

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H008038

TEREASA WASHINGTON, CLAIMANT
EMPLOYEE

ARKANSAS DEPARTMENT OF CORRECTIONS, RESPONDENT
EMPLOYER

PUBLIC EMPLOYEE CLAIMS DIVISION, RESPONDENT
INSURANCE CARRIER/TPA

OPINION FILED NOVEMBER 14, 2022

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE JOE M. ROGERS, Attorney at Law, West Memphis, Arkansas.

Respondents represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed July 12, 2022. The administrative law judge found that the claimant failed to prove she was entitled to a permanent anatomical impairment rating. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she was entitled to a 10% permanent anatomical impairment rating to each upper extremity.

I. HISTORY

The record indicates that Tereasa Washington, now age 56, became employed with the respondents in February 2017. Ms. Washington testified

that she was employed as a Mental Health Advisor for the respondents, and that her job duties included typing. The claimant testified that she eventually began suffering from numbness and pain in her hands.

The parties stipulated that the employee-employer-carrier relationship existed at all pertinent times, including August 6, 2020. The parties stipulated that the claimant sustained “compensable bilateral upper extremity injuries” on August 6, 2020. A physician’s assessment on August 6, 2020 was “Tingling in extremities,” “Symptomatic. Obtain NCS/EMG of the bilateral arms.” Dr. Michael Chesser performed electrodiagnostic testing on October 7, 2020 and gave the following conclusion: “1. Moderate right carpal tunnel syndrome. 2. Mild left carpal tunnel syndrome. 3. Normal motor and sensory ncv studies of both ulnar nerves.”

Dr. Sean M. Morell performed a “RELEASE, CARPAL TUNNEL – Right side” on October 26, 2020. The pre- and post-operative diagnosis was “Bilateral carpal tunnel syndrome.” The Operative Findings included “recurrent median artery.”

Dr. Morell provided follow-up treatment after surgery, and stated on December 18, 2020, “It is my medical opinion that Ms. Tereasa Washington may return to work full duty, with no restrictions.” Dr. Morell stated on February 8, 2021, “It is my medical opinion that Ms. Tereasa Washington

has achieved MMI on her right wrist following her procedure on 10/26/2020.”

Dr. Morell performed a “RELEASE, CARPAL TUNNEL – Left side” on February 24, 2021. The Operative Findings included “thickened TCL.”

Dr. Morell gave the following impression on April 23, 2021:

Tereasa Washington is a 54 y.o. female that is s/p left carpal tunnel release, and after a review of medical history, previous medical documentation, along with history of present illness, and taking into account the physical exam along with pertinent testing conducted today, it was determined after a thorough discussion with the patient that she has improved greatly and has a nice result on that left hand.

Plan: - After a thorough discussion, the patient and I decided on full return to work with no restrictions. She is released to work. She has reached maximum medical improvement....

IMPAIRMENT RATING: Patient has returned to full activity and has full improvement of carpal tunnel symptoms. She has a 0% Impairment Rating in my medical opinion and has reached maximum medical improvement.

The claimant testified that she returned to work for the respondents.

The record contains a Change of Physician Order dated June 10, 2021: “A change of physician is hereby approved by the Arkansas Workers’ Compensation Commission for Tereasa Washington to change from Dr. Sean Morell to Dr. Michael Hood.” Dr. Hood examined the claimant on June 29, 2021:

This is a 54 year old female who is being seen for evaluation of bilateral hand symptoms. The patient is right hand dominant. Occupation: Mental health advisor. Onset or Duration: 08262020. Symptoms began with repetitive activity or overuse (Typing/writing). Symptoms include pain, swelling,

weakness, loss of grip strength, feelings of giving way, pain when using tools, pain with grip, pain with heavy or repetitive activity, and sleep disturbance....She has had the following diagnostic studies: plain radiographs. Previous treatment has included bracing, NSAIDs, surgery, and carpal tunnel SX Left 10/20 Right 2/21. Relevant history includes previous surgery (Carpal Tunnel)....

Dr. Hood's impression included "Carpal tunnel syndrome, bilateral upper limbs." Dr. Hood returned the claimant to work with no restrictions.

Pursuant to Dr. Hood's referral, the claimant participated in a Functional Capacity Evaluation on July 28, 2021: "The results of this evaluation indicate that a reliable effort was put forth, with 51 of 51 consistency measures within expected limits....Ms. Washington completed functional testing on this date with **reliable** results. Overall, Ms. Washington demonstrated the ability to perform work in the **MEDIUM** classification of work[.]"

Dr. Hood noted on August 31, 2021:

Utilizing AMA guides to the evaluation of permanent impairment fourth edition, Chapter 3, table 32 average strength of grip by age and 100 subjects, table 34 upper extremity impairment for loss of strength; the patient has the following loss of strength in the dominant right hand 26% and nondominant left hand 17.8%. Both percent strength loss index result in 10% upper extremity to each extremity. 10% left and 10% right upper extremity impairment each corresponds to 6% whole person impairment. Utilizing the combined values chart 6% whole person + 6% whole person equals 12% whole person impairment.

Therefore the patient's final impairment rating is 10% to the left upper extremity, 10% to the right upper extremity, or 12% to the whole person.

On October 21, 2021, Dr. Morell corresponded regarding the claimant:

You asked me previously to do that second opinion on her after she got assigned that IR by the outside physician? She was a very problematic patient, and after I treated her carpal tunnel syndrome she continued to not want to return to work. She also continuously bombarded my nurse with feverish emails throughout the day which was ironic because her job is typing. Therefore, I did not want to proceed with a second opinion.

