura J. Pearce, Attorney at Law, Fort Smith, Arkansas.

**Statement of the Case**

On August 10, 2022, the above-captioned claim came on for a hearing in Little Rock, Arkansas. Previously, on July 19, 2022, a pre-hearing telephone conference was conducted in this matter. A Pre-hearing Order was entered on that same day. I have marked said order and the respective responsive prehearing filings of the parties as Commission's Exhibit 1, without objection from either party.

**Stipulations**

During the prehearing telephone conference, and/or hearing, the parties jointly proposed the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-insurance carrier relationship existed at all relevant times, including on May 5, 2020, when the Claimant sustained compensable injuries to her right forearm and hand.
3. The Claimant's average weekly wage at the time of her admittedly compensable work-related incident was \$861.00. Her weekly compensation rates are \$574.00 and \$431.00 for temporary total disability and permanent partial disability compensation, respectively.
4. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

### Issues

The parties agreed to litigate the following issues at the time of the prehearing telephone conference:

1. Whether the Claimant sustained a compensable injury to her right thumb.
2. Whether the Claimant is entitled to medical benefits, including but not limited to the surgery performed on her right thumb.
3. Whether the Claimant is entitled to temporary total disability (TTD) compensation from May 20, 2020 until October 28, 2020.
4. Whether the Claimant is entitled to a permanent partial disability rating for her right thumb.
5. Whether the Claimant is entitled to benefits under Ark. Code Ann. §11-9-505(a) (1) beginning on October 28, 2020 and continuing for one year (until October 28, 2021). (The Claimant's last day of employment with the Respondents was October 29, 2020. Therefore, she would be entitled to these benefits beginning on October 30, 2020, in the event said benefits are awarded herein).
6. Whether the Claimant's attorney is entitled to a controverted attorney's fee for indemnity benefits being sought.

### Contentions

The respective contentions of the parties are as follows:

#### Claimant:

First, the Claimant will contend that she is entitled to additional medical treatment for her

compensable right-hand injury. The Claimant underwent surgery for her right hand and contends that this treatment was reasonable, necessary and in connection with her compensable injury.

Next, the Claimant will contend that she is entitled to temporary total disability benefits from May 20, 2020 to October 28, 2020. In support, the Claimant will contend that she remained in her healing period and was totally disabled during this period of time.

Next, the Claimant will contend that she is entitled to permanent partial disability benefits for her right-hand injury. The Claimant has not been assigned an impairment rating and contends that the Commission has authority to determine the Claimant's anatomical impairment and that the absence of a medically assessed degree of permanent impairment does not automatically preclude the Claimant from being entitled to such benefits. See *Polk County. v. Jones*, 74 Ark. App. 159, 162, 47 S.W.3d 904, 906 (2001).

Next, the Claimant will contend that she is entitled to benefits under Ark. Code Ann. §11-9-505(a)(1). In support, the Claimant will contend that she was terminated by the Respondent on October 30, 2020 and that this termination represented an unreasonable refusal to the Claimant to work where suitable employment was available within the Claimant's physical and mental limitations. Therefore, the Claimant would be entitled to up to a year of lost wages or the difference between benefits received and her average weekly wage from October 30, 2020 to October 30, 2021.

Next, the Claimant will contend that she is entitled to controverted attorney fees pursuant to Ark. Code Ann. §11-9-715. In support, the Claimant will contend that the Respondent has controverted the indemnity benefits sought.

Finally, the Claimant reserves her right to amend these contentions prior to the hearing in this case.

Respondents:

Respondents contend that the claim was accepted as compensable as to the Claimant's right forearm and wrist. The surgical procedure in question is an "AI pulley release" on Claimant's right thumb to repair her "Trigger Thumb," which Respondents contend was not reasonable and necessary medical treatment for the injury to her lateral wrist and forearm on the date of injury.

As Claimant sought unauthorized treatment<sup>1</sup> and surgical intervention for her non-compensable right thumb condition, Respondents are not required to pay temporary total disability (TTD) payments during her absence from work. Additionally, Claimant was hospitalized for a period of time in July for Covid-related pneumonia, which is entirely unrelated to this claim.

Likewise, Respondents contend Claimant is not entitled to permanent partial disability benefits for her right hand, as the problem with her thumb is not related to the compensable injury to her right forearm and wrist.

Respondents further contend Claimant is not entitled to benefits under Ark. Code Ann. 11-9-505(a)(l) as Claimant's right trigger thumb is not a compensable injury. Claimant had been provided light duty work within her restrictions.

Respondents have provided Claimant with all reasonably necessary evaluation and treatment and Claimant is not entitled to additional benefits nor is her attorney entitled to an attorney's fee.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

From a review of the record as a whole, to include the medical reports, the

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<sup>1</sup>During the hearing, counsel for the Respondents withdrew their contention that the Claimant sought unauthorized medical treatment. (Tr. 53)

documentary evidence, and all other matters properly before this Commission, and after having had an opportunity to hear the testimony of the Claimant, and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. I find that the Claimant proved by a preponderance of the evidence that she sustained a compensable injury to her thumb on May 5, 2020, in the course and scope of her employment with the respondent-employer.
4. The Claimant proved by a preponderance of the evidence that all the medical treatment of record is reasonable and necessary for the injury she incurred on May 5, 2020, during her work-related incident while working for the respondent-employment.
5. The Claimant proved her entitlement to temporary total disability benefits from May 20, 2020 until October 28, 2020.
6. The Claimant failed to prove her entitlement to a permanent anatomical impairment for her right thumb injury.
7. The Claimant proved her entitlement to benefits under Ark. Code Ann. §11-9-505(a) (1) beginning on October 30, 2020 and continuing until October 30, 2021.
8. The Claimant's attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded herein.

### Summary of Evidence

Ms. Lasherra V. Bell (referred herein to "the Claimant") was the sole witness to testify during the hearing.

The record consists of the hearing transcript of August 10, 2022, and the exhibits contained therein. Specifically, in addition to Commission's Exhibit 1, the evidentiary

record consists of: Claimant's Medical Exhibit Index comprising of twenty-nine numbered pages, which was marked Claimant's Exhibit 1.

### **Testimony**

The Claimant, age 49, testified she began working for the respondent-employer as a bottom valve tech mechanic on August 27, 2019. She specifically confirmed that this employment was with a railroad company, the respondent-employer. According to the Claimant, her employment duties entailed testing the valves of the tanker trucks for leaks and/or air holes. The Claimant agreed that she was required to remove the valves located at the bottom of the trucks. The Claimant confirmed that she held the same job with UT throughout her entire employment with them.

She agreed that she had an injury to her right hand and right forearm on May 5, 2020, while working for the respondent-employer. The Claimant gave the following description of her accidental injury:

A: There's eight (8) bolt that's on this bottom valve outlet and I had took off seven (7) of 'em, and then I went to take off the last one, and you have to have help with that one or you have to have a jack. Well, I had called over someone to come and help and assist with it, and I was taking the last one off. Well, the force of it - - I mean, I was taking the valve off. I had the pneumatic impact and it twisted my arm like this [indicating], and the valve fell down and hit my arm.

Counsel for the Claimant asked her to go through the exact mechanism of her injury in a little bit more in detail, and she did so. Specifically, the Claimant confirmed that there was a valve on the bottom of the tanker truck that had to be removed and replaced. The Claimant verified that she removed seven of the bolts and had left the eighth one in, so it does not just drop. To perform this task, the Claimant was lying down underneath

the tank on a board. The Claimant testified that she was using a three-quarter impact, which is a pneumatic gun to remove the bolts.

Under further questioning, the Claimant explained:

Q: And you're in mechanics. Do you know what the foot-pounds of torque that this thing would generate?

A: Between 50 and 70.

Q: Okay. So going back, you had the seven (7) bolts removed and the 8<sup>th</sup> one is there. Tell us what happened when you took out the 8<sup>th</sup> bolt.

A: Well, that's the -- the -- the pressure on that when I was taking the bolt down, the gun twisted and my hand and the gun flew that way [indicating], and I went back and that's when the bottom valve fell down, hit the corner of the board, and the handle is what hit my hand.

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She confirmed she put a fly board on the bottom of the tanker truck so she could get underneath it because it had rained that day. The Claimant agreed that the valve hit the board, and the board came up and hit her arm. She testified that she had an immediate onset of symptoms, including swelling where the handle of the BOV (blow-off valve) hit her arm and cut it. The Claimant further testified that she had excruciating pain all over her hand after the accident. Per the Claimant, they had to cut the glove off her hand. Following her incident, Safety was called, and they came back and provided her with treatment on the day of the incident, which was May 5, 2020.

The Claimant went to the emergency room. At that time, the Claimant reported pain in her forearm and hand. They performed X-rays and discharged her home with no restrictions, splint, or medications. The Claimant went to work but the plant manager sent her home because she was still in pain. She confirmed she went to the emergency room at Wadley Regional Medical Center on May 17, 2020 because she was still in pain and

had swelling. According to the Claimant, she was unable to bend her hand at the digits, and her thumb was “just straight, like it was stuck”. The Claimant was asked about the treatment that they provided for her hand. She replied, “They did x-rays, they put a splint on it, and gave me some pain medication.” The hospital staff also referred the Claimant to Dr. Rush (Claimant did not attest to his full name), her family doctor. However, Dr. Rush refused to treat her because her injury was a workers’ compensation case. The Claimant testified she next sought treatment from Dr. Cook<sup>2</sup> on May 20 because she was still hurting. According to the Claimant, she selected Dr. Cook because she was taken there by the company’s safety guy, Brad Taylor.

