

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H005060

STANLEY R. CHEATHAM, CLAIMANT
EMPLOYEE

HUSQVARNA OUTDOOR PRODUCTS, INC., RESPONDENT
EMPLOYER

SAFETY NATIONAL CASUALTY CORP./ RESPONDENT
CORVEL ENTERPRISE COMP., INC.,
INSURANCE CARRIER/TPA

OPINION FILED FEBRUARY 22, 2024

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

Claimant represented by the HONORABLE MALCOLM A. SIMMONS,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE EDWARD W. McCORKLE,
Attorney at Law, Arkadelphia, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed July 12, 2023. The administrative law judge found, among other things, that the claimant proved he sustained a compensable right wrist injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained a compensable injury.

I. HISTORY

The record indicates that Stanley Cheatham, now age 53, became employed with the respondents, Husqvarna Outdoor Products, Inc, in October 2016. The claimant testified on direct examination:

Q. How long did you work for Husqvarna?

A. I started my work with them October 17, 2016. I came in and I was assigned to Line 5 under supervisor Parnell Pope on the carousel in the assembly department....

Q. Tell the Court about your injury.

A. Well, eventually – like I said, I started on Line 5. We eventually moved to another line, Line 3, and when I got to that line – I believe it was at the end of 2017, around the beginning of 2018. On that line some of the jobs that I was doing was a lot more strenuous than what I was used to, and a description of them would be – the first job would have been second torque, fishing module cables around the side of a unit. My second job was torquing flywheels and placing modules on the unit. Third job was torquing two screws in a module and routing a sparkplug wire around the unit and putting it on the sparkplug.

Q. What was your daily schedule?

A. I came in on that line, on Line 3 specifically is where the injury started, from – we started I believe at 5:30 a.m. and first break would have been at 9 o'clock....

Q. What were you doing say from 5:30 a.m. until 9:00 a.m.? Can you explain that to the Court what you were doing at that time and your best guess or estimate for the time it took you to perform your job and how long you were doing that during that period?

A. Yes. Most of the time we ran units 12 to 15 seconds, you know, per unit and taking the high end, just saying maybe 15 seconds, there was going to be about 200 units an hour or 240 units an hour maybe, and that's about 2,000 I think a day. It's a lot of screwing, using air guns to torque down screws. You are pulling wires around, twisting – it's a lot of twisting, a lot of rotating, a lot of pushing, fast paced, flipping units, and that particular job was one that had caused a previous injury with the constant torquing, flipping and fishing them wires around, trying to push them through a hole and then pulling it out. It's a lot of wear and tear on you and it's very fast paced. I'm saying the high end is 15 seconds that you got to do all of this and then the next unit, and this is repetitive, over and over and over and over.

Dr. Brian Norton provided an Initial Evaluation on July 20, 2018:

This is a 47 year old right hand dominant male that comes in complaining of left thumb locking and pain. He has had the pain and locking since March 2018. The patient relates the symptoms to repetitive gripping and pinching activities while at work. He has received one steroid injection which actually made his symptoms worse. He describes the pain as a throbbing type pain....Heat and rest improves his symptoms. Symptoms are worse with pinching and gripping type activities....

The patient's clinical history and physical examination are consistent with stenosing tenosynovitis of the left thumb....I recommend he proceed with a left thumb A1 pulley release....

The claimant testified that he underwent the left thumb A1 pulley release recommended by Dr. Norton.

The parties stipulated that the employment relationship existed at all pertinent times, including December 19, 2019. The claimant testified with regard to his right wrist:

A. It was tolerable until December of 2019. Our line didn't work – wasn't scheduled to work so I needed my hours so I volunteered to come in and work wherever. I was put on lines 7 and 8, and that particular job that I was doing really had me – I'm using my left hand but it was my right, had me bending the wrist a lot and using a stapler and it started hurting worse that it had ever hurt, to the point that it was unbearable. So I asked the supervisor, Yvonne Moreland, if she would take me to the nurse's station to get some rub on it and get it wrapped because I had never had it hurt quite that bad before. She took me and I came back to the line and I just noticed that it was just progressively getting more and more intense and I was like what's going on here....So after that we went on about a three week break for the holidays and we didn't come back....

Q. When did you return to work?

A. January – I want to say I actually returned and worked January 8th, came back maybe a few days before then. Line 3, which was my line, wasn't working or didn't have parts so

we went home and when we eventually came back to work they shut that line down and reassigned us and I went to line 4....Once I started on line 4 is when I really noticed it. I was like, wow, you know, the way my wrist was hurting before I left, within an hour's time it was inflamed again and I didn't quite understand why the pain was so intense and why even after being off three weeks, why is my wrist still hurting me like this you know. And so I think I had went and had it wrapped before I started work because I was still bothered by it, just over the break, but from that point on just throughout the day it was just getting bad and I was having to go back to the nurse and try to get some wrap on it, some rub on it and have it wrapped, and just from that point on it just progressively got to the point that any rotating, pinching, pushing and pulling, the pain was far more intense that it had been previously. So whatever had happened 12/12 really set it off, and from that point on it just progressively got worse to the point where gripping became a serious problem....

A FIRST AID VISIT REPORT dated January 8, 2020 indicated, "Pain in right hand and wrist. Started working on line 4 carousel today. Waited until after clocking out to come to first aid." The BREIF (sic) DESCRIPTION OF EVENT was "lifting."

A FIRST AID VISIT REPORT dated January 23, 2020 indicated, "Stated pain started on line 3 when he was using a gun on every job. Then he was moved to Yinas line doing boxes and this is when it flared up. On 1/8/2020."

According to the record, a Nurse Note was entered on January 23, 2020:

Stanley Cheathem presented to first aid with request to wrap his right wrist. There is no swelling redness lumps bumps or bruises. Stanley [stated] that he has come in first aid a few

times with this pain and he was given a wrap and he returned to work. I saw him on 1/8/2020 as he was going home and treated him he was to return to first aid and placed on the first aid list and did not return to first aid for at least three days. ROM wnl there is no grinding locking or clicking. He holds his wrist tight making movement hard and states that he is having pain when I did the ROM with his right wrist. Stanley freely moves the right wrist himself. Incident form and form N completed. Copy form N given to employee. Hot wax treatment done to right wrist and hand. Otc menthol pain patch applied to the outer right wrist. He shows me his pain is above the second third and fourth digits of the right wrist. [Restrictions] no use of the right hand or wrist. May use the finger tips but no weight over one pound with the right hand. Recheck 0530 in AM and as needed today. Supervisor instructed that safety investigation is required.

The claimant followed up with the Nurse on January 27, 2020, February 3, 2020, and February 6, 2020. FIRST AID NOTES FOR SUPERVISOR on February 6, 2020 indicated, "Return to work with out restriction."

A FIRST AID VISIT REPORT was prepared on July 1, 2020: "Pain in right wrist, increases with certain movement. He stated repetative (sic) motion....C/O pain in right wrist stated it is the same pain he had in December and January and he has been hurting ever since. No swelling or redness. OTC menthol patch applied to the thumb side of the right wrist and light wrap of coflex to keep it in place. Did not return to first aid during the rest of his shift as instructed."

The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on July 3, 2020. The ACCIDENT INFORMATION section of the

Form AR-N indicated that the Date of Accident was December 12, 2019, and that the employer was notified of same on December 12, 2019. The claimant appeared to write that the cause of injury was “Repetative (sic) use of my right wrist. Same combinations of twisting & pinching or pushing causes more immediate and severe pain. It hurts pretty much all of the time and can’t be [unintelligible].”

FIRST AID NOTES on July 14, 2020 indicated, “Due to safety investigation ruling of NWR issue and this being the first time Sandra McWha, from safety department could talk with Stanley, he has missed several days recently. Stanley was sent out for a full release from his PCP for his right wrist today. Stanley did not come to first aid on 7/7/20, 7/8/20, 7/9/20, 7/10/20 called in 7/11/20 and 7/13/20. Must bring MD release to return to work.”

The claimant testified that he did not work for the respondents after July 14, 2020.

A Human Resources Representative for Husqvarna Group wrote the following on July 15, 2020:

Dear Medical Provider:
Husqvarna Group is concerned for the safety and health of all employees. As such, please note that Stanley Cheathem has made us aware of a personal medical condition that may compromise his safety while performing duties at work. Stanley stated that he has been having pain in his right hand and forearm since December 2019. Husqvarna is requesting that you review her ability to safely perform the essential

functions noted in the attached job description and provide medical advice regarding any restrictions prior to their return to work.

In addition to the attached job description, the job has general requirements as follows:

- Hand eye coordination
- Fast paced work environment
- Use of hand held power tools
- Standing for periods of time up to 10 hours
- Lifting up to 40 pounds

Husqvarna is requesting that you document any restrictions or limitations as well....

On October 9, 2020, the claimant signed an APPLICATION FOR UNEMPLOYMENT INSURANCE BENEFITS. The claimant reported on the APPLICATION that he began working for the respondents, Husqvarna Outdoor Products, on October 17, 2016 and that the DATE LAST WORK ENDED was July 14, 2020.

Melanie Hearnberger McGuire, APRN examined the claimant at Hope Family Practice Center on October 14, 2020:

He presented with wrist pain. At night wrist locks up and has to use other hand to get it unstuck, when he squeezes something and tries to turn pain radiates up arm. It is located on the right. The symptoms started 1 years ago. Pt is a 49 y/o BM who is new to our clinic. He complains of chronic wrist pain. Reports most of his pain is at night and in the morning. At times he has to use his opposite hand to manually [maneuver] his right wrist because it feels like it locks up. Pain is located in the wrist but radiates up his forearm. States pain improves after he has moved wrist for a little while. Reports after he has been using his wrist a lot, he develops a soft knot on the lateral side of the wrist. Reports he has had this kind of problem previously prior to his trigger finger development in 2018.

Melanie McGuire noted "ROM – wrist: crepitus." Ms. McGuire diagnosed "Chronic pain of right wrist," "Osteoarthritis of right wrist, unspecified osteoarthritis type," "Tendonitis of wrist, right," and "Body mass index (BMI) 25.0-25.9, adult."

Melanie McGuire reported on October 14, 2020:

Stanley Cheatham (sic), DOB 11/11/1970, came to our office today due to right wrist pain. He may return to work on 10/15/2020 with the following restrictions: no use of hand held power tools with his right hand, no lifting of 5 pounds or more with the right hand, and must wear wrist brace/splint with any activity. This is the first visit with this gentleman, so the work excuse is for today only. Thank you.

Dr. G. Thomas Frazier examined the claimant on November 9, 2020:

Stanley Ray Cheatham (sic) is a 49 y.o. male patient Who presents today for evaluation of a 9-10 month history of right wrist pain. His symptoms began in December of 2019. He he (sic) works at Husqvarna making small engines and another (sic) equipment. The pain and weakness in his right wrist is fairly constant and worse with even light grasping or lifting activities. He denies any history of a remote injury. He has been wearing a wrist splint and taking ibuprofen 600 mg. He has also applied some topical ointments without significant improvement....

Right hand and wrist

There is Mild diffuse swelling over the dorsal aspect of the wrist, with tenderness to palpation over the radiocarpal joint, more towards the radial styloid....

Radiographic interpretation:

PA, lateral, and scaphoid views of the right wrist show a scapholunate diastasis with dorsal intercalated segment instability. There are arthritic changes at the radial styloid consistent with a scapholunate advanced collapse deformity, stage 1-2.

Dr. Frazier assessed "Scapholunate advanced collapse deformity the right wrist." Dr. Frazier treated the claimant conservatively.

Dr. Frazier noted on December 7, 2020, "The patient returns for follow-up of his right wrist pain secondary to a scapholunate advanced collapse deformity, stage II. He reports improvement in his wrist pain following intra-articular corticosteroid and local anesthetic injection. He continues to wear a carpal strap or soft wrist support....The patient will continue to wear a carpal strap for support of his wrist when engaging in strenuous activity. He may increase activities as tolerated....He will return if he has further problems or concerns regarding his right wrist, and otherwise on a p.r.n. basis."

The claimant returned to Melanie McGuire on December 30, 2020:

He presented with wrist pain.

F/U right wrist pain. Stated now having numbness from fingers to elbow. Was seeing Dr. Frazier in Little Rock.... Pt is a 50 y/o BM who presents for follow up on right wrist pain. Pt was seen by Dr. Frazier on 11/9 and diagnosed with scapholunate advanced collapse of right wrist. Pt received intra-articular injection of betamethasone and lidocaine. Was instructed to wear a thumb spica splint x4 weeks. Pt was released to prn based visits at f/u visit on 12/7. On 12/7, pt reported improvement in symptoms after injection and splinting. Pt was advised to wear carpal strap with strenuous activity, increase activity as tolerated, continue OTC pain meds, and to return if problems continued. Pt requests second opinion because the injection did not fix the problem and he does not want surgery. States he feels like his symptoms are the direct result of an acute injury at work instead of an injury sustained in his 20's that has progressed to the point where he is now. Patient denies ever having

acute injury to wrist. Patient works at Husqvarna where he uses hand tools to build small engines. Previously had the same symptoms in his left wrist. Reports he had surgery in 2018 which fixed the symptoms in his left wrist....

Ms. McGuire physically examined the claimant's right wrist and reported "swelling mild." It was noted that the claimant requested a second opinion with Dr. Brian Norton.

Dr. Norton examined the claimant at OrthoArkansas on or about January 16, 2021:

Stanley Cheatham is a 50 year old Male who presents to discuss concerns about their Wrist, that began on 12/19/2019....

Injury occurred: Repetitive gripping, pinching & twisting at a fast pace for extended periods of time. On my job....

Work status: Not working....

This is a 50-year-old male that presents with complaints of right wrist pain and swelling. He looks the pain to the radial side of his wrist. He states that the pain for the past several months. He describes the pain as a dull and shooting type pain. He cannot recall a specific injury or event that initiated symptoms. He states pain is worse with use of the wrist as well as wrist extension or flexion. Pain is improved with rest....

Dr. Norton reported "Mild swelling" in the claimant's right wrist and hand. X-ray showed "Scapholunate diastases with evidence of advanced collapse." Dr. Norton assessed "1. Right SLAC wrist with chronic pain" and planned, "1. I discussed with the patient today both surgical and nonsurgical treatment options....2. The patient would like to think about his

treatment options and then let me know. He is recent (sic) received a steroid injection that only provided temporary relief.”

The claimant followed up with Dr. Norton on March 10, 2021: “At this point the patient does continue to have radial sided wrist pain. I discussed with him once again treatment options. He still is reluctant about having a partial wrist fusion. He is going to think about this and let me know. In the meantime I will place him in a removable cast to further immobilize the wrist. He will let me know when he wants to proceed with surgery.”

A pre-hearing order was filed on March 1, 2023. According to the text of the pre-hearing order, the claimant contended, “The claimant contends that on or about December 19, 2019, he was relocated to a new position, line and job that he wasn’t used to performing. His right wrist had been irritated for a few weeks before he was moved to the new job, but nothing unusual for the type of work he performed. The claimant contends the newly assigned position caused him to use his right wrist in a more demanding way that really ignited the pain, causing him to request and seek medical treatment. The plant nurse, Yvonne Moorland, wrapped and rubbed the claimant’s right wrist.”

The parties stipulated that the respondents controverted the claim.

The respondents contended, “The respondents contend the claimant cannot meet his burden of proof pursuant to the Act in demonstrating he

sustained a gradual onset injury that culminated in disability as of December 19, 2019. The respondents contend the claimant did not injure his right wrist within the course and scope of his employment and, therefore, he did not sustain a compensable gradual onset injury to his right wrist. The respondents contend the relevant medical reports indicate the claimant already had a scapholunate advanced collapse of his right wrist as well as osteoarthritis of his right wrist which are non-compensable conditions/injuries.”

The parties agreed to litigate the following issues:

1. Whether the claimant sustained a gradual onset compensable injury within the meaning of the Arkansas' Workers' compensation Act (the Act) to his right wrist on December 19, 2019.
2. If the claimant's alleged injury is deemed compensable, the extent to which he is entitled to medical and indemnity benefits.
3. Whether the claimant's attorney is entitled to a controverted fee on these facts.
4. The parties specifically reserve any and all other issues for future litigation and/or determination.

After a hearing, an administrative law judge filed an opinion on July 12, 2023. The administrative law judge found, among other things, that the claimant was entitled to medical treatment “related to his compensable right wrist injury.” The respondents appeal to the Full Commission.

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

- (A) “Compensable injury” means:
 - (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, in the injury is:
 - (a) Caused by rapid repetitive motion....

In analyzing whether an injury is caused by rapid repetitive motion, the standard is a two-pronged test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998).

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(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).

Ark. Code Ann. §11-9-102(4)(Repl. 2012) further provides, in pertinent part:

- (E) BURDEN OF PROOF. The burden of proof of a compensable injury shall be on the employee and shall be as follows:
 - (ii) For injuries falling within the definition of compensable injury under subdivision (4)A(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

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). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(A)(Repl. 2012).

In workers' compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). The Full Commission has the duty to decide the case *de novo* and we are not bound by the characterization of evidence adopted by the administrative law judge. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

In the present matter, an administrative law judge found, among other things, that the claimant proved his job duties for the respondents "constituted rapid repetitive motion." The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. The claimant became employed with the respondents in 2016. The claimant described his work on a "carousel" assembly line as

involving rapid repetitive motion with both upper extremities. The claimant testified regarding his assembly-line work, "Most of the time we ran units 12 to 15 seconds, you know, per unit and taking the high end, just saying maybe 15 seconds, there was going to be about 200 units an hour or 240 units an hour maybe, and that's about 2,000 I think a day." The claimant's work required "torquing down screws" and "pulling wires" at a rapid, repetitive pace over a period of several hours. Dr. Norton described "repetitive gripping and pinching activities" in July 2018 and eventually performed a left thumb A1 pulley release.

The claimant's testimony indicated that he returned to work for the respondents following the surgery to his left upper extremity. The claimant testified that his physical condition was "tolerable until December of 2019." The claimant testified that his job duties were increased and caused more stress and bending of his right wrist. The claimant subsequently began treating with the respondent-employer's company nurse for increased work-related symptoms in his right upper extremity. A First Aid report on July 1, 2020 described "repetative (sic) motion" in the claimant's right wrist. FIRST AID NOTES on July 14, 2020 indicated that the claimant "Must bring MD release to return to work." A Human Resources letter on July 15, 2020 stated that the claimant's work included a "Fast paced work environment" with "Use of hand held power tools." Melanie McGuire, APRN began

treating the claimant in October 2020 and related the claimant's right wrist pain to his work for the respondents. Ms. McGuire reported that the claimant should no longer use hand-held power tools "and must wear wrist brace/splint with any activity." The claimant also treated with Dr. Frazier and Dr. Norton.

Whether or not an employee was performing rapid repetitive motion is not a mathematical formula but is a finding of fact based on the circumstances of each particular case. *Hapney v. Rheem Manufacturing Co.*, 67 Ark. App. 8, 992 S.W.2d 151 (1999). In the present matter, the claimant's credible testimony indicates that his assembly line work for the respondents was both rapid and repetitive. The claimant testified that he was assembling 200-240 units per hour over the course of a full day's work shift, and that such work required strenuous use of his left and right hands. The evidence demonstrates that the claimant's tasks in the respondents' employment were repetitive, and that the repetitive motion was rapid.

Malone, supra

The claimant proved by a preponderance of the evidence that he sustained a "compensable injury" in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(a)(Repl. 2012). The claimant proved that he sustained an injury causing physical harm to the body, that the injury arose out of and in the course of employment, and that the injury was caused by rapid

repetitive motion. The claimant also established a compensable injury by medical evidence supported by objective findings, namely the reports of “swelling” in the claimant’s right wrist and hand as observed by Dr. Frazier, Ms. McGuire, and Dr. Norton. Swelling can be an objective medical finding establishing a compensable injury. *White County Med. Ctr. v. Johnson*, 2022 Ark. App. 262, 646 S.W.3d 245. Finally, the claimant proved by a preponderance of the evidence that the compensable injury was the major cause of his need for treatment.

After reviewing the entire record, therefore, the Full Commission finds that the claimant proved he sustained a compensable injury to his right wrist and hand, which injury was caused by rapid repetitive motion in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(a)(Repl. 2012) *et seq.* The claimant proved that the medical treatment of record provided on and after December 19, 2019 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant’s attorney is entitled to fees for legal services, pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant proved he sustained a compensable injury to his right wrist.

Arkansas Code Annotated § 11-9-102 (4)(A)(ii) (Repl. 2002) provides that a compensable injury includes:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion.

When a rapid repetitive motion injury is argued to be an aggravation of a pre-existing condition, the claimant must prove by a preponderance of the evidence that the injury: (1) arose out of and in the course of his employment; (2) caused internal or external physical harm to the body requiring medical services; (3) was caused by rapid repetitive motion; (4) was the major cause of the disability or need for treatment; and (5) was

established by medical evidence supported by objective findings. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004); See also Ark. Code Ann. § 11-9-102(4)(A) and (E).

There is no medical evidence or testimony that supports a finding that the claimant's right wrist osteoarthritis was a result of his work with the respondent employer. As an initial matter, the claimant admitted in his testimony that he has never received any kind of permanent disability diagnosis. (Hrng. Tr, Pp. 54-55). The only medication the claimant takes for his purported injury is over the counter Ibuprofen "[a]s I need it. It stiffens up sometimes, tightens up, and I take over-the-counter Ibuprofen." (Hrng. Tr, Pp. 49, 58). The claimant occasionally wears a wrist brace but was not wearing one at the time of the hearing and has not seen a doctor for his right wrist in approximately two years. (Hrng. Tr, Pp. 50, 56).

The claimant first received medical treatment for his right wrist at Hope Family Practice Center where he complained of chronic right wrist pain. (Resp. Ex. 2, P. 3). Claimant was diagnosed with "[o]steoarthritis of right wrist, unspecified osteoarthritis type and . . . Chronic pain of right wrist." (Resp. Ex. 2, P. 4). He was prescribed ibuprofen at that time. *Id.* At an October 28, 2020 visit with Hope Family Practice Center, APRN Melanie Hearnberger McGuire reviewed an X-ray of the claimant's wrist and found "widening of scapholunate interval and cystlike changes along

the radial aspect of the distal scaphoid pole” and diagnosed “[i]njury of the right scapholunate ligament with no instability.” (Resp. Ex. 2, P. 8).

After a referral from APRN McGuire, the claimant visited Dr. G. Thomas Frazier, an orthopedic surgeon at UAMS, on November 9, 2020. (Resp. Ex. 2, Pp. 10-24). Dr. Frazier reviewed the claimant’s radiographic findings and observed “scapholunate diastasis with dorsal intercalated segment instability. There are arthritic changes at the radial styloid consistent with a scapholunate advanced collapse deformity.” (Resp. Ex. 2, P. 13). The claimant received a steroid injection at that time, and Dr. Frazier recommended symptomatic treatment. (Resp. Ex. 2, P. 19). Dr. Frazier did not take the claimant off work at that time and made no connection between the claimant’s work and his complaints.

On December 30, 2020, the claimant obtained a referral for second opinion from Dr. Brian Norton who had conducted a previous surgery on the claimant’s left hand. (Resp. Ex. 2, P. 29). As of March 10, 2021, Dr. Norton’s findings mirrored those of Hope Family Practice and Dr. Frazier: radiographic findings showed scapholunate diastases with evidence of advanced collapse, and Dr. Norton diagnosed primary osteoarthritis in the right wrist. (Resp. Ex. 2, Pp. 36-37). Like Dr. Frazier, Dr. Norton made no connection between the claimant’s work and his condition.

The record is clear that the claimant's right wrist condition is degenerative in nature. There is no indication that any purported rapid repetitive motion could have resulted in the claimant's osteoarthritis, nor does any medial practitioner or orthopedic specialist state that the claimant's scapholunate diastasis is the result of his working conditions. There is simply no objective evidence that this injury was work related, was the major cause of the claimant's need for treatment or has been established by medical evidence supported by any objective findings.

In workers' compensation cases, a decision often rests solely on the credibility of the claimant as a witness. A determination of the weight and credibility of a witness' testimony is exclusively within the province of the Commission. *Wade v. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989). The Commission has the right to believe or disbelieve the testimony of any witness, and the Commission's decision is entitled to the weight we give a jury verdict. *Tyson Foods, Inc. v. Disheroon*, 26 Ark. App. 145, 761 S.W.2d 617 (1988).

In the present case, we are unable to rely on the claimant's testimony regarding the source and nature of his injury, as he has proven himself to be unreliable. From the outset, the claimant was dishonest on his application for unemployment insurance through the Arkansas Department of Workforce Services, stating he was unemployed due to

medical leave. (See Resp. Ex. 3). Further, the respondents obtained an investigator to observe the claimant, who found that he “is very active with his right hand.” (Resp. Ex. 1, P. 1). On October 22, 2020, the investigator observed the claimant walking a dog holding “the leash with his left hand and at times with his right hand at other times. The dog often pulled and tugged on the leash. The subject did not have a brace or any other device on either wrist or hand.” (Resp. Ex. 1, P. 1). This was a consistent pattern with the claimant through October of 2023. (See Resp. Ex. 1, Pp. 3, 5, 7). The claimant testified that the dogs in question are American Bulldogs that can weigh up to fifty pounds. (Hrng. Tr, P. 41). At the time of the hearing, the claimant had six of these dogs in his care. (Hrng. Tr, P. 51).

From these observations and the claimant’s own responses when pressed, it is clear that his capabilities far exceed what the claimant asserts. While the claimant alleges chronic, debilitating pain, he is consistently able to continue the daily activities of life and the care of the dogs he hopes to one day enter the business of selling. For this reason, any testimony by the claimant regarding the source and nature of his injury must be disregarded.

Accordingly, for the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner