

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION**

**DORRIS, SHAWN M**

Employee/Petitioner

Case# **11WC046624**

**CONTINENTAL TIRE**

Employer/Respondent

On 11/27/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1459 LEVENHAGEN LAW FIRM PC  
T FRITZ LEVENHAGEN  
4495 N ILLINOIS ST SUITE E  
BELLEVILLE, IL 62226

0299 KEEFE & DEPAULI PC  
ANDREW J KEEFE  
#2 EXECUTIVE DR  
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF JEFFERSON )

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
NATURE AND EXTENT ONLY**

**SHAWN M. DORRIS**  
Employee/Petitioner

Case # 11 WC 46624

v.

Consolidated cases: \_\_\_\_\_

**CONTINENTAL TIRE**  
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **October 3, 2012**. By stipulation, the parties agree:

On the date of accident, **09/18/2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$29,002.35**, and the average weekly wage was **\$736.90**.

At the time of injury, Petitioner was **38** years of age, *married* with **3** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$631.62** for TTD, **\$ 0.00** for TPD, **\$ 0.00** for maintenance, and **\$4,421.40** for 10 weeks advanced PPD payments benefits covering the period of **08/24/12 -11/01/12**, for a total credit of **\$5,053.02**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

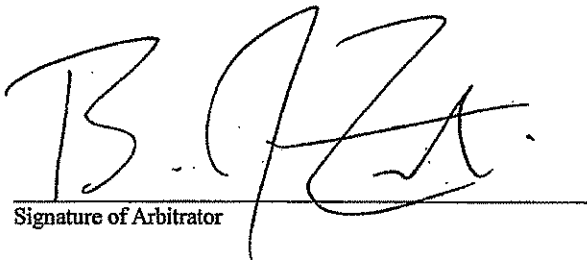
**ORDER**

Respondent shall pay Petitioner the sum of \$442.14/week for a further period of 26.65 weeks, as provided in Section 8(e)(9) of the Act, because the injuries sustained caused the 13% loss of use to the left hand/wrist.

Respondent shall pay Petitioner compensation that has accrued from September 18, 2011 through October 3, 2012, and shall pay the remainder of the award, if any, in weekly payments.

**RULES REGARDING APPEALS** Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

11/16/2012  
Date

NOV 27 2012

STATE OF ILLINOIS )  
 )SS  
COUNTY OF JEFFERSON )

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

SHAWN M. DORRIS  
Employee/Petitioner

v.

Case # 11 WC 46624

CONTINENTAL TIRE  
Employer/Respondent

**MEMORANDUM OF DECISION OF ARBITRATOR**

**FINDINGS OF FACT**

The parties stipulated that on September 18, 2011, Petitioner, Shawn M. Dorris, a 38-year-old passenger tire press operator, sustained injuries to his left forearm and wrist while working for Respondent, Continental Tire, at its tire manufacturing plant in Mt. Vernon, Illinois. On that date, Petitioner was pulling a stuck tire from a mold when it broke loose and hit the bottom side of a plate causing it to bounce up and strike him in his left wrist and forearm. On that same day, Petitioner saw the plant physician at Health Services, who recommended physical therapy at Work-Fit- the plant physical therapy facility. Petitioner returned to the plant physician following therapy and was referred to Dr. David Brown, a hand surgeon in St. Louis, Missouri. (Petitioner's Exhibit (PX) 1).

On November 2, 2011, Dr. Brown found diffuse tenderness over the ulnar aspect of the left wrist and ordered an MRI scan and recommended continued use of the wrist splint. (PX 3). On November 15, 2011, an MRI of the left wrist was performed at Imaging Partners of Missouri. (PX 4). Dr. Brown reviewed the diagnostic study and noted findings consistent with a peripheral TFCC tear. (PX 3).

On December 1, 2011, Dr. Brown performed a left wrist arthroscopy with repair of peripheral TFCC tear at Timberlake Surgery Center. (PX 3; PX 5).

Following surgery, Petitioner remained off from work at the recommendation of Dr. Brown and was paid his temporary total disability (TTD) benefits. When he returned to see Dr. Brown on December 12, 2011, his sutures were removed and Petitioner was released to return to work with restrictions. On January 16, 2012, Dr. Brown recommended a course of physical therapy. (PX 3).

Petitioner started physical therapy at Work-Fit on January 24, 2012. (PX 1). He returned to see Dr. Brown on March 12, 2012. Dr. Brown recommended two additional weeks of physical therapy, followed by a home exercise program. Petitioner was to continue his work restrictions until March 27, 2012. Petitioner was scheduled to follow up with Dr. Brown on May 7, 2012. (PX 3).

Petitioner last saw Dr. Brown on May 7, 2012. At that time, Dr. Brown noted that the arthroscopic portals were well healed. Petitioner estimated that he was "80% better." Active range of motion of the wrist was 82 degrees supination to 76 degrees pronation, 56 degrees dorsiflexion to 54 degrees palmarflexion, 21 degrees radial deviation to 33 degrees ulnar deviation. Dr. Brown noted good active range of motion of the digits. Grip strength testing revealed the following: three trials right 132, 118, 119; three trials left 57, 53, 57. Key pinch: three trials right 23, 21, 24; three trials left 17, 17, 20. Dr. Brown had no further treatment recommendations and released Petitioner to be seen on an as needed basis. (PX 3).

At the request of Respondent's counsel, Dr. Brown prepared a permanent partial disability impairment report dated August 27, 2012. Dr. Brown noted that he last saw Petitioner on May 7, 2012, and that Petitioner estimated he was "80% better." Dr. Brown found Petitioner to have excellent range of motion and good strength. Dr. Brown's report states, "According to the Sixth Edition AMA Guidelines, table 15-3, table 15-6, table 15-7 and table 15-9, Mr. Dorris has sustained a 6% upper extremity impairment as a result of his TFCC tear and subsequent surgery (as noted on page 390 of the AMA Guidelines 'all impairments in the wrist, elbow and shoulder regional grids are expressed as upper extremity impairment')." (RX 1).

Petitioner testified that he continues to have left wrist and forearm pain that comes and goes. He testified that he has loss of strength and has restricted motion in his hand/wrist which he demonstrated at arbitration. Petitioner testified that his wrist has improved following surgery; however, he would not describe his range of motion as "excellent" as it was described by Dr. Brown. Petitioner confirmed that on May 7, 2012, he told Dr. Brown that he was approximately "80% better." Petitioner testified to altering work activities to compensate for his left hand. Petitioner testified having concern completing a home flooring project without assistance because of his left hand and wrist. Petitioner has returned to his regular duties as a passenger tire press operator for Respondent. His job duties require that he lift tires weighing between 50 and 90 pounds throughout his 8 hour and 12 hour shifts. He continues to work his regular duties without restrictions.

### CONCLUSIONS OF LAW

Pursuant to Section 8.1b of the Illinois Workers' Compensation Act, 820 ILCS 305/1 et seq. (hereafter the "Act"), for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
- (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
  - (i) the reported level of impairment pursuant to subsection (a);
  - (ii) the occupation of the injured employee;
  - (iii) the age of the employee at the time of the injury;
  - (iv) the employee's future earning capacity; and

- (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

820 ILCS 305/8.1b.

With regard to Section 8.1b(b)(i) of the Act, the Arbitrator notes in his report of August 27, 2012, Dr. Brown states that according to the AMA Guides Sixth Edition, Petitioner has sustained 6% upper extremity impairment as a result of his TFCC tear and subsequent surgery. In his report, Dr. Brown also states that all impairments in the wrist, elbow, and shoulder regional grids are expressed as upper extremity impairment. The Arbitrator notes that TFCC tear injury permanency awards are based on the "hand" and not the "arm," as set forth in Illinois Workers' Compensation Commission decision precedent.

