

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**ERASTO MARTINEZ** )  
Claimant )  
V. )  
 ) Docket No. 1,056,367  
**TYSON FRESH MEATS, INC.** )  
Self-Insured Respondent )

**ORDER**

Claimant appealed the May 11, 2016, Award entered by Administrative Law Judge (ALJ) Pamela J. Fuller. The Board heard oral argument on September 8, 2016.

**APPEARANCES**

Conn Felix Sanchez of Kansas City, Kansas, appeared for claimant. Thomas G. Munsell of Kansas City, Missouri, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award. At oral argument, the parties agreed the Board may consider the emails attached to claimant's brief.

**ISSUES**

Claimant alleges a February 10, 2011, accidental repetitive work injury. The ALJ found claimant failed to prove he sustained personal injury by accident or repetitive trauma and permanent impairment as a result of his work activities. Therefore, compensation was denied. Because claimant did not prove his injury was compensable, the ALJ did not decide the issues of nature and extent of disability, whether respondent is entitled to a credit for a preexisting impairment, if respondent is entitled to a Social Security offset or if claimant is entitled to future medical treatment.

Claimant contends his injury, an aggravation of a preexisting condition, arose out of and in the course of his employment and he is permanently totally disabled. Claimant argues respondent is not entitled to a credit for preexisting impairment, nor has respondent provided sufficient evidence for a Social Security offset. Claimant asserts the testimony

of Dr. Steen Mortensen and Steve Benjamin should be stricken from the record because their deposition transcripts were not received by the ALJ before respondent's terminal date.

Respondent contends claimant did not sustain a compensable injury by accident or repetitive trauma. It asserts claimant's preexisting condition was not aggravated by his work. Respondent argues that because claimant did not sustain a compensable injury, he does not have any permanent disability. If claimant sustained a compensable injury, respondent contends claimant is not permanently totally disabled and his permanent partial disability is limited to functional impairment attributable to his employment. Respondent submits Dr. Pedro A. Murati's opinion on claimant's preexisting functional impairment is sufficient to reduce a potential award and that an offset for Social Security is appropriate if permanent benefits are awarded. Respondent maintains: (1) the two deposition transcripts in question were taken before respondent's terminal date, (2) only one of the transcripts arrived after the terminal date, (3) flexibility regarding the rules of procedure is allowed under the Workers Compensation Act, (4) the ALJ implicitly extended respondent's terminal date and (5) prior Board orders suggest depositions need only be taken by the terminal date and the deposition transcripts need not be received by the ALJ by the terminal date to be admitted into evidence.

The issues are:

1. Should the testimony of Dr. Steen Mortensen and Steve Benjamin be stricken from the record?
2. Did claimant sustain a personal injury by accident arising out of and in the course of his employment? Specifically, did claimant's repetitive work activities cause, aggravate, accelerate or exacerbate his rheumatoid arthritis (RA) and carpal tunnel syndrome (CTS)?
3. If so, did claimant suffer a permanent functional impairment?

#### **FINDINGS OF FACT**

Claimant worked for respondent 28 years, with his last day worked on February 10, 2011. He testified that after working for respondent six years, he developed arthritis in his hands and feet. In about 2000, he saw a doctor in Pratt, Kansas, for his arthritis and was prescribed Prednisone and some pills.

From 2003 until shortly before his employment with respondent ended, claimant worked in respondent's receiving department. UPS or FedEx would deliver packages, which he would open to determine to whom they needed to go. He then delivered the packages to different plant offices, pushing the packages in a cart. He would use one hand to open doors and the other to push the cart.

Prior to delivering packages, claimant performed various jobs for respondent, including working on the floor in knives and then in packing. He also weighed packages, iced them and took them to shipping with a forklift. Claimant believed his work activities at respondent worsened his arthritis.

On January 21, 2011, claimant went to see respondent's nurse because his hands hurt. The nurse placed him on light duty in the painting department, where he cleaned machines, which required him to use his hands repetitively. Claimant quit working on February 10, 2011. He testified he quit because he could not do the cleaning job and it was very hot and because respondent refused to send him to a physician. However, the nurse made an appointment for claimant to see Dr. Terry Hunsberger. According to claimant, Dr. Hunsberger told claimant to continue doing the job in painting and did not give him restrictions.

