

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Foamex, :  
 :  
 Petitioner :  
 :  
 v. : No. 249 C.D. 2008  
 :  
 Workers' Compensation Appeal : Submitted: August 1, 2008  
 Board (Kozak), :  
 Respondent :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge  
 HONORABLE ROBERT SIMPSON, Judge  
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY SENIOR JUDGE KELLEY

FILED: October 23, 2008

Foamex (Employer) petitions for review of an order of the Workers' Compensation Appeal Board (Board) affirming a decision of the Workers' Compensation Judge (WCJ) which granted Claimant's claim petition. We reverse.

By decision and order of April 23, 2003, WCJ Stokes granted a claim petition filed by Anthony Kozak (Claimant) pursuant to a stipulation entered into between Employer and Claimant. The stipulation provided that Claimant was alleging, in a claim petition, a work-related injury on February 20, 2001, to Claimant's right arm and neck when he was working as a forklift driver for Employer and was pushing a plate onto a dock when he felt numbness down the right side of his forearm into his hand. The stipulation provided further that the

evidence showed that Claimant did sustain a work-related injury and that his treatment with Dr. Richard Buonocore who performed surgery to Claimant's cervical spine on September 21, 2001, involving a posterior cervical foraminotomy on the right side for a condition diagnosed as foraminal stenosis on the right at C7-T1. Claimant received temporary total worker's compensation benefits for the period September 20, 2001, through October 21, 2001, after which his benefits were suspended.

On or about August 24, 2005, Claimant filed a claim petition alleging that he suffered an injury to his right shoulder, arm and neck on February 20, 2001, and that he had now suffered a specific loss of his hand. Employer filed a timely answer denying the material allegations of the claim petition. A hearing was held before WCJ Liebau.

In support of his claim petition, Claimant testified on his own behalf and presented the deposition testimony of Thomas W. Jacob, M.D., who is board certified in orthopedic surgery. In opposition to the claim petition, Employer presented the deposition testimony of William Kirkpatrick, M.D., who is board certified in orthopedic surgery.

Claimant testified with respect to the limitations he was experiencing in his daily life and his work duties due to the physical wasting of his right hand. Claimant testified further that Dr. Jacob performed hand surgery in April 2004.

Dr. Jacob testified that he first saw Claimant on May 7, 2003, because Claimant was having problems with his right hand. At that time, Claimant gave the doctor a history of injuring his right neck and arm while at work. Claimant told Dr. Jacob that he was picking up something that weighed approximately 300 pounds and felt a sharp, stinging-like pain from his neck down through his arm to his hand.

Dr. Jacob testified further that a physical examination revealed that Claimant had severe thenar atrophy with atrophy of the muscles between the thumb and index finger. Claimant also had a weak opposition of his thumb. Dr. Jacob testified that Claimant had a weak abduction and adduction of the fingers, which is the ability to move his fingers from side to side, and he also had diminished sensation expressly in the ring and middle fingers.

Dr. Jacob testified that his impression at that time was an advanced right median and ulnar neuropathy. Dr. Jacob testified further that an EMG revealed that Claimant had a double crush injury with a moderate chronic right C8 radiculopathy with a severe right carpal tunnel syndrome.<sup>1</sup>

Dr. Jacob performed carpal tunnel release and a tendon transfer on April 30, 2004, to try to restore some motion to Claimant's right thumb. Claimant had suboptimal improvement with regard to the tendon transfer. Dr. Jacob testified that he last saw Claimant on January 12, 2006, and that Claimant had a worsening atrophy of his right hand. Dr. Jacob testified that Claimant had no ability to abduct or move his index finger from side to side; that Claimant had a very weak opposition of his thumb; that Claimant had a progression of severe atrophy throughout his hand; and that Claimant had abnormal sensation.

Dr. Jacob testified, within a reasonable degree of medical certainty, that Claimant had lost the use of his right hand for all practical intents and purposes. When asked to what the doctor attributed Claimant's loss, Dr. Jacob

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<sup>1</sup> The EMG study is not part of the certified record in this matter. While Dr. Jacob testified that the EMG study revealed a chronic right C8 radiculopathy, Dr. Kirkpatrick testified that the EMG study suggested the presence of a chronic right C7 radiculopathy. As Employer does not dispute the obvious conflict in which level of chronic radiculopathy the EMG study actually refers to, we will assume that Dr. Jacob meant to refer to a chronic right C7 radiculopathy.

testified that it was attributed to a combination of Claimant's cervical injury and the severe carpal tunnel syndrome. On cross-examination, Dr. Jacob testified that he was not sure what cervical level Claimant had surgical spine surgery.

Based on Claimant's history and his examination of Claimant on April 19, 2006, Dr. Kirkpatrick testified that his diagnosis of Claimant's condition was status post-cervical surgery and status post-right carpal tunnel release with a palmaris longus opponensplasty with advanced intrinsic muscle atrophy in the right hand. Dr. Kirkpatrick opined that Claimant had not sustained the loss of his right hand for all practical intents and purposes because he adapted to this muscle loss and was able to use his right hand for most activities with diminished strength and dexterity. Dr. Kirkpatrick testified that Claimant was able to operate his forklift and perform most grasping activities; that Claimant would have difficulty with finer manipulation skills; and that Claimant could use a hammer or screwdriver, though with limitations.

WCJ Liebau accepted Claimant's testimony as credible. WCJ Liebau found the testimony of Dr. Jacob more credible and more persuasive than the testimony of Dr. Kirkpatrick. WCJ Liebau stated that Dr. Jacob was Claimant's treating physician and as such had the clinical advantage over Dr. Kirkpatrick. In addition, WCJ Liebau found that given the physical findings on examination, his personal observation of Claimant's hand, and Claimant's credible testimony, it was reasonable that Claimant had lost the use of his right hand for all practical intents and purposes. WCJ Liebau found further that as of January 12, 2006,<sup>2</sup> the date that Dr. Jacob first stated his opinion that Claimant had a loss of use of his right hand

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<sup>2</sup> In his findings, WCJ Liebau refers to "February 12, 2006" as the date that Dr. Jacob first stated his opinion with regard to Claimant's loss of use of his right hand; however, the

*(Continued....)*

for all practical intents and purposes, all of Claimant's disability from his work injury of February 20, 2001, had resolved into a specific loss of use of the right hand.

Accordingly, WCJ Liebau concluded that Claimant met his burden of proof and granted Claimant's claim petