

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel.	:	
Katheryn J. Holderman,	:	
	:	
Relator,	:	No. 12AP-32
	:	
v.	:	(REGULAR CALENDAR)
	:	
Industrial Commission of Ohio and	:	
Russell Price Post 4 Amvets of Ohio,	:	
	:	
Respondents.	:	

D E C I S I O N

Rendered on December 20, 2012

Agee, Clymer, Mitchell & Laret, and Eric B. Cameron, for relator.

Michael DeWine, Attorney General, and Colleen C. Erdman, for respondent Industrial Commission of Ohio.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

KLATT, J.

{¶ 1} Relator, Katheryn J. Holderman, commenced this original action in mandamus seeking an order compelling respondent, Industrial Commission of Ohio ("commission"), to vacate its order that denied relator's motion for a scheduled loss award in connection with an injury to her right hand, and to enter an order granting her motion.

{¶ 2} Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate found that: (1)

the commission did not abuse its discretion when it relied on Dr. Koppenhoefer's report; and (2) the commission did not abuse its discretion in considering relator's handwriting ability. Therefore, the magistrate has recommended that we deny relator's request for a writ of mandamus.

{¶ 3} Relator has filed objections to the magistrate's decision. In her first objection, relator contends that the magistrate erred by not eliminating Dr. Koppenhoefer's March 6, 2010 medical report from evidentiary consideration because it is internally inconsistent. Therefore, relator argues that Dr. Koppenhoefer's report does not constitute "some evidence" upon which the commission could rely. We disagree.

{¶ 4} Relator sought a R.C. 4123.57(B) scheduled loss award for an industrial injury to her right hand. Dr. Koppenhoefer examined relator in connection with her application. Although the first page of Dr. Koppenhoefer's report inaccurately lists "left hand anyklosis" as the alleged condition, the body of his report reflects that he understood the nature of relator's injury and the purpose of his exam and report.

{¶ 5} Dr. Koppenhoefer's report indicates that he took relator's medical history which reflects an injury to her right hand, her treatment involved her right hand, and her symptomology involved her right hand. His ultimate opinion addressed her right hand and also indicated that he understood the specific purpose of the exam (whether she had lost the use of her right hand for all practical purposes). Because the body of his report clearly indicates that his examination and opinion related to relator's ability to use her right hand, we agree with the magistrate that the commission did not abuse its discretion when it relied on Dr. Koppenhoefer's report in reaching its decision. For these reasons, we overrule relator's first objection.

{¶ 6} In her second objection, relator contends that the magistrate misapplied the law in reviewing the commission's decision. Relator argues that *State ex rel. Sears, Roebuck & Co. v. Campos*, 10th Dist. No. 04AP-1266, 2005-Ohio-5700, required the commission to grant relator's motion for a scheduled loss award. Again, we disagree.

{¶ 7} As noted by the magistrate, there are significant factual differences between the condition of relator's right hand and the condition of the claimant's right hand in *Sears*. Respondent points out that in *Sears*, the claimant had a severe hand tremor and his hand had assumed a claw position. Here, Dr. Koppenhoefer noted that relator

experienced right hand pain, decreased grip strength due to pain, and tightness. Nevertheless, Dr. Koppenhoefer opined that relator could use her right hand for many useful activities, including signing her name. The commission did not abuse its discretion in relying on Dr. Koppenhoefer's report and the magistrate did not err when he found that *Sears* is distinguishable on its facts and does not compel the commission to grant relator's scheduled loss award request. For these reasons, we overrule relator's second objection.

{¶ 8} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we deny relator's request for a writ of mandamus.

Objections overruled; writ of mandamus denied.

BRYANT and FRENCH, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel.	:	
Katheryn J. Holderman,	:	
	:	
Relator,	:	No. 12AP-32
	:	
v.	:	(REGULAR CALENDAR)
	:	
Industrial Commission of Ohio and	:	
Russell Price Post 4 Amvets of Ohio,	:	
	:	
Respondents.	:	

MAGISTRATE'S DECISION

Rendered on August 16, 2012

Agee, Clymer, Mitchell & Laret, and Eric B. Cameron, for relator.

Michael DeWine, Attorney General, and Colleen C. Erdman, for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶ 9} In this original action, relator, Katheryn J. Holderman, requests a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order denying her motion for an R.C. 4123.57(B) scheduled loss award for an alleged loss of use of her right hand, and to enter an award for loss of use of her right hand.

Findings of Fact:

{¶ 10} 1. On September 10, 2006, relator injured her right hand while employed as a bartender or waitress for a state-fund employer. On that date, relator struck her right hand on the bar when she reached for a coffee cup.

{¶ 11} 2. The industrial claim (No. 06-378128) is allowed for:

Contusion of right hand; contusion of right fifth finger; sprain right interphalangeal; right distal interphalangeal joint sprain; right fifth digit opponens digiti minimi strain; right fifth digit flexor digiti minimi strain; intermetacarpal ligament tear between 4-5, right.

{¶ 12} 3. In February 2008, relator underwent right hand surgery that was performed by Dr. Ghany. Dr. Ghany repaired an intermetacarpal ligament tear between the fourth and fifth digits.

{¶ 13} 4. On September 9, 2009, at the request of the Ohio Bureau of Workers' Compensation ("bureau"), relator was examined by H. Tom Reynolds, M.D. In his four-page narrative report, Dr. Reynolds states:

The exam is limited to the upper limbs. She has normal range of motion of the right elbow, forearm and wrist. Right thumb range of motion is intact. She is not able to touch the distal tips of the fingers to the distal palmar pads of digits 2, 3, 4 and 5. Digit 2 lacks about a centimeter, digit 3 lacks about 2 cm, digit 4 a cm and a half, and 5 about a centimeter. She has about 30 degrees of flexion at the DIP joints of each of these 4 digits. She has about 60 degrees of flexion of the right 2nd PIP joint, 70 digit 3, 50 digit 4, 50 digit 5. Light touch sensation is grossly intact. She has hypersensitivity to light touch over the scar of the right hand through the palmar crease distally at the metacarpophalangeal joints, digits 3, 4 and 5. She has normal sensation over the dorsum of the hand. No swelling, effusion, or edema is noted. The skin wrinkle and venous appearance of the hand dorsally on the right is similar to that of the left. The right hand may be just a slight darker, tan-wise. No pitting edema is noted. Her fingernails are painted on both hands. There is no swelling of the joints that I can tell. The joints are tender to touch, she reports, primarily at the PIP joint, digit 3, 4 and 5. Reflexes are symmetric in both upper limbs. There is a fair grip on the right side, though limited by pain with fair-minus ulnar hand intrinsic strength, due to pain complaints, thumb-to-little finger opposition and long thumb flexor strength is normal in the right, compared to the left.

* * *

Today's opinion considers the allowed conditions, as mentioned above. Based on today's evaluation, review of available information, and history obtained from the claimant, it is my opinion, medically, that the injured worker

has experienced a maximum medical improvement. She had surgery a year ago in February. She has had multiple sessions of physical therapy and injections. She is on gabapentin 300 mg 3 times a day with some improvement in the right hand, burning and stabbing pain complaints. I do not feel she can return to her previous level of employment and feel that this inability is permanent. Her functional limitation would be of a sedentary-type supportive nature with the right hand only.

{¶ 14} 5. On October 21, 2009, vocational case manager Esther Peery, B.S.N., R.N., C.C.M., wrote:

Behavioral Observations During Interview: Ms. Holderman is Rt. Hand dominant. Her Rt. Hand was dusky in color and cold to touch during this interview. She was unable to close her hand, unable to grasp with her Rt. hand and unable to lay her hand flat on the table. When signing her name could not grasp the pen, but rather placed it awkwardly between her 2nd and 3rd fingers and wrote her name laboriously in increments with long pauses in between to allow the visible muscle spasms in her Rt. Hand and Forearm to stop. Purpose tremors were noted in her Rt. Hand stemming from her effort to write her signature. She complained of severe pain shooting up the underside of her Rt. Forearm after signing her name twice. She stated that she does very little writing and notes that her signature has changed since her injury.

* * *

Case Manager Recommendation(s) and Impression(s): The numerous adjustments made to how Mrs. Holderman performed her FCE which was completed roughly 6 months ago was staffed at length with the POR and Mrs. Holderman during face to face staffing on 10-7-09. Her daughter drove her to this appointment as her Rt. hand was too painful on this day to allow her to try to drive herself. Because of her obvious inability to use her Rt. Hand in a functional/safe manner and this field case manager's concern regarding potential further deterioration of motor function during the 6 months since the prior assessment – the POR supported a request for a preplan FCE to be completed by a different BWC certified provider. Approval of this C-9 is pending from the MCO.

{¶ 15} 6. On November 12, 2009, at relator's own request, she was examined by Nancy Renneker, M.D., who is board certified in physical medicine and rehabilitation. In her three-page narrative report, Dr. Renneker wrote:

Kath[e]ryn Holderman complains of constant numbness about right little finger, right ring finger and right middle finger, constant stiffness about right wrist, right thumb and right 4 fingers and Ms. Holderman is unable to make even a loose fist with her right hand due to stiffness about right fingers and right thumb. Kath[e]ryn Holderman also states that since this injury she is no longer able to move her right 5th finger away from her right 4th finger i.e. she is unable to abduct right 5th finger. Kath[e]ryn Holderman is unable to open jar lids or 2 liter twist top soda bottles with her right hand and as stated earlier, she is unable to do any lifting and carrying with that hand. Kath[e]ryn Holderman also states that she has hypersensitivity to any touch or pressure along surgical scar at distal palmar crease of right hand. Kath[e]ryn Holderman is able to perform activities of daily living/self care tasks which can be done "one handed."

Kath[e]ryn Holderman has not learned how to write with her left hand and she reports that she continues to write her signature with her right hand; however, she reports that this signature is illegible.

EXAMINATION:

Height: 5' 4", Weight: 280 lbs. A healed surgical scar is noted distal palmar crease of right hand and Kath[e]ryn Holderman reports dysesthesia with any touch or pressure along this scar. Active right wrist range of motion: flexion 30 degrees, extension 30 degrees, radial deviation 10 degrees and ulnar deviation 20 degrees. Active right thumb range of motion: (a) MP +10-60 degrees, IP +10-60 degrees (b) 30 degrees of radial abduction is noted (c) 0-6 cm right thumb opposition range is noted and (d) a 2 cm lack of full right thumb adduction is noted. Active range of motion of right index and right middle finger: MP 30-60 degrees, PIP 30-80 degrees and DIP 10-40 degrees. Active range of motion of right ring finger: MP 0-60 degrees, PIP 30-60 degrees and DIP 10-20 degrees. Active range of motion of right little finger: MP 0-30 degrees, PIP 20-50 degrees and DIP 30-40 degrees. Of note, Kath[e]ryn Holderman was unable to approximate any finger to her right palm. Right upper extremity strength, deep tendon reflexes and sensation are

within normal limits with the exception of: (1) 0/5 strength is noted in right 5th finger abduction (2) a total transverse sensory loss is noted right 5th finger and ulnar half of right ring finger and (3) Kath[e]ryn Holderman lacked the necessary active range of motion throughout right 4 fingers in order to adequately use the grip apparatus. As such, no formal grip strength testing of right wrist and hand was possible.

OPINION:

Based on medical records reviewed, my exam of this date in which Kath[e]ryn Holderman was unable to approximate any of her right 4 fingers to her right palm, nor is she able to tolerate any pressure/touch against distal right palmar crease and as such, it is my medical opinion that Kath[e]ryn Holderman is entitled to a functional loss of use of right hand as a residual impairment related to this work injury of 9-10-06 (Claim no. 06-378128).

{¶ 16} 7. On December 10, 2009, relator moved for an R.C. 4123.57(B) scheduled loss award for an alleged loss of use of her right hand. In support, relator submitted the November 12, 2009 report of Dr. Renneker, the September 9, 2009 report of Dr. Reynolds, and the October 21, 2009 report of Peery.

{¶ 17} 8. On March 6, 2010, at the bureau's request, relator was examined by Ron M. Koppenhoefer, M.D. On the first page of his three-page narrative report, Dr. Koppenhoefer lists the allowed conditions of the claim. Under the allowed conditions listed, the report states:

Alleged Condition: 718.54 ankylosis-hand left

Thereafter, Dr. Koppenhoefer's report states:

Medical History: Ms. Holderman is a 52-year-old right handed female who was examined on March 6, 2010 for an injury which occurred on September 10, 2006. At the time of her injury, she states that she was working as a waitress. The injury occurred on September 10, 2006 when she reach for a coffee cup on the bar and struck her right hand on the bar. She was able to complete her shift but used her left hand.

She reported the incident the following day and did light duty for three days. She was then terminated.

She did undergo surgery on her right hand in February of 2008. She states that the ligament which was torn was fixed. Since her surgery she has been treated with therapy which she had prior to her surgery. She states that her last physical therapy treatments were greater than one year. Currently, the only treatment she has is over-the-counter medication for pain which she uses two to three times a day.

She complains of constant pain involving the right hand. She states that the pain is confined to the dorsal aspect of the hand which is a constant pain aggravated by lifting. She states that she has trouble squeezing and grasping because of this pain. In addition, since her surgery she has had a constant numbness and hyperesthesia involving the right palm. This occurs distal to the well healed surgical scar.

Physical Examination Focused to the Allowed Condition(s): Her physical examination revealed her stated height to be 5 foot 4 inches, weight 280 pounds. Her gait was normal. Motion involving the cervical spine was full. Range of motion of the glenohumeral joints was full on an active and passive basis. Range of motion of the elbows and wrists was full on active and passive range. Examination of the right hand revealed no evidence of swelling. Hair growth was symmetric when compared to the left. No atrophy or fasciculations were observed. Skin temperature was symmetric. Peripheral pulses were present and symmetric.

Actively, she did have movement in all joints involving the right hand including the thumb. However, total flexion of all joints was slightly decreased on an active basis by approximately 5 degrees. Passively, all the fingers had full range. Tightness was noted involving hand intrinsic musculature.

Neurological exam revealed reflexes to be symmetric, sensation was decreased to fine touch distal to the well healed palmar scar, a questionable Tinel's sign was noted involving the scar itself. Grip strength was decreased involving the right hand secondary to pain.

* * *

Discussion: Based on my examination and review of the medical records, I believe I can answer the questions posed in the cover letter.

1. In your medical opinion, has the allowed injury resulted in total, permanent loss of use, to such a degree that the effected body part is useless for all practical purposes, that is, the body part though present is not capable of performing most of the functions for which it commonly performs as a result of the allowed conditions in this claim? Be specific.

It is my medical opinion that the allowed injury has not resulted in a total permanent loss of use of her right hand. It is noted that she was able to move her right hand for useful activities during the course of her examination. In fact, she signed the Workers' Compensation form with her right hand. Her right hand does have limitations at this time in regards to power gripping activities but she is able to use the hand for sedentary work activities and particularly in a helping hand situation. It is noted that there is no evidence of ankylosis involving the right wrist or any of the fingers. She does have tightness involving the hand intrinsic musculature but this is not compatible with complete ankylosis. In addition, she does have some hyperesthesia or dysesthesia to the right palm which would prevent her from doing repetitive gripping and grasping activities. However, there is no evidence to indicate that this prevents her from using her hand for all activities. In fact, as stated, she signed the BWC form with her right hand.

{¶ 18} 9. Following an April 6, 2010 hearing, a district hearing officer ("DHO") issued an order granting relator's December 10, 2009 motion.

{¶ 19} 10. The bureau administratively appealed the DHO's order of April 6, 2010.

{¶ 20} 11. Following a May 4, 2010 hearing, a staff hearing officer ("SHO") issued an order that vacates the DHO's order of April 6, 2010 and denies relator's December 10, 2009 motion. The SHO's order explains:

This decision is based on the 03/06/2010 report from Dr. Koppenhoefer.

The Injured Worker stated that Dr. Koppenhoefer's report was unreliable because he lists the condition to be considered as ANKYLOSIS OF THE LEFT HAND. The Injured Worker also argues that the issue of loss of use is not the same as an additional condition of ANKY[L]OSIS and that Dr. Koppenhoefer uses the wrong standard.

A review of the actual report doesn't support this objection. Dr. Koppenhoefer clearly reviews the right hand and evaluates the allowed claim. He also discusses the the [sic] Injured Worker's ability to use the right hand.

Dr. Koppenhoefer states in page 2 of the report:

"Actively, she did have movement in all joints involving the right hand including the thumb. However, total flexion of all joints was slightly decreased on an active basis by approximately 5 degree[s]. Passively, all fingers had full range."

He goes on to state the Injured Worker's grip strength was decreased in the right hand secondary to pain.

Dr. Koppenhoefer stated that the Injured Worker was able to move her right hand for useful activities during the course of the examination.

Dr. Koppenhoefer noted that the Injured Worker was able to use her right hand for the purposes of making a signature. The Injured Worker was shown several examples of her signature at hearing and she agreed she was the author of these signatures and that she used her right hand. She stated that she had to use her left hand to assist in the making of the signature. The signature involved, including the 10-01-2009 signature on the Rehabilitation Agreement, are completely clear. The signature is not even shaky. The Injured Worker volunteered at hearing that because of the right hand problem and pain that she was limited to writing a letter or two at a time before she had to stop.

Beyond the dispute regarding the Injured Worker's ability to write with her right hand, Dr. Koppenhoefer's report is found to be evidence that supports a conclusion that the Injured Worker retains the use of her right hand. The hearing officer reviewed the unreported [*State ex rel. Sears Roebuck & Co. v. Campos*, 10th Dist. No. 04AP-1266, 2005-Ohio-5700] case from the 10th District Court of Appeals, which found the ability to write with the hand in question would not be an absolute bar to a loss of use award. The IW's ability to write with the right hand is not the primary basis for this decision, though it is one factual consideration in reviewing the IW's ability to use her hand.

In preparation for hearing, the Hearing Officer reviewed the pertinent cases in this area, including [*State ex rel. Gassmann v. Indus. Comm.*, 41 Ohio St.2d 64 (1975), *State ex rel. Walker v. Indus. Comm.*, 58 Ohio St.2d 402 (1979), and *State ex rel. Alcoa Bldg. Prods. v. Indus. Comm.*, 102 Ohio St.3d 341, 2004-Ohio-3166]. The findings of law in the Alcoa case represent the current standard in this area of the law. Alcoa sets the standard that the loss of use must be "for all practical purposes." The standard is not complete and total loss of function, but the loss "for all practical purposes." Based on the opinion of Dr. Koppe[n]hoefer, the Injured Worker does not have the loss of use of her right hand "for all practical purposes." Dr. Koppenhoefer does not use this precise language in his report. The Staff Hearing Officer interprets the finding in his report as consistent with a conclusion that the Injured Worker retains some practical use of her right hand. The injury does limit the Injured Worker, but not to the extent that she is entitled to an award for the total loss of use [of] the hand.

(Emphasis sic.)

{¶ 21} 12. On May 27, 2010, another SHO mailed an order refusing relator's administrative appeal from the SHO's order of May 4, 2010.

{¶ 22} 13. On July 9, 2010, the three-member commission, on a two-to-one vote, mailed an order denying relator's request for reconsideration.

{¶ 23} 14. On January 9, 2012, relator, Katheryn J. Holderman, filed this mandamus action.

Conclusions of Law:

{¶ 24} Two main issues are presented: (1) must the March 6, 2010 report of Dr. Koppenhoefer be eliminated from evidentiary consideration, and (2) did the commission abuse its discretion when it addressed relator's handwriting ability.

{¶ 25} The magistrate finds: (1) Dr. Koppenhoefer's report need not be eliminated from evidentiary consideration, and (2) the commission did not abuse its discretion when it addressed relator's handwriting ability.

{¶ 26} Accordingly, it is the magistrate's decision that this court deny relator's request for a writ of mandamus, as more fully explained below.

{¶ 27} Turning to the first issue, equivocal medical opinions are not evidence. *State ex rel. Eberhardt v. Flxible Corp.*, 70 Ohio St.3d 649, 657 (1994). Equivocation

occurs when a doctor repudiates an earlier opinion, renders contradictory or uncertain opinions or fails to clarify an ambiguous statement. *Id.*

{¶ 28} A physician's report can be so internally inconsistent that it cannot be some evidence supporting the commission's decision. *State ex rel. Lopez v. Indus. Comm.*, 69 Ohio St.3d 445, 449 (1994); *State ex rel. Taylor v. Indus. Comm.*, 71 Ohio St.3d 582, 585 (1995).

{¶ 29} According to relator, Dr. Koppenhoefer's report is equivocal and internally inconsistent. Relator draws this conclusion from the fact that, below the listing of the allowed conditions of the claim, Dr. Koppenhoefer wrote, "Alleged Condition: 718.54 ankylosis-hand left."

{¶ 30} Relator endeavors to make two points or arguments regarding Dr. Koppenhoefer's report. First, relator points out that she injured her right hand—not her left, and that Dr. Koppenhoefer examined only her right hand. Rather than offering the possibility that reference to the left hand is a typographical error, relator concludes that reference to the left hand renders Dr. Koppenhoefer's report equivocal. The magistrate finds that relator's first point or argument lacks merit.

{¶ 31} Indeed, in the body of his report, Dr. Koppenhoefer repeatedly and consistently makes clear that he is examining the right hand. Only in the heading of his report do we find a reference to the left hand. Clearly, the reference to the left hand is a mistake. Minor discrepancies in a doctor's report do not render the report equivocal nor ambiguous. *State ex rel. Warnock v. Indus. Comm.*, 100 Ohio St.3d 34, 2003-Ohio-4833.

{¶ 32} Relator's second point or argument regarding Dr. Koppenhoefer's report is again focused upon the language in the report, "Alleged Condition: 718.54 ankylosis-hand left." Relator suggests that the language indicates that the report is a so-called "additional allowance report" rather than a report about "extent of disability." (Relator's brief, at 3.) That is, relator suggests that Dr. Koppenhoefer examined relator to determine whether the claim should be additionally allowed for ankylosis of the hand rather than whether relator has sustained a loss of use of the right hand. Relator's second point or argument also lacks merit.

{¶ 33} It is indeed unclear why Dr. Koppenhoefer suggests that relator was alleging ankylosis in her hand. Certainly, in her December 10, 2009 motion, relator sought R.C.

4123.57(B) scheduled loss compensation for loss of use of her hand. Relator did not allege that her claim should be additionally allowed for ankylosis in her hand.

{¶ 34} Notwithstanding that relator may not have alleged that her claim be additionally allowed for ankylosis, it is clear that Dr. Koppenhoefer examined relator's right hand to determine her so-called extent of disability, that is, to determine whether she had lost the use of her right hand.

{¶ 35} As earlier noted, the second issue is whether the commission abused its discretion when it addressed relator's handwriting ability.

{¶ 36} Relator relies heavily upon *State ex rel. Sears Roebuck & Co. v. Campos*, 10th Dist. No. 04AP-1266, 2005-Ohio-5700.

{¶ 37} In *Sears*, the claimant, Charles Campos, sustained severe industrial injuries when he fell from a ladder while employed with Sears. Following a January 6, 2004 hearing, an SHO awarded Campos R.C. 4123.57(B) compensation for loss of use of his right hand and arm. In the order, the SHO stated reliance upon a November 19, 2002 report from Ronald R. Wade, M.D., and Campos' personal demonstration of the right hand and right arm at the January 6, 2004 hearing.

{¶ 38} In the order, the SHO quotes at length from Dr. Wade's report. Dr. Wade's report states in part:

"He has a severe tremor in the right hand. That hand tends to assume a claw posture. There has been marked stiffness in the hand. He has trouble writing with the right hand and, in fact, is simply unable to do so. The problem with the right hand is present constantly but is somewhat better now than it was previously. He is currently getting Botox injections into the muscles of the right arm per Dr. Auberle.

* * *

There is a marked abnormality of posture in the right hand. The muscles are extremely rigid throughout the right arm and hand. The right arm and hand shake constantly in a frequency considerably slower than a Parkinsonian tremor and also involves the proximal muscles in an almost dystonic fashion. Fine movements of the right hand are impossible. There also appears to be some weakness in the proximal muscles of the right upper extremity. * * *

* * *

Tests for coordination are impossible for him to perform with the right arm but are done fairly accurately with the left arm. Rapid alternating movements are again impossible for him to accomplish with the right arm but are done well on the left.

* * *

Considering the allowed conditions in this claim, Mr. Campos [sic] could not possibly return to his former position at Sears. He is unable to write, cannot climb, cannot perform meaningfully with his dominant arm, i.e., the right, and has diminished capacity in terms of memory, which would all be exclusionary factors. All of these activities are limited by the allowed conditions."

Id. at ¶ 7.

{¶ 39} Sears filed in this court a mandamus action challenging the commission's award of compensation to Campos.

{¶ 40} In that action, Sears argued that Dr. Wade's report and Campos' hearing testimony do not constitute some evidence upon which the commission can rely. Adopting the magistrate's decision as its own, this court rejected Sears' arguments and objections, and denied the writ.

{¶ 41} Here, in her brief, relator quotes two paragraphs from the magistrate's decision in *Sears*. Those paragraphs are numbered 37 and 43. In the two paragraphs, this court, speaking through its magistrate, states:

Sears also seems to suggest that because claimant can place his signature on form C-230 (Stipulated Record at 7), the commission must conclude that he indeed can write with his right hand and arm, albeit, not "skillfully." However, even Sears' own doctor, Dr. Steiman, describes the difficulty. According to Dr. Steiman, claimant "holds the pen in a fist and uses the forearm movement to write." Given claimant's hearing testimony as to how he can write, along with Dr. Wade's report, it was clearly within the commission's fact-finding discretion to conclude that claimant cannot perform this task "meaningfully."

* * *

At best, Sears' arguments point to some residual capacity in claimant's right hand and arm. Relator can manage, with

great difficulty, to produce an illegible signature on a form. He can put an orange or apple in his right hand but he can't eat the orange or apple from his right hand. He can place an eating utensil in his right hand but he cannot use the utensil to eat from his right hand.

Id. at ¶ 37 and 43.

{¶ 42} According to relator, in *Sears*, this court "analyzed loss of use in a situation remarkably similar to that of" relator. (Relator's brief, at 5.)

{¶ 43} The magistrate disagrees with relator's suggestion that the *Sears* case compels a writ of mandamus in the instant case.

{¶ 44} To begin, there are some obvious contrasts between the *Sears* case and the instant case. In *Sears*, the commission awarded compensation. Here, the commission denied compensation. In *Sears*, the commission found Campos' hearing testimony persuasive. Here, the commission did not find persuasive relator's hearing testimony regarding her handwriting ability.

{¶ 45} Here, paraphrasing the Peery report, relator asserts:

Claimant must awkwardly place the pen between her second and third finger, and write her name in laborious increments. * * * She must take long pauses in between to allow the visible muscle spasm in her right hand and forearm stop.

(Relator's brief, at 6.)

{¶ 46} Apparently, Peery's description of relator's writing ability was not accepted by the SHO, who denied compensation following the May 4, 2010 hearing. Peery's report is not mentioned in the order. The SHO exclusively relied upon the report of Dr. Koppenhoefer.

{¶ 47} The SHO's order of May 4, 2010, indicates that the SHO questioned the accuracy or validity of the description of relator's handwriting ability contained in the report of Peery and the report of Dr. Renneker. In that regard, the order states:

Dr. Koppenhoefer noted that the Injured Worker was able to use her right hand for the purposes of making a signature. The Injured Worker was shown several examples of her signature at hearing and she agreed she was the author of these signatures and that she used her right hand. She stated that she had to use her left hand to assist in the making of

