

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G903148**

JEFFREY W. WIGTION,  
EMPLOYEE

CLAIMANT

ROACH MANUFACTURING CORPORATION,  
EMPLOYER

RESPONDENT NO. 1

TRAVELERS PROPERTY & CASUALTY,

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND

RESPONDENT NO. 2

**OPINION FILED FEBRUARY 2, 2021**

A hearing was held in the above-styled claim on October 2, 2020, before Former Chief Administrative Law Judge Barbara Webb, in Jonesboro, Arkansas. Submitted for ruling before Administrative Law Judge Chandra L. Black, in Pulaski County, Little Rock, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney at Law, Jonesboro, Arkansas.

Respondents No. 1 represented by Guy Wade, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas. Ms. King waived appearance at the hearing.

**STATEMENT OF THE CASE**

A Pre-hearing Telephone Conference was held in this matter on January 29, 2020. A Pre-hearing Order was entered on that same day. This Pre-hearing Order set forth the stipulations offered by the parties, their contentions, and the issues to be litigated.

The following stipulations were submitted by the parties, either pursuant to the Pre-hearing Order, or at the start of the hearing. I hereby accepted the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-insurance carrier relationship existed on April 19, 2019.

The parties agreed to litigate the following issues at the hearing:

1. Whether the Claimant sustained compensable injuries to his hands and arms on April 19, 2019.
2. Whether the Claimant is entitled to additional medical treatment.
3. Whether the Claimant is entitled to an attorney's fee.

### CONTENTIONS

Claimant: The Claimant contends that he sustained an[sic] compensable injury[sic] to both hands during and in the course and scope of his employment with Respondent (Respondent No. 1).

Respondents No. 1: Respondents contend that the Claimant did not sustained a work-related injury within the course and scope of employment or while performing any employment services. The Claimant failed to timely report an injury at work. Any complaints are the result of pre-existing conditions for which the Respondents are not responsible. The Respondents are not responsible for payment of any indemnity and/or medical benefits.

Respondent No. 2: The Trust Fund has deferred to the outcome of litigation.

The documentary evidence submitted in this case consists of the hearing transcript of October 2, 2020, and the documents contained therein.

The following witnesses testified during the hearing: Mr. Jeffery W. Wigtion (the Claimant), Mr. Larry Wayne Cossey, and Mr. George Kevin Hazelwood.

### DISCUSSION

The Claimant, Mr. Wigtion, was 45 years of age at the time of the hearing. He has a high school diploma. According to the Claimant, he also has an associate degree in the auto mechanic industry. The Claimant confirmed that he has certification in computer technology.

Regarding the Claimant's work history, he previously worked for Pepsi-Cola, in Jackson, Tennessee. It appears the Claimant worked there for approximately five years. He previously held a CDL. Ultimately, the Claimant returned to Arkansas. He went to work for a computer outfit/WIS International. They performed inventory management for other companies. Next, the Claimant went to work for Southworth Products, which is located in Manila, Arkansas.

The Claimant admitted that he has had some problems relating to alcoholism. He was incarcerated in a treatment center in Mississippi County for nine months due to this condition. This occurred nine years ago.

The Claimant began working for Roach Manufacturing, as a warehouse handler. The Claimant picked tickets wherein he had to pull orders for the outgoing units. According to the Claimant, he had to fill inventory orders for chains, reducers, or any special part that was required on the conveyors. On average, the Claimant pulled 16 to 19 tickets a day. He testified that there was a weight-lifting requirement of 80 pounds for his job. However, the Claimant testified that he sometimes had to lift motors that weighed 60 to 120 pounds, and even 240-pound ones, but with assistance. In a course of a day, the Claimant stated that he also had to restock motors. He further stated that he had to handle approximately 40 to 60 motors, depending on the ticket.

Over the years, the Claimant was promoted by Roach Manufacturing. He supervised and signed for trucks. According to the Claimant, he was more of a lead person. However, there were times when the Claimant had to fill the tickets himself. The Claimant worked for the respondent-employer for over six years. He worked in a lead position for the last three years of his employment with them. The Claimant's supervisor was Shane Dallas.

He verified that he was switched from pulling the orders and carrying the motors and chains over to something called the Power Assembly Department. He admitted that he assembled the

units, which drove the conveyor belts. The Claimant testified that they provided him with socket sets to assemble the units, but a lot of his work activities required the use of power tools. He agreed that the tool used was a pneumatic/ratchet tool that hooked to the compressor system. According to the Claimant, he had to constantly use a power tool throughout the course of a work week. The Claimant verified that one could use the power tool with both hands if that person is ambidextrous. Hence, the Claimant confirmed that he is right-handed.

