

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H303337

VICTOR MELANCON, Employee	CLAIMANT
AMERICAN CONTRACTING SERVICES, INC., Employer	RESPONDENT
TRAVELERS INDEMNITY CO., Carrier	RESPONDENT

OPINION FILED JULY 2, 2024

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

Claimant represented by JARID M. KINDER, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 4, 2024, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on November 27, 2023, and a Pre-hearing Order was filed on December 5, 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 April 29, 2023.
3. The respondents have controverted the claim in its entirety.

4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$835.00 for temporary total disability benefits and \$626.00 for permanent partial disability benefits.

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

1. Whether Claimant sustained a compensable bilateral carpal tunnel injury on or about April 29, 2023.

2. Whether Claimant is entitled to medical treatment for his compensable bilateral carpal tunnel injury.

3. Whether Claimant is entitled to temporary total disability benefits from May 3, 2023, to a date yet to be determined.

4. Whether Claimant's attorney is entitled to an attorney fee.

The claimant's contentions are as follows:

“1. The Claimant, Victor Melancon, sustained a compensable bilateral carpal tunnel injury on April 29, 2023, while working for American Contracting Services in Fort Smith, Arkansas.

2. Despite objective evidence of injury, the Respondents denied compensability of the Claimant's injury.

3. The Claimant contends that he is owed medical benefits as well as Temporary Total Disability benefits from May 3, 2023, through a date yet to be determined.

4. Due to the controversion of entitled benefits, the Respondents are obligated to pay one half of the Claimant's attorney's fees.

5. Claimant reserves the right to raise additional contentions at the hearing of this matter.”

The respondents' contentions are as follows:

“Respondents contend the claimant did not sustain a compensable injury within the course and scope of his employment.

Respondents are not responsible for the payment of any medical or indemnity benefits.”

The claimant in this matter is a 39-year-old male who alleges to have sustained compensable bilateral carpal tunnel injuries on or about April 29, 2023. The claimant worked as a general laborer for the respondent performing various manual labor tasks including operating a jackhammer. The respondent is in the business of repairing and restoring bridges. The claimant had worked for the respondent on two previous occasions, and during those periods of employment also engaged in manual labor-type work including jackhammering. During the claimant’s third and most recent employment with the respondent he alleges compensable bilateral carpal tunnel injuries. That period of work for the respondent was a total of 14 days. The claimant began work on April 17, 2023, which was a Monday. For the first week of his employment with the respondent, the claimant was unable to work on the bridge itself because of a problem with his Union dues. Instead of working on the bridge, the claimant was tasked with other work including picking up trash for that first week, ending Saturday, April 22, 2023.

The next week, on Monday, April 24, 2023, the claimant began operating a jackhammer on the bridge and doing “hydro” which is done by connecting and disconnecting hoses on the bridge. It was the claimant’s testimony that he was jackhammering for 13 hours straight.

Following is a portion his cross-examination testimony about jackhammering:

Q Now, you complained that you were jackhammering 13 hours straight on two different occasions. So you would get to work, clock in, get a jackhammer, and you would do that until you clocked out?

A Yes, sir.

Q According to your testimony; is that right?

A Yes, sir.

Q No breaks. Ate your lunch while you were jackhammering?

A You have to eat whenever you get a chance.

Q Never got a chance to stop, for those two days at least, is that what the record shows?

A While I am eating my sandwich, I have a jackhammer in my lap. I don't want to get sent home.

Q What you are testifying to is that you got no breaks; you didn't get to change positions; you didn't rotate with anybody?

A Not during those days, I did not.

On direct examination the claimant gave testimony about when his problems began, reporting them to the supervisor, and seeking medical treatment as follows:

Q When did you first start noticing problems?

A Maybe the 10th or 11th day of me jackhammering.

Q If we have down April 29th of 2023 as your first report of injury, does that sound correct?

A Yes, sir.

Q What were you noticing?

A A numbing sensation, lots of tingling. The only way to relieve it was to raise my hands and shake them (indicating). I was basically waking up in the middle of the night with pains like shooting from my hands all the way up to my shoulders.

Q Okay. Where was that numbness and tingling located?

A From the tip of my fingers through my wrists and sometimes mostly in my shoulder.

Q And your testimony today is you first started noticing those symptoms on April 29th of 2023; is that correct?

A Yes, sir.

Q Now, did you report this to anybody?

A Yes, sir. I told Marcel. He is sitting right there.

Q And you say he is sitting right there. Marcel was your supervisor while working at this company?

A Yes. He was the second in command to the bridge supervisor named Brian.

Q Okay. And when did you report to him that you were having these issues?

A The 29th when I got off. When I went home, I texted him and told him I was having a hard time opening my right hand. It's closed shut. I couldn't open it. And it was hard just texting him. And I told him it was hard just texting him with my left hand.

Q Okay. Did you ever have any problems with your hands, wrists with numbness and tingling in the past?

A Never in my life.

Q How did you report the injury to Marcel?

A By via text.

Q And what was the response from the company after you reported the injury?

A I didn't get a response.

Q Did your supervisor take any action after this, after you reported that you were having numbness and tingling in your hands?

A No, sir. I had to take action myself.

Q Okay. And how long did you continue to jackhammer after this?

A A few more days until I couldn't take it anymore.

Q When did you first seek medical attention?

A I took off May 2nd.

Q And I will note in the medical records it looks like you called your doctor on May 2nd?

A Yes, sir.

Q Okay. Why did you call your doctor on May 2nd?

A I wanted to seek some anti-inflammatory meds for my hands to get the swelling to go down.

On May 2, 2023, a medical record from Mercy Clinic Primary Care indicates the claimant and his wife both called and left messages for the claimant's primary care physician.

Those messages follow:

Message:

Patient works in construction and is needing an anti inflammatory and pain medication to be called in due to his arms are in pain and swollen. Please advise. Thank you.

Message:

Victor called to give a bit more info. He said that his job is building bridges, and he is running the jackhammer for at least the next week. He is having pain and swelling in the arms due to this, and he does not want to lose his job over the health issue.

He chose to reach out to us rather than go to a walk-in, is since Dr. Syed knows his medical history and his med list, she would have a better idea of what would be safe to take.

The claimant was seen at Mercy Clinic Primary Care on May 10, 2023, and underwent x-rays of his wrists bilaterally:

Reason For Exam: See Diagnosis. Numbness and tingling of both upper extremities; Numbness and tingling of both upper extremities; Pain in both upper arms; pain in both upper arms.

Right wrist: No acute fracture or dislocation. No significant degenerative changes. No osseous erosions.

Left wrist: No acute fracture or dislocation. No significant degenerative changes. No osseous erosions.

Impression:

IMPRESSION:

1. No radiographic abnormality identified.

During that visit the claimant was seen by Dr. Beena Syed, his primary care physician.

Following is a portion of that medical report:

Chief Complaint

Follow Up (He also wants to talk about his hands. He hurt them while at work. He was jack hammering on the 540 bridge for too long. Now they are numb and in pain and now the pain is radiating to his neck. Can't feel his finger tips.)

Visit Diagnosis

Numbness and tingling in both upper extremities (primary)

Pain in upper arms

White coat syndrome with diagnosis of hypertension

PROGRESS NOTE:

Patient has hypertension. He is only taking lisinopril. He stopped taking his hydrochlorothiazide because it did not make him feel right. He did not notify office about that. Lately his blood pressure is staying elevated. He states that at home his systolic blood pressure is in 140s.

His initial blood pressure in the office was 190/110 left arm and 182/110 right arm. Reports no headaches, changes in vision, chest pain, shortness of breath, confusion, slurred speech. At the end of the visit it was down to 170/90.

He has been under stress because of recent hand pain secondary to jackhammering at work. He states that he did it for 13 hours straight on 2 different occasions.

On April 29 he did it for 13 hours and the problems started then. Had pain tingling or numbness of both times and he notified his supervisor about his hands. Sunday he was off and Monday they put him on the same job for 13 hours. Tuesday he took off. Wednesday when we went back they put him again for jackhammering for 6 hours. It gradually got worsen and now radiates up to his neck, but the worst is in his hands. He has quit this job due to persistent placement on jackhammering/task and resulting pain, tingling numbness of his hands.

He has not notified Workmen's Compensation. He was working with American contracting services, Jefferson Indiana.

He reports that this was the third time he was working with them. He never had problems before, but the supervisor was different this time.

He took Aleve 2 tablets 3 times a day but he stopped it as it was helping him short-term only. Now he is taking 3 aspirins, does not know the strength, but he gets it from Dollar store and he takes it twice a day and it helps him somewhat.

He wants to work. He will be joining chicken plant now and he is concerned that his symptoms might be worsened.

On May 18, 2023, the claimant underwent a nerve conduction study at Mercy Clinic Neurology on his bilateral upper extremities, which was performed by Dr. Janice Keating.

Following is the Impressions section of that diagnostic report:

IMPRESSION:

1. Moderately severe bilateral carpal tunnel syndrome, worse on the right compared to the left.
2. Ulnar nerve normal bilaterally.

On May 30, 2023, the claimant was again seen by Dr. Syed. Following is a portion of that medical report:

PROGRESS NOTE:

He has been under stress because of recent hand pain secondary to jackhammering at work. He states that he did it for 13 hours straight on 2 different occasions.

On April 29 he did it for 13 hours and the problems started then. Had pain tingling or numbness of both times and he notified his supervisor about his hands. Sunday he was off and Monday they put him on the same job for 13 hours. Tuesday he took off. Wednesday when we went back they put him again for jackhammering for 6 hours. It gradually got worsen and now radiates up to his neck, but the worst is in his hands. He has quit this job due to persistent placement on jackhammering/task and resulting pain, tingling numbness of his hands.

He took Aleve 2 tablets 3 times a day but he stopped it as it was helping him short-term only. Now he is taking 3 aspirins, does not

know the strength, but he gets it from Dollar store and he takes it twice a day and it helps him somewhat.

Last visit he reported that he will try to work in a chicken plant but he could not work for more than 1 day because working there also resulted in his symptoms recurrence.

He has had nerve conduction test done and has carpal tunnel syndrome. He was the breadwinner of the family and now his wife has to go back to work because he cannot work and he has to stay home and take care of look after her 8-year-old daughter. Previously his mother-in-law was helping with her but now she has terminal cancer.

He states that even at home doing dishes and other chores results in pain tingling and numbness of both hands. He has not been able to get wrist brace because he did not have money. He states that his wife will be paid today so he will start using it. He has been doing exercises.

PLAN: In addition to above:

Bilateral carpal tunnel syndrome: Discussed with him for going for surgery but he states that he cannot because at this point he has no one to take care of his daughter in the summer break. And he has to do the household stuff because his wife is working. He will get the brace and start using. He is doing exercises. I will also have him see neurology. We will add Cymbalta and it might help him with his symptoms and also with his anxiety.

White coat syndrome: Blood pressure is better today. Will add hydrochlorothiazide. Continue losartan.

On June 13, 2023, the claimant was again seen by Dr. Syed. Following is a Progress Note from that visit:

PROGRESS NOTE:

Patient has come for his follow-up. He states that he is taking hydrochlorothiazide and losartan regularly. He reports that he is checking his blood pressure at home and it has improved. Yesterday it was 137/80. He states that starting Cymbalta has helped him mostly with his anxiety but the current dose seems to be high for him.

Regarding carpal tunnel he still has significant problem, he has ordered the brace and he will receive it soon and start using it.

Also has slight elevation in white cell count. No fever, night sweats, swollen glands, unintentional weight loss, chronic cough or diarrhea.

On June 15, 2023, Dr. Syed referred the claimant to Fort Smith Mercy Orthopedics with a diagnosis of bilateral carpal tunnel syndrome. On July 25, 2023, the claimant was seen by Dr. Trent Johnson at Mercy Orthopedics. Following is a portion Dr. Johnson's clinic note:

CHIEF COMPLAINT: Numbness and tingling in the bilateral hands.

HISTORY OF PRESENT ILLNESS: Mr. Melancon is here for evaluation of his bilateral hands. He is a 38-year-old gentleman. The patient works in construction. The patient has numbness and tingling in the bilateral hands. Been doing a lot of jack-hammering. Since that time, he has significantly worsening pain, with pain at the wrists, as well as numbness and tingling in the fingertips. He states that he has numbness and tingling throughout the day, and in the evenings. He states that it is mainly the thumb, index, and middle fingers. He has tried bracing and oral anti-inflammatories with continued symptoms. The patient is right-hand dominant. The patient states that the right hand affects him somewhat more, but both hands are moderately symptomatic. He denies any particular neck pain, radicular or neurological symptoms. Denies any fever or chills.

IMPRESSION/DIAGNOSIS: A 38-year-old gentleman with bilateral hands he has carpal tunnel syndrome, this is moderately severe. Treatment options are discussed. He has attempted nonoperative management with night-splinting, activity restrictions, and oral anti-inflammatories with continued pain. Surgical intervention with risks and benefits of carpal tunnel release were discussed. The patient will go home and consider this treatment option.

The respondent in this matter called Marcel Pryor, Jr. as a witness. Mr. Pryor is a supervisor for the respondent and directly supervised the claimant during his employment with the respondent at which time he alleges to have sustained compensable bilateral carpal tunnel syndrome. Mr. Pryor gave direct examination testimony about the amount of jackhammering done in a workday as follows:

Q Okay. Tell me how that works out.

A So like, okay, I think this is where he gets confused at. He had been on the clock for 12 or 13 hours.

Q Right.

A I think there was some confusion that is coming in because, I mean, you've probably been on the clock 12, 13 hours, but you are not working the whole – you are not jackhammering no 13 hours.

And you've got to sit down to eat holding the hammer, that is not the case. You get breaks. It's up to you when you take your breaks; you know what I am saying? You might hammer for two hours, sit down for 30. You might hammer another two hours, sit down for 30. It's not no when you get there you straight hooking up a hammer and hammering for no 13 hours.

Q Now, do you have enough hammers for everybody who is on the crew to have their own hammer?

A Well, we got multiple compressors, but that hammer only allowed – that compressor only allows you to hook up five hammers, maybe. And we have people that is designated to switch out so everybody – so you might have five hammers going, but you've got six or seven people that is actually there, so you can switch out and rotate with them.

Q Okay.

A Everybody is not hammering. If everybody hammered 13 hours, we wouldn't have nobody.

Q You wouldn't have enough hammers?

A No. I don't think they will stay if they've got to hammer 13 hours straight every day.

Q All right. So you have enough people to be able to rotate people in?

A Yes, sir.

Q People can take breaks?

A That's what we do.

Q So you are not standing there hammering for 13 hours straight each day?

A No, sir.

On cross examination, Mr. Pryor was also asked about the time spent jackhammering by the claimant as follows:

Q Now, you are not here denying that Mr. Melancon didn't jackhammer on the job; is that correct?

A No, sir.

Q And you are not denying that he didn't jackhammer for at least from your testimony for at least two hours at any given time; is that correct?

A Yes.

Q Okay. And your testimony was that it's very common for laborers at American Contracting to jackhammer for two hours at a time and take 30-minute breaks; correct?

A I don't know if it would be a full two hours. You got some guys that's been doing it for years and they might hold it longer than two hours, but you got some that might just hold it for an hour. We don't set a time that you have to hold it or nothing like that. When you want to stop, you stop and take a break.

Q So it is up to the individual persons on the job to jackhammer as long as they want to jackhammer for, is that correct, and that would include hours at a time?

A No. We are not going to let you jackhammer 13 hours straight.

Q Okay. That wasn't my question. My question was it is up to the individual to jackhammer as long as they want and that can amount to hours at a time?

A Yes, sir.

Q Okay. What percentage of the day would you say an individual who was assigned a jackhammer would jackhammer?

A Out of a 12-hour, 13-hour shift, I would say he is jackhammering between eight and nine hours. And I say that because you have got to think, if you take away that 30 minutes or 40 minutes every time you are stopping, then that adds up. If you stop four times, that is two hours already gone. And in a 13-hour shift, you are going to stop more than four times.

Q So your testimony as we sit here today is that at American Contracting, it is possible for an individual who is jackhammering to jackhammer for nine hours out of their day; is that correct?

A Yeah.

On direct examination, Mr. Pryor was asked about the claimant reporting an injury to him as follows:

Q Now, did he ever report to you that he was injured on the job?

A One particular day. So his vehicle, sometimes he would leave it at the yard. Sometimes he would leave it at the yard and then I will go get him. So I took him back to the yard on this particular day and we was just having a normal guys' conversation and he said he might be a little late in the morning because he had to go see his doctor about his blood pressure. And he said, "I am going to see if she can give me anything." He said, "I haven't worked with you guys in a long time. I got to get back used to hammering."

Q Okay. Did he tell you he had injured himself or was hurt on the job?

A No, sir. He never said he was injured or hurt. The only think he said was he got to see his doctor to get his blood pressure medicine and he said that his hands was hurting. He got to get back used to hammering.

Q So he didn't act like that was any particular issue with him, at least was your impression; is that correct?

A No, sir.

Q Now, had he come to you and said, “I’ve hurt myself on the job,” what would you do?

A The first thing I would do is call April Hicks and let her know and she would direct me what the next step would be, but I already know that. Take him to the hospital.

Q Okay. Now, is she the HR lady?

A She is the safety lady.

On cross examination, Mr. Pryor was asked about the claimant’s reporting of an injury to him as follows:

Q Now, your testimony earlier was that Mr. Melancon did not report the injury to you; is that correct?

A Yes, sir.

Q But your testimony was Mr. Melancon said he was hurting in his hands from the jackhammer; is that correct?

A He said his hands were hurting because he hadn’t jackhammered in a long time. We was on our way to the yard and we were just having a guys’ conversation and laughing and talking and he was telling me about that he was going to be late the next morning. And he said, “When I go see my doctor, I am going to see if she can give me something because my hands are hurting me.”

Q Okay. And then on 5/3, it was your testimony that he told you that his doctor said he could not jackhammer anymore; correct?

A He never tell me that.

Q Okay.

A He text me, like I told the Judge, after all of this happening, he didn’t show up the next day or whatever the case may be. So when I start receiving the text message, he put in the text message that he was getting a lawyer and we were going to have to pay him and he said his hands is messed up from hammering. And I said,

“Where is the doctor’s note at ? Did you give me a doctor’s note? Did you tell me you went to the doctor?”

He didn’t have – I mean he’s got the text messages because we got them.

This administrative law judge questioned Mr. Pryor in order to get clarification about when and how he and the claimant had communicated about the claimant’s hands hurting from jackhammering as follows:

THE COURT: I am trying to clarify a note that I took. Sir, just shortly ago, you said he did say his hands were hurting from hammering. And I know we talked about text messages and all, but did he say that in person or was that a text message?

THE WITNESS: That was a text message.

THE COURT: Was that recently or back around the time he left work?

THE WITNESS: I am not understanding.

THE COURT: When he told you that his hands were hurting from hammering –

THE WITNESS: Uh-huh.

THE COURT: -- when did that occur?

THE WITNESS: Me and him, one day me and him was on – he text one time before, but that was when after all of this was going on and he text me saying his hands was hurting and we was going to have to pay him.

But one time before, me and him, like I said, he used to drive his truck – used to drive his personal SUV to the yard, so I would take him back to the yard to get his vehicle and he said that he might be a little late in the morning because he had to go to the doctor to get some more medicine for his blood pressure and he said, “ I am going to see if my doctor can give me something for my hands because my hands is hurting.” He said, “ I got to get back used to jackhammering. I haven’t jackhammered with you guys in a long time.”

THE COURT: Okay. So that was an exchange while he was working, still working with the company?

THE WITNESS: Yes, sir.

THE COURT: And then there was an exchange later on through a text message?

THE WITNESS: Yes, sir.

THE COURT: Do you remember, roughly, how long after he quit working that text message was?

THE WITNESS: The next day or even the day after.

THE COURT: Soon after he stopped working?

THE WITNESS: Yeah, but it wasn't a text message saying my hand is injured. It went straight to the Threads, whether I Googled him or whether he had Googled me. And then he started saying we are going to have to pay him. We are going to have to pay him.

And I told him he wasn't going to do nothing to me and I replied how a man is going to reply. That is what I did. But I never text him first or nothing like that. He text me.

THE COURT: Okay.

THE WITNESS: He text implying all of this that we was going to have to pay him. He implied that he is going to get a lawyer and all this kind of stuff like that.

THE COURT: Okay. Thank you.

Mr. Pryor testified on direct examination about asking the claimant to move his truck on the claimant's last day of employment, which would have been Wednesday, May 3, 2023, as follows:

Q And this would have been the last day that he worked; is that right?

A Yes. I told him, I said, “You’ve got trucks coming in and out. Go move your vehicle.” And then I said, “When you are finished with that, you don’t need to be taping up no more drains or nothing. You are supposed to be hammering.”

But he said, “Why can’t me and Roy just finish picking up paper and trash like we have been doing for the last couple of days. I want to continue to do that.”

I said, “That’s not your job at the time. You are supposed to hammer.” So he moved his vehicle and I’ve never seen him again.

So the next day I am calling him and looking for him. He never showed up. So I asked one of the guys where he was at and they showed me a text where he said he’s tired of his job; that he wasn’t going to hammer. He didn’t want to hammer.

Q So did he come back after you had told him to move his truck?

A No, sir.

On cross examination, the claimant was questioned about being asked to move his truck on the last day of his employment with the respondent as follows:

Q You don’t remember being asked to move your truck and then just getting in your truck and leaving?

A No, sir.

Q Okay. That didn’t happen or you just don’t remember that?

A We had a conversation about my jackhammering and then I was sent home.

Q So you are claiming that he sent you home. You didn’t just leave the job?

A He sent me home.

Q Now, did you ever come back or contact them about returning to work at any point after May the 3rd?

A No, sir.

The claimant in this matter has asked the Commission to determine whether or not he sustained compensable bilateral carpal tunnel syndrome on or about April 29, 2023.

In order to prove a compensable carpal tunnel syndrome injury, claimant must satisfy all of the following requirements: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment; (2) proof by a preponderance of the evidence that the injury caused external or internal physical harm to the body; (3) medical evidence supported by objective findings as defined in A.C.A. §11-9-102(16); and (4) proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment. Claimant does not have the burden of proving by a preponderance of the evidence that his job duties required rapid repetitive motion.. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W. 2d 190 (1998).

The credibility of witnesses and the weight to be given to their testimony are matters solely within the province of the Commission. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993).

It is clear that the claimant in this matter overexaggerated the amount of time he spent operating a jackhammer. However, it is also clear that he did spend a great deal of time jackhammering on the days that he did so. I am uncertain if that time-period was three or four days or as many as eight or nine. Either amount is a reasonable time-period to develop bilateral carpal tunnel syndrome given the nature of operating a jackhammer.

The claimant testified that he informed his supervisor, Mr. Pryor, that he injured himself jackhammering. Mr. Pryor denies this but does admit the claimant made the following statements to him, speaking of being late because he was going to the doctor. Mr. Pryor testified that the

claimant stated “I am going to see if she can give me anything”... “I haven’t worked with you guys in a long time. I got to get back used to handling.”; “I am going to see if my doctor can give me something for my hands because my hands is hurting.” ... “I got to get back used to jackhammering. I haven’t jackhammered with you guys in a long time.”; “When I go see my doctor I am going to see if she can give me something because my hands are hurting me.” Mr. Pryor also testified that the claimant, via text message, informed him about his hands hurting and that he was going to get a lawyer and “we was going to have to pay him.” Mr. Pryor was the claimant’s supervisor and while he does not believe the claimant reported an injury to him, his own testimony about the claimant’s statements proves otherwise.

The claimant on May 2, 2023, missed work but contacted his primary care physician’s office and described his bilateral upper extremity difficulties and related those difficulties to jackhammering. The claimant’s May 18, 2023, nerve conduction study shows “moderately severe bilateral carpal tunnel syndrome, worse on the right compared to the left.” Dr. Johnson at Mercy Orthopedics recommended surgical intervention as a treatment plan for the claimant’s bilateral carpal tunnel syndrome. The claimant is able to prove by a preponderance of the evidence that he sustained compensable injuries in the form of bilateral carpal tunnel syndrome on or about April 29, 2023.

The claimant has asked the Commission to determine whether he is entitled to medical treatment for his compensable bilateral carpal tunnel syndrome.

Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries, Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31

(2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

After a review of all the medical records submitted into evidence in this matter, it appears that the treatment the claimant has received thus far is reasonable and necessary treatment for his compensable bilateral carpal tunnel syndrome, including the surgical intervention recommended by Dr. Johnson and its after care.

The claimant has asked the Commission to determine if he is entitled to temporary total disability benefits from May 3, 2023, to a date yet to be determined.

A claimant who suffers a scheduled injury is entitled to receive temporary total or temporary partial disability benefits during their healing period or until they return to work, regardless of whether there is a total incapacity to earn wages. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001).

In the present matter, the claimant has sustained scheduled injuries in the form of bilateral carpal tunnel syndrome. The claimant was at the time of hearing in this matter still in his healing period. The claimant had during the time period after his compensable April 29, 2023, injury worked for a different employer but was not employed at the time of the hearing in this matter. The claimant is entitled to temporary total disability benefits for his scheduled compensable injuries from May 4, 2023, until a date yet to be determined, less any period of time in which the claimant was employed by another employer.

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 witnesses and to observe their 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 November 27, 2023, and contained in a Pre-hearing Order filed December 5, 2023, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he sustained compensable bilateral carpal tunnel injuries on or about April 29, 2023.

3. The claimant has proven by a preponderance of the evidence that he is entitled to medical treatment for his compensable bilateral carpal tunnel injuries. This includes reimbursement for any out-of-pocket expenses related to the medical treatment admitted as evidence in this matter regarding the claimant's bilateral carpal tunnel syndrome.

4. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from May 4, 2023, to a date yet to be determined, less any period of time in which the claimant has been employed by another employer.

5. The claimant has proven by a preponderance of the evidence that his attorney is entitled to an attorney fee in this matter.

ORDER

The respondent shall pay for the reasonable and necessary medical treatment associated with the claimant's compensable bilateral carpal tunnel syndrome, including the surgical recommendation of Dr. Johnson. The respondent shall also be responsible for any out-of-pocket medical expenses related to the medical treatment admitted as evidence in this matter regarding the claimant's bilateral carpal tunnel syndrome. The respondent shall pay the claimant temporary

total disability benefits from May 4, 2023, to a date yet to be determined, less any time-period in which the claimant was employed by another employer.

The respondent shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one-half of said attorney's fee to be paid by the respondent in addition to such benefits and one-half of said attorney's fee to be withheld by the respondent from such benefits pursuant to Ark. Code Ann. § 11-9-715.

All sums herein accrued are payable in a lump sum and without discount and shall earn interest at the legal rate 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.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**