

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**AWCC NO.: H207378**

**WYNNEFORT BELL, EMPLOYEE**

**CLAIMANT**

**DOMTAR CORPORATION,  
EMPLOYER**

**RESPONDENT**

**FARMINGTON CASUALTY COMPANY,  
TRAVELERS INDEMINTY CO.,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED SEPTEMBER 9, 2024**

A hearing was held before Administrative Law Judge Chandra L. Black, in Texarkana, Miller County, Arkansas.

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

Respondents represented by the Honorable Guy Wade Alton, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on June 11, 2024, in Texarkana, Arkansas. On April 17, 2024, a prehearing telephone conference was held on this claim. A prehearing order was entered into this matter on that same day. Said order set forth the stipulations offered by the parties, their respective contentions, along with the issues to be litigated.

**Stipulations**

The parties submitted the following stipulations, either pursuant to the prehearing order, or at the beginning and/or during the hearing. I hereby accept the jointly proposed stipulations as fact:

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

2. That the employee-employer-insurance carrier relationship existed on October 1, 2022, when the Claimant sustained an admittedly compensable right-hand injury for which the Respondents have paid to and on behalf of the Claimant some medical benefits and temporary total disability/TTD compensation. Of note, the Claimant primarily suffered injuries to her right pinky and ring fingers.

3. The parties agreed that the Claimant's average weekly wage on the day of her work-related injury was \$1,347.00, which entitles her to the maximum compensations rates for a 2022 injury.

4. The Respondents have controverted the 22% impairment rating assessed for the Claimant's right-hand injury of October 1, 2022.

5. In addition, all issues not litigated herein are reserved under the Arkansas Workers' Compensation Act. Specifically, during the hearing, the Claimant reserved issues, including but not limited to her assertion of a further claim for her entitlement to benefits pursuant to Ark. Code Ann. §11-9-505.

### Issues

By agreement of the parties, the issues to be litigated at the hearing were as follows:

1. Whether the 22% anatomical impairment rating assessed by Dr. G. Thomas Frazier for the Claimant's compensable right-hand injury of October 1, 2022, is accurate, or is the 10% impairment rating appropriate.

2. Whether a penalty should be assessed against the Respondents for their failure to pay benefits on the impairment rating for the Claimant's hand injury, under the provision of Ark. Code Ann. §11-9-802. Said rating was made known to the parties on January 19, 2024.

3. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

### Contentions

The parties' respective contentions are outlined below:

Claimant:

The Claimant contends that the permanent impairment rating assessed by Dr. Thomas Frazier has been controverted and is still unpaid in the amount of 22% to the right hand.

Also, the Claimant further contends that Respondents should be ordered to pay attorney's fees associated with this matter as provided by law.

Respondents:

The Respondents contend that they accepted the Claimant's injury as compensable and paid the applicable medical and indemnity benefits. The Respondents contend the Claimant's permanent partial disability/PPD rating assessed by the physician is not appropriate and should be a 10% PPD rating to the right hand.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on my review of the record as a whole, to include the documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the Claimant and observe her 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 Claimant proved by a preponderance of credible evidence that she sustained a 22% permanent anatomical impairment to her right pinky and index fingers, as a result of her admittedly compensable injury of October 2022.
4. The Claimant proved her entitlement to an 18% penalty for the Respondents' failure to initiate payment of the 10% impairment rating for her hand injury, in a timely manner pursuant

to the relevant statutory provisions considering there was no dispute surrounding this rating. However, the evidence does not preponderate that the Respondents acted willfully in their failure to initiate payments on the rating since the parties were actively negotiating settlement of this claim.

5. The Claimant’s attorney is entitled to a controverted attorney’s fee on the indemnity benefits awarded in this opinion.

6. All issues not litigated herein are reserved under the Arkansas Workers’ Compensation Act.

### Summary of Evidence

Ms. Wynnefort Bell (referred to herein as the “Claimant”), was the only witness to testify during the hearing.

The record consists of the June 11, 2024 hearing transcript and the following exhibits: Specifically, the documentary evidence includes Commission’s Exhibit 1, which comprises the prehearing order filed on April 17, 2024, along with the parties’ responsive filings; and Joint Exhibit 1, which is entitled Respondents’ Exhibit Index consisting of sixteen (16) pages.

## **DISCUSSION**

### Wynnefort Monae Bell/the Claimant

At the time of the hearing, the Claimant, age 43, was born on May 11, 1973. She has a high school diploma and some additional education. After the Claimant graduated from high school, she completed an online two-year college program. According to the Claimant, the union obtained payment for her college courses through her employer, Domtar. She took human resources and business administration classes. The Claimant completed her online classroom

courses in October of 2023, and she graduated *magna cum laude*, having achieved a 3.8 grade point average.

Regarding her employer, the Claimant testified that the main production at Domtar involves the manufacture of paper. She worked in the packaging department. According to the Claimant, she was responsible for packaging reams of paper. She began working for Domtar on April 2, 2001. The Claimant was initially hired to perform employment duties as a utility worker. This position entailed emptying the trash with a forklift. After about nine (9) or ten (10) months of performing utility type-work, the Claimant was promoted to a different position. She began working as an assistant sealer operator. According to the Claimant, she essentially performed that job for five (5) years before becoming a sealer operator. She basically testified that she worked in that position for nearly seven (7) years.

The Claimant testified:

Q All right. So just briefly kind of explain for us, as a Sealer Operator, what were your duties? What would you generally be doing as a Sealer Operator.

A I would load the cartons and lids in that made the finished cartons of paper. I would, also, load in the packaging to wrap the individual reams of paper. I would, also, load in the packaging to wrap the individual reams of paper. Make sure that the pallets were, you know, stacked correctly on the front end of the machine, as well, but I kept the material in and organized to get the packaged paper.

Q So if I'm understanding, and you kind of explained it to us in the deposition, this is boxes already ready-to-go-out paper and it's already in its packaging and it's in a larger box that your machine in your area is going to, in effect, seal it up, put the lid on and move it down the line?

A Yes. It's flat cartons and flat lids and then they fold. The equipment actually folds the cartons and folds the lids and inserts the wrapped reams of paper into it.

According to the Claimant, she sat at a desk and was able to view and monitor a large portion of the machine stationed in her area. However, there were lights and alerts on the machine, which were not visible, so she had to walk around for this reason, and to make sure the machine

was properly stocked for full operation. The Claimant confirmed that she worked rotating shifts while employed at Domtar. She sustained a compensable injury to her right hand, while working at Domtar on October 1, 2022. At the time of the Claimant's work-related accident, she was working the night shift. Her working hours were from 5:30 p.m. until 5:30 a.m. The Claimant testified that her work-related accident occurred around 9:00 p.m. Per the Claimant's testimony, an alert light came on one of the machines, and she went to investigate the source of the problem. She essentially testified that seven (7) boxes had accumulated in the machine, and jammed it, causing it to shut down. The boxes weighed between fifty (50) and seventy (70) pounds, and they contained ten (10) reams of eight and one-half (8½) by eleven (11) copy machine paper.

Specifically, the Claimant explained that she immediately hit the emergency button to stop the machine. According to the Claimant, roughly six (6) cartons of paper had lids on them, as a result she started to take each box out, one at a time and manually pushed them forward down the conveyor belt. The Claimant testified that when she pushed the last box out of the machine, it caused the machine to engage, and it caught her hand underneath her thumb. She denied having any knowledge of what caused the machine to start on its own. The Claimant testified that her hand got caught between the box and one of the metal fingers<sup>1</sup> attached to the inside of the machine. According to the Claimant, her hand was stuck between the box and the metal finger for several seconds. The Claimant specifically testified that the machine caught underneath her thumb and there was a puncture that went all the way across her hand. She confirmed that she injured her right hand. The Claimant essentially testified that the metal finger cut through the material of her leather work gloves. Her testimony demonstrated how the metal finger held her hand and

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<sup>1</sup> The Claimant testified that there are four metal fingers on the inside of the machine. She confirmed that the purpose of the fingers is to help push the box down the machine. There are two fingers on each side of the front of the box and two on the back of the box that holds each box steady. She described the fingers as being thick and held by a chain. The Claimant testified that the fingers are six (6) inches long and three (3) inches wide.

moved it through the machine on the top of the box because the carton of paper continued moving. According to the Claimant, when it caught her ring finger, she heard it “snap” and when it reached her pinky finger, the box released and freed her hand. The machine caught the Claimant’s ring and pinky fingers. The Claimant sustained punctures across the webbing between her thumb and index finger. She confirmed that her ring finger and pinky both got caught in the machine in some form or fashion because she heard and felt them both “pop.”

Under further questioning, the Claimant admitted that she was taken to the company’s safety office for immediate medical attention. The security guard transported the Claimant to the Texarkana Emergency Center for further evaluation and treatment. However, the orthopedic doctor was not able to see her at that moment because he was performing a surgical procedure. They gave the Claimant a shot to deaden her fingers and put a splint on her hand. The Claimant was sent home until the orthopedic doctor became available, which was not until Monday.

Dr. Smolarz performed surgery by putting a metal pin in her right ring finger. He did not do anything to her pinky finger at that time. The Claimant testified that at the end of four weeks, Dr. Smolarz removed the pin from her ring finger. Two weeks after her surgery, Dr. Smolarz ordered physical therapy. However, Dr. Smolarz recommended that the Claimant see a specialist, someone who specializes in hand injuries. The Claimant denied that during this time frame she was back working at Domtar. She testified that she began receiving workers’ compensation benefits after being off work for about two weeks.

Therefore, the Claimant was scheduled for an appointment to be evaluated by Dr. G. Thomas Frazier, in Little Rock. She underwent initial evaluation by Dr. Frazier on December 10, 2022. Dr. Frazier diagnosed the Claimant as having a chipped bone on the side of her right pinky finger. He performed surgery on her right hand/ring finger on December 14, 2022. The Claimant

testified that this first surgery done by Dr. Frazier was performed to let her have more movement and range of motion in her ring finger. During that procedure, Dr. Frazier put a metal plate and nine (9) screws in her ring finger. In April of 2023, the Claimant went for a routine visit with Dr. Frazier after he performed surgery on her ring finger. At that point, Dr. Frazier decided that the Claimant needed surgery on both her ring and pinky fingers. The goal of her final surgery was again, to attempt and free up the tendons in her ring and pinky fingers in order to give her more movement and mobility in her fingers. The Claimant specifically testified that Dr. Frazier made an incision on the side of her pinky finger to try and free up the tendons in it as well. According to the Claimant, this last surgical procedure dealt solely with the tendons in her ring and pinky fingers.

She confirmed that the metal plate and nine (9) screws are still in her ring finger. However, the Claimant does not have a metal plate in her pinky finger. The Claimant confirmed that she underwent physical therapy following her final surgery by Dr. Frazier. She stated that she attended sessions of physical therapy from October 2022 until November 2023.

Currently, the Claimant explained that the use of her right hand is still extremely limited. The Claimant specifically testified that her pinky and ring fingers will not bend or straighten out. She confirmed that she does not have the ability to actively close her fingers or wrap them around a softball or tennis ball. The Claimant admitted that the small puncture wound between her thumb and index finger resolved without any lingering issues or problems in that particular area on her hand. However, the Claimant testified that she still has a scar in that area of her hand, but no functional issues with her thumb or index finger. The Claimant agreed that she can use her left hand to physically move her right ring and pinky fingers.

Upon further questioning, the Claimant explained:



Q Once you close your fingers around the ball and take your other hand away, what happens?

A They'll come back up into the position that they are in now.

Q You can't keep them down there?

A No. Not without using my other hand to keep them down.

Q All right. Now, as far as strength in those fingers, how would you describe them in terms of how you can use those with your hand?

A I can't use them. I isolate them like if I want to write something, I isolate the fingers. It's like this, because they won't close.

The Claimant confirmed that she was demonstrating that she uses her left hand to put her right pinky and ring fingers out to the side and use her other three fingers/right hand regularly. The Claimant agreed that in addition to going to physical therapy sessions regularly, there were exercises that she was doing at home to improve the condition of her right hand. She further agreed that the therapist sent her home with "putty," and she had a splint that she put on at night to sleep in that kept her fingers straight. The Claimant testified that she had pages of home exercises that she would do, but her fingers still continue in the bent position.

She confirmed that she was referred by Dr. Frazier for work hardening for four to six weeks. The intent was to transition her to return back to work. However, the Claimant admitted that she does not have any effective use of her pinky and ring fingers. After she completed the work hardening, the Claimant was referred for a functional capacity evaluation/FCE, which was done on November 15, 2023. She confirmed that Dr. Frazier performed the FCE. The Claimant testified that they took measurements of her hand. She performed different exercises, and they assessed her ability to move her fingers and use her hand. Following the FCE, the Claimant did not return to see Dr. Frazier.

According to the Claimant, Travelers Insurance paid her workers' compensation benefits until Dr. Frazier declared her to be at maximum medical improvement. The Claimant confirmed that she continued receiving workers' compensation benefits until she received the maximum medical improvement report from Dr. Frazier. She specifically stated that the carrier paid her benefits until January 19, 2024.

However, to date, the Claimant has not returned to work for Domtar, although she emailed a copy of her final medical report (which addressed her impairment rating, and MMI date) to Wendy Harmon, the human resource assistant. The Claimant confirmed that the letter from Dr. Frazier describes her physical limitations, resulting from her compensable injury. Her physical abilities based on the functional capacity evaluation shows that the Claimant can lift ten (10) pounds occasionally, twenty-five (25) pounds on a constant basis, and fifty (50) pounds occasionally.

The Claimant testified that she was told that the workers' compensation carrier would not insure her if she returned to work at Domtar. She confirmed that she has not received any payments for the impairment rating that was assessed in March 2024. The Claimant testified that she had discussions with Trevelyan Hodge, Jennifer Beard, the union president, and Charles Swilley, the union representative, that she was not receiving any compensation. She testified that she was told by Mr. Hodge that the workers' compensation carrier would not insure her with a 22% rating, and that her rating needed to be changed to a 10%. According to the Claimant, she was told that she could go to the company doctor and have him change her rating to 10% so she could return to work. However, the Claimant did not specify who told her to go to the company doctor and have him change her rating a 10% so that she could return to work. The Claimant denied anybody ever set her up with an appointment to see a company doctor to have her rating changed.

The Claimant denied that anybody indicated to her, other than during her conversation with Mr. Hodge, that there was a dispute about the impairment rating. However, the Claimant confirmed that there is a later report in February 2024, which expresses an opinion regarding her impairment rating. According to this doctor's opinion, the Claimant sustained only a 10% impairment rating. However, the Claimant denied having seen this doctor. Although the report was rendered on February 1, 2024, the Claimant confirmed that she has not received any payments associated with that rating. The Claimant testified that she has survived financially by using her income tax refund that she received in February to pay some of her bills. She also had to rely on help from other people and a lot of her bills have gone unpaid. The Claimant testified that she filed for unemployment benefits, and she started receiving those benefits in April. According to the Claimant, she received \$200.00 weekly unemployment benefits for twelve (12) weeks. However, the Claimant denied that these benefits were not enough to take care of her financial needs. As a result, she filed for bankruptcy in April.

She admitted that she checked the Domtar website for the availability of other jobs within Domtar that she could perform. The Claimant testified that she has applied for a couple of clerical jobs at Domtar since Dr. Frazier released her from his care, but management did not select her for either position. In April, a human resource position became available at Domtar, and the Claimant applied for that position. However, the Claimant received a denied for that position a couple of weeks ago.

The Claimant admitted she started applying for jobs outside of Domtar in April. She began working for Bi-State on April 29, 2024, as a municipal court clerk, processing traffic tickets, fines, and various other related tasks. In that position, the Claimant confirmed that she is managing with her right hand. According to the Claimant, when doing the entries for tickets received and

checking on the status of tickets, she types at a slower rate because she uses only two fingers on her right hand to type. The Claimant testified that she also has trouble writing out the actual citation forms directing individuals to appear for court because she must isolate her pinky and ring fingers when she writes. Per the Claimant, her hand “cramps up” and her fingers “stack” together even when she isolates them. During the hearing, the Claimant demonstrated how she isolates her fingers when writing. (Tr. 48)

The Claimant denied that she takes any prescription medications or over-the-counter medication for her hand injury. She denied using a brace or any type of assistive device for her hand. The Claimant admitted that she filed for Social Security Disability benefits in September of 2023. However, she has other medical issues outside of her work-related injury. The Claimant testified that she has been diagnosed with Sjogren syndrome which is an autoimmune disorder. She confirmed that she had this condition while working at Domtar. However, the Claimant denied that any of her Sjogren symptoms have changed or worsened. She confirmed that she has other conditions for which she filed for Social Security Disability. According to the Claimant, she also suffers from lumbar degenerative disc disease, secondary to her Sjogren syndrome condition. She takes a muscle relaxer and an anti-inflammatory for her back symptoms.

Under further questioning, the Claimant denied having received a payment on the impairment rating as of the date of the hearing. She testified that in her current position, she has the flexibility to stand, walk, and move around in her current position. The Claimant denied she has received any information from Domtar, nor have they contacted her about her job status. Her hourly rate of pay while working for Domtar was \$33.58. She currently makes only \$14.00 an hour, in her current position as a court clerk.

The Claimant explicitly confirmed again that she has not received any permanent impairment benefits since the doctors provided the impairment ratings on January 19, 2024, and February 1, 2024. She agreed that based on her conversations with the HR people at Domtar, she believes that they have not treated her fairly. The Claimant testified that she has worked there twenty-one and a half (21½) years without any type of disciplinary action or safety incidents. According to the Claimant, she has never had so much as a paper cut. The Claimant stated that it seems as though they are doing everything within their power to keep her from returning back to work at Domtar.

On cross-examination, the Claimant confirmed that she began working at Domtar in 2001. She finished high school in 1989. The Claimant later obtained an online associate's degree in business management while working at Domtar as part of an incentive program through the union.

About her work at Domtar, the Claimant confirmed that she worked as a sealer, and the machine she ran is called a sheeter. In other words, a sealer operator runs the sheeter machine. She admitted to having worked 12-hour rotating shifts while employed by Domtar.

The Claimant confirmed that while working on October 1, 2022, she sustained an injury to her right hand. She confirmed she got her hand caught in the machine until it released it. The Claimant agreed that the primary injuries were to her ring and pinky fingers. According to the Claimant, doctors addressed treatment to those specific fingers. She confirmed again that Dr. Smolarz performed her first surgery in the form of inserting a pin in her ring finger. The Claimant underwent physical therapy and then, Dr. Smolarz referred her to Dr. Frazier for continuing treatment. During the Claimant's first surgery under Dr. Frazier's care, he put a plate and screws in her ring finger. The Claimant confirmed that she underwent physical therapy after that

procedure. Next, in April of 2023, Dr. Frazier operated on both fingers to release the tendons via a procedure described as a tenolysis.

Under further questioning, the Claimant admitted that she has not had surgery on any other part of her hand or body. She confirmed that in January of 2024 she received the letter from Dr. Frazier where he determined that she had reached maximum medical improvement for her hand injury. The Claimant admitted that she has not seen Dr. Frazier since October or November of 2023. She admitted that she does not have any other visits scheduled with either Drs. Smolarz or Frazier, or any other medical provider about her hand and/or fingers.

She agreed that the functional capacity evaluation indicated that she could medium duty work. The Claimant confirmed that as a municipal clerk, she takes payments, does filing, shred documents, and computer entry. She confirmed that she filed for Social Security Disability benefits in September of 2023. The Claimant agreed that in addition to her other conditions previously named, she has arthritis in her neck.

The Claimant admitted that there is a dispute regarding the extent of the impairment rating in her claim. She admitted that she did not have any visits scheduled with any medical provider who treated her fingers or hand. The Claimant admitted that Dr. Frazier's letter was dated January 19, 2024, and that she had not received any indication there was an impairment rating before that date.

Under further questioning, the Claimant admitted that she did not ever personally contact Travelers or the insurance company for Domtar and ask them to start making PPD payments. The Claimant acknowledged that she was aware there were negotiations going on about her claim and the extent of the impairment rating. The Claimant testified that there are other positions at Domtar

that would fit in the scheme of what Dr. Fraizer said she could do. However, she admitted that this was her own opinion.

### **Medical Records**

A review of the medical evidence records shows a Work Hardening Plan of Care dated August 29, 2023, which was authored by Occupation Therapist, Brian M. Murphy, OTR/L. The examiner diagnosed the Claimant with: “1. Closed displaced fracture of proximal phalanx of right ring finger with routine healing. 2. Muscle weakness of right upper extremity.” Therapy diagnosis: Finger Stiffness; and Muscle Weakness. The examiner’s assessment: “Pt displays decreased tolerance with lifting/carrying tasks and limited finger ROM with RUE, limited grasp strength RUE which limits her ability to return to work at her previous position (Machine Operator).”

On November 15, 2023, the Claimant underwent a Functional Capacity Evaluation at Christus St. Micheal Outpatient Rehab, in Texas by Brian M. Murphy, OTR/L. At that time, the examiner found that per the U.S. Department of Labor standard for Physical Demand Classification (PDC), the Claimant qualified to work at a MEDIUM physical demand classification. Per this classification, the Claimant can occasionally lift fifty (50) pounds, frequently lift twenty (20) pounds, and constantly lift ten (10) pounds.

On January 19, 2024, Dr. G. Thomas Frazier, the Assistant Professor, Department of Orthopedic Surgery, Section of Hand, and Upper Extremity Surgery for UAMS faxed the following letter to the adjuster and case manager:

First of all, I want to apologize for the delay in getting back to you in regard to the FCE which was performed on your Claimant and my patient, Ms. Bell. I have had a chance to review the results of the FCE.

Based on my interpretation of the FCE, it is my opinion that Ms. Bell performed at a satisfactory level during the FCE and that the results of the FCE are valid. It is also my

opinion that Ms. Bell may return to work that is classified as medium in severity based on the Department of Labor Standards for Physical Demand Classification System. This includes lifting up to 50 lbs. on occasion, up to 25 lbs. on a frequent basis, and up to 10 lbs. on a constant basis.

Also, based on Ms. Bell's most recent examination, and based on the guides to the evaluation of permanent impairment, 4<sup>th</sup> edition, as published by the AMA, it is my opinion that she has sustained a 22% permanent impairment to her right hand, which corresponds to a 20% permanent impairment to the right upper extremity. In determining this impairment, I have referenced figure 19 on page 3/32, figure 21 on page 3/33, figure 23 on page 3/34, and table 34 on page 3/65.

These opinions are submitted within a reasonable degree of medical certainty.

If I can be of further assistance, or provide you with further information, please do not hesitate to contact me.

On February 1, 2024, Dr. Sean Lager, a Board-Certified Orthopedic Surgeon of Sports

Medicine, opined particularly in reference to the Claimant's hand injury.

My review refutes the 22% hand impairment concerning a 20% upper extremity based on range of motion and possibly grip strength. Peer review recommends a 10% hand impairment converting to 9% upper extremity converting to a 5% whole person impairment to the right hand based on range of motion deficits of the ring and small finger. (Figure 19, Page 32, Finger 21, Page 33, and Figure 23, Page 34.

To summarize the injured worker would have a 5% whole person impairment based on the data that has been provided:

Right hand 10% based IR = 9% UEI = 5% WPI (Figure 19, Page 32, Figure 21, Page 33, and Figure 23, Page 34) AMA Guides the Evaluation of Permanent Impairment Fourth Edition.

## **ADJUDICATION**

### **A. Anatomical Impairment**

The crucial issue for determination is whether the Claimant sustained a 10% permanent physical impairment to her right hand/pinky and ring fingers; or if she sustained a 22% permanent anatomical impairment rating to her hand/fingers resulting from her compensable injury of October 1, 2022.



The Respondents contend that the Claimant is entitled to a 10% impairment rating for her right hand. However, the Claimant contends that she is entitled to a 22% impairment rating for her right hand/pinky and ring fingers due to her compensable hand injury of October 2022.