He essentially testified that in the Power Assembly Department, he still had to lift objects. Specifically, the Claimant testified that he had to lift the motors that went on the pallets. The Claimant further testified that he had to put the nuts and bolts in the bins. He also had to lift 80-pound motors from pallets up to his work surface. The Claimant estimated that he lifted motors and/or parts in that job about 130 times a day. He was allowed to work overtime in that position. The Claimant agreed that working overtime was more the rule, than the exception.

Upon further questioning, the Claimant testified:

Q In the course of your work, either in pulling the tickets or later on over in this Power Assembly Department, did you notice any kind of problem?

A Yeah, that's when I went to Dr. Brown.

According to the Claimant, he started noticing symptoms with his hands while working in the warehouse and the Power Assembly Department, but more so when working in the latter department. The Claimant verified that he testified during his deposition that he started having problems with his wrists about six months before he went to the doctor. He testified that he was not quite sure what was going on. They would freeze up and his hands would go numb. The Claimant further testified that his right side was worse.

Upon further questioning, the Claimant testified:

Q Okay. Did it involve any other part of your body besides your fingers and hands?

A It was mainly just my hand. It felt – they were numb, like I couldn't -- I don't know, it was just --

Q Okay. Okay. And how long did this persist before you mentioned it to somebody?

A I mean, I mentioned it to him, because I had to go there to the clinic to the doctor. That doctor there in the clinic.

The Claimant essentially testified that Dr. (Mark) Brown is the company doctor for Roach. He essentially agreed that Dr. Brown is on the premises on a regular basis. They have an on-site clinic for employees. According to the Claimant, he saw Desha, the nurse practitioner. The Claimant has been seen by both Dr. Brown and Desha. According to the Claimant, Dr. Brown referred him to an orthopedic clinic, Dickson Orthopedics PA, which is also commonly called, Jonesboro Orthopedics & Sports.

There, the Claimant was evaluated by Dr. Dickson. He ordered tests for the Claimant upper extremities. As a result of that, they sent the Claimant over to Dr. Mario Cauli. The Claimant admitted that he underwent an EMG study. Per the Claimant, pursuant to this study, surgery was recommended. However, prior to any surgery being performed, the Claimant was required to undergo steroid shots. The Claimant confirmed that the shots provided him with temporary relief of his symptoms.

Regarding the current condition of the Claimant's hands and arms, he testified that on awaking every morning, they feel as though they have been submerged in ice. The Claimant testified that he is unable to make a fist. He also essentially testified that he is unable to pick up objects, and he drops them. The Claimant maintained that sometimes he is unable to start his vehicle, or button his pants.

The Claimant testified that after learning the results of his medical situation, he turned in the documentation to his supervisor. He also made copies for the human resource person, Kevin

Hazelwood. The Claimant testified that his supervisor was Shane and then it was Brian Priddy. According to the Claimant, he gave everybody that was a superior to him a copy of this information.

He denied that he was referred to any other doctors, or for an independent medical examination. The Claimant also denied that he was sent back to Dr. Dickson. He admitted to running into Michael Roach on the factory floor. The Claimant maintained that he told Mr. Roach what was going on and the problems he was experiencing with his hands. According to the Claimant, he broke down in front of Mr. Roach and cried because he was scared.

According to the Claimant, he was terminated about a week after he turned in the report relating to his wrists and arms conditions. The Claimant testified that they called him in to the office on that Friday and told him he was not made out to be a builder.

The Claimant admitted that he filed for unemployment insurance benefits. He admitted that he drew these benefits for a couple of months, if not longer. The Claimant further admitted that he had an old overpayment of unemployment benefits. According to the Claimant, he still owes payment for these benefits. The Claimant denied that his unemployment payments were reduced due to this overpayment. He confirmed that he drew these benefits, until he was no longer qualified for them.

Since this time, the Claimant has tried working at Shearer's Foods Company. This company manufactures snack products, including potato chips and other snacks. He denied that the work there was light. According to the Claimant, he kept dropping the boxes and was unable to fold them. The Claimant testified that he worked on a line wherein his employment duties were repetitive. However, he worked there for only two weeks. The Claimant testified that he went

through orientation and was on the floor for three days. According to the Claimant, they then pulled him because he was too slow.

Regarding his symptoms, the Claimant denied that his symptoms have gotten any better over time. Instead, the Claimant testified that he believes they have gotten worse. According to the Claimant, he is not able to do anything. The Claimant testified that on the morning of the hearing, it was hard for him to make a fist. He essentially testified that it is hard for him to close his hand to make a fist. The Claimant maintained that his wife has to help him a lot. The Claimant testified that on the way into the hearing, he dropped his cell phone and his keys.

During the day, the Claimant watches his children. They are ages, seven and nine. One of his children is his doing online courses. He denied that any other family lives in the house with him besides his wife and kids.

He verified that if his worker' compensation claim is found to be compensable; he plans to have the surgery.

On cross examination, the Claimant verified that he worked for Pepsi-Co America, as a truck driver. The Claimant also named other places he has previously worked, such as Dillard's Southworth, and Gateway. He confirmed that he has had five DWI's, for which he did a stint at the Department of Correction.

Regarding his employment at Roach Manufacturing, he admitted that he started working with them through a temporary agency. He first worked at Roach, in the warehouse, picking orders. In that process, the Claimant verified that he drove through the warehouse on a bicycle. It was a three-wheeled bike. According to the Claimant, he put the parts for the orders on a "bicycle trailer." The Claimant testified that if they were too heavy, the bicycle would flip. He confirmed

that he would drive through the warehouse, pull what was needed by way of bike or forklift, and then put it on a pallet.

A few years later, the Claimant worked his way up to lead warehouseman. As the lead person, the Claimant admitted that he would oversee up to six other employees of order pickers. The Claimant had other responsibilities as a lead warehouse person, which included answering the phones. He also had to sign in the inventory of items and perform data entry tasks.

He verified that he suffers from alcoholism, diabetes, and hypoglycemia. During his last three months of his employment with Roach Manufacturing, the Claimant worked on the floor. In that position, he would take parts and look at blueprints. The blueprints included the plans for the ultimate assembly of whatever he was trying to put together.

The Claimant verified that Larry Cossey oversees everybody in the warehouse. Michael Roach is the supervisor of the Power Assembly Department, and Kevin Hazelwood is the HR person over the whole plant. He admitted that when he was moved over to the Power Assembly Department, and he was learning the position of how to assemble the products. The Claimant worked with another employee to learn the position.

Under further questioning, the Claimant verified that he was transferred to Power Assembly due to family issues. He was moved to that area after a three-day suspension. The Claimant testified that he was suspended because he was bringing his “home stuff” into work. As a result, the Claimant and Shane would “butt heads.” According to the Claimant, he was having some issues with his family and stepson. The Claimant admitted that he was leaving work early, getting there late, or missing work because of his family. As a result, his points added up quickly.

He testified:

Q Now you told us a minute ago that you believed that you had given all of your medical paperwork and all of that to the supervisors or the people at Roach, is that right?



A I'd make a copy of what was given to me was the excuses; so I would not get points, because the re-occurring incidents, which still stay with the same points. So I would make sure that my supervisor and Kevin would get a copy of those items.

Q And that would be the documentation that you were having problems with your hands and arms?

A Anything that I missed work for.

The Claimant was asked if he recalled testifying that he did not know if he told his employer that he believed his complaints with his hands, arms, or shoulder were related to his job. His response was, "I don't." Therefore, counsel for Respondents No. 1 provided the Claimant with a copy of his oral deposition.

In that regard, during his deposition testimony, the Claimant was asked if he told his employer he believed that his complaints were related to his work. He replied, "I don't know for sure." The next question was, "Did you tell Brian, or Shane or Larry?" The Claimant replied, "Not that I recall." Without being asked a question, the Claimant essentially testified that he was not aware what his symptoms were about. According to the Claimant, they were still running testing on him. Also, during his deposition testimony, the Claimant confirmed that he knew to report an injury to his supervisor if he fell over and broke his back at the workplace.

Upon further questioning, the Claimant testified:

Q Okay. Well, if you're having problems with your hands or problems with your arms or your shoulder and you think it's the workplace that's doing it, you have to report that, don't you?

A Yes, I mean, I –

Q In fact, when you first started at Roach, you signed a document that says, "Work-Related Injuries," and the first thing it says, "If you have a work-related injury, you must immediately report the injury to your supervisor and/or Human Resource Manager, Kevin Hazelwood." Do you remember signing that?

A It was in your handbook but, no I do not remember signing it.

