BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC NO.: H207378

WYNNEFORT BELL, EMPLOYEE	**CLAIMANT**
DOMTAR CORPORATION, EMPLOYER	**RESPONDENT**
FARMINGTON CASUALTY COMPANY, TRAVELERS INDEMINTY CO., CARRIER/TPA	**RESPONDENT**

OPINION FILED OCTOBER 9, 2026

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Texarkana, Miller County, Arkansas.

Claimant represented by the Honorable Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by the Honorable Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on July 14, 2026, in Texarkana, Arkansas. On April 15, 2026, a prehearing telephone conference was conducted in this claim with the parties.

Pursuant to said telephone conference, I entered the following Prehearing Order into this matter on that same day. Said order set forth the stipulations offered by the parties, their respective contentions, along with the issues to be litigated.

Stipulations

I hereby accept the parties' jointly proposed stipulations as fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. That the employee-employer-insurance carrier relationship existed on October 1, 2022, when the Claimant sustained an admittedly compensable right-hand injury for which the Respondents have paid some medical and temporary total disability/ TTD compensation.

3. That the Claimant's average weekly wage at the time of her accidental work related injury was $1,347.00, which entitles her to the maximum compensation rates for a 2022 injury.

4. The Claimant was awarded a 22% PPD rating to her right-hand pinkie and index fingers due to her October 1, 2022, injury, which has been paid by the Respondents.

5. The Claimant underwent a functional capacity evaluation on November 15, 2023, and did not return to work for the Respondents.

6. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

7. This claim for additional benefits has been controverted by the Respondents.

Issues

By agreement of the parties, the issues to be litigated at the hearing were as follows:

1. Whether the Claimant is entitled to benefits pursuant to Ark. Code Ann. §11-9-505.

2. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The parties' respective contentions are outlined below:

Claimant: The Claimant contends she should be awarded benefits pursuant to Arkansas Code §11- 9-505. The Claimant contended the Respondents should be ordered to pay attorney's fees as provided by law.

Respondents: The Respondents contend that they conducted an evaluation of the Claimant's abilities and determined she was not qualified or able to perform the functions of her

job and return to work based on her limitations. The Claimant has obtained separate employment and has maintained working in other capacities since her release, and she is not entitled to any additional benefits over and above the PPD rating determination and award previously provided.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the documentary evidence, other matters properly before the 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. The Claimant failed prove by a preponderance of credible evidence that she is entitled to additional compensation pursuant to Ark. Code Ann. §11-9-505 (a) due to a result of her admittedly compensable injury of October 2022. The remaining issue of a controverted attorney's fee has been rendered moot.

4. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Summary of Evidence

The following three witnesses testified during the hearing: Mr. Charles Swilley, Ms. Wynnefort Bell (referred to herein as the "Claimant"), and Mr. Jason Young.

The record consists of the July 14, 2026, hearing transcript and the following documentary exhibits: Commission's Exhibit 1, which includes the April 15, 2026 Prehearing Order, along with the parties' responsive filings; Claimant's Exhibit 1 encompasses fifty-two numbered pages and a cover sheet; Respondents' Exhibit 1 encompasses Respondents' Exhibit Index, which consists of

thirty-five numbered pages accompanied by one cover sheet; Joint Exhibit 1 is the transcript of the June 11, 2024 full hearing; and Joint Exhibit 2 includes the Opinion filed on September 9, 2024, pursuant to said hearing.

BACKGROUND

Charles Swilley

Charles Swilley testified on behalf of the Claimant. He works as a production worker for the A-1 fluff pulp machine on the loader line. Swilley testified that he is the Vice President of Production Local 1327. He has served in that capacity with the union for sixteen years. Per Swilley he started at the bottom and worked his way up. His general responsibilities are to make sure that there are no contract violations and ensure fair treatment of employees. Swilley admitted that he was familiar with the grievance complaint that the union has assisted the Claimant with.

According to Swilley, once it was determined that the Claimant was not able to return to work, the union filed two grievances on her behalf under OSHA and American Disabilities Act. These are basically two different grievances to bring the Claimant back to work or to make accommodations and to make her whole in both money and seniority.

Swilley explained:

Q. All right. I guess, once the Union takes the step of initiating the grievance, is there a process that the union takes on from there?

A. Yes, sir. There is.

Q. Can you talk through that for us?

A. It's determined in steps. You know that the first step is, basically, like talking to the company. The second step is actually filing a grievance, getting assigned a number with their corporate and then you have another meeting, and if the Union and company

doesn't come to an agreement, then it goes to the third step. The third step is normally held like once a quarter. It depends on how many you have. Normally we have two or three at the same time but, but they're normally held every quarter, sometimes every six months. Then if the Union and the company can't come to an agreement there, then it's pursued in arbitration.

According to Swilley, they never proceeded to the third step. Swilley explained that every time the third step was scheduled and put on the agenda, he was notified either by the company or the Claimant that there was some kind of talk between Claimant's lawyer and the corporate lawyers about some kind of discussion about a settlement, impairment ratings, or an early retirement package. Per Swilley, they did not want to hurt the Claimant's case, so in some instances they held off on the third step because they wanted to do what was in her best interest. Next, management indicated that they were going to bring her back to work if she was fit for duty. As a result, the Claimant's grievances were placed in abeyance by directive until further notice to proceed.

However, once the Claimant was unable to return to work because she was unable to pass multiple return to work physical examinations, which caused her grievances to continue to be held in abeyance. According to Swilley the Claimant's first grievance was about an alleged OSHA violation, and the other one involved the American with Disabilities Act. Both of these grievances involved work accommodations for the Claimant to be able to return to work.

Swilley confirmed being familiar with the Claimant's company job, which was a sealer operator. He agreed that the Claimant approached the union for help because she believed that she could perform the job she was doing previously. Swilley agreed that in 2024 every injured worker had to see a specific doctor (namely, Dr. Bowman) before returning to work at Domtar. However,

Swilley denied that this was policy pursuant to a union agreement. The Claimant confirmed that it would have surprised him if Dr. Bowman did not administer a fitness for duty physical examination of the Claimant. He also stated that it would surprise him if Dr. Bowman did not physically examine or put his hands on the Claimant at all. Swilley confirmed that Jennifer Beard is the Union President. He admitted that he was aware that there was an attempt to return the Claimant back to work per the restrictions she was given by Dr. Frazier. Swilley agreed that he was aware that the Claimant applied for both salary and production jobs. According to Swilley he was not aware of an attempt by Domtar to bring the Claimant back to work under accommodations.

Swilley testified:

Q. So is it fair to say that unless she could come back pursuant to the fit for duty tests that they mandated, they never offered her an opportunity to return to work.

A. I would say that's correct.

He agreed that at one point they were going to bring the Claimant back to work, but they wanted her to go do the fit for duty evaluation. Swilley testified that the Claimant has done several of those evaluations. He confirmed that he has been involved in many discussions with management involving the Claimant's numerous attempts to try and return to work. However, Swilley admitted that the Claimant could never pass the physical examination because she had too many restrictions.

On cross-examination Swilley testified that he is not a medical doctor, physical therapist, or occupational therapist. He admitted that he did not perform any medical testing on the Claimant. Swilley denied that he has reviewed the Claimant's functional capacity evaluation. He further denied that he attended the Claimant's hearing back in June of 2024. Swilley agreed that he could not dispute that the Claimant lacked the functional use or range of motion in her right pinkie and

ring fingers. He agreed that after checking to determine whether it is common for employees to have to undergo a physical examination after they have been off work for a year, he found that this policy was consistently applied at Domtar. He agreed that the grievances were stayed because the Claimant was unable to pass the functional capacity evaluation and the fit for duties examinations. Swilley confirmed that the fit for duty examination is an overall assessment which is then applied to the particular job. He essentially testified that by the time the Claimant was released by Dr. Frazier the sealer operator position no longer existed because Domtar no longer has that department available in the plant.

Under further questioning, Swilley was not aware that Dr. Bowman was asked to evaluate the Claimant's fit for duty finding and apply it to certain positions. Said positions included the wood yard employee position, another position in the pulp department reserve and the third one was for a labor pool. He agreed that Dr. Bowman took the evaluation findings and then applied them to these categories of job to determine if she could do the particular job. Swilley confirmed that if the Claimant is limited in what she can and cannot do, then she would not qualify for the position. He agreed that if a person is unable to lift a certain weight of product, then they are not qualified to do a job that calls for lifting that amount of weight.

He agreed that the Claimant applied for a couple of salaried positions. One of the positions she applied for was for an HR Manager position and the other job was for a Health and Safety position. However, the Claimant did meet the educational or certification requirements for these positions, one of which was a certified industrial hygienist. Swilley also testified that if the Claimant applied for a clerical position at Domtar, he does not have any knowledge or documentation to show that she applied for the job.

Regarding the fit for duty requirements that Dr. Bowman performed on the Claimant, he confirmed that there were six types of requirements or job specific testing was done, performed during this process. He agreed that the result was that the Claimant could not perform five of the six categories. This resulted in the Claimant being disqualified from for those positions. Swilley confirmed that there was a discussion at some point about a job the Claimant had described during her deposition. However, Swilley stated that the mapping job that the Claimant referenced does not currently exist right now at Domtar.

Under further questioning, Swilley explained:

Q. But the people that make the choice as to who is going to fill that position is a Union representative?

A. Well, it's joint between Union and company.

Q. Okay. So, you would make the recommendation or you would choose the person?

A. We would.

Q. Okay. Did you ever choose her or propose her for that position?

A. Jennifer Beard did, yes.

Q. Okay. But that position doesn't exist at the present time?

A. No, sir.

Q. So, obviously, she couldn't fill it if it doesn't exist?

A. Correct.

Swilley again verified that if an employee is absent from work during whatever the required time period, before the employee is permitted to return to work, they have to undergo a fit for duty physical examination. He agreed that the purpose behind this policy is to ensure the safety of that

employee and people they are going to be working around. Swilley further agreed that they want to know that the person is qualified and able to physically do whatever task the job requires. *He verified that it was his understanding that following the fit for duty evaluations for each position that the Claimant applied for, she was not qualified to physically perform any of the positions.* He confirmed that the decision to determine if the Claimant is fit for duty is made by a third party who does the evaluation.

On redirect examination, Swilley confirmed that one of the Claimant's grievances involved the American with Disabilities Act. He agreed that this involves whether the company looked into adjusting or making accommodations to determine whether Domtar could provide a job with certain reasonable accommodations. Swilley further confirmed that he was not aware of any efforts by Domtar that they made to offer the Claimant a position wherein they agreed to attempt to accommodate or work around some of her restrictions to give her an effort and opportunity to return to work.

He said that there exists a possibility that the Claimant still has an opportunity to come to the union and ask to move forward with her grievances. Swilley confirmed that the Claimant had been an employee of the company for twenty-two years.

Upon recross examination, Swilley confirmed that he is aware that the Claimant sued the company that managed the work on the machine, and she also filed two EEOC charges against the company. In one of those documents, the Claimant indicated she had a permanent restriction of lifting no more than twenty pounds. Swilley basically testified that he does not know the physical requirements of every production job, but he does not know of any production jobs that she would be able to perform if her lifting restriction was twenty pounds.

Swilley confirmed that the Claimant is suing the union. However, Swilley insisted that the union looks out for their own. The following exchange took place with Swilley and Respondents' attorney:

> Q. But if there are certain restrictions that by no means is she is able to perform the requirements of that job, and I'm either going to have to pull in somebody else to do that job for her, that's not necessarily accommodation., that's changing the whole category, isn't it?
>
> A. Yes, sir.

Swilley verified that the Claimant was offered their early retirement package, which is what they call a voluntary early retirement package/VERP.

Upon questioning, Swilley explained:

> THE COURT: At the time of the .... I guess there was a collective bargaining agreement in place that would have applied to Ms. Bell [the Claimant]
>
> A. Not in that particular situation. I mean, the company policy is if they're not medically able to return back to work after 165 days, they're terminated.

Wynnefort Monae Bell/the Claimant

At the time of the hearing, the Claimant was employed by the Texas Municipal Court, as a Deputy Court Clerk. She began working there on April 10, 2024. Per the Claimant, she is paid $16.00 an hour. She confirmed that she works forty hours a week.

The Claimant confirmed that Dr. Frazier referred her for a functional capacity evaluation in November of 2023, and he issued a letter on January 19, 2024, outlining certain restrictions and limitations. She testified that per her restrictions, she can lift fifty pounds occasionally, twenty-five pounds frequently and ten pounds constantly. The Claimant confirmed that her

restrictions were confirmed through the functional capacity evaluation that she underwent for her physical limitations to be determined. After the Claimant underwent this evaluation, Dr. Frazier issued a letter in this regard. The Claimant testified that she believed that she could return to her prior job as a sealer operator, which she believed still existed at that time.

She confirmed that she made efforts to return to work at Domtar once she received the letter from Dr. Frazier. The Claimant spoke with Wendy Harmon, in the Human Resources Department, and informed Harmon that she had been released. The Claimant emailed the letter to Harmon, Charles Swilley and Jennifer Beard, the Union's Vice President, and President.

Regarding her medical treatment, the Claimant confirmed that Dr. Smolarz initially treated her compensable hand injury. According to the Claimant, a referral was made for her to be evaluated by Dr. Frazier because he specializes in hand injuries. Per the Claimant, she reached out several times to management about returning to work. At that time, the Claimant denied that there were any direct instructions about her having to see a company doctor. She denied that anyone ever offered her an opportunity to return to her old job or any other job with the restrictions that Dr. Frazier had provided to the company. The Claimant admitted that she had been drawing temporary total disability benefits up until the time Dr. Frazier issued his letter.

The Claimant agreed that the parties litigated the issue of her impairment rating after the insurance carrier refused to pay her any permanent benefits, at which time the carrier cut her TTD off. According to the Claimant, her financial circumstances at that moment were that she had no income coming in at all. Therefore, she filed for unemployment benefits. She qualified for those benefits and was paid $200.00 a week for eleven or twelve weeks. However, ultimately the Claimant had to file for bankruptcy in April. Five months later, the Claimant's attorney reached out to the Respondents' attorney via email to inquire about why she had not been returned to work

per Dr. Frazier's limitations. There was no immediate response, but the Claimant finally received instructions that she had to be seen by Dr. Bowman before returning to work in the plant for Domtar. According to the Claimant, she received an email from the Human Resources Manager, Greg Hubby, directing her to see Dr. Bowman. During this time, the Claimant filed for unemployment benefits. She also took steps on her own to try and find other jobs within Domtar. She confirmed that she checked the Domtar website on a regular basis and applied for any position that was not a production position and within her restrictions. She applied for the safety position and a few months later she applied for the Human Resources position. The Claimant testified she received separate emails saying that the position had been filled. Prior to the positions being filled, the Claimant denied that she was ever contacted about an interview or her eligibility.

The Claimant confirmed that she saw Dr. Bowman twice. However, she denied that Dr. Bowman physically examined her at either visit. Per the Claimant, Dr. Bowman referred her to go for physical evaluations through Christus St. Micheal's Rehabilitation Center. She denied being told in advance anything about the jobs or job she was being considered for, nor was she informed of the requirements or qualifications she would have to be able to meet in order to qualify for any particular jobs for which she was being considered.

She denied that Domtar contacted her about the closing of the converting department or to let her know her job would no longer be available. The Claimant testified that she heard about the closure when it was announced on the news. She was offered a severance package along with others who were affected by the closure. However, the Claimant confirmed that the converting department was still up and running when Dr. Frazier issued his letter in January 2024. The Claimant was not certain of the precise date of the closure, but she was certain that the retirement package offer was made after January 2024.

The Claimant admitted that she was assessed at the heavy classification for an entry level position in that particular category of work. She confirmed that documentation saying that the test that she had to go through designated that she had to do a fit for duty post-employment fit for duty test, for an entry level heavy position. According to the Claimant, in her prior position, the heaviest thing she had to lift was a full carton of paper, which was forty or maybe fifty pounds. She testified that she did not accept the severance package because it appeared from her reading of the paperwork that she would not be able to pursue litigation against the contractor by accepting the retirement package. The Claimant said she had a third-party claim against the contractor that handled the safety panel. According to the Claimant, a safety panel had been removed from the piece of equipment that the Claimant was working with, which caused her injury. However, the Claimant testified that the third-party lawsuit was ultimately dismissed via a partial settlement being reached by the parties.

She confirmed that after she was instructed to go see Dr. Bowman and the company refused to accept Dr. Frazier's restrictions to allow her to come back to the plant, she filed a grievance because she thought she was being treated differently. The Claimant admitted that she went to the union for help with this mater. She admitted that she continued to express her concerns to the union about the fact that she felt like she was being treated differently with the fit for duty test. The Claimant confirmed that she has not indicated to anyone associated with the union that she would like to drop or stop her grievance.

Upon further discussion, the Claimant denied that at any time following Dr. Frazier's assessment of her restrictions of limitations and after the testing was done that was requested by Dr. Bowman, the company did not ever offer her a job. Nor did the company reach out to her about wanting to make accommodations for her or wanting to address other job opportunities to

see if she could work within her restrictions or limitations in any capacity. She admitted that she was terminated in September 2025. Although there was a medical assessment report referencing the results of another functional capacity evaluation on August 11, 2025, which said a medical assessment was done on September 4, 2025, she denied undergoing a medical examination on September 4. The Claimant testified that she underwent another functional capacity evaluation on August 11, 2025. She admitted that this evaluation was conducted at the same location, Christus St. Micheal Rehabilitation. The Claimant denied being given a reason for her grievances being held in abeyance.

She admitted that she received a letter from Greg Hubby (in June 2025 before being terminated), asking if she was still interested in returning to work. The Claimant testified that she responded to the letter stating that she was still interested in returning to work. She further explained that she was interested in returning to work at Domtar because she had been actively employed there for over twenty years. The Claimant testified that she took the job with the city because she needed the income. She was also a single parent with kids at that point. Domtar was also only two miles away from her house. The Claimant admitted that she inquired about removing the money she had in her 401(k) with Domtar because it was just sitting there and she was not making any interest off of it, nor was she making any contributions into it. However, the Claimant testified that because she was still considered an employee of Domtar, she was not allowed to move those funds. She agreed that the reason for the hearing is because she believes that she has not been treated fairly and she wanted to return to work for Domtar. The Claimant confirmed that this is the reason she is seeking benefits under section 11-9-505.

On cross-examination, the Claimant confirmed that since her hearing in June 2024 and the award of benefits, she has been paid that amount in one lump sum payment. She confirmed that

the case against the contractor went to arbitration and she settled it. The Claimant admitted that at the time of her deposition in April 2025, she denied having any EEOC claims against Domtar. However, the Claimant admitted that she subsequently filed two EEOC claims against Domtar, after her termination.

Regarding the first EEOC claim, the Claimant admitted that she had a permanent lifting restriction of no more than twenty pounds and that she was upset that she had not been placed in a new position. The Claimant testified that she filed another claim after her termination in September 2025. According to the Claimant, her termination was effective September 19, 2025, and she filed the EEOC complaint at the end of September. She confirmed that the documentation of record shows that she filed the first EEOC complaint in June 2025. The Claimant later confirmed that the second EEOC claim was filed in September but was not processed until December 2025 due to a government shutdown.