An injured worker must prove by a preponderance of the evidence that she is entitled to an award for a permanent physical impairment. Any determination of the existence or extent of physical impairment shall be supported by objective and measurable findings. Ark. Code Ann. § 11-9-704(c)(1). Pursuant to Ark. Code Ann. § 11-9-522(g) and our Rule 099.34, the Commission has adopted the *American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to be used to assess anatomical impairment.

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(4)(F)(ii)(a). “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). Preponderance of the evidence means 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).

Based on the record as a whole, without giving the benefit of the doubt to either party, I find that the preponderance of the evidence demonstrates that the Claimant’s right hand work-related injury was significant and was the major cause of her 22% permanent anatomical impairment, as assigned by Dr. Thomas Frazier. The basis for my conclusion is outlined below.

In the claim at bar, the Claimant had worked at Domtar for over twenty-one (21) years as of October 1, 2022. At that time, the Claimant worked as a machine operator. The Claimant sustained an admittedly compensable injury while working when her right hand was caught in a

machine. She sustained injuries primarily to her right pinky and ring fingers. The Claimant was diagnosed with a closed displaced fracture to the proximal phalanx of the fourth digit, and stiffness and weakness of the upper right upper extremity.

The Respondents accepted this claim and paid benefits to and on behalf of the Claimant for her admittedly compensable injury of October 2022. They have paid for three surgical procedures to the Claimant's right hand/ pinky and rings fingers under the care of Drs. Smolarz and Thomas.

Specifically, Dr. Smolarz performed the first surgery to the Claimant's ring finger, which resulted from her compensable injury in October 2022. During this surgical procedure, Dr. Smolarz put a pin in the Claimant's ring finger. Thereafter, the Claimant underwent physical therapy to her right hand with no improvement. Ultimately, Dr. Smolarz decided that the Claimant needed to seek medical care for her fingers from a hand specialist. At that point, the Claimant was scheduled for an appointment to be evaluated by Dr. Frazier. On December 10, 2023, Dr. Frazier found that the Claimant needed a second surgery to her ring finger. Therefore, on December 14, Dr. Frazier performed a second surgery to the Claimant's ring finger, which included the permanent placement of a metal plate and nine (9) screws. Hence, as of the date of the hearing, this hardware remained in the Claimant's ring finger. Dr. Frazier performed a third surgical procedure, tenolysis, to the Claimant's right ring and pinky fingers to try to release the tendons in her fingers to give her more useful mobility and movement in these fingers. Although the Claimant underwent these surgical treatment modalities and multiple sessions of physical therapy, which also included work hardening and home exercises, her fingers have not responded well to any of these treatment modalities.

Nevertheless, on January 19, 2024, the Claimant treating physician/a hand specialist, opined that the Claimant had reached maximum medical improvement with respect to her right-hand injury. At that time, Dr. Frazier also assessed the Claimant with a 22% permanent anatomical impairment due to the compensable injuries she sustained to her right hand, namely to her pinky and ring fingers. Dr. Frazier assessed this rating utilizing the *AMA Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993). To the contrary, on February 1, 2024, Dr. Sean Lager, assigned the Claimant a 10% impairment rating for her right-hand injury by means of the appropriate edition of the *Guides*. However, Dr. Lager did not conduct a physical examination of the Claimant's right hand. Instead, Dr. Lager's assessment of a 10% impairment to the Claimant's right hand was derived solely from the Claimant's medical records.

Considering all the foregoing, I find that Dr. Frazier's expert medical opinion is very thorough and rigorously well-reasoned. Most notably, Dr. Frazier's expert opinion bears with the *Guides*, documentary medical evidence of record, and my own visual observations of the Claimant's demonstrations of her complete lack of movement in her affected fingers during the hearing. The Claimant's fingers are severely constricted. She demonstrated a total inability to straighten the affected fingers. In fact, the Claimant's fingers have been reduced to a permanently bent position due to her compensable job-related injury October 1, 2022. These contractures of the Claimant's affected fingers interfere with most of her daily tasks and functionality of her right hand, which include simple tasks such as writing and data entry. During the hearing, the Claimant had to take her left hand to straighten her affected fingers. Still, at that point, the Claimant was unable to completely straighten her fingers. Once the Claimant let go of her fingers with her left hand, they went back to their original bent position. In fact, the Claimant lacked any type of functional use or range of motion in her right pinky and ring fingers.

As such, I have attached significant weight to the Claimant's treating hand specialist, Dr. Frazier's expert opinion due to all the above and following reasons. Accordingly, I have afforded only minimal weight to Dr. Lager's expert opinion. Specifically, Dr. Lager conducted a peer review and his rationale for the impairment rating was based solely on the Claimant's clinical history and medical records. Dr. Lager did not have the opportunity to physically see or observe the Claimant's fingers. It is noteworthy that even Dr. Lager confirmed in his report that the Claimant has range of motion deficits of the ring and small fingers. My own observation of the Claimant's fingers revealed that she has significant deficits of range of motion in her fingers that even a layperson would be able to easily notice when engaged in routine face-to-face interaction with the Claimant. The Claimant credibly testified during the hearing that she is right hand dominant and is unable to write normally with her right hand due to the range of motion deficits in her fingers. Moreover, I found the Claimant to be a credible and forthcoming witness concerning the abnormalities, deficits, and deformities in her fingers even when trying to perform even menial tasks, such as simply signing her name. Her testimony comports with the medical records, particularly, Dr. Frazier's expert opinion and the FCE report.

Here, the Claimant's 22% physical impairment to her right pinky and ring fingers are supported by objective and measurable findings. Specifically, the medical records of evidence are replete with objective medical findings, including but not limited to significant contractures, stiffness, lack of any functional and muscle weakness of both fingers. Hence, of course, all the existence of all of these objective and measurable findings resulted from the Claimant's compensable hand injury of October 1, 2022.

Moreover, the Claimant confirmed that she did not suffer any prior problems with her right hand/fingers or any related symptomology that predated her compensable injury of October 2022.

In fact, the evidence shows that the Claimant was able to perform her job duties which required the ability use of her hands and perform hand intensive employment duties. However, since her accident, the Claimant has not been able to return to work at Domtar due to her physical restrictions and limitations that have resulted from her work-related right-hand injury. As such, I am persuaded to find that the evidence preponderates that the Claimant's October 1, 2022, accidental work-related injury was the major cause of the Claimant's 22% permanent impairment to her right hand/pinky and ring fingers.

B. Installment Penalty

Ark. Code Ann. §11-9-802 (b) states:

If any installment of compensation payable without an award is payable without an award is not paid without fifteen (15) days after it becomes due, as provided in subsection (a) of this section, there shall be added to the unpaid installment an amount equal to eighteen percent (18%) thereof which shall be paid at the same time as, but in addition to, the installment unless notice of controversion is filed or an extension is granted the employer under §11-9-803 or unless such nonpayment is excused by the commission after a showing by the employer that, owing to conditions over which he or she had no control, the installment could not be paid within the period prescribed.

Additionally, Ark. Code Ann. §11-9-802 (e) provides:

In the event that the Commission finds the failure to pay any benefit is willful and intentional the penalty shall be up to thirty-six percent (36%) payable to the Claimant.

In the present matter, the Respondents contend that the Claimant sustained a 10% permanent impairment rating to her hand for her compensable injury. However, to date they have failed to pay any benefits to the Claimant for this rating. Therefore, I find that the Claimant is entitled to a 18% penalty for Respondents' failure to make installment payment to the Claimant on the 10% rating since there was no dispute concerning the accuracy of this rating.

Here, the evidence does not preponderate that the Respondents' failure to pay any benefit on this installment or the 22% rating was willful and intentional concerning the parties were in actively involved in negotiation discussions of a possible settlement of this claim up until the night before the hearing. (Tr. 9)

C. Attorney's Fee

The Respondents have stipulated that they controverted this claim for additional benefits in its entirety. Therefore, the Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded to the Claimant, pursuant to Ark. Code Ann. § 11-9-715.

**AWARD**

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Per Ark. Code Ann. §11-9-715, the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the Claimant.

All issues not addressed herein are expressly reserved under the Act.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**ADMINISTRATIVE LAW JUDGE**