The above referenced document was made a part of the record by Respondents No. 1. It is located at page 19, of the Respondents' Exhibit. The Claimant verified that he signed this document in 2014. He agreed that this document directed him to report his injury to his supervisor and/or the Human Resource Manager.

Regarding prior injuries, the Claimant essentially admitted that he had a prior injury while working for Roach. It appears that the Claimant ran over his foot with a forklift during a prior work-related injury with Roach Manufacturing.

The Claimant was asked if he is claiming an injury date of April 19, 2019. However, there was no response from the Claimant.

Respondents No. 1's counsel continued to question the Claimant in this regard:

Q Is that correct?

A I -- April 19<sup>th</sup>, 2019, is on here. "He couldn't come in to work." I did come in to work that day. I had to go to work that day.

Q In fact, you had a meeting with your supervisor and talked with him and he told you, you had to come in or you were going to be let go, because they needed all the employees or all hands on deck.

A Exactly.

Q Is that right?

A And I was explaining to him that I could not button my own pants at that time. I couldn't even start the car. And that's what I told Brian. I ended up coming in to work that day.

The Claimant admitted that his points were adding up, which is why they told him that he needed to come in or they were probably going to fire him. The Claimant admitted that he went to the ER because he thought he was having a heart attack. He verified that he had a meeting in Kevin Hazelwood's office at some point in May 2019, but he was not sure of the exact date. At

that point, Roach terminated the Claimant’s employment with them. The Claimant admitted that he did not try or ask to file a workers’ compensation claim.

Instead, the Claimant filed for unemployment insurance benefits. The Claimant verified that he drew these benefits for a brief period of time. He admitted that he was unable to draw these benefits for a period of time because he had overdrawn unemployment benefits before. According to the Claimant, he was finding all of this out by the “unemployment office.” He agreed that there was some issue that they determined or at least, claimed was fraud because he had drawn these benefits too long back in 2013. The Claimant testified that while working for Roach, he filed for unemployment benefits.

Counsel for Respondents No. 1 asked the Claimant if when he applied for unemployment benefits in June (2019), he stated that he could go to work immediately, full-time, and that he did not have any disabilities. The Claimant inserted, the following comment: “It says, “That you are aware of.” Counsel essentially asked if the Claimant was aware of any disabilities, he replied, “I just knew my hands need surgery.”

Next, the following exchange took place between Respondent No.1’s attorney and the Claimant:

Q Okay. But you didn’t say that in here, did you?

A (NO RESPONSE.)

Q You said, “I can work.” “Do I have disabilities that limit your ability to perform your normal job duties,” and you checked, “no.” is that right?

A After I was employed.

The Claimant agreed that on June 21, 2019, he checked “No,” with regard to the question regarding disabilities that would limit his ability to perform normal job duties. However, the Claimant testified: “Yeah, it’s painful. It’s hurtful, but – – ”

Under further questioning, the Claimant testified:

Q But did you describe that anywhere?

A I don't know.

Q You just checked, "no." didn't you?

A That's correct.

Q Okay. And in fact, you re-applied in September, after you had worked at another company and made the same type of description, do you see that?

A (NO RESPONSE.)

Q You have no disabilities that would limit your ability to perform normal job duties, correct?

A Well, I see what you're –

Q That's what you said, isn't it?

A Yes.

Q Okay. Now, you, originally, told us that you had no job anywhere else after you left Roach's do you remember that?

A Yes.

However, the Claimant admitted that he later testified that he worked at Shearer's Foods, for about two weeks. The Claimant admitted that he also worked for Service Master. He testified that he left employment with Service Master because he had drama with his wife. It appears that the Claimant put this information on his application for unemployment benefits.

The Claimant admitted that he made certain job contacts and was able to work during the time that he filed for unemployment benefits. He essentially admitted that this document demonstrates that he was able to work.

Per the Claimant's testimony, he saw Dr Dickson, on May 21, 2019. The Claimant testified:

Q So you didn't see a doctor, after you were terminated?

A No.

Q Okay. Well, I'm looking at your medical exhibit, page 6 –

A Because I couldn't afford it.

The Claimant did not recall the date he was let go from Roach. He denied having testified regarding the date he was discharged. He agreed that if there is testimony later that he was terminated on May 3, 2019, that would be before he saw Dr. Dickson on May 21, 2019. The Claimant admitted to telling Dr. Dickson that he had problems for three months. He agreed that his problems would have started at some point in February based on this report. The Claimant admitted that during his deposition testimony he testified that he did not tell anyone at work/Roach that he believed his complaints were work-related.