Dr. Naveed Salahuddin, a board-certified rheumatologist, first saw claimant for RA on July 27, 2011. Claimant presented with achiness and stiffness in multiple joints. Dr. Salahuddin noted claimant's wrists were troublesome and had significant swelling. The doctor testified claimant did not discuss his job duties at respondent and did not discuss a potential relationship between his job duties and his RA. Dr. Salahuddin was aware claimant was not working. The doctor indicated claimant was diagnosed with RA nine years earlier by Dr. Rehman in Pratt. Dr. Salahuddin received that information from claimant and did not have the records of Dr. Rehman. Claimant reported being treated at some point with Methotrexate and steroids and was currently taking Meloxicam. X-rays showed erosive changes in claimant's hands and feet.

Dr. Salahuddin indicated claimant had untreated moderate to severe chronic erosive RA involving 14 joints and needed aggressive treatment. The doctor was surprised claimant had a diagnosis of RA and had not seen a rheumatologist for some time. The doctor asked claimant why he had not treated his RA and he had no good answer. Dr. Salahuddin testified there are various forms of treatment for RA and it was unfortunate claimant had never treated.

Dr. Salahuddin testified the etiology, or cause, of RA is unknown. He indicated RA is an autoimmune disease and non-treatment causes synovial membranes to become inflamed with inflammatory cells and the bone underneath erodes. The ligaments and tendons running over the joints are affected, eventually resulting in severe joint deformity and the joints may develop osteoarthritis.

Dr. Salahuddin testified he saw claimant five or six times. The doctor treated claimant with four Remicade infusions and claimant improved considerably. Claimant's wrist, ankle, and foot swelling improved, his gait improved, he felt much better and looked sharper.

Dr. Salahuddin opined, within a reasonable degree of medical certainty, claimant's employment at respondent did not cause his RA, nor contribute to his symptoms of RA. When asked if within a reasonable degree of medical certainty claimant's work caused a permanent aggravation, Dr. Salahuddin replied, "I think it is difficult to say that it caused permanent aggravation. Of course, it will cause aggravation."<sup>1</sup> The doctor testified:

Q. So in your opinion, is the treatment that you're providing for Mr. Martinez related to his employment and the work he performed with Tyson Fresh Meats?

A. I don't think in all that the rheumatoid arthritis was related to his -- his job was not the cause for it. I, as far as I understand, he was doing some lifting and opening doors. That may have aggravated some of the joint symptoms which are already inflamed, and because he was already untreated, but is the work the cause for his rheumatoid arthritis? I do not think so.

Q. If the work aggravated some of the joints in Mr. Martinez's body, would that be a permanent aggravation or a temporary aggravation?

A. I would say it will be -- it depends on the amount of work someone is doing. If the physical work is continuous and constant, then of course, the pain is going to be longer and the stiffness is also going to be longer.

Q. Okay. And when you use the word, the words, "continuous and constant," can you let the judge know what you mean by those words?

A. If somebody is doing repetitive work at short intervals, pushing for continuously for 10, 15 minutes or longer, then of course, the joint symptoms can and will get worse. I would like to mention that these -- that he was already an untreated patient, so he will always have a baseline swelling with pain and inflammation. That will always be there.<sup>2</sup>

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Q. Tell me if I'm stating this wrong. It sounds to me like you're saying that Mr. Martinez's work performed for Tyson would have aggravated his rheumatoid arthritis for the periods he was working for Tyson?

A. It is very much possible.

Q. Then are you saying once he no longer worked for Tyson, there was no continuing aggravation of his rheumatoid arthritis?

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<sup>1</sup> Salahuddin Depo. at 35.

<sup>2</sup> *Id.* at 21-22.

A. From the work, you know, in --

Q. From the work, yeah.

A. From the work, yes. That cause for pain was of course not, not, not there at that time.<sup>3</sup>

Dr. Salahuddin opined, within a reasonable degree of medical certainty, that claimant's work at Tyson caused a physical change, primarily joint aggravation with pain and increased swelling. When asked if the physical changes, in terms of joint swelling, still exist, the doctor answered, "No. After the treatment, it has improved a lot. He has significant improvement now."<sup>4</sup> The doctor also testified it was possible claimant's work activities could contribute toward damage over a period of time and there is a chance of more permanent damage occurring sooner. Dr. Salahuddin indicated using knives in a repetitive motion for three years, packing for two years, driving a forklift for 15 years, pushing beef for a year and working in a storeroom for six years could have aggravated claimant's arthritis.