At that point, the Claimant stated that her thumb was still swollen, and she was unable to move it. Dr. Cook placed the Claimant on work restrictions, which included not using her hand for a few days and recommended an MRI. According to the Claimant, she tried to go back to work with those restrictions, but Brad Taylor told her she had to be fully released before she could return to work.

The Claimant underwent an MRI on May 27, 2020, at the Collum and Carney Clinic, and there she came under the care of Dr. Darius F. Mitchell. She confirmed that Dr. Mitchell discussed surgery with her at that time. According to the Claimant, they had her scheduled for surgery on June 29, 2020, but it was canceled because the workers’ compensation carrier denied payment for the surgery.

She confirmed that she sought medical treatment for COVID from Wadley Regional three days after her appointment with Dr. Mitchell. The Claimant was off work for three weeks due to COVID. She confirmed she is not asking for benefits during this

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<sup>2</sup>Although the Claimant referred to Cara P. Cook as a doctor at various times throughout her testimony, the medical records show that Ms. Cook is an NP, a nurse practitioner.



period of time. After being released to go back to work following her COVID quarantine, the Claimant tried to go back to work but they refused to allow her to work because she did not have a full release from her doctor.

The Claimant agreed she returned to Dr. Cook on August 3, 2020 for a second follow-up visit. She testified she could not bend her thumb at that point. As a result, Dr. Cook referred the Claimant to an orthopedic specialist. Per the Claimant, her work restrictions remained the same.

Ultimately, on September 17, 2020 the Claimant underwent surgery to her hand/thumb, in the form of “trigger finger surgery.” She confirmed that she benefitted from the surgery. Per a report authored by Dr. Mitchell on September 30, 2020, the Claimant was going to be released to return to work in one week. The Claimant confirmed that she provided her employer with this information. However, Mr. Brad Taylor and Ms. Cecilia, in HR told the Claimant she had to be fully released from both doctors before she could return to work. The Claimant testified that these doctors were Ms. Cook and Dr. Mitchell.

According to the Claimant, she returned to work on October 29, 2020 after providing management (Mr. Taylor and Ms. Cecilia) with a copy of the written release from Dr. Cook because Dr. Mitchell had already released her. The Claimant returned to her same job of valve tech mechanic. According to the Claimant, she worked until 2:45 p.m. that day and they called her to the office and terminated her. The Claimant applied for unemployment benefits and was approved for these benefits. She confirmed she started working for a temporary service in May or June 2021. The Claimant worked on this job for two months. Her hourly rate of pay was \$13.00. According to the Claimant,

since August of 2021, she has been employed at Red River Army Depot. Currently, the Claimant's hourly rate of pay is \$25.75, and she works 40 hours per week.

She confirmed that she did not receive any checks or payments from workers' compensation for her time off after her surgery. The Claimant paid for the surgery out-of-pocket. However, she specifically denied having ever received a Form AR-N from the Respondents letting her know about the change of physician rules.

On cross-examination, the Claimant testified that when her injury occurred, she was using an air gun, which is a small handheld pneumatic impact gun. She agreed that this device resembles a small drill and weighs approximately 5 to 15 pounds.

The Claimant was asked to give a more detailed explanation of her injury and the equipment involved in her injury, and she did so:

Q: Okay. And when you described your injury earlier, just for clarification purposes, the valve didn't hit you as it fell from the tank down; it hit you as it came up off the board correct?

A: The handle is what hit me when it - - the valve hit the corner and the handle is what popped my arm.

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Q: Okay. So as far as your injury that day, you're saying that the injury was caused from when the valve - - the cap -- the handle that's located on the cap hit the plywood board that was underneath the tank, bounced up, and hit you in the arm?

A: Yes, ma'am.

The Claimant agreed that she went to the ER that day and x-rays revealed no fractures, breaks, or anything to her arm or her hand. However, the Claimant stated she had contusions. She agreed she returned to work the following day, but they sent her home. According to the Claimant, she did return to work, they had her driving a forklift. Per the Claimant, she did the best she could to work the forklift in light of her injury. She

drove the forklift for two or three weeks. The Claimant testified that her “whole hand was swollen.” According to the Claimant, all her digits, as well as the center of her palm were swollen. She stated that from her thumb to her pinky, she had swelling. The Claimant essentially denied that the swelling went down prior to surgery.

She admitted she sought medical treatment from Wadley Regional Medical Center because she was still in pain and had some swelling in her hand. The Claimant confirmed that at that time, she was under the care of Dr. Darius F. Mitchell, with Collum & Carney Clinic. According to the Claimant, the workers’ comp lady referred her to him. She admitted to seeing Dr. Mitchell on June 29 and then she went to Wadley Regional on July 2 because she was sick with COVID. The Claimant denied that there were no concerns about her hand at the point and time. According to the Claimant, her hand was still hurting. The Claimant admitted that she is not requesting benefits for the period of time she was under treatment for COVID.

Specifically, the Claimant confirmed that when she went to see Dr. Mitchell, she told him that she was working with a pneumatic gun and twisted her thumb. Moreover, she testified that she told the ER staff about the pneumatic device having twisted her hand although they did not mention this in their clinic note.

Regarding her termination, the Claimant confirmed that when she returned to work, they fired her. She denied that they gave her a reason for her termination. The Claimant specifically testified she had been released to full duty. She was not aware of a slowdown in work. The Claimant confirmed that she collected unemployment benefits for about four to six months. While not working, the Claimant admitted that she was looking for work. The Claimant denied any issues with her thumb at that point and time.

According to the Claimant, she looked for warehouse, parts, and general labor jobs. She was not limited to any certain job based on her injury. The Claimant received \$505.00 in weekly unemployment benefits. In August 2021, the Claimant went to work for Red River as a mechanic.

Upon being questioned by the Commission, the Claimant was not aware of a layoff at the time of her termination. The Claimant had no knowledge of any other workers being terminated. She testified that she could have worked as a valve tech mechanic because they had work available. According to the Claimant, prior to her returning to work, UTC had been calling her to come back to work. The Claimant testified she did not return to work prior to the day she went because she did not have full duty release.

### **Medical Evidence**

My review of the first medical record of evidence shows that the Claimant presented to Texarkana ER Hospital, Emergency Department on May 5, 2020. The Claimant had a chief complaint of wrist problem. Dr. William Kelley evaluated her according to a physician chart note. At that time, the Claimant's symptoms were of the right ulnar and radial wrist due to a direct blow. The severity of the Claimant's pain was moderate. Per this clinic note, it appears the Claimant sustained a laceration to her right arm during this incident. Specifically, the Claimant reported that she was at work taking off an 80-pound shutoff valve underneath a railroad tank and was on the last "boat bow" when it fell striking a wooden board, and then hitting her right wrist and forearm area. X-rays of the right forearm were performed with an impression of no fracture or dislocation. At that time, the Claimant had pain on movement and some mild swelling. She denied any previous history of any injury to that area. Dr. Kelley's impression was contusion of

right hand, initial encounter. The Claimant's condition upon discharged home was good and stable. She was instructed to return to the ER if worsening or increase of symptoms.

The Claimant was evaluated on May 17, 2020 at Wadley Regional Medical Center due to a chief complaint of right wrist pain since injury. Per an Emergency Department Record, the Claimant reported a work-related injury at work on May 5, 2020 when a 70 to 80 pound bolt fell on her hand. The Claimant was evaluated by Dr. Jack E. Menges. At that time, Dr. Menges assessed the Claimant with "Contusion of the right hand, and contusion of right wrist." Per Dr. Brett Barker, x-rays of the Claimant's right hand complete via 3+ Views Right Injury showed findings of: "1. There is no fracture or malalignment. 2. The joint spaces are normal. There are no osseous erosions. 3. The soft tissues are normal." Dr. Barker's impression was "No evidence of acute traumatic injury to the right hand." Dr. Menges directed the Claimant to follow-up with her regular doctor, Dr. Rush, within two (2) to four (4) days. He placed the Claimant off work for three (3) days, instructed her to wear a wrist splint for comfort, and prescribed Norco to be taken accordingly.

On May 20, 2020 the Claimant sought treatment from the Family Medical Group (FMG) of Texarkana under the care of Cara P. Cook, NP. Per this medical note the reason for the Claimant's office visit was due to an injury of her right hand, "Tendinitis of Thumb." The History of Present Illness states in pertinent part, per "Patient's words: workers [sic] comp-bolt and handle hit rt hand and wrist causing pain and swelling." The Claimant reported that she was told by Dr. Rush on Monday that she needed an MRI and since FMG has the contract with her employer, he suggested she go come there for further work-up. Per this report, the Claimant has a history of right wrist surgery in 2007

due to carpal tunnel syndrome (CTS). On physical examination of the Claimant's right hand, Cook stated that the Claimant had right hand localized and abnormal mobility of her "right thumb and first finger – Swelling - Right." She also noted that the Claimant had localized tenderness and abnormal mobility (unable to flex and extend her right thumb). Therefore, Cook ordered an MRI of the Claimant's right hand with and without contrast. Cook directed the Claimant to continue to wear the forearm/wrist splint until completion of the MRI. She also gave the Claimant a release to return to work with restrictions.