He asked counsel for Respondents No. 1 to repeat the above question:

Q Sure. Based on what you told me in your deposition and based on what you've said in this hearing, you did not tell anyone at Roach that you believed your complaints were work-related, correct?

A **No, I told Mr. Roach too that I was gonna have surgery done on my hands and I was scared.**

The Claimant was unable to explain how he was able to tell Mr. Roach that he was having surgery on his hands and scared if he did not see Dr. Dickson until May 21<sup>st</sup>. He maintained that he saw Dr. Dickson before May 21<sup>st</sup>. The Claimant testified that Dr. Dickson performed the injections.

Larry Wayne Cossey, testified on behalf of Respondents No. 1. As of the date of the hearing, Mr. Cossey worked at Roach Manufacturing, in Truman. He works as an office manager

over several offices, which is called the purchasing side of it. Mr. Cossey admitted that he is familiar with the Claimant. He is also familiar with the job performed by the Claimant. Mr. Cossey gave an overview of the activities involved in picking orders. (TR, pp. 66-67)

He verified that he is familiar with the position in the Power Assembly Department and what it entails. According to Mr. Cossey, there is another department called the Fabrication Expeditors. They do the same thing, pick all the fabricated parts, and those are put on a buggy and pushed over to the Power Assembly Department for processing. Specifically, per Mr. Cossey, they start the process of taking all the parts and bolting them together to build a conveyor, which are sometimes ten foot long. He admitted that an employee is taught how to build a conveyor. However, Mr. Cossey explained that it is basically a “mentoring training process.”

Mr. Cossey denied that he was aware that the Claimant was claiming he had been hurt at work, in his capacity over the warehouse or Power Assembly part. He denied being told by anyone in his department that the Claimant was claiming an injury. Mr. Cossey verified that the Claimant was instructed on how to report an injury.

On cross examination, Mr. Cossey testified that his job title is Purchasing Manager. He agreed that he is not involved in the various production processes. Mr. Cossey further admitted that he could not comment on the relative weight of the parts, either in pulling tickets, or in the Power Assembly Department. In addition to this, Mr. Cossey agreed that he could not testify to the frequency of repetitions of required lifting for employees, in either of departments.

Kevin Hazelwood testified on behalf of the Respondents. His job title at Roach is Human Resource (HR) Manager. Mr. Hazelwood worked in this position during the time Roach employed the Claimant. He has been the HR manager since January 30<sup>th</sup> of 2000.

Mr. Hazelwood is familiar with the various position within the warehouse, including Power Assembly, and other jobs at Roach Manufacturing.

He admitted that he is familiar with the positions in the warehouse. According to Mr. Hazelwood, in the warehouse there is going to be a very wide range of things/products. There is everything from motors to paper towels, toilet paper, Kleenex, nuts, and bolts.

Mr. Hazelwood essentially testified that the Claimant started out his employment with Roach, as a picker. He testified that this job changed depending on the order. According to Mr. Hazelwood, it is not something that you are doing the same thing over and over again. He denied that orders have to be pulled fast or pulled by a certain number of orders each day. However, Mr. Hazelwood testified that they do want everybody to be productive.

According to Mr. Hazelwood, when the Claimant was moved to the lead warehouse position, his paperwork responsibilities increased. This included the Claimant's data entry responsibilities, answering the phones, and things of that nature. Mr. Hazelwood also gave an overview of the employment duties involved in the Power Assembly position, which do not require assembly-line type work. (TR, p. 74)

He denied that the Claimant had to use power tools the entire 12-hour shift, or for an extended period of time. Mr. Hazelwood denied that there would be someone with a stopwatch telling the Claimant he has to perform quickly. He admitted that some of the work was done over and over again as part of that process.

Mr. Hazelwood verified that he was not made aware of any issues with the Claimant's hands, arms, wrist, shoulders, or anything prior to his termination. He denied receiving any paperwork about a work-related claim for the Claimant. Mr. Hazelwood explained that there is a

form that an employee must fill out if that employee has an injury. Then, the employee is taken to the clinic. He denied having received a form from the Claimant regarding a work injury.

According to Mr. Hazelwood, the Claimant was terminated on May 3, 2019. He admitted that he was part of that process. Mr. Hazelwood denied that the Claimant was terminated due to any kind of complaints with his body or physical issues because he had not ever told him anything about an injury. He testified that the Claimant was let go because he was out in the parking lot drinking beer during his lunch break.

He again verified that at the time, the Claimant was let go on May 3, 2019, he had not been provided with any information that the Claimant was claiming he was injured at work. The Claimant also had not indicated that he wanted to file a workers' compensation claim.

On cross examination, Mr. Mr. Hazelwood agreed that if the Claimant was working in the Power Assembly Department, he had to use ratchet and impact tools. Mr. Hazlewood confirmed that this would have been the rule rather than the exception.

### Medical Records

A review of the first medical record of evidence shows that the Claimant sought medical treatment from St. Bernard's Healthcare, in Jonesboro, on April 19, 2019. At that time, Dr. Mario Cauli wrote:

#### Patient History:

43 year old right handed male, here with pain, tingling, and numbness that starts in the index, middle, and third finger and radiates up to the shoulder and back. Patient has grip and strength loss. Patient's left hand worse. Symptoms began two months ago. Patient is a diabetic.

Therefore, Dr. Cauli performed Electromyography Nerve Conduction Velocity Studies on the Claimant's upper extremities. Dr. Cauli authored a Neurodiagnostic Report, on that same date,



which reads, in relevant part: “Impression: 1. Moderate bilateral CTS. 2. Mild bilateral ulnar entrapment neuropathy at elbow.”

On May 21, 2019, the Claimant underwent evaluation by Dr. Brian Dickson, due to bilateral wrist and bilateral elbow complaints. Dr. Dickson reported, in relevant part:

History of Present Illness:

This is a 44-year-old male. He has developed fairly acute numbness in both hands about three months ago. He does pretty repetitive work at a factory. He is right-handed. He is having trouble buttoning buttons and picking things up. It wakes him up at night. He has tried braces. He feels like it is related to his work which is fairly repetitive and sometimes heavy. There is numbness mostly in his thumb, index and long fingers in both hands. The small finger does not appear to be involved. He had a nerve conduction study done.

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Physical Exam: on exam of both hands today, there is mild positive Phalen’s with a negative Tinel’s. There is no wasting. Pretty good range of motion. His skin is intact. Good intrinsic strength. Sensation is intact. Good capillary refill. Good hand, wrist and elbow range of motion. There is a negative Tinel’s over both elbows.

X-RAYS: I ordered x-rays of both wrists and both elbows today: X-rays show overall pretty good bony alignment. I do not see any significant arthritis. No acute change or severe findings.

His nerve conduction study showed moderate bilateral carpal tunnel syndrome and mild bilateral cubital syndrome.

ASSESSMENT: Bilateral carpal tunnel syndrome. His cubital tunnel syndrome does not seem to have symptoms from his ulnar nerve currently.

PLAN: I injected both carpal tunnels with steroids and Lidocaine today. I gave him a prescription for Naproxen. He is going to continue with his bracing. He is working on Worker’s [sic] It does sound like it is work related. If it is, I am going to have him follow-up with one of my partners later. We briefly discussed surgery as well.

Per the documentary evidence introduced by Respondents No. 1, the Claimant applied for unemployment insurance benefits on June 21, 2019. The Claimant made a second application for said benefits on September 29, 2019. The Claimant gave extensive testimony about these documents during the hearing as outlined above.

Additionally, a copy of the Claimant's Unemployment File from September 9, 2019, was made a part of the record. A Notice of Agency Determination dated October 11, 2019 has been included in the record. On May 22, 2020, Shearer's Food submitted to the Arkansas Department of Workforce Services an Employer Wage Audit for the Claimant's employment with them.

### **ADJUDICATION**

#### **Compensability**

The Claimant has asserted that on April 19, 2019, he sustained compensable injuries to his hands and arms\upper extremities, in the form of "moderate bilateral carpal tunnel syndrome," and "mild bilateral ulnar entrapment neuropathy at elbow," while working for Roach Manufacturing. These conditions were confirmed on April 19, 2019, following Electromyography Nerve Conduction Velocity Studies performed by Dr. Cauli. However, Respondents No. 1 contend that the Claimant did not sustained a work-related injury within the course and scope of employment or while performing any employment services.

Here, the Claimant has not indicated whether he is asserting gradual onset injuries to his upper extremities, or an accidental/specific incident injury, which resulted in physical harm to his hands and arms. As a result, both categories (gradual onset and accidental injury) of alleged injuries have been considered herein this Opinion.

The requirements for an accident injury to the Claimant's upper extremities is set forth in Arkansas Code Ann. §11-9-102(4)(A), which defines "Compensable injury," as:

(i)An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of

occurrence[.]

The Claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4) (E)(i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W. 2d 442 (1947).

Regarding the Claimant's assertion for gradual onset injuries to his hands (in the form of bilateral carpal tunnel syndrome, the Claimant is not required under the provisions of Act 796 of 1993 to establish that his work duties required rapid-repetitive motion in order to establish the compensability of his bilateral carpal tunnel syndrome injuries. See Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998). However, the Claimant must still prove that he sustained bilateral carpal tunnel syndrome arising out of and in the course of employment, that his work-related activities are the major cause of his disability or need for medical treatment. "Major cause" means more than fifty percent (50%) of the cause. Ark. Code Ann. § 11-9-102 (14)(A). These alleged compensable injuries must also be established by objective medical findings. Ark. Code Ann. § 11-9-102(4)(D).

With respect to the Claimant's alleged gradual onset injuries to his arms, in the form of "mild bilateral ulnar entrapment neuropathy;" in order to prove compensability for these injuries, the Claimant must prove the following: (1) that his elbow injuries arose out of and in the course of his employment with Roach Manufacturing; (2) that the injuries caused internal or external physical harm to his body which required medical services or resulted in death or disability; (3) that the injuries were caused by rapid repetitive motion; (4) that the injuries were the major cause of the disability or need for treatment; and (5) that the injuries were established by medical evidence supported by objective findings.

In determining whether an injury is caused by rapid repetitive motion, a two-prong test is employed. The test for what constitutes "rapid repetitive motion" was set out by the Arkansas Supreme Court in Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1998) as a two-pronged test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant failed to prove by a preponderance of the credible evidence that he sustained compensable injuries to his hands and arms, arising out of and in the course of his employment with Roach Manufacturing, on April 19, 2019, either by way of a specific incident injury to his hands and wrists, or as a result of gradual onset injuries to his upper extremities. Specifically, I find that in both instances, the Claimant failed to prove a causal connection between any of his work activities at Roach Manufacturing and his current hands and arms conditions.

In the case at bar, the Claimant worked for Roach Manufacturing for six years. He performed various positions while working there. However, during the last three years of his tenure with Roach Manufacturing, the Claimant worked as a lead person. Ultimately, the Claimant was discharged from Roach, on May 3, 2019. The evidence demonstrates that the Claimant was discharged for drinking beer in the parking lot of Roach Manufacturing during his lunch break.

Nevertheless, when comparing the Claimant's testimony on direct examination with his cross examination testimony, and because his deposition testimony contradicted his hearing testimony, I find that the Claimant was not a credible witness. This impression is formed based

on the Claimant's inconsistent and conflicting testimony about having reported an injury to management, and other relevant information in this claim.

Specifically, on direct examination the Claimant testified that he told management he was alleging a work-related injury. During his deposition testimony the Claimant stated that he was not sure if he told them he was alleging a work-related injury. Ultimately, on cross examination, the Claimant admitted that he did not report a work-related injury to management at Roach Manufacturing. In addition to this, the Claimant testified that he told Mr. Roach on the floor he was having surgery. The Claimant was discharged from Roach on May 3, 2019, and there had been no discussion with any of his physicians about the possibility of surgery until May 21, 2019. It would not have been possible for the Claimant to have had this discussion with Mr. Roach.

Moreover, both witnesses for Roach (Mr. Cossey and Mr. Hazelwood) denied that the Claimant ever reported an injury to them. I am persuaded that Mr. Cossey and Mr. Hazelwood were very forthcoming during hearing in this regard and other aspects of their testimony. As such, I am convinced that the Claimant did not ever make a report of an injury to management even though he maintained on direct examination that he had experienced symptoms of the upper extremities for six months prior to seeking treatment. However, when the Claimant sought treatment from Dr. Dickson on May 21, 2019, he told him his symptoms in his hands had developed over the last three months.

Here, the Claimant was well aware of the process for reporting a work-related injury, but he failed to do so. He was cognizant of the reporting process because he had a prior work-related injury with Roach; and he signed a form acknowledging receipt of the process for reporting work injuries. This was done on February 26, 2014, when the Claimant first went to work for Roach.

Curiously, at one point in his testimony, the Claimant gave conflicting and confusing testimony about his own understanding of what a work-related injury entailed.

Even so, the evidence shows that the Claimant was having problems with his hands at least three months before he went to the doctor on April 19, 2019. As such, the Claimant was aware that he was having problems with his hands in February of 2019. However, the Claimant did not make a claim for injuries to his upper extremities until after he had been terminated on May 3, 2019.

This brings me to another point; the Claimant did not allege an injury until after he was terminated from Roach Manufacturing. At no point during his termination process did he make a claim for workers' compensation benefits. Instead, the Claimant filed for unemployment insurance benefits. On the Claimant's two applications for unemployment benefits, he denied having any disability that prevented him from working.

The Claimant also gave inconsistent and confusing testimony about a prior case of making a fraudulent claim for unemployment benefits. Ultimately, the Claimant verified that he filed for these benefits while working for Roach.

Moreover, the evidence shows that the Claimant suffers from untreated alcoholism, diabetes, and hypoglycemia. These are pre-existing conditions which might logically account for his problems with his hands and arms. It is noteworthy that the first medical report of April 2019 mentions that the Claimant is diabetic, but there is no mention of a work-related injury. In fact, absolutely no medical documentation of this being a possible work-related claim was made until May 21, 2019, which was after the Claimant's termination from Roach. At that time, the Claimant gave a history of his work activities being the cause of his problems with his hands and arms.

In light of these pre-existing conditions, and because the Claimant's failed to report an injury, despite being given ample opportunity to do so, coupled with his incredulous testimony, I am not persuaded that the Claimant's hands and arms conditions arose out of his work with Roach Manufacturing. Moreover, under these circumstances, it would require an impermissible degree of conjecture and speculation on my part for me to conclude that the Claimant's hands and arms condition arose out of and in the course of his employment with Roach Manufacturing. Conjecture and speculation, even if plausible, cannot take the place of proof. *Ark. Dept. of Correction v. Glover*, 35 Ark. App. 32, 812 S.W. 2d 692 (1991). *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W. 2d 155 (1975).

Accordingly, I find that the Claimant failed to establish by a preponderance of the credible evidence that he sustained injuries to his hands and arms arising out of and in the course of his employment with Roach Manufacturing on April 19, 2019, either via gradual onset injuries, or a specific incident injury.

I am aware that Dr. Dickson opined that the Claimant's conditions of the hands and arms could be related to his work activities. However, minimal weight has been attached to Dr. Dickson's expert opinion because it was based on an inaccurate history provided to him by the Claimant; and because it lacks the definiteness needed to establish the Claimant's burden to prove causation. Specifically, the Arkansas Supreme Court has held that a medical opinion that an event "could" have or "possibly" cause an injury is insufficient to prove causation. *See Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W. 3d 900 (2000); *Frances v. Gaylord Container Corp.*, 341 Ark. 527, 20 S.W. 3d 280 (2000). Hence, Dr. Dickson's expert opinion falls short of the statutory requirement that medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. *See Ark. Code Ann. §11-9-102(16) (B)*.

Therefore, based on all of the foregoing, I find that the Claimant has failed to meet his burden of proving by a preponderance of the evidence that he sustained compensable injuries to his hands and arms, on April 19, 2019, arose out and in the course of his employment with the respondent-employer/Roach Manufacturing, either due to gradual onset injuries or a specific incident.

Of note, the Claimant failed to point to any single specific incident that occurred while working for Roach on April 19, 2019, that would have caused injury to his hands and arms. In addition to this, the evidence does not show that the Claimant employment duties required him to engage in any rapid or repetitive motions of the elbow. The testimony elicited from the witnesses during hearing confirmed this conclusion. In fact, the Claimant was working as a lead person during the last three years of his employment with Roach Manufacturing.

Nevertheless, since the Claimant failed to prove he sustained compensable hands and arms injuries, all other issues relating temporary total disability compensation and medical benefits, have been rendered moot and not discussed in this Opinion. Accordingly, this claim for alleged injuries to the Claimant's hands and arms is respectfully denied and dismissed in its entirety.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. I hereby accept the aforementioned proposed stipulations as fact.
3. I find that the Claimant failed to prove by a preponderance of the evidence that he sustained compensable injuries (via gradual onset or specific incident) to his hands and arms, which arose out of and in the course of his employment the respondent-employer/Roach Manufacturing, on April 19, 2019.



**ORDER**

For the reasons discussed herein, this claim must be, and is, hereby respectfully denied.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK  
ADMINISTRATIVE LAW JUDGE**

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