Dr. Salahuddin's notes do not mention claimant had CTS, nor did he testify claimant had CTS.

By agreed order of the parties, Dr. Terrence Pratt, board certified in physical medicine and rehabilitation, evaluated claimant on March 12, 2013. The doctor indicated claimant's medical records showed he was diagnosed with RA in 2003. After evaluating claimant, Dr. Pratt's impressions were RA with bilateral wrist discomfort and left elbow discomfort with report of traumatic degenerative joint disease related to a 2007 or earlier event. Dr. Pratt indicated RA is a progressive condition that if not treated, worsens. The doctor testified that "[b]ased on his history that he had to be referred to a rheumatologist after reporting his symptoms, he was not having ongoing treatment with a rheumatologist."<sup>5</sup>

Dr. Pratt indicated claimant's RA was a personal autoimmune condition and was not caused by his work at respondent. He could not say within a reasonable degree of medical certainty that claimant's RA was permanently aggravated by his work at respondent. The doctor testified:

Q. If he had a symptomatic exacerbation of symptoms, would that necessarily mean that his rheumatoid arthritis was worsened as a result of his work?

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<sup>3</sup> *Id.* at 33.

<sup>4</sup> *Id.* at 35.

<sup>5</sup> Pratt Depo. at 13.

A. Not necessarily.

Q. And would you be able to quantify as a physician any of his -- any degree of potential exacerbation or aggravation which was caused by his work?

A. I would need clarification. If you're referring to in relation to rheumatoid arthritis, I'd say no.<sup>6</sup>

Dr. Pratt conducted a bilateral upper extremity electrodiagnostic study that suggested right CTS and possible right ulnar involvement. The doctor referred claimant to Dr. Anne Rosenthal for an upper extremity evaluation. Dr. Pratt deferred to a rheumatologist or upper extremity specialist when asked about the cause of claimant's right CTS. He also deferred to a rheumatologist when asked if standing for eight hours a day, walking and doing repetitive work would cause claimant's RA to be accelerated or exacerbated.

At respondent's request, claimant was evaluated by Dr. Steven B. Smith, an orthopedic surgeon, on February 18, 2015. Dr. Smith treats patients with degenerative and traumatic upper extremity conditions, including patients with RA. Claimant presented with pain, swelling, deformity and difficulty using his hands and wrists. There were also potential issues with his feet. Medical records reviewed by Dr. Smith indicated claimant was diagnosed with RA as early as 2003. The doctor indicated claimant was previously diagnosed with seropositive RA, which is important because it means he has systemic inflammatory RA, verified by laboratory testing.

Dr. Smith's examination of claimant revealed swelling of his wrists and finger joints, crepitation in his wrists and deformity of his wrists and hands. Claimant was tested for CTS and although claimant had some numbness, Dr. Smith did not feel claimant was clinically positive for CTS.

Dr. Smith opined claimant's RA symptoms could have been aggravated by his work activities. However, the doctor testified that within a reasonable degree of medical certainty, claimant's RA was not caused, aggravated or accelerated by his work activities. The doctor opined that because of claimant's severe RA, he should not engage in manual labor. The doctor indicated claimant's work activities at respondent did not contribute to that restriction.

Dr. Smith did not believe claimant's work activities at respondent aggravated the joint damage caused by claimant's RA. The doctor did not assign any permanent impairment attributable to claimant's work activities. When asked if repetitively using a knife and cutting would cause damage to claimant's joints, Dr. Smith testified, "Not necessarily. Sometimes motion is good for people with arthritis. I will agree with you

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<sup>6</sup> *Id.* at 14-15.

sometimes motion and trauma can be detrimental to people with arthritis.”<sup>7</sup> According to Dr. Smith, claimant’s RA would have progressed if he worked at respondent, worked on a computer or sat at home all day. The doctor acknowledged he did not have an intimate knowledge of claimant’s work activities.

Dr. Steen Mortensen, Chief of Rheumatology at Via Christi Clinic, saw claimant on January 19, 2016. The purpose of the visit was a consultation with claimant for his RA with an eye toward claimant becoming a new patient. Claimant gave a history of having progressive arthritis for probably 15 years. The doctor provided claimant advice, but provided no treatment. The doctor recommended claimant be given disease-modifying antirheumatic drugs, which required four visits. Claimant never returned for a follow-up visit. Dr. Mortensen did not place claimant on any work restrictions. A January 19, 2016, x-ray report from Via Christi stated, “There is progressive carpal crowding in both wrists, with diffuse erosive changes. The appearance would be compatible with rheumatoid arthritis.”<sup>8</sup> Dr. Mortensen did not diagnose claimant with CTS, nor was he asked if claimant had CTS.

Dr. Mortensen could not say within a reasonable degree of medical certainty whether claimant’s work activities at respondent caused his RA, aggravated his RA or caused an increase in his symptoms. He admitted he did not know what claimant’s job duties were at respondent and that he did not have medical reports of Dr. Steven B. Smith, Dr. Salahuddin or Dr. Pedro A. Murati.

At the request of his attorney, claimant was evaluated by Dr. Murati, board certified in physical medicine and rehabilitation, on October 20, 2015. Claimant reported working for respondent for 28 years and after working for respondent four years, began having coldness and burning in his feet and pain and swelling in his wrists. At that time, claimant was a plate boner, which required standing and using a knife all day. While working as a plate boner, claimant went to the nurse’s station numerous times and was given cream for his hands. He was then moved to packaging, where his symptoms decreased. After moving to a forklift manifester position, his foot and hand pain increased. He was again moved, this time to receiving. Claimant reported that by 2010, his hands became so bad that he could not open doors. In 2010, claimant also developed left elbow pain and his bilateral hand and foot symptoms worsened.

Dr. Murati’s report stated claimant denied any significant preexisting injuries to his wrists, hands and feet prior to his work-related injuries reported on February 10, 2011, at respondent. Claimant reported he was diagnosed with RA in 2000.

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<sup>7</sup> Smith Depo. at 27-28.

<sup>8</sup> Mortensen Depo., Ex. 2.

After reviewing claimant's prior medical records and conducting a physical examination, Dr. Murati's diagnoses were: (1) aggravation of preexisting RA with resulting left elbow and bilateral hand and feet pain and (2) aggravation of bilateral moderate CTS. The doctor opined, within a reasonable degree of medical probability, that claimant's diagnoses were a direct result of his work activities at respondent. The doctor explained:

Well, the rheumatoid arthritis itself, the disease process is not aggravated. What's aggravated is his damage to the joint that the rheumatoid arthritis is doing. In other words, the first rule of thumb is, that a person like this does not work in a repetitive environment. When you get your flare-ups, you don't work when you use your hands. You rest them. But, this person did work in a meat packing plant, of all places, which accelerated and aggravated his preexisting medical condition. The result of his preexisting medical condition.<sup>9</sup>

Dr. Murati testified that persons with RA have a higher incidence of CTS because of the inflammatory condition. The doctor indicated it is "common medical knowledge and common sense"<sup>10</sup> that repetitive work activities worsened claimant's RA and CTS. The doctor testified claimant was between a rock and a hard place because he developed RA before biologic medications were available and he could not use Prednisone, another medication used to treat RA, because he is diabetic. Dr. Murati stated claimant should never have been allowed to work in a meat packing plant.

Using the *Guides*,<sup>11</sup> Dr. Murati assigned claimant upper and lower extremity impairments for his work injury that he combined for a 16 percent whole body impairment, which was 25 percent of his total functional impairment. The doctor indicated he assigned claimant a 5 percent functional impairment for right CTS and a 5 percent functional impairment for left CTS because 75 percent of his functional impairment for bilateral CTS was attributed to his RA. Dr. Murati indicated claimant's whole body functional impairment was much higher, but only 16 percent was attributable to his work injury. The doctor assigned claimant work restrictions and opined claimant was permanently totally disabled.

Vocational experts Paul S. Hardin and Steve Benjamin each performed a task analysis of claimant. Their findings and testimony have little relevance to the issue of whether claimant suffered a personal injury by accident arising out of and in the course of his employment. Therefore, their findings and testimony are not discussed herein.

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<sup>9</sup> Murati Depo. at 33-34.

<sup>10</sup> *Id.* at 46.

<sup>11</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Dr. Mortensen was deposed on April 25, 2016, and Mr. Benjamin was deposed on April 29, 2016. According to claimant's brief, their deposition transcripts were not sent to the ALJ until sometime after respondent's May 4, 2016, terminal date. On May 10, the ALJ sent an email to the parties' attorneys indicating she was ready to make her findings and had not received the deposition transcript of Dr. Mortensen and had received two other deposition transcripts after the terminal dates. Claimant's attorney sent the ALJ an email asking which deposition transcripts arrived after the terminal dates. The ALJ responded on May 11 that she had not received the deposition transcripts of Dr. Mortensen and Mr. Benjamin. Later on May 11, she indicated that only one of the two deposition transcripts arrived after the terminal date, but did not specify which transcript.

Submission letters by the parties to the ALJ discuss Dr. Mortensen's testimony and respondent's submission letter refers at length to Mr. Benjamin's findings and opinions. The May 11, 2016, Award discusses the findings and testimony of Mr. Benjamin and Dr. Mortensen.

#### **PRINCIPLES OF LAW AND ANALYSIS**

K.S.A. 2010 Supp. 44-523, in part, states:

(a) The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.

(b) Whenever a party files an application for hearing pursuant to K.S.A. 44-534 and amendments thereto, the matter shall be assigned to an administrative law judge for hearing and the administrative law judge shall set a terminal date to require the claimant to submit all evidence in support of the claimant's claim no later than 30 days after the first full hearing before the administrative law judge and to require the respondent to submit all evidence in support of the respondent's position no later than 30 days thereafter. . . .

The Board denies claimant's request to strike the testimony of Dr. Mortensen and Mr. Benjamin from the record. On May 10, the ALJ sent an email to the parties indicating she had not received the transcript of Dr. Mortensen's deposition and had received two other deposition transcripts after the terminal dates. Claimant's attorney asked which transcripts, but did not object to the transcripts being part of the record or request some type of relief. The Board has frequently declined to exercise de novo review when an issue was not raised and limited review to "questions of law and fact as presented and shown

by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.”<sup>12</sup> The Board will not hear this issue on appeal.

At oral argument, claimant argued he did not have time to raise this issue before the ALJ issued her Award. Even if that is the case, K.S.A. 2010 Supp. 44-523(a) states the ALJ and Board are not bound by technical rules of procedure. Claimant argues the terminal dates are sacrosanct and evidence or documents submitted after the terminal dates should not be considered by the ALJ. That ignores K.S.A. 2010 Supp. 44-523(a). Claimant was given a reasonable opportunity to present his case. His attorney was present at the depositions of Dr. Mortensen and Mr. Benjamin. Claimant had copies of the Mortensen and Benjamin transcripts before he sent his submission letter to the ALJ and his submission letter referenced Dr. Mortensen’s findings. The ALJ obviously received the disputed transcripts prior to issuing the Award, because she discusses Dr. Mortensen’s and Mr. Benjamin’s opinions in said Award. The Board notes that even if it excluded the disputed transcripts from the record, its decision on the other issues raised by claimant would remain the same.

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>13</sup> “‘Burden of proof’ means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.”<sup>14</sup>

It is the function of the trier of facts to decide which testimony is more accurate and/or credible and to adjust the medical testimony, along with the testimony of the claimant, and any other testimony that may be relevant to the question of disability. The trier of facts is not bound by medical evidence presented in the case and has a responsibility of making its own determination.<sup>15</sup>

The Board finds claimant sustained a personal injury by accident arising out of and in the course of his employment, but that claimant’s accidental repetitive work injury did not cause, permanently aggravate, accelerate or exacerbate his RA.

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<sup>12</sup> See K.S.A. 2010 Supp. 44-555c(a); *Byers v. Acme Foundry, Inc.*, No. 1,056,474, 2013 WL 6382905 (Kan. WCAB Nov. 21, 2013). See also *Hunn v. Montgomery Ward*, No. 104,523, 2011 WL 2555689 (Kansas Court of Appeals unpublished opinion filed June 24, 2011).

<sup>13</sup> K.S.A. 2010 Supp. 44-501(a).

<sup>14</sup> K.S.A. 2010 Supp. 44-508(g).

<sup>15</sup> *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

Five doctors treated or evaluated claimant. Three of those physicians – Drs. Salahuddin, Pratt and Mortensen – were not hired as experts by either party. The Board finds it significant that none of those physicians opined claimant’s work activities permanently aggravated his preexisting RA. As noted by Dr. Salahuddin, RA is an autoimmune disease with an unknown etiology. It progressively worsens. Dr. Salahuddin thought claimant’s work activities may have aggravated his joint symptoms, but could not say if claimant’s work activities permanently aggravated claimant’s condition. The doctor also indicated that claimant’s condition actually improved after receiving treatment.

Dr. Pratt, the court-appointed neutral physician, indicated claimant’s work activities may have exacerbated his symptoms, but not necessarily worsened his RA. He also deferred to a rheumatologist when asked if standing for eight hours a day, walking and doing repetitive work accelerated or exacerbated claimant’s RA.

Dr. Mortensen, whom claimant went to see on his own, could not say claimant’s work activities increased his symptoms or aggravated his RA.

Dr. Smith, respondent’s expert, opined claimant’s RA symptoms could have been aggravated by his work activities, but his work activities did not cause, aggravate or accelerate his RA. According to Dr. Smith, claimant’s RA would have progressed whether he worked at respondent or sat at home all day. He indicated that in some instances, activities requiring motion could help some patients with arthritis, but could be detrimental to others.

Dr. Murati, claimant’s expert, was the only physician who definitively opined that claimant’s work activities permanently aggravated or accelerated his RA. Dr. Murati, unlike Drs. Salahuddin and Mortensen, is not a rheumatologist. Dr. Murati ignored the fact that after claimant quit working for respondent and received treatment from Dr. Salahuddin, his condition improved. Dr. Murati also discounted or ignored the very nature of RA: that it is a progressive autoimmune disease.

Claimant also alleges he has bilateral CTS and his work activities caused or aggravated his CTS. There was insufficient medical evidence that claimant has bilateral CTS. The Board finds it significant that neither of the rheumatologists who treated or evaluated claimant diagnosed CTS. Dr. Salahuddin indicated that when he first saw claimant, his wrists were swollen from RA. Dr. Smith noted claimant was tested for CTS and had numbness, but indicated claimant was not clinically positive for CTS.

Dr. Pratt conducted bilateral upper extremity electrodiagnostic testing, which suggested right CTS. Dr. Pratt deferred to a rheumatologist or upper extremity specialist when asked about the cause of claimant’s alleged CTS.

Only Dr. Murati opined claimant had bilateral CTS that was aggravated by his work activities. He based that opinion on common medical knowledge and common sense. The

doctor testified that persons with RA have a higher incidence of CTS and attributed 75 percent of claimant's functional impairment for bilateral CTS to RA and 25 percent to his work activities. However, the doctor did not provide an explanation as to how he arrived at that determination. Even if claimant has bilateral CTS, the Board is unconvinced it was permanently aggravated by claimant's work activities.

### CONCLUSION

1. The depositions of Steve Benjamin and Dr. Steen Mortensen are part of the record.
2. Claimant suffered a personal injury by accident arising out of and in the course of his employment.
3. Claimant failed to prove his work injury caused, accelerated, permanently aggravated or exacerbated his rheumatoid arthritis.
4. Claimant failed to prove he has bilateral carpal tunnel syndrome. If claimant has bilateral carpal tunnel syndrome, he failed to prove his work injury caused, accelerated, exacerbated or permanently aggravated his carpal tunnel syndrome.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>16</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

### AWARD

**WHEREFORE**, the Board modifies the May 11, 2016, Award entered by ALJ Fuller by finding claimant suffered a personal injury by accident arising out of and in the course of his employment, but claimant's work injury did not cause, accelerate, permanently aggravate or exacerbate his rheumatoid arthritis or any carpal tunnel syndrome.

**IT IS SO ORDERED.**

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<sup>16</sup> K.S.A. 2015 Supp. 44-555c(j).

Dated this \_\_\_\_ day of November, 2016.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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Honorable Pamela J. Fuller, Administrative Law Judge