The Claimant underwent an MRI of the right hand due to a history of persistent dorsal right-hand pain following blunt trauma on May 27, 2020. Dr. Douglas A. Trippe opined:

**FINDINGS:** soft tissues are unremarkable. No evidence of contusion, fluid collection, mass lesion. Carpals, metacarpals, and phalanges, demonstrate expected appearance without evidence of fracture or dislocation. No arthritic changes observed. No evidence of marrow infiltration or edema.

**IMPRESSION:** Negative MRI of the right hand.

Dr. Darius F. Mitchell III, with Collum & Carney Clinic evaluated the Claimant's right thumb on June 29, 2020. According to this office visit note, Dr. Mitchell saw the Claimant as a new patient. Specifically, Dr. Mitchell reported in relevant part:

**PHYSICAL EXAMINATION:** Examination of the right thumb shows tenderness over the flexor pollicis longus. She now has tenderness with flexion and extension of this thumb. No tenderness over the first dorsal compartment she has tenderness over the A1 pulley.

**IMPRESSION:** Traumatic trigger finger of the thumb.

**TREATMENT PLAN:** I think she probably had and injury to the FPL. At this point, she has tried a brace. She has tried time. She wants to go ahead and proceed with operative intervention. We will plan for this at her earliest convenience.

The Claimant sought treatment from Wadley Regional Medical Center on July 2,

2020 due to COVID-19 related symptoms, which were confirmed by testing. This condition is not connected with the Claimant's work injury of May 5, 2020.

On August 3, 2020 the Claimant sought follow-up treatment of her right hand and thumb. At that time, the Claimant was assessed with among other things, trigger finger of right thumb. The Claimant's symptoms included decreased ROM (right wrist and hand). Cara Cook, RN/FNP, noted that on physical examination, the Claimant continued with localized tenderness and abnormal mobility of her right thumbs. Cook also noted that the Claimant had swelling in first right finger, along with abnormal mobility (unable to flex and extend right thumb). Moreover, Cook assessed the Claimant with trigger finger, and referred her to Dr. Trey Mitchell, an orthopedic surgeon.

Dr. Darius F. Mitchell III saw the Claimant on August 19, 2020 due to right hand pain. He noted that the Claimant was there for a repeat evaluation of her right thumb. The Claimant reported to Dr. Mitchell she was working with a pneumatic wrench and twisted her thumb on May 5, 2020. Since then, the Claimant had continued swelling along her flexor pollicis at the A1 pulley. Per this clinic note, Dr. Mitchell wrote:

PHYSICAL EXAMINATION: Exam shows swelling at the A1 pulley with tenderness over the flexor pollicis longus. She has tenderness with flexion and extension of the thumb. She cannot fully extend the thumb and has been wearing a thumb spica brace over the last six weeks. There is notable swelling difference between the right thumb and the left thumb. This is a flexor tendon injury that led to trigger finger.

IMPRESSION: Traumatic trigger finger of the thumb.

TREATMENT PLAN: Apparently, her case manager or someone involved in work comp has a diagnosis as a thumb sprain and that is rather elementary. She has a trigger finger for her thumb and that this the problem that she has and needs to be surgically corrected because she is [sic] not gotten better with NSAIDs and anti-inflammatory medication. Let us go ahead and proceed with release of this.

On September 17, 2020 Dr. Mitchell authored an Operative Report, which reads

in relevant part:

PRE-OP DIAGNOSIS: Traumatic trigger thumb of the right hand.

POST OP DIAGNOSIS: Same.

OPERATION: A1 pulley release right thumb.

The Claimant returned to Dr. Mitchell on September 30, 2020 for repeat evaluation of her trigger finger release. On physical examination, Dr. Mitchell's observation was that the incision site looked good. As a result, they removed the Claimant's stitches. Dr. Mitchell indicated that he would allow the Claimant to slowly return to activities. However, Dr. Mitchell wrote, "She (the Claimant) can go back in one week."

On October 13, 2020, the Claimant returned to the Family Medical Group for a re-check of her right thumb trigger finger injury. Cook described the problem as other injury to right hand and wrist. Current symptoms included decreased ROM (right wrist and hand). The Claimant was given educational information on finger injuries and disorders.

The final medical record is dated October 28, 2020 from the Family Medical Group, which was authored by Physician Assistant Cook. At that time, Cook observed that on physical examination of the Claimant's right hand that she was noted to have decreased range of motion, associated with wrist swelling and pain. Also, the Claimant complained of discomfort, and intermittent pain in her right thumb, and pain on top of the forearm. Therefore, the Claimant was instructed to return for follow-up care of her injury on an as needed basis.

### **Adjudication**

#### **A. Compensability**

Claimant contends that she also sustained a compensable injury to her right thumb during the May 5, 2020 work-related incident. In order to prove the occurrence of an



injury caused by a specific incident or incidents identifiable by time and place of occurrence, a Claimant must show by a preponderance of the evidence that: (1) an injury occurred that arose out of and in the course of his or her employment; (2) the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

If the Claimant does not establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Id.* This standard means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003)(citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)).

A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962).

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to

believe the testimony of the Claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id*

Here, the Claimant had worked as a bottom valve tech mechanic for the respondent-employer since August 2019. It is undisputed that on May 5, 2020, the Claimant was involved in an accidental injury in the course and scope of her employment with the respondent-employer/UTC Railcab Repair Services. The parties stipulated that on May 5, 2020, the Claimant sustained compensable injuries to her right forearm and hand. The Respondents accepted these injuries as being compensable and paid appropriate benefits in this regard. However, the Respondents have controverted the Claimant's assertion of a right thumb injury. Now, the Claimant contends that she also sustained a compensable injury to her right thumb during the May 5, 2020 work-related incident.

With that in mind, on May 5, 2020, the Claimant was removing bolts from the bottom of a tanker trucker, using a pneumatic gun, when the last bolt flew off and hit a board, and then striking her right arm. During the hearing, the Claimant gave a detailed explanation of her work-related injury as described above.

She promptly reported the accident to management, and the Respondents provided her medical treatment for her right forearm and hand. After having observed the Claimant's demeanor during the hearing and when comparing her testimony with the medical evidence of record, I find that the Claimant was a credible witness. I recognize the Claimant gave some inconsistent particulars of the mechanism of her injury. However, I attribute these varying details to the incident having happened so fast and unexpectedly. Nevertheless, the Claimant denied any prior problems with her right thumb

before the May 5, work-related incident. Her testimony of no prior problems with her thumb is corroborated by the nonexistence of any documented problems with her thumb in any of the medical records, and because there is absolutely no other evidence whatsoever demonstrating any pre-existing difficulties with her thumb.

Following the accident, the Claimant consistently complained of problems with her right arm upon her treatment at the ER on the day of the incident. At that time, the Claimant complained of pain and a laceration of the right forearm and hand. She further complained of pain on movement and mild swelling. The Claimant's testimony demonstrates that after the incident she experienced swelling in all of her digits and her thumb was "stuck." The medical records confirm this account, as evidenced by documented problems of limited range of motion in her thumb. On May 20, the Claimant complained to Nurse Cook of pain and swelling primarily in her right thumb. Cook assessed the Claimant with "Tendinitis of the Thumb." This medical record demonstrates that the Claimant had abnormal mobility and was unable to flex and extend her right thumb. I find that the Claimant established an injury to her right thumb, by medical evidence supported by objective findings in the form of "swelling." I am persuaded and relate these findings to the Claimant's work-related injury of May 5, 2020. In that regard, of importance is the fact that the Claimant had not experienced any problems with her thumb prior to May 5, nor had she complained of it being "stuck," or having swelling in it, or any complaints of pain.

Nevertheless, the Claimant came under the care of Dr. Mitchell, an orthopedic specialist. On August 19, Dr. Mitchell evaluated the Claimant's right thumb and opined she had swelling along her flexor pollicis at the A1 pulley. His assessment was "traumatic

trigger finger of the thumb,” for which he recommended surgical intervention to correct the problem. On September 17, 2020 Dr. Mitchell performed A1 pulley release on the Claimant’s right thumb.

I find that the Claimant proved by a preponderance of the evidence all of the elements necessary for establishing a compensable injury to her right thumb as a result of her work-related incident of May 5, 2020. The Claimant proved by a preponderance of the evidence that she sustained an accidental injury causing physical harm to her right thumb as noted in the medical records, particularly those of Ms. Cook and Dr. Mitchell. The Claimant proved that the accidental injury arose out of and in the course of her employment with the respondent-employer, and this injury required medical services. The Claimant proved that her thumb injury was caused by a specific incident and was identifiable by time and place of occurrence, which was on May 5, 2020. The Claimant established a compensable injury by medical evidence supported by objective findings not within her voluntary control, specifically those objective findings documented by Cook and Dr. Mitchell.

**B. Additional Medical Treatment**

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2012). The Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary in connection with the injury received by the employee. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2002). Our courts have quantified the preponderance of the evidence to mean the evidence having greater weight or

convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

Here, the Claimant sustained a compensable injury to right thumb on May 5, 2020. The Claimant underwent conservative treatment for her entire right hand. Despite this conservative treatment, she continued with swelling, pain, and discomfort in her thumb. Ultimately, the Claimant was diagnosed with trigger thumb, by Dr. Mitchell, specialist. After the Claimant failed conservative treatment modalities, her treating physician, Dr. Mitchell recommended surgery. Considering that the Claimant failed conservative care, I am persuaded that surgical intervention was warranted. The record, namely the Claimant's testimony, and the lack of any follow-up treatment after her being released to full duty work, clearly prove that the surgical intervention resolve the Claimant's thumb injury.

Under these circumstances, I find that the Claimant proved by a preponderance of the evidence that all the treatment of record for her thumb is reasonably necessary in connection with the injury received by the Claimant on May 5, 2020. Although the Respondents initially contended that the Claimant's treatment for her thumb was unauthorized, during the hearing, counsel for the Respondents withdrew this contention during the hearing. As a result, this issue has not been addressed in this Opinion.

### C. Temporary Total Disability Compensation

In the case at bar, the Claimant sustained a scheduled injury to her right thumb. For a scheduled injury, a Claimant is entitled to temporary total disability benefits until her healing period ends or until she returns to work, whichever occurs first. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2002). The healing

period continues until the injured employee is as far restored as the permanent character of the injury will permit. The healing period ends once the underlying condition has become stable and when nothing further in the way of medical treatment will improve the permanent character of the injury. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The persistence of pain is not sufficient, by itself, to extend the healing period provided that the underlying condition has stabilized. *Id.*

The Claimant contends that she is entitled to temporary total disability compensation from May 20, 2020 until October 28, 2020.

In that regard, Dr. Mitchell performed surgery on the Claimant's her right thumb on September 2020. Following her surgery, the Claimant was placed on physical limitations by Dr. Mitchell. Her testimony demonstrates that management refused to permit her to return to work due to these restrictions, at least beginning on May 20, 2020. The Claimant continued to follow-up with Dr. Mitchell after her surgery and she remained within her healing period and on physical restrictions until October 28, 2020. At that point, Dr. Mitchell released the Claimant from medical care for her thumb injury and directed to return for follow-up treatment on an as needed basis. Dr. Mitchell also removed physical limitations and restrictions from the Claimant due to her thumb injury/surgery. There is absolutely no evidence whatsoever showing that the Claimant sought any medical treatment for her thumb after October 28, 2020.

Based on the foregoing, I find that the Claimant reached the end of her healing period for her compensable thumb injury on October 28. It is well established in workers' compensation law that temporary total disability compensation cannot be awarded after

the end of the healing period. Of importance, her testimony demonstrates that on October 29, 2020 she returned to work for the respondent-employer as a valve tech mechanic.

With that in mind, I find that the evidence preponderates that the Claimant remained in her healing period and had not returned work from May 20 and continuing until October 28, 2020. As a result, I find that the Claimant proved her entitlement to temporary total disability compensation from May 20, 2020 through and until October 28, 2020.

The Respondents are liable for payment of these benefits during this period of time. Likewise, the Claimant's attorney is entitled to payment of a controverted attorney's fee as a result of the awarding of indemnity benefits payable to the Claimant.

D. Permanent Impairment

The Claimant contends that she is entitled to an impairment rating for her compensable right thumb injury of May 5, 2020.

The Arkansas Court of Appeals thoroughly discussed the requirements necessary to establish an entitlement to benefits for a permanent anatomical impairment in *Excelsior Hotel v. Squires*, 83 Ark. App. 26, 115 S.W.3d 823 (2003).

First, benefits for permanent impairment must be based on an impairment rating using the *AMA Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993). The Commission may review the *Guides* even if the *Guides* are not in the record, and the Commission may determine its own impairment rating under the *Guides*, rather than simply assessing the validity of impairment ratings assigned by doctors. *Avaya v. Bryant*, 82 Ark. App. 273, 105 S.W.3d 811 (2003).

Second, benefits for permanent anatomical impairment shall be awarded only if the claimant's compensable injury is the major cause of the impairment at issue. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a). The provisions of Ark. Code Ann § 11-9-102(4)(F)(ii)(b) do not apply in determining a claim for permanent anatomical impairment. *Michael v. Keep & Teach, Inc.*, 87 Ark. App. 48, 185 S.W.3d 158 (2004). Major cause means more than 50% of the cause. Ark. Code Ann. § 11-9-102(14).

Third, a determination of the existence and extent of physical impairment must be supported by objective and measurable physical findings. Ark. Code Ann. §11-9704(c)(1)(B). "Objective findings" are defined as "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. § 11-9-102(16)(A)(i). When determining the permanent physical impairment, neither a doctor nor the Commission may consider complaints of pain. For purposes of assigning impairment ratings to the spine, straight-leg-raising tests and range-of-motion tests do not qualify as objective findings. Ark. Code Ann. § 11-9102(16)(A)(ii). If the allegation of permanent physical impairment is supported by objective and measurable findings, then the Commission must also consider the credibility of relevant subjective evidence as well in assessing permanent impairment. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006).

Here, the Claimant met her burden of proof of a compensable thumb injury which was established by objective medical findings. However, after the Claimant's surgery, she has no medically documented medical evidence of any unending objective and measurable findings to support a permanent physical impairment to her right thumb. While the Claimant had some swelling a few weeks after her surgery, this objective finding



resolved. This are no medically documented clinic notes of any continuing objective medical findings establishing that her symptom of swelling persisted after the surgery. Most significantly, the final medical records from October 28, 202 of the Claimant's follow-up visit with Dr. Mitchell does not prove that she had any significant swelling or any other objective medical findings with regard to her thumb injury. In fact, this final medical report shows that the Claimant had only subjective complaints of mild pain and discomfort. Most importantly, the Claimant's own testimony demonstrates that the surgery resolved all of her thumb issues, as evidence by her testimony of being able to return to work as a mechanic with no problems. In addition to this, during the hearing the Claimant did not attest to any long-lasting complaints or difficulties whatsoever with her right thumb.

Therefore, because the Claimant failed to proffer proof of a permanent physical impairment to her right thumb supported by objective and measurable physical findings, her claim for a permanent anatomical impairment to her right thumb must be respectfully denied and dismissed in its entirety.

E. 505(a) Benefits

Ark. Code Ann. § 11-9-505(a)(Repl. 2002) provides:

(1) Any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, where suitable employment is available within the employee's physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between benefits received and the average weekly wages lost during the period of the refusal, for a period not exceeding (1) year.

Before Ark. Code Ann. § 11-9-505(a) applies several conditions must be met. Specifically, the employee must prove by a preponderance of the evidence (1) that she sustained a compensable injury;(2) that suitable employment which is within her physical

and mental limitations is available with the employer;(3) that the employer has refused to return her to work; and (4) that the employer's refusal to return her to work is without reasonable cause. *Torrey v. City of Fort Smith*, 55 Ark. App. 226, 934 S.W.2d 237 (1996).

The Claimant contends that she is entitled to benefits under Ark. Code Ann. § 11-9-505(a)(1) after being terminated by the respondent-employer on October 29, 2020.

In the present matter, it is undisputed that the Claimant sustained admittedly compensable injury to her right hand, namely, her thumb, while working for the respondent-employer/UTC Railcab on May 5, 2020. The Claimant has undergone surgical repair to her right trigger thumb injury. She was released to work without any physical restrictions or limitations resulting from her compensable thumb injury on October 28, 2020. The Claimant testified that before her full release, the respondent-employer was calling and asking her to return to work. Ultimately, on October 29, 2020, she returned to work for the respondent-employer. Her testimony demonstrates that that she returned to work in her prior position of valve tech mechanic after being contacted by management on several occasions for her to return to work. The Claimant denied that there had been a layoff in the company and other mechanics continued to work. Based on the Claimant's testimony and there being no evidence elicited or documented to the contrary, I find that the respondent-employer had suitable employment within the Claimant's physical and mental limitations available, as a valve tech mechanic. However, the Claimant testified that on October 29, 2020 around 2:45 p.m., the respondent-employer ended her employment with them as a mechanic without giving her any explanation for this drastic action. Said action supports a finding that the employer refused to return to work and that the employer's refusal to return her to work was without

reasonable cause in light of the fact that no particular reason or cause for her discharge was ever cited by the respondent-employer/management.

In summary, I find that the Claimant proved all of the necessary prerequisites under *Torrey* to prove her entitlement to 505 (a) benefits from October 30, 2020 and continuing until October 30, 2021. Accordingly, I find that the Respondents are liable for these benefits.

F. Attorney's Fee

The Respondents controverted this claim for an injury to the Claimant's right thumb in its entirety as is evidenced by the within litigation that has ensued. As such, I find that the Claimant's attorney is entitled to a controverted attorney's fee for the indemnity awarded per this Opinion.

**AWARD**

In accordance with the findings of fact and conclusions of law set forth, the Respondents are directed to pay benefits as set forth herein. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

The Respondents are directed to pay the court reporter's fee within thirty days of receipt of the invoice.

**IT IS SO ORDERED.**

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**Hon. Chandra L. Black  
Administrative Law Judge**