With regard to Section 8.1b(b)(ii) of the Act, Petitioner's occupation is a passenger tire press operator. Based on Petitioner's testimony, this is a labor-intensive job. The Arbitrator concludes that Petitioner's permanent partial disability will be larger based on this regard than an individual who performs lighter work.

With regard to Section 8.1b(b)(iii) of the Act, Petitioner was 38 years old at the time of his injury. (Arbitrator's Exhibit 1). The Arbitrator considers Petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability will be more extensive than that of an older individual because he will have to live with the permanent partial disability longer.

With regard to Section 8.1b(b)(iv) of the Act, there is no alleged future earning capacity in question, and no weight is therefore given in this regard.

With regard to Section 8.1b(b)(v) of the Act, evidence of disability in Petitioner's treating medical records finds that Petitioner's TFCC tear was treated surgically and has now healed. Dr. Brown reported Petitioner's loss of grip strength and limited range of motion. Petitioner testified that he continues to have left wrist and forearm pain which comes and goes. He testified that he also has loss of strength and has restricted hand/wrist motion, both of which are corroborated in Dr. Brown's records. Petitioner has had to alter his work activities to compensate for his left hand. He testified about having concerns completing a home flooring project without assistance due to his left hand.

The determination of permanent partial disability (PPD) is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, applying Section 8.1b of the Act, Petitioner has sustained accidental injuries that caused the 13% loss of use of the left hand/wrist. The Arbitrator accordingly finds that Respondent shall pay Petitioner the sum of \$442.14/week for a further period of 26.65 weeks, as provided in Section 8(e)(9) of the Act.

Respondent shall have a credit for 10 weeks of advanced PPD benefits, to be deducted from the final award, in the amount of \$4,421.40.

TABLE 15-3 (CONTINUED) Wrist Regional Grid: Upper Extremity Impairments

IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES (upper extremity %)	0	1%–13% UE	14%–25% UE	26%–49% UE	50%–100% UE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
<b>LIGAMENT/BONE/JOINT*</b>					
Wrist sprain/h/o dislocation* including carpal instability	0 No residual findings: +/- surgical treatment	6 7 8 9 10 Mild instability (grade modifier 1 per radiographic studies and criteria in Table 15-9) <i>(clinical studies excluded from adjustment process)</i>	14 15 16 17 18 Moderate instability (grade modifier 2 per radiographic studies and criteria in Table 15-9) 20 22 24 25 25 Severe instability (grade modifier 3 per radiographic studies and criteria in Table 15-9) <i>(clinical studies excluded from adjustment process)</i>		
Triangular fibrocartilage complex (TFCC) tear*	0 No residual findings: +/- surgical treatment	6 7 8 9 10 Documented TFCC injury +/- surgery with residual findings			
Fracture*	0 No residual findings: +/- surgical treatment	1 2 3 4 5 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Avascular necrosis (AVN) of lunate Kienbock's disease*		1 2 2 3 4 Stage 1 normal bone architecture on plain X rays, MRI may be normal or show early stages 3 4 5 6 7 Stage 2 abnormal bone architecture on plain X rays or MRI but no carpal lunate collapse	14 15 16 17 18 Stage 3 abnormal bone architecture on plain X rays or MRI with lunate collapse or fragmentation 17 19 22 23 25 Stage 4 abnormal bone architecture on plain X rays or MRI with lunate collapse or fragmentation and adjoining bones affected. If treated surgically, wait until MMI and rate by type of surgical treatment		
<p>Note: UE indicates upper extremity; MMI, Maximum Medical Improvement; and MRI, magnetic resonance image.                      * If motion loss is present, this impairment may alternatively be assessed using Section 15.7, Range of Motion Impairment.                      A range of motion impairment stands alone and is not combined with diagnosis impairment.</p>					



Chapter 15