A pre-hearing order was filed on January 26, 2022. According to the text of the pre-hearing order, the parties agreed to litigate the following issues:

- (1) Whether the claimant is entitled to additional temporary total disability benefits for as yet unspecified dates in relation to her compensable bilateral upper extremity injuries of August 6, 2020;
- (2) Whether the Claimant is entitled to a 10% permanent anatomic impairment rating to each upper extremity in relation to her compensable bilateral upper extremity injuries of August 6, 2020; and
- (3) Attorney's fees in relation to controverted indemnity benefits.

A hearing was held on April 15, 2022. At that time, the parties agreed that the claimant's entitlement to additional temporary total disability benefits was no longer an issue for adjudication. An administrative law judge filed an opinion on July 12, 2022. The administrative law judge found

that the claimant failed to prove she was entitled to a 10% permanent anatomical impairment rating to her upper extremities. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Permanent Impairment

Permanent impairment is any functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The Commission has adopted the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to be used in assessing anatomical impairment. See *Commission Rule 34*; Ark. Code Ann. §11-9-521(h)(Repl. 2012). It is the Commission's duty, using the *Guides*, to determine whether the claimant has proved she is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1)(Repl. 2012). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012). Although it is true that the legislature has required medical evidence supported by objective findings to establish a compensable injury, it does not follow that such evidence is

required to establish each and every element of compensability. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997). All that is required is that the medical evidence be supported by objective medical findings. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006). Medical opinions addressing impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B)(Repl. 2012).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a)(Repl. 2012). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause must be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, "(2) The Claimant has failed to prove, by a preponderance of the evidence, that she is entitled to a 10% permanent anatomic impairment rating to both upper extremities and attorney's fees thereon in relation to her compensable

bilateral upper extremity injuries of August 6, 2020.” The Full Commission does not affirm this finding.

As we have discussed, the parties stipulated that the claimant sustained “compensable bilateral upper extremity injuries” on August 6, 2020. Subsequent electrodiagnostic testing showed moderate carpal tunnel syndrome in the claimant’s right upper extremity and mild carpal tunnel syndrome in the claimant’s left upper extremity. Dr. Morell performed a right carpal tunnel release on October 26, 2020 and a left carpal tunnel release on February 24, 2021. Dr. Morell assessed maximum medical improvement on April 23, 2021. Dr. Morell opined that the claimant had sustained “a 0% Impairment Rating.” Dr. Morell thereafter declined to reassess his opinion that the claimant had sustained 0% permanent anatomical impairment and described the claimant as “a very problematic patient.”

It is the Commission’s duty to translate the evidence of record into findings of fact. *Gencorp Polymer Prods. v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (1991). It is within the Commission’s province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. App. 94, 989 S.W.2d 151 (1999).

In the present matter, the Full Commission assigns minimal evidentiary weight to Dr. Morell’s opinion that the claimant sustained 0%

permanent anatomical impairment. We attach greater evidentiary weight to Dr. Hood's expert application of the *Guides* and his conclusion on August 31, 2021, "Therefore, the patient's final impairment rating is 10% to the left upper extremity, 10% to the right upper extremity, or 12% to the whole person." We find that Dr. Hood's anatomical impairment rating is supported by the 4th Edition of the *Guides* at p. 3/65, Table 34, "Upper Extremity Impairment for Loss of Strength." The Full Commission recognizes that loss of strength is a subjective finding. Nevertheless, Dr. Hood's rating is supported by demonstrably objective findings, namely, "recurrent median artery" shown in the right carpal tunnel and "thickened TCL" in the left carpal tunnel. These objective medical findings were revealed during surgery. These findings support Dr. Hood's permanent rating. *Singleton, supra.*

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a 10% permanent anatomical impairment to the left upper extremity and a 10% permanent anatomical impairment to the right upper extremity. These findings were proper in accordance with the 4th Edition of the *Guides* and were supported by objective medical findings not within the claimant's voluntary control. The claimant also proved that the August 6, 2020 compensable injuries were the major cause of the claimant's

permanent anatomical impairment. Finally, the Full Commission finds that Dr. Hood's opinion assessing permanent anatomical impairment was stated within a reasonable degree of medical certainty.

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

The majority opinion granting the claimant a ten percent (10%) impairment rating to each upper extremity is primarily founded on the objective findings that the claimant showed "recurrent median artery" in the right carpal tunnel and "thickened TCL" in the left. These findings, so says the majority, form the platform upon which the claimant's purported loss of

strength may somehow shift from admittedly subjective to sufficiently objective.

This interpretation fails to reflect that these conditions were found during the claimant's surgeries conducted by Dr. Sean Morell in October 2020 and February 2021 and that Dr. Morell, in fact, assigned the claimant a 0% impairment rating. She did not receive the rating at issue here until she began seeing Dr. Michael Hood after a change of physician request in June 2021.

I find it unreasonable to grant a substantial award based entirely on credible findings by a doctor who ultimately determined that there was indeed no impairment. On this basis, I would opine that Dr. Hood's ratings are not supported by objective medical findings and agree with the administrative law judge that the claimant is not entitled an anatomical impairment rating.

For these reasons, I respectfully dissent.

CHRISTOPHER L. PALMER, Commissioner