The Claimant admitted that since the hearing in June 2024, she has not received any medical treatment for her right-hand (which is her dominate hand) injury of October 1, 2022. She admitted to having received fourteen months of rehab after her injury. The Claimant also further admitted that the evaluations that have been discussed were to evaluate her overall functioning ability, but also the ability for her to use her right hand and fingers. She admitted that she testified that Domtar sent her to be evaluated and that they had certain jobs that they provided to the doctor after the evaluation to determine what she would qualify to be able to do. These were provided prior to the examination. They were provided to the doctor. She confirmed that the occupational therapist did the evaluation to determine her overall functional abilities. Next, they applied the results of that evaluation to the job duties and tasks. She admitted to seeing Brian Murphy, who is an occupational therapist, and not a doctor. The Claimant verified that the results of the second

evaluation that Brian Murphy did on her right hand were worse than the first one. She agreed that they assessed her on six different functions that they evaluated on and she failed five of the six functions. That evaluation was done on August 13, 2024. She testified to having undergone another evaluation in July 2025, which was also performed by Murphy. The Claimant agreed that Domtar has specific guidelines that combine with certain job descriptions.

Although she primarily worked in the converting department. However, she confirmed that she was familiar with the wood yard, pulp mill, and labor pools positions. She was not made aware that those specific job descriptions were evaluated or reviewed by Dr. Bowman after her evaluations were done. According to the Claimant, she was not aware of him having reviewed them because she did not see him again after she visited the therapist for the evaluation. She admitted that the evaluation identified tasks that she could not tolerate based on the testing. The Claimant confirmed that the purpose of the evaluation was to enable Dr. Bowman with the ability to assess her capability for performing certain job tasks and descriptions. She admitted that although she was eligible for and offered an early deferred retirement package, she refused it.

The Claimant admitted that she experiences cramping in her hands and fingers, particularly when doing manual labor, and even when she is not doing manual labor. She also has problems with writing and holding other devices. Her right hand is her dominant hand. However, the Claimant admitted that she is now relying more on her left hand to perform certain tasks. She confirmed that she has not applied for a secretarial type of position at Domtar although the HR and safety positions that she applied for are in the clerical bargaining unit at Domtar. She admitted that she received something from the company saying that she was not qualified for the positions and was not being considered. The Claimant admitted that she does not hold a bachelor's degree of any kind. She further admitted that she is not a certified industrial hygienist.

According to the Claimant, she has a plate, and nine screws in her ring finger. She admitted that her right hand is extremely limited. Both fingers will not straighten out. The Claimant confirmed that Dr. Frazier's letter only mentions her lifting restrictions, he does not go into her ability to grip, hold objects, or her ability to use her right hand effectively. She confirmed that she has difficulty performing certain cooking tasks that require the use of a knife such as chopping onions and potatoes. The Claimant confirmed that she cannot climb a ladder such as the scaffold type ladder at Domtar because she is unable to wrap her fingers around the rungs.

Per a report authored by Brian Murphy, the Claimant displayed decreased tolerance with lifting, carrying tasks and limited finger range of motion with her right upper extremity, which limits her ability to return to work at her previous position as a machine operator. *This evaluation was performed in August 2024. She confirmed that the first evaluation she underwent was pursuant to a referral made by Dr. Frazier, which was done in November 2023.* According to this evaluation, the Claimant had several *functional limitations in the upper extremity index.* Per this report, she had difficulty in multiple areas of impairment including completing her regular housework, hobbies, recreational antivirus, lifting a bag of groceries to the waist/counter level or higher, preparing food and opening a jar, throwing a ball or carrying a small suitcase. She agreed that the subsequent August 2024 evaluation done by Brian Murphy, he assessed a number of different things and her overall ability to be able to perform or function. After testing, the Claimant was considered for the pulp department reserve position, all wood yard employees, and the labor pool positions. Pursuant to these reports the physicians applied the functional testing results, the fit for duty result, to the specific positions in determining whether or the Claimant was fit for duty to perform those jobs. In each instance, it was determined that the Claimant could not perform the requirements of the three jobs. The fit for duty is a determination of what the Claimant can and

cannot do in order protect her safety and the safety of other employees. She agreed that the fit for duties that were performed were not done at Domtar. Instead, they were performed at Christus St. Micheal's Rehabilitation Center. These evaluations were done either by a therapist or a physician.

On redirect examination, the Claimant maintained that upon her release by Dr. Frazier, she thought she could go back to performing her former job, but she was not given the opportunity to do so. The Claimant testified that she did work in the wood for a while when the converting department had shut down previously in some type of utility job. According to the Claimant, she believes she could perform that job because she did not have to do heavy lifting. She testified that she worked with heavy equipment. The Claimant testified that if she had been offered the job, she would have tried to do it. She admitted that she worked in the pulp mill during her tenure with Domtar as a utility worker operating heavy equipment. She believes if she had been offered the opportunity to perform that job, she could have transitioned to that type of employment with Domtar. The Claimant specifically testified that she certainly would have tried to do the job because her goal was to return to work.

On recross examination, the Claimant confirmed that she believed that she could have returned to work as a machine operator in her prior position upon her release to return to work by Dr. Frazier. She admitted that she was assessed for that position by Brian Murphy, an occupational therapist. In August 2023[sic] and he stated that she displayed decreased tolerance lifting and carrying, along with limited finger range of motion and limited grasp. The Claimant admitted that she was aware that Brian Murphy stated in August 2024 that she could not be a machine operator.

Jason Young

Young confirmed that he works at Domtar. His job title is Health, Safety and Security Manager. He gave an overview of his employment duties. (Tr. 110) Young confirmed that he is

familiar with the Claimant. He confirmed the policy requiring that an employee be required to undergo a medical evaluation to return to work if they miss seven consecutive days from work or have a significant medical injury or illness. The HR department has a form that has the physical requirement of the job. The employee must have a doctor complete the form before returning if either category applies to them. Any doctor can complete the form, not just their company doctor.

He confirmed that the Claimant's prior job was eliminated or close to elimination in June 2024. As a result, she could not have returned to her former position of sealer operator. Young admitted that based on the Claimant's evaluations, she could not have returned to that job based on the evaluations he has reviewed. Young agreed that from a physical perspective the pulp, wood yard, and labor pool positions had the least requirements from a physical standpoint that the Claimant could go to in the entire plant.

Young agreed that the evaluation or the fit for duty that was performed in August 2024 is at page 25 of Respondents' exhibit. He agreed that the Claimant was assessed in her functional ability in all levels as opposed to just one category. In this case, there were six requirements. The Claimant met only one requirement.

Young was asked to explain the process:

A. Okay. I'll explain the process just a little bit more maybe. Sop this the physical demands for each individual position. That's why you see three. One for wood yard, one for pulp, one for labor pool. These different sets of physical demands, so someone goes to the fit for duty, they do the six requirements that Mr. Murphy assesses them by…

Q. And that would be the report that is right in front of you.

A. Yes, sir.

Young confirmed that at the end, they determine whether that person is qualified or not for the position. He verified that the Claimant did not meet the qualifications for either of the positions mentioned previously. Young confirmed that in each case, the Claimant was not able to perform the job. He testified that he was not aware of any jobs available at Domtar that the Claimant would be able to perform at this point based on the fit for duties that were done. Per Young, there was no work available for the Claimant that she was qualified to do or physically able to do in this particular case.

On cross-examination, Young agreed that the Claimant was never given the opportunity to come out to the plant and physically attempt to return to work where it was her old job or under any accommodated circumstances in any position.

ADJUDICATION

Additional Compensation

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 this section applies and for the Claimant to be awarded benefits, she must prove the following requirements. Specifically, the Claimant 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. Roark v. Pocahontas Nursing & Rehab, 95 Ark. App. 176, 235 S.W. 3d 527 (2006). Preponderance of the evidence means the evidence that has greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

In the case at bar, on October 1, 2022, the Claimant sustained compensable injury to her right hand, which included primarily to her pinky and ring fingers. The Claimant underwent three surgeries to her hand. She was assessed to be at maximum medical improvement for her injury and released from medical treatment. The Claimant was assessed with a 22% impairment rating to her right hand which has been accepted and is being paid by the Respondents.

Upon release from his care, Dr. Fraizer placed permanent restrictions on the Claimant of no lifting more than twenty pounds. The Claimant had been employed by Domtar for twenty-two years. At the time of her injury, the Claimant performed employment duties as a sealer operator. Prior to her compensable injury, the Clamant occasionally performed work in other departments that were utility-type positions in nature prior to her work-related injury. The Claimant testified during the hearing that she believes she is physically capable of performing her prior job as an operator sealer, the utility positions, and the three potential positions that were identified and discussed in great detail during the hearing. After the Claimant was released by Dr. Frazier to return to work with the lifting restriction of no more than twenty pounds, per company policy, the Claimant had to undergo a fit for duty physical examination. Here, the Claimant underwent assessments and evaluations by Dr. Bowman and Brian Murphy, an occupational therapist, as referenced and discussed above. However, the results of these tests showed that the Claimant was unable to physically perform the requirements for each one of the potential jobs that has been named. Therefore, based on the results/findings of the evaluations/assessments performed by the

medical providers, the Claimant was found not fit for duty to return to work at Domtar in any of the above positions.

Based on the above credible evidence, I must find that the record is replete with credible evidence demonstrating that the Claimant has failed to prove by a preponderance of the evidence that suitable employment existed within the scope her physical and mental limitations with her employer. Although the Claimant applied for non-production/clerical unit at Domtar, she was not qualified to work in these positions because she did not meet the educational and/or past work experience requirements. There is no probative evidence whatsoever before me showing that Claimant's employer had suitable work within her physical and mental limitations. I realize that her testimony shows that she believes if given the opportunity, she could perform her prior job and the previously above referenced positions at Domtar. However, when considering all of the credible evidence to the contrary, including but not limited to the medial assessments, functional evaluations, and her own self-reported functional restrictions/challenges involving the use of her right hand (in all areas of her life) prove otherwise. Young and Swilley, the Claimant's own union representative, both credibly testified that they were not aware or able to name a job in the plant that the Claimant was physically able to perform. In fact, Swilley credibly testified that the Claimant worked under a union agreement and they tried to help her in finding a job at Domtar, but regrettable they were unsuccessful in doing so.

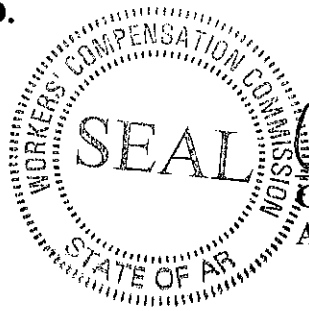
Under the foregoing circumstances, considering that the Claimant was assessed not fit for duty; I find that the Respondents did not have suitable work within the Claimant's physical limitations and restrictions. As such, the Respondents have not unreasonably refused to allow the Claimant to return to work at Domtar. Because there was no suitable work available with her

employer within her functional abilities with her employer, the Claimant did not prove her entitlement to benefits pursuant to Ark. Code Ann. § 11-9-505(a). Therefore, this claim for benefits must be denied and is hereby respectfully dismissed.

ORDER

The Claimant failed to prove by a preponderance of the evidence her entitlement to benefits pursuant to the provisions of Ark. Code Ann. § 11-9-505(a). Accordingly, this claim for benefits is hereby respectfully denied and dismissed in its entirety.

IT IS SO ORDERED.



CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE