

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H206137**

FRANK BOWDOIN, Employee	CLAIMANT
OK FOODS, INC., Employer	RESPONDENT
OK FOODS, INC., Carrier	RESPONDENT

**OPINION FILED JULY 18, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

**STATEMENT OF THE CASE**

On April 20, 2023, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on February 27, 2023, and a Pre-hearing Order was filed on February 28, 2023. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on July 11, 2022.
3. The respondents have controverted the claim in its entirety.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable injury to his right hand and wrist on or about July 11, 2022.
2. Whether Claimant is entitled to medical treatment for his right hand and wrist injury.
3. Whether Claimant is entitled to temporary total disability benefits from July 12, 2022, to a date yet to be determined.
4. Whether Claimant’s attorney is entitled to an attorney fee.
5. Claimant’s compensation rates.

Claimant’s contentions are:

“The claimant contends that he sustained a compensable injury to his right hand and wrist in an employment related fall on July 11, 2022 that has caused and continues to cause him to require reasonable necessary medical services and has resulted in him being rendered temporarily totally disabled from July 12, 2022 through a date yet to be determined. Finally, he contends his attorney is entitled to a statutory fee on all appropriate benefits awarded.”

Respondents’ contentions are:

“Respondent controverts this claim in its entirety and contends that Claimant did not sustain a compensable injury as that term is defined by Act 796.”

The claimant in this matter is a 70-year-old male who alleges to have sustained compensable injuries to his right hand and right wrist on or about July 11, 2022. The claimant had very recently been hired by the respondent when he alleges his injuries to have occurred on the first day of orientation, before his job duties had been assigned to him. The claimant gave direct examination testimony about how he alleges the injuries to have occurred and his reporting of his injuries as follows:

Q All right. Now, what were you doing for OK Foods on July 11, 2022?

A I was in orientation.

Q And did you have an accident on that day?

A Yeah, in the bathroom. I fell and crushed by own hand with my own body trying to break my fall.

Q Can you describe the accident in a little more detail for the Judge?

A Well, I slipped and tried to put my hand down. I landed on it sideways and I thought I broke – I thought for sure I broke these two fingers because it hurt so much.

Q They can't tell what two fingers.

A These two here (indicating).

Q Nobody is videotaping this. You have to tell us which fingers it is.

A It don't know. How do you explain them? The little finger and the next one in.

Q All right. Your ring finger and your little finger?

A Yes.

Q And what difficulties did you have after this accident? What physical difficulties or symptoms?

A My hand was throbbing all the time. I couldn't hardly get any sleep at all. And to this day, the same. It hasn't improved at all.

Q Did you also initially have some low back complaints?

A Yes, my back did hurt the day it happened, but then it stopped hurting and I feel like it's 100 percent now.

Q And did you report this accident and your difficulties to OK Foods?

A Yes. When it happened immediately.

Q And were you sent for medical treatment?

A Yes.

On cross examination, the claimant was asked about the events surrounding his alleged injury in more detail as follows:

Q Okay. Let's talk a little bit about the accident itself. And I took your deposition. We have given the Judge your deposition so I don't want to belabor it, but it is my understanding that during the orientation you were given two breaks, a break in the morning and a break in the afternoon and also a lunch; correct?

A Yes.

Q And this accident happened during one of those breaks?

A Yes.

Q I think you told me didn't most people go outside and smoke a cigarette or do whatever they did?

A Yes.

Q You didn't have any restrictions on what you had to do during the break; did you?

A No.

Q You didn't have to respond to any customers or maintain any equipment while you were on the break?

A No.

Q And as I recall from your testimony, you had gone I think outside for your break; correct?

A Just for a breath of fresh air, yes.

Q Okay. And then on your way back in, you decided to stop at the restroom?

A Uh-huh.

Q And you had to have a bowel movement; correct?

A Uh-huh.

Q It is my understanding you sat on the commode, had your bowel movement?

A Yes, sir.

Q And as you were standing up from that bowel movement, that is when you fell?

A Well, I pulled my pants unbuckled and took a step and fell.

Q Okay. You are still in the stall?

A It's not a stall. It's an open bathroom.

Q Okay. You hadn't even gotten to the point of washing your hands yet; had you?

A No.

At Respondents' Exhibit 2, pages 1-2, a document is found entitled "Initial Incident Report." That report gives general information about the claimant and the incident he alleges. The report indicates the claimant reported his July 11, 2022, incident to Lessyrinereira Velazquez Diaz. In the report, the claimant complained of lumbar, right wrist, and right hand difficulties. Specifically, the claimant reported a right ring and right pinky finger injury in regard to his right hand.

The claimant was seen at Occupational Medicine Clinic on July 11, 2022, by Tawni Glander, APN. Following is a portion of that medical report:

**CHIEF COMPLAINT**

Right hand

**PATIENT DESCRIPTION OF ACCIDENT**

Frank slipped in the bathroom causing him to fall on right hand causing hand.

### HISTORY OF PRESENT ILLNESS

Frank's primary problem is pain located in the right hand. He describes it as sharp, numb, tingling. The problem began on 7/11/2022. He has noticed that it is made worse by moving it. He also notes that it is accompanied by tingling, numbness. His pain level is 5. Additional History: Injury date 7/1/2022: slipped in the bathroom causing FOOSH injury of right hand with now pain to 4<sup>th</sup>-5<sup>th</sup> digits and medial hand. Also having lumbar pain, difficulty sitting, feels a sharp shooting pain with a "pull" feeling in his back. Area iced at work after incident.

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### EXAMINATION

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Right Hand: An abrasion is not present. An open wound is not present. Pain on motion is present over the 4<sup>th</sup> metacarpal, volar surface, Pain on motion is present over the 5<sup>th</sup> metacarpal. Pain to palpation is present over the 5<sup>th</sup> metacarpal. Pain to palpation is present over the 4<sup>th</sup> metacarpal. Range of motion is normal. Swelling is not present. Strength is limited. A laceration is present over the hand, dorsal surface. Erythema is not present. Its surfaces are clean, Sensation distal to the wound is normal. At the deepest it extends through the dermis and into the subcutaneous layer, Motor function distal to the wound is normal, The skin edges are smooth. The laceration is 3 centimeters long.

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### IMAGING STUDIES

X-Ray Results: x-ray – lumbar spine, right hand fingers with no abnormal findings.

### DIAGNOSIS

1. Low back pain (M54.4)
2. Pain in right hand (M79.641).
3. Pain in right finger(s) MM79.644)
4. Fall on same level, unspecified, initial encounter (W18.30XA)

### DISCUSSION

This is the first examination for this back strain and hand injury. He was provided NSAIDs for the pain. He was instructed on back exercises. He is to ice the back after the exercises. He will follow up in 10 days. Frank received a copy of the 'Visit Summary and Instructions'. He was given an opportunity to ask questions about his care. He verbalized understanding.

**PLAN OF CARE**

Comments Restrictions provided. NSAID as prescribed and Tylenol as needed for pain. Muscle relaxer at night. Hot showers twice daily. Home exercises given to be done daily. Follow up in 1 week.

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**MEDICAL CAUSATION**

The cause of this problem is related to work activities.

**RECOMMENDED WORK STATUS**

Frank's recommended work status is Restricted Duty. The effective date for this work status is 7/11/2022.

**RECOMMENDED ACTIVITY RESTRICTIONS**

Right Hand: Grasping may not be performed. Lifting should not be performed. Should keep wound clean and dry. Back: Lifting should be limited to 20 pounds or less. Lifting repetitively should be limited to 10 pounds or less. Limit bending/stooping/twisting. Alternate sit/stand/walk as tolerated.

**AFTERCARE INSTRUCTIONS**

Restrictions given. Recommend take 2 acetaminophen (500 mg each) every 6 hours as needed for pain. NSAID twice daily with food as prescribed. Recommend hot showers twice daily. Low back exercises provided. Follow up here in 10 days. Contact us if you have any questions or problems.

An x-ray of the claimant's right fingers was also performed at Mercy Clinic Regions on that same day and showed "no acute fractures or dislocations." The claimant's right-hand x-ray also revealed "negative right hand x-ray."

On July 21, 2022, the claimant was again seen by Tawni Glander, APN. Following is a portion of that medical record:

**CHIEF COMPLAINT**

Right hand

**PATIENT DESCRIPTION OF ACCIDENT**

Frank slipped in the bathroom causing him to fall on right hand causing hand.

### HISTORY OF PRESENT ILLNESS

Frank's primary problem is pain located in the right hand. He describes it as throbbing. The problem began on 7/11/2022. Frank says it seems to be constant. He has noticed that it is made worse by moving it. He feels it is not improving. His pain level is 8. Additional history: Reports continued throbbing and pain in right hand with no numbness or tingling. Has not been taking prescribed medications, states he took one of them but did not feel it was effective and no longer took anything else. Worse with movement, reports resolved with rest. Back pain resolved.

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### EXAMINATION

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Right Hand: An open wound is not present. An abrasion is not present. Swelling is not present. Strength is limited. The hand examination is normal, dorsal surface, Erythema is not present. Pain on motion is present over the 4<sup>th</sup> metacarpal, dorsal surface, Pain on motion is present over the 5<sup>th</sup> metacarpal, dorsal surface, Pain to palpation is not present.

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### DIAGNOSIS

2. Pain in right hand (M79.641)
3. pain in right finger(s) (M79.644)

### DISCUSSION

This is the follow up visit for this hand injury. It is recommended he start taking the NSAID as prescribed and the muscle relaxer at bedtime. Frank received a copy of the 'Visit Summary and Instructions'. He was given an opportunity to ask questions about his care. He verbalized understanding.

### PLAN OF CARE

Comments Restrictions provided. NSAID as prescribed and Tylenol as needed for pain. Muscle relaxer at night. Contrast bath to right hand.

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### IMAGING STUDIES

X-Ray Results: repeat x-ray right hand – no abnormal findings.

### MEDICAL CAUSATION

The cause of this problem is related to work activities.



**RECOMMENDED WORK STATUS**

Frank's recommended work status is Restricted Duty. The effective date for this work status is 7/11/2022.

**RECOMMENDED ACTIVITY RESTRICTIONS**

Right Hand: Lifting should not be performed. Grasping may not be performed. Limit use right hand, Splint should be used.

**AFTERCARE INSTRUCTIONS**

Restrictions continued for right hand. Restrictions lifted for back. Recommend prescribed NSAID twice daily and muscle relaxer at night. Contrast baths.

Follow up here in 1 week. Contact us if you have any questions or problems.

On July 28, 2022, the claimant was again seen at the Occupational Medicine Clinic by Tawni Glander, APN. Following is a portion of that medical record:

**CHIEF COMPLAINT**

Right hand

**PATIENT DESCRIPTION OF ACCIDENT**

Frank slipped in the bathroom causing him to fall on right hand causing hand.

**HISTORY OF PRESENT ILLNESS**

Frank's primary problem is pain located in the right hand. He describes it as throbbing. The problem began on 7/11/2022. Frank says that it seems to be variable – depending on the activity level. He has noticed that it is made worse by moving it. He feels it is improving slightly. His pain level is 4. Additional History: Improved, throbbing with movement or use of right hand, continues to report numbness to 4<sup>th</sup> and 5<sup>th</sup> digits of right hand. He has not been using brace with activity as instructed, he states he has not been back to work since injury date. He did take the prescribed medication and reports improvement with NSAID use.

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**EXAMINATION**

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Right Hand: An open wound is not present. An abrasion is not present. Swelling is not present. Strength is limited. The hand examination is normal, dorsal surface, Erythema is not present.

Pain on motion is present over the 4<sup>th</sup> metacarpal, dorsal surface,  
Pain on motion is present over the 5<sup>th</sup> metacarpal, dorsal surface,  
Pain to palpation is not present.

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#### DIAGNOSIS

1. Pain in right hand (M79.641)
2. Pain in right finger(s) (M79.644)

#### DISCUSSION

This is the follow up visit for this hand injury. It is recommended he continue taking the NSAID as prescribed and the muscle relaxer at bedtime if needed. It is recommended that he use the provided brace for any activity with right hand. Frank received a copy of the 'Visit Summary and Instructions'. He was given an opportunity to ask questions about his care. He verbalized understanding.

#### PLAN OF CARE

Comments Brace with any use of right hand.

#### MEDICAL CAUSATION

The cause of this problem is related to work activities.

#### RECOMMENDED WORK STATUS

Frank's recommended work status is Restricted Duty. The effective date for this work status is 7/11/2022.

#### RECOMMENDED ACTIVITY RESTRICTIONS

Right Hand: Lifting should not be performed. Grasping may not be performed. Limit use right hand, Splint should be used.

#### AFTERCARE INSTRUCTIONS

Continue prescribed NSAID twice daily and muscle relaxer at night. Contrast baths. Needs to use brace with any use of right hand. Follow up here in 2 weeks. Contact us if you have any questions or problems.

On August 11, 2022, the claimant was again seen by Tawni Glander, APN. Following is a portion of that medical record:

#### CHIEF COMPLAINT

Right hand

#### PATIENT DESCRIPTION OF ACCIDENT

Frank slipped in the bathroom causing him to fall on right hand causing hand.

#### HISTORY OF PRESENT ILLNESS

Frank's primary problem is pain located in the right hand. He describes it as throbbing. The problem began on 7/11/2022. Frank says that it seems to be variable – depending on the activity level. He has noticed that it is made worse by moving it. He feels it is improving slightly. His pain level is 0. Additional History: Reports no improvement, continues to throb with movement, reports difficulty flexing 4<sup>th</sup> and 5<sup>th</sup> digits, unable to make a fist due to pain and throbbing, continued numbness to 4<sup>th</sup> and 5<sup>th</sup> digits. He is not using brace or splint of any kind, no longer doing any work activities, he is limiting use of right hand at home.

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#### EXAMINATION

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Right Hand: An open wound is not present. An abrasion is not present. Swelling is not present. Strength is limited. The hand examination is normal, dorsal surface, Erythema is not present. Pain on motion is present over 4<sup>th</sup> metacarpal, dorsal surface, Pain on motion is present over the 5<sup>th</sup> metacarpal, dorsal surface, Pain to palpation is not present.

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#### DIAGNOSIS

1. Pain in right hand (79.641)
2. Pain in right finger(s) (M79.644)

#### DISCUSSION

This is the follow up visit for this hand injury. Due to reported limitation of movement and ROM we will start PT for his right hand and fingers to gain improved mobility.

#### PLAN OF CARE

Comments Brace with any use of right hand.

#### MEDICAL CAUSATION

The cause of this problem is related to work activities.

#### RECOMMENDED WORK STATUS

Frank's recommended work status is Restricted Duty. The effective date of this work status is 7/11/2022.

**RECOMMENDED ACTIVITY RESTRICTIONS**

Right Hand: Lifting should not be performed. Grasping may not be performed. Limit use right hand, Splint should be used.

**AFTERCARE INSTRUCTIONS**

Follow up in 3 weeks.

The claimant's right hand continued to be restricted and was placed in a splint. The claimant was, at that time, referred to physical therapy. The claimant began physical therapy on August 17, 2022, at Fort Smith Hand Therapy and had six physical therapy sessions, of which his last occurred on August 21, 2022.

The claimant eventually underwent an MRI of his right hand without contrast at Baptist Health on February 23, 2023. Following is a portion of that diagnostic report authored by Dr. Eira Roth:

**IMPRESSION:**

1. Technically suboptimal exam due to failed fat saturation across the thumb and thenar soft tissues. Within these confines there is no definite evidence of acute injury. However if there continues to be a strong index of clinical suspicion consider correlation with conventional CT for a more detailed assessment of cortical integrity.
2. Thickened edematous flexor tendons to the 2<sup>nd</sup> and 3<sup>rd</sup> digits suggesting tendinopathy versus a strain. Correlate clinically.
3. Background conventional osteoarthritis.

It is the claimant's burden to prove by a preponderance of the evidence that he sustained compensable injuries to his right hand and right wrist on or about July 11, 2022. In order to do so, the claimant must show evidence of objective medical findings regarding the injuries he alleges. In review of the evidence admitted into the record in this matter, I find no objective medical evidence or findings regarding the claimant's right wrist. As such, the claimant is unable to prove a compensable right wrist injury as he alleges.

The claimant is able to prove the existence of objective medical evidence regarding his right hand. The medical report from the claimant's July 11, 2022, visit to the Occupational Medicine Clinic with Tawni Glander, APN, found at Respondents' Exhibit 1, page 2, in the "EXAMINATION" section and the subsection "Right Hand," specifically states in part "A laceration is present over the hand, dorsal surface, Erythema is not present. Its surfaces are clean, Sensation distal to the wound is normal, At its deepest it extends through the dermis and into the subcutaneous layer, Motor function distal to the wound is normal, The skin edges are smooth, The laceration is 3 centimeters long." The claimant has proven the existence of objective medical findings regarding his right hand. The claimant must also prove a causal connection between the objective medical evidence of a right-hand injury and the July 11, 2022, incident he alleges.

The claimant testified that while on a break from his orientation he left the building to get some fresh air. Then on his return to orientation stopped to use the restroom. After the claimant had completed defecating, he stood up, secured his clothing, and fell as he moved toward the lavatory. It is in this fall he alleges his right-hand injury to have occurred. The claimant's deposition and hearing testimony are generally consistent with the medical records and incident report submitted into evidence regarding the events of and surrounding the falling incident. Given those documents and the claimant's testimony, I find the claimant can prove a causal connection between his objective evidence of a right-hand injury and the restroom falling incident he alleges on July 11, 2022. The claimant in this matter is able to prove that he sustained a compensable right-hand injury on July 11, 2022, when he fell in the restroom.

The claimant has asked the Commission to determine whether he is entitled to medical treatment for his right hand and right wrist. The claimant is not entitled to medical treatment for his right wrist as the claimant has failed to prove by a preponderance of the evidence that he

suffered a compensable right wrist injury on or about July 11, 2022. The claimant is entitled to reasonable necessary medical treatment for his compensable right hand injury. The medical evidence submitted into the record regarding the claimant's right hand is reasonable necessary medical treatment for his compensable right hand injury. The claimant is entitled to reimbursement for any out-of-pocket expenses regarding medical treatment submitted into the hearing record as it is all reasonable necessary treatment for his compensable right hand injury.

The claimant has asked the Commission to determine if he is entitled to temporary total disability benefits from July 12, 2022, to a date yet to be determined. The claimant was placed on activity restrictions on July 11, 2022, the day of the incident, by Tawni Glander, APN at Occupational Medicine Clinic. The claimant was given the following right-hand restrictions at that time, "Grasping may not be performed. Lifting should not performed. Should keep wound clean and dry." It is clear the claimant was placed on restrictive duty on the same day as his compensable right-hand injury. The claimant remained on work restriction and on August 11, 2022, when he again saw Tawni Glander, APN, he had restrictive duty with the limitations of "Lifting should not be performed. Grasping may not be performed. Limit use right hand, splint should be used."

The claimant's testimony is unequivocal that he was offered light duty work and did not accept or attempt to do so. On direct examination, the claimant was questioned about light duty work as follows:

Q Now, did they offer you light duty within those restrictions?

A Yes, they did, but I told them my hand hurt so much –

Q Just slow it down. They did offer you light duty within those restrictions?

A Yes.

Q Did you take it?

A No.

Q Why didn't you take it?

A Because my head throbbed continuously so I couldn't even concentrate on doing anything.

On cross examination, the claimant was questioned about light duty as follows:

Q Okay. And you told Mr. Ellig they offered you light duty?

A Yes.

Q And you just told them you weren't going to do it?

A I was in too much pain to do it.

Q Well, did you accept the light duty?

A I never accepted it, no.

Q Did you try?

A No, I didn't try it.

Q Okay.

A I didn't understand why they would want me there in so much pain. How could I concentrate on doing anything?

The claimant's pain level is reported in many of his medical records. I believe this to be a pain scale of 0 to 10, with 10 being the worst pain. On July 11, 2022, the claimant reported a pain level of 5, on July 21, 2022, a pain level of 8, on July 28, 2022, a pain level of 4, and on August 11, 2022, a pain level of 0. The claimant was recommended to take two 500 mg acetaminophen tablets every six hours as needed for pain on July 11, 2022. On July 21, 2022, the

claimant was told to take Tylenol as needed for pain. On July 28, 2022, and August 11, 2022, no pain medication for the claimant's right hand was recommended. It should be noted that NSAIDs and muscle relaxers were prescribed or recommended to the claimant, but those appear to be for a low back injury that was not considered in this matter.

A.C.A. §11-9-526 states:

If any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers' Compensation Commission, the refusal is justifiable.

In the present matter, the claimant did not accept or even attempt to participate in the light duty work offered by the respondent. Given the medical records regarding what appears to be a straightforward laceration of the claimant's right hand and pain levels described in medical records, I find the claimant refused employment suitable to his capacity that was offered by the respondent. As such, the claimant is not entitled to temporary total disability benefits under A.C.A. §11-9-526.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on February 27, 2023, and contained in a Pre-hearing Order filed February 28, 2023, are hereby accepted as fact.



2. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right wrist on or about July 11, 2022.

3. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right hand on or about July 11, 2022.

4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to medical treatment for his alleged right wrist injury as he has failed to prove that it is a compensable injury.

5. The claimant has proven by a preponderance of the evidence that he is entitled to reasonable necessary medical treatment for his compensable right hand injury.

6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from July 12, 2022, to a date yet to be determined, as the claimant is barred from temporary total disability benefits as he has refused employment under A.C.A. §11-9-526.

7. The claimant has failed to prove that his attorney is entitled to an attorney's fee in this matter as no indemnity benefits have been awarded as required by the Arkansas Workers' Compensation Act.

8. The request to determine the claimant's compensation rates is moot as no indemnity benefits have been awarded in this matter.

### **ORDER**

The respondent shall pay for the reasonable necessary medical treatment regarding the claimant's compensable right hand injury which occurred on or about July 11, 2022. The respondents shall also pay any out-of-pocket expenses incurred by the claimant regarding his reasonable necessary medical treatment for his compensable right hand injury.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

**IT IS SO ORDERED.**

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**HONORABLE ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE**