

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.:H103296

JOHNNY M. FREEMAN, EMPLOYEE

CLAIMANT

MERCY HOSPITAL/CHI ST. VINCENT HOT SPRINGS,
EMPLOYER

RESPONDENT

INDEMNITY INS. COMPANY OF NORTH AMERICA,
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR
(TPA)

RESPONDENT

OPINION FILED AUGUST 31, 2022

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On June 28, 2022, the above-captioned claim came on for a hearing in Little Rock, Arkansas. However, previously on May 17, 2022 a prehearing telephone conference was conducted in this matter. A Prehearing Order was entered on that same day. I have marked the order and the respective prehearing filings of the parties as Commission's Exhibit 1.

Stipulations

During the prehearing telephone conference, and/or hearing, the parties jointly proposed the following agreed to stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-insurance carrier relationship existed at all relevant times, including on March 23, 2021, when the Claimant sustained a compensable injury to his left wrist.
3. The Claimant's average weekly wage at the time of his admittedly compensable work injury was \$447.38. His weekly compensation rates are \$298.00 and \$224.00 for temporary total disability and permanent partial disability compensation, respectively.
4. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues

1. Whether the Claimant is entitled to additional medical treatment for his left wrist injury, in the form of surgery, as recommended by Dr. Cari Cordell.
2. Whether the Claimant is entitled to temporary total disability compensation associated with the proposed surgery, in the event this additional medical treatment is awarded.
3. Whether the Claimant's attorney is entitled to a controverted attorney's fee on any indemnity benefits awarded herein.

Contentions

The respective contentions of the parties are as follows:

Claimant:

- a. Claimant contends that he is entitled to the additional medical treatment being recommended by Dr. Cordell/specifically surgery to his left wrist for De Quervain's tenosynovitis.
- b. Claimant contends entitlement to temporary total disability benefits associated with the surgery.
- c. Claimant contends Respondents should be ordered to pay attorney's fees as provided by law.

Respondents:

The Claimant allegedly injured his left wrist at work on 3-20-(sic)¹-21. The claim was accepted and benefits were paid until 5-21-21 when he was released to return to work with no restrictions. He was referred to a new

¹The Claimant's work injury occurred on the 23rd of March 2021, instead of the 20th.

doctor in 2022 who has stated that his tests “are suggestive” of de Quervains (sic) tendonitis or that he “possibly” has DQT. No doctor has taken him off of work. Medical opinions addressing compensability have to be stated within a reasonable degree of medical certainty. A.C.A (sic) 11-9-102(16). The Claimant does not have a compensable DQT.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including the medical reports, the documentary evidence, and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the Claimant, and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The evidence preponderates that the surgical intervention recommended by Dr. Cari Cordell is not causally connected to the Claimant’s accidental work injury of March 23, 2021.
4. The remaining issues have been rendered moot and not addressed in this Opinion.

Summary of Evidence

Claimant was the sole witness to testify during the hearing.

The record consists of the hearing transcript of June 28, 2022, and the exhibits contained therein. Specifically, in addition to Commission’s Exhibit 1, the following exhibits are also a part of the evidentiary record: Claimant’s Exhibit 1 consists of five numbered pages of an Abstract of Medical Table of Contents; Claimant’s Exhibit 2 is a Table of Contents along with a Medical Exhibit encompassing fifty-four numbered pages;

and Respondents introduced a copy of a one-page Screenshot of a Facebook Post from March 22, 2021. This document has been marked as Respondents' Exhibit 1.

Hearing Testimony

Johnny Freeman

The Claimant, now age 44, testified that he became employed with the Respondents, Mercy Hospital/CHI St. Vincent Hot Springs, in October 2018. He further testified that he is married and lives in the home with his wife, and her two adult children, ages 18 and 25. According to the Claimant, his initial job title was hall technician. As of the date of the hearing, the Claimant continued to work for the respondent-employer.

At the time of his accidental injury of March 23, 2020, the Claimant normally worked forty hours a week. The Claimant gave the following description of his job duties on a typical day: "...I go to the linen room. I collect the linen carts, go to the floors, and collect the dirty linen, and I get the two (2) hoppers for the trash and the bio..." The Claimant explained that "bio" is biohazard waste which includes body fluids, and sometimes even body parts. As a result, they put the bio waste in separate containers. He confirmed that pictures of the containers in question are part of the record at pages 53 and 54 of the Claimant's Exhibit. The Claimant testified that these containers are stacked "four high" to make it easy for them to be transferred via a two-wheeler to the removal truck.

On further direct examination, the Claimant testified about the mechanism of his work injury:

Q: And on March 23rd of '21, what were you doing when you believe that you hurt yourself at that time?

A: I was stackin' the red bins when I was puttin' the last one on top.

Q: So you were moving a bin to the top of the stack?

A: Yes, sir.

Q: And what happened?

A: That's when I heard my wrist pop.

According to the Claimant, he injured his left wrist. The Claimant denied any problems with his left wrist before the day of his injury. He also denied that he ever had any problems with his left wrist that caused him to see a doctor. The Claimant confirmed that he promptly reported his injury to management.

The Claimant essentially testified that his employer instructed him to go to CHI St. Vincent Convenient Care Clinic, where he came under the care of Dr. Mark Larey. He confirmed that Dr. Larey ordered an MRI of his left wrist. Subsequently, Dr. Larey referred the Claimant to Dr. Robert Olive, an orthopedic specialist, in Hot Springs. The Claimant confirmed that he saw Dr. Olive for at least three office visits. According to the Claimant, Dr. Olive performed only one cortisone injection for his wrist. He also placed the Claimant on light duty work restrictions. Per the Claimant, Dr. Olive prescribed ibuprofen for his wrist symptoms, and told him to use Tylenol 'here and there.' The Claimant confirmed that on May 18, 2021, Dr. Olive released him to full duty.

Regarding his understanding as to what was wrong with his wrist, the Claimant essentially testified he had problems with his tendons because he had difficulty bending his thumb back and forth, and problems with moving his thumb or lifting it up.

Specifically, the Claimant testified:

Q: When you felt the pop in your wrist as you were lifting the bin, can you show us in the area where you felt the pop?

A: I felt it right here [indicating], on my wrist.

Q: So you're pointing to an area below your thumb in the wrist area below the thumb - -

A: Yes, sir.

Q: - - on your left hand; is that right?

A: Yes, sir.

Immediately after the incident, the Claimant admitted he did not have any visible swelling or anything at that time. However, the Claimant testified that by the next morning, he had swelling in his left wrist, and he showed it to his supervisor. The Claimant admitted that by the time Dr. Olive released him in May 2021, his pain had resolved. He confirmed that he went back to his full-duty job at CHI St. Vincent. Although Dr. Olive released the Claimant to fully-duty on May 18, 2021, there is a reference to final follow-up appointment that the Claimant had scheduled with Dr. Olive for June 30, 2021. The Claimant was asked if he was aware of the appointment, and his reply was: "No, sir, not that I recall." Counsel informed the Claimant that the report says that he was a no-show for that appointment. To that end, the Claimant explained: "To my knowledge - - to my knowledge, I released to full-duty to go back to full-duty to go back to work, so to my knowledge, I thought that was it."

Nevertheless, the Claimant testified that as he returned and continued his employment duties with CHI St. Vincent, he did not have any more problems at that time. However, the Claimant testified that the pain gradually came back.

Regarding his first symptoms after the injury, the Claimant testified that he had a throbbing sharp pain in his wrist at the point he treated with Dr. Olive. He agreed that the injection performed by Dr. Olive seemed to have resolved the symptoms in his wrist. Yet,

the Claimant testified that as his pain recurred, his wrist started to not bend, and his thumb would lock-up. According to the Claimant, anything he picked up caused it to start hurting.

The Claimant was shown a copy of Dr. Olive's medical report of May 18, 2021, which reads, in relevant part: "His hands feel fairly normal now. He notices much less swelling. Denies any numbness or tingling." Upon being asked about the accuracy of the statements contained in the aforementioned report, the Claimant confirmed that all of the information is accurate. Although the Claimant did not recall the exact date, he maintained that a couple of months after his last visit with Dr. Olive, he began to experience some recurrence of symptoms in his wrist. According to the Claimant, this is when he decided to go down to Convenient Care. However, the Claimant admitted that this medical visit did not occur until October 28, 2021. The Claimant specifically confirmed that this was the first medical treatment he had after the recurrence of his symptoms.

Under further questioning, the Claimant testified that when he went back to work after being released in May 2021, he resumed working full duty for the respondent-employer in the same position, lifting the tubs/bins. Later, the Claimant transitioned to another department and began working as a transporter. His employment duties as a transporter entailed transporting patients from the ER to one of the floors via a hospital bed, or wheelchair. He also transported patients to various places in the hospital for diagnostic testing.

The Claimant did not associate the recurrence of his wrist symptoms with any particular activity. He testified that his wrist symptoms returned, in the form of a sharp

pain and swelling. The Claimant specifically denied that he plays video games. To the contrary, the Claimant maintained that he does not have time to play video games because he works sixteen hours a day, and then he works extra hours on the weekends.

Next, the Claimant was shown a picture dated March 22, 2021, which is one day before his work accident. The Claimant confirmed that the photograph depicts a gaming chair that he received from his wife as a birthday present. However, the Claimant testified that the chair is a “massaging chair.” The Claimant gave a complete description of the chair’s features, which primarily entailed the use of the chair for relaxing, or a whole-body massage. He confirmed the colors (black and yellow) of the chair, and that he is a Pittsburgh Steeler’s fan. According to the Claimant, his “whole man cave” is black and yellow, therefore his wife bought that chair to match the colors of his man’s space. The Claimant vehemently denied he started playing video games after Dr. Olive released him. However, the Claimant eagerly admitted that his children play video games.

With respect to what led the Claimant to go back to Convenient Care on October 28, 2021, he testified that he went back there because previously they had given him a referral to Dr. Olive. However, they referred the Claimant to Dr. Cari Cordell, instead of Dr. Olive. The Claimant confirmed that both doctors work from the same clinic. According to the Claimant, he has seen Dr. Cordell for only one visit.

Counsel for the Respondents asked the Claimant about certain notations appearing in the October 28, 2021 medical report:

Q: And so when you went back to Convenient Care in October, the reference says [as read], “No Known injury.” Do you have any explanation for that or understand that?

A: I don't understand it cause that's who I seen when it first happened and that's who referred me to the orthopedic doctors, so I don't understand why it's on there.

Of note, the Claimant paused and asked if he could "fix" a couple of earlier statements, and he was permitted to do so. Specifically, the Claimant testified that when he went to Convenient Care in October 2021, he received another Cortisone shot. The Claimant also clarified for the record that in the beginning, for the first two to four weeks, the workers' compensation carrier paid him, and then his employer found him a light-duty job.

In October 2021, when the Claimant returned to Convenient Care, he received a second Cortisone injection. However, the Claimant denied that they placed any work limitations or restrictions on him at that time. The Claimant confirmed that Dr. Cordell recommended surgery for his wrist as reflected in her progress notes. He verified that he wishes to undergo the surgery for his wrist. The Claimant testified that he wants the surgery so that he can go on with his life; and get his wrist "working right and feeling better."

The Claimant admitted he decided on his own to go back to Convenient Care. He further admitted that before seeking this treatment, he did not have a conversation with anyone from CHI St. Vincent about his actions. He verified that both Dr. Olive and Dr. Cordell diagnosed him with de Quervain's tenosynovitis. The Claimant verified that he is asking the Commission to allow him to continue treating with Dr. Cordell and that he be awarded the surgery that she has recommended for his wrist condition.

The Claimant testified that after he had gone back to Convenient Care, he spoke with Sherry, the employee health supervisor for CHI St. Vincent; and she gave him the

number for Sedgwick. According to the Claimant, he called Sedgwick multiple times, but he never got a response, or phone call from them.

On cross-examination, the Claimant denied having testified during his deposition that he does not have any children. However, the Claimant's deposition testimony clearly shows that when asked do you have any children, he replied: "No, sir." The Claimant essentially admitted that he does have two children by marriage as previously discussed on direct examination. The couple has been married for five years. The Claimant confirmed that when they got married, his wife already had children.

Regarding his use of Facebook, the Claimant admitted that he does post messages on Facebook. However, the Claimant denied that he made a post on Facebook in February 2021, wherein he asked people to join him playing video games. Counsel for the Respondents asked the Claimant: "Johnny Freeman; is that your Facebook profile name?" The Claimant answered: "I have two (2). One has been hacked." Although the Claimant did not specify how long he had been hacked, he explained that he has been hacked for a while and that he is having a tough time trying to get his account open." The Claimant maintained that he has been sending messages to Facebook trying to gain access to his Facebook account.

More pointedly, the Claimant was specifically asked if he posted a message on Facebook in February of 2021, which read: "Who is on Call of Duty on survivor mode? Y'all give me your gamer tags." However, the Claimant insistently denied having made the post.

Under further questioning, the Claimant testified:

- Q: You think that's been hacked and somebody else did that?
- A: It's been hacked for a while, a long time.
- Q: So you don't play Modern Warfare or Call of Duty?
- A: I don't have time to play, I work so much and I tucker out.
- Q: And I told you there's a – I looked up an article about the cause of de Quervain's tenosynovitis, and my son has had it also. It said gaming is the Number 1 cause. And you say you do not play games at all?
- A: No, sir, I don't have time. I work a lot.
- Q: Do you see where gaming could be a cause of a similar problem?
- A: Mm, I -- to recall, I don't see it 'cause the kids have played for a long time. They never had problems.

He admitted that his kids have video games, and they play them. The Claimant agreed that when holding a gaming device, it is held with both hands and the thumbs are used to manipulate the knobs. According to the Claimant, he knows the afore information because he watches his kids play.

With respect to his work-related injury, the Claimant admitted that the Respondents accepted his claim and paid some benefits. The Claimant confirmed that his injury is not a repetitive motion injury. Instead, he testified his injury resulted from a specific incident, while lifting a tub.

The Claimant agreed that after being released by Dr. Olive in May 2021, he waited five months before seeking treatment again. He gave a history of left wrist pain for several months, with no injury having occurred. The Claimant was asked about a report authored by Martha Hobson, APN with CHI St. Vincent Clinic on December 2, 2021. At that time, the Claimant complained of wrist pain, but the cause was unknown. However, the Claimant essentially testified that he told medical staff about his wrist pain, and he does not understand why the cause was reported as being unknown.

The Claimant admitted that his injury occurred because he picked up a tub. He further admitted that he did not have any trauma to the outside of his thumb in any way.

Upon being questioned by the Commission, the Claimant gave conflicting and confusing testimony concerning the time that his Facebook page was hacked. Ultimately, the Claimant admitted that his Facebook page had not been hacked at the time of the posting of the message on his page, which read: "Who is on Call of Duty on survivor mode? Y'all give me your gamer tags." However, the Claimant continued to deny having made the post.

Medical Evidence

On March 24, 2021, the Claimant sought medical treatment from CHI St. Vincent's Corporate Health in Hot Springs under the care of Dr. Mark Eugene Larey. At this time, the Claimant reported to Dr. Larey that he felt a "pop" in his left wrist accompanied by an acute onset of pain. He provided Dr. Larey a history of his injury having occurred while picking up bio tubs and stacking them. Specifically, the Claimant stated his symptoms began on March 23, 2021 while lifting a heavy biohazard container. He denied prior issues with his wrist. The Claimant described symptoms of throbbing along with a very limited ROM in his wrist and thumb. Dr. Larey ordered x-rays of the Claimant's left wrist, which revealed the following findings: "There was no acute fractures or dislocation. The soft tissues planes are well-preserved. There is no evidence of arthritis." Dr. Larey assessed the Claimant with "Unspecified sprain of left wrist, initial encounter." The medical causation of his condition was determined by Dr. Larey to be the Claimant's work activities. Dr. Larey ordered an MRI of the Claimant's left wrist and instructed him to wear

a thumb spica/sling. Additionally, Dr. Larey referred the Claimant for an orthopedic evaluation.

On April 9, 2021, an MRI of the Claimant's left wrist was performed. Dr. William M. Reyenga opined the following:

IMPRESSION:

1. Motion degraded exam.
2. Mild soft tissue edema in the radial aspect of the wrist associated with the first extensor compartment without disruption of the tendons or intrinsic signal abnormalities. Findings could be secondary to the patient's recent injury or tendosynovitis.

Dr. Robert J. Olive evaluated the Claimant due to his left wrist pain and discomfort on April 13, 2021. The Claimant gave a history of left wrist pain and discomfort that he had been experiencing for four weeks. According to this medical note, the Claimant reported he was having pain with any type of range of motion. The Claimant stated that the location of his pain was on the distal radial aspect of his wrist. He further reported he had pain when using his left hand, particularly when turning doorknobs or lifting a jug of milk. At that time, the Claimant's pain was markedly affecting his activities of daily living, and on occasion was present at rest. On a pain scale with ten (10) being the worst possible pain, the Claimant rated his pain to be at an intensity of 6/10. Specifically, the Claimant described his wrist pain as being aching, throbbing, and dull in nature. Dr. Olive opined that on physical examination of the Claimant's left wrist, his Finkelstein's test was very positive. He also noted that the Claimant had pain with palpation over the first dorsal extensor compartment. Dr. Olive further noted that this is where the Claimant has complained of pain in the past. Additionally, the Claimant also had discomfort to resisted extension of his thumb. After reviewing prior x-rays of the Claimant's left wrist, Dr. Olive's assessment was: "The patient has left De Quervain's tenosynovitis." To decrease the

Claimant's pain, Dr. Olive performed a cortisone injection. He instructed the Claimant to follow-up with him in two weeks.

On April 27, 2021, the Claimant returned for a follow-up visit with Dr. Olive of his left wrist injury. Per these progress notes, the cortisone injection helped for a few days. The Claimant continued with wrist pain and discomfort. Dr. Olive reviewed the MRI scan of the Claimant's left wrist. He opined that the Claimant had findings suggestive of de Quervain's tenosynovitis, but nothing to suggest a TFCC tear or similar ligamentous disruption. The Claimant rated his pain to be at a 4/10 on the pain scale, and he reported the quality of his pain was dull. Dr. Olive prescribed Voltaren gel. If this did not improve the Claimant's symptoms, Dr. Olive planned to perform another injection on the Claimant's wrist.

The Claimant returned to Dr. Olive for a follow-up office visit on May 18, 2021. At that time, the Claimant reported to Dr. Olive that the last cortisone injection in his wrist at his last visit definitely benefitted him. The Claimant stated that his hand felt fairly normal now. He also stated that he had "much less" swelling in the wrist and was happy with the results he had gotten so far. Dr. Olive noted the Claimant was ready to go back to work without any restrictions. The Claimant denied any numbness or tingling sensations as well. On physical examination of the Claimant's left wrist, Dr. Olive reported: "... the Finkelstein's test was negative. There was much less pain to palpation over the first dorsal extensor compartment. This is where the patient has complained of pain the past. There is no discomfort to resisted extensor resisted extension of the thumb. All the swelling has resolved on the radial portion of his wrist as well." Dr. Olive's assessment was, "The patient has left de Quervain's tenosynovitis which is (sic) responded well to

cortisone injection.” Based on Dr. Olive’s physical findings of the Claimant’s left wrist he released him to work without any restrictions. Dr. Olive planned to see the Claimant back in six weeks just to make sure he was doing okay. Overall, Dr. Olive opined that the Claimant would do quite well.

The Respondents requested the Claimant’s medical records from Dr. Olive’s office. On July 29, 2021 Dr. Olive’s staff honored this request. However, his staff specifically noted that the Claimant was a “no show “for his June 30, 2021 follow-up appointment with Dr. Olive.

Further review of the medical records show the Claimant did not seek treatment for his left wrist again until October 28, 2021. At that time, the Claimant sought treatment under from CHI St. Vincent Convenient Care Clinic. During this office visit, the Claimant treated with nurse practitioner, Martha Victoria Hobson. The Claimant reported having left wrist pain for “several months.” Per these medical notes, he reported to the medical staff that he had no injury. His pain was worse at night and associated with numbness of the fingers. On physical examination, the Claimant’s left wrist was positive for arthralgias and myalgias. X-rays were performed, which revealed some degenerative disease, pending review by the radiologist. The nurse practitioner furnished the Claimant with a wrist brace to wear at night, medications, and a referral to an orthopedic surgeon.

Also, on October 18, 2021 Dr. William M. Reyenga rendered the following opinion regarding the x-rays of the Claimant’s left wrist:

Findings: Three views were obtained of the left wrist. No acute fracture is seen. The carpal bone alignment is maintained. No significant soft tissues swelling is seen.

Impression: No acute osseous abnormality seen.

On December 2, 2021, the Claimant returned to CHI St. Vincent Convenient Care Clinic. John H. Bondhus, a physician assistant, evaluated the Claimant due to a chief complaint of left wrist pain – *cause unknown*. The Claimant was diagnosed with: “De Quervain’s tenosynovitis,” for which he was prescribed a medication regimen and given home exercises for his wrist.

The Claimant underwent an orthopedic evaluation by Dr. Cari L. Cordell on January 25, 2022 for his left wrist complaints. He reported left wrist pain for ten months. According to this record, the Claimant reported that his left wrist condition resulted due to an injury. The Claimant reported an injury date of March 23, 2021. The mechanism of his injury noted to have occurred while lifting a biohazard tub at work. His pain was constant, and the intensity was 8/10. The Claimant was experiencing pain with his activity of daily living. He reported symptoms of numbness and tingling in the thumb. The left upper extremity was evaluated. Dr. Cordell noted swelling on the radial side of the wrist. There was tenderness to palpation, at the radial over the first dorsal compartment. He also had crepitation with range of motion. Dr. Cordell diagnosed the Claimant with de Quervain’s tenosynovitis. They discussed the diagnosis and treatment options. Since the Claimant had failed conservative treatment, he opted to have the left first dorsal compartment released.

On April 11, 2022 the Respondents’ attorney posed questions to Dr. Robert Olive about causation of the Claimant’s left wrist injury. Dr. Olive provided answers to these questions on June 10, 2022:

1. You reported that the MRI showed findings that were suggestive of DQT. What test is needed to show the Claimant has DOT for certain? I tend to rely on physical exam - tenderness over the 1st dorsal extensor compartment (the

thumb side of the wrist. He also had a very positive Finkelstein's test which is the best test for de Quervain's.

2. The Claimant said that picking bio "tubs" (plural) cause his condition and later said picking up a single bio tub was the cause. Is DQT caused by repetitive motion or a single act? Is it a gradual or specific injury? De Quervain's is caused by repetitive motion much like carpal tunnel. It can also be caused by Striking blow to the thumb site of the wrist. It can be gradual in onset or sudden.
3. Does the Claimant's job involve rapid and repetitive motion? I think he works as a transporter at the local hospital. This type of work can certainly stress the hand.

Adjudication

Additional Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2012). The Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary in connection with the injury received by the employee. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2002). Our courts have quantified the preponderance of the evidence to mean 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).

At issue is the Claimant's entitlement to the surgical intervention, in the form of a left first dorsal compartment release, for his compensable wrist injury of March 23, 2021, as recommended by Dr. Cari Cordell.

Specifically, in the present matter, the parties stipulated that the Claimant sustained an admittedly compensable injury to his left wrist while working for the

respondent-employer on March 23, 2021. The Claimant's injury occurred as he lifted a container/tub of biohazard waste to place it on the top of a stack. His testimony shows that as he lifted one of the tubs, he heard a pop in his wrist. The Claimant reported his injury to management and the Respondents provided the Claimant with some medical treatment in connection with his wrist injury.

Specifically, the next day, on March 24, 2021, the Claimant sought initial medical treatment for his wrist from CHI St. Vincent Convenient Care Clinic, where he came under the care of Dr. Larey. At that time, the Claimant complained of symptoms which included an acute onset of left wrist pain, along with swelling, and numbness and tingling in his thumb. However, x-rays taken that day of the Claimant's left wrist were "unremarkable." Dr. Larey assessed the Claimant with "Unspecified sprain of the left wrist."

An MRI was performed of the Claimant's left wrist on April 9, 2021 with an impression of:

1. Motion degraded exam.
2. Mild soft tissue edema in the radial aspect of the wrist associated with the first extensor compartment without disruption of the tendons or intrinsic signal abnormalities. Findings could be secondary to the patient's recent injury or tendosynovitis.

Subsequently, Dr. Larey referred the Claimant to Dr. Olive, an orthopedic specialist. On April 13, 2021, Dr. Olive evaluated the Claimant for left wrist pain and discomfort. After performing a physical examination of the the Claimant's left wrist, Dr. Olive opined that the Finkelstein's test was very positive. There was pain with palpation over the first dorsal extensor compartment. He assessed the Claimant with left de Quervain's tenosynovitis. Dr. Olive performed a cortisone injection on the Claimant's left wrist and placed him on light duty work restrictions.

Dr. Olive released the Claimant to full duty on May 18, 2021. At that time, the Claimant reported that his hand felt fairly normal. The Claimant was happy with the results he had gotten and was ready to return to work without any restrictions. He denied any symptoms of numbness or tingling sensations. Dr. Olive opined that on physical examination of the Claimant's wrist, the Finkelstein's test was negative. Essentially all the swelling had resolved in the radial portion of his wrist. However, Dr. Olive's progress notes show that he scheduled the Claimant for one final visit six weeks later to make sure he was doing "okay."

However, subsequent medical reports obtained from Dr. Olive's office by the Respondents indicate that the Claimant was a no show for his final follow-up visit with Dr. Olive in June 2021. During the hearing, the Claimant maintained he was not made aware of this appointment. Considering that the Claimant was notified of previous follow-up visits, and because the Claimant gave conflicting and confusing testimony regarding his failure to attend his final appointment with Dr. Olive in June 2021, I am convinced the Claimant was made aware of this follow-up visit. Hence, the Claimant's testimony and the medical evidence prove that in May 2021, his left wrist was back to normal and that he was happy with the results and was eager to get back to work. Dr. Olive's May 2021 progress notes prove that on physical examination of the Claimant's wrist, his Finkelstein's test was negative. Given all of these circumstances, I am persuaded that the Claimant was non-complaint for his final follow-up visit with Dr. Olive because his compensable wrist injury had completely healed.

Be that as it may, after his last visit with Dr. Olive, the Claimant returned to work for the respondent-employer in his original job. There is no documented evidence that

the Claimant complained to his employer of any problems with his left wrist. In fact, shortly after his return to work, the Claimant transitioned to another department into a new position, wherein he worked as a transporter. For more than five months, there is no probative evidence whatsoever showing that the Claimant had any problems with his wrist, nor did he seek any medical treatment for his wrist.

In fact, the Claimant did not seek medical treatment for his wrist until October 28, 2021, when he returned to Convenient Care Clinic. At that time, the Claimant's wrist pain had been for several months. However, the Claimant reported "no injury." The Claimant readily admitted that he did not contact his employer before seeking this treatment.

The medical staff at Convenient Care referred the Claimant to Dr. Cari Cordell for further evaluation. On January 25, 2022, the Claimant saw Dr. Cordell for his wrist pain and symptoms. At that point, the Claimant reported to Dr. Cordell his wrist symptoms were due to his work injury. Dr. Cordell's physical examination of the Claimant's left wrist demonstrated a positive Finkelstein's test and swelling on the radial side of the wrist. She assessed the Claimant with left de Quervain's tenosynovitis. Dr. Cordell also reviewed the findings of the MRI with the Claimant and discussed treatment options with him, which included surgical intervention since he had failed conservative treatment. The Claimant wishes to undergo the left first dorsal compartment release.

During the hearing, the Claimant gave inconsistent and conflicting testimony regarding his reason for the entry of no injury to his wrist in October 2021, when he returned to CHI St. Vincent. It was not until January 2022, that the Claimant related his wrist to this work injury, which was some eight months after his release to full duty in May 2021.

Counsel for the Respondents pointed out that de Quervain's tenosynovitis is a common condition suffered by people who play video games. However, the Claimant vehemently denied playing video games. He also gave inconsistent and confusing testimony about a message posted on his Facebook asking for gamer tags. At one point, the Claimant denied having made the post because his Facebook page had been hacked. He later admitted he had access to his Facebook page but continued to deny having posted the call to play. The Claimant also provided inconsistent testimony as to why he did not ask the Respondents for additional treatment of his wrist in October. He was also unable to provide a plausible explanation as to why he waited five months to seek treatment for his wrist after being released to full duty by Dr. Olive in May 2021. Likewise, although the Claimant maintained that his wrist began giving him problems a couple of months after his last visit with Dr. Olive, his testimony is not corroborated by the medical records. There are absolutely no medically documented complaints of any wrist problems being reported by the Claimant until October 2021. Here, the Claimant's own actions indicate that he did not relate his current wrist condition to his work-related incident by his failure to contact his employer about his need for additional medical care for his work injury. What is most telling is the Claimant's failure to return to Dr. Olive in October 2021 for further evaluation once he decided he needed additional treatment for his wrist. Instead, the Claimant sought medical treatment on his own at Convenient Care. Considering all of the forgoing, I find that the Claimant was not a credible witness.

Here, there is no medically documented complaint of any ongoing problems with the Claimant's wrist during or following his May 2021 visit with Dr. Olive, until his return to Convenient Care on October 28, 2021. During this five-month period, the Claimant

performed his regular employment duties without any documented complaints of any wrist problems. Under these circumstances, I find that the Claimant's compensable wrist injury resolved no later than May 18, 2021. Hence, the evidence preponderates that the Claimant's compensable wrist injury is not a contributing factor in his current need for surgery.

To summarize, considering the five-month gap in treatment for the Claimant's left wrist; that there is no medically documented complaint of any left wrist problems during this period of time; the indication by the Claimant to Dr. Olive his hand was back normal; the fact that the Claimant returned to work full-time for five months without any documented difficulties with his wrist; that he was able to work a significant amount of overtime; his incredulous testimony, particularly about his participation in playing video games, which is a common cause of de Quervain's; he sought additional medical own his own in October 2021, that he reported to medical he had no injury; and in light of the fact that the Claimant was non-compliant for his final visit with Dr. Olive, and all of the other foregoing evidence, I am persuaded that it would require conjecture and speculation to causally link the Claimant's current left wrist complaints to his workplace injury of March 23, 2021. Conjecture and speculation cannot supply the place of proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979).

Therefore, I find that the record compels the conclusion that additional medical treatment is not reasonably necessary in connection with the Claimant's compensable injury. Accordingly, based on all the foregoing, I find that the Claimant has failed to prove by a preponderance of the evidence that his current need for surgery is connected to his compensable left wrist injury of March 23, 2021.

I realize it is well-settled in workers' compensation law, the Claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the Claimant's injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W. 3D 31 (2004). However, I am not persuaded that this is applicable here.

Of note, Dr. Olive has answered some questions posed to him by the Respondents' attorney. Dr. Olive has indicated that the Claimant's employment duties as a transporter can contribute de Quervain's. However, minimal weight has been attached to Dr. Olive's expert opinion in this regard since the Claimant was not performing employment duties in this position when his injury occurred, and his expert medical opinion falls short of the statutory requirement that it be stated with definitiveness to establish causation.

The remaining issues of temporary total disability, and a controverted attorney's fee have been rendered moot and not addressed herein this opinion.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim for additional benefits is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

Hon. CHANDRA L. BLACK
Administrative Law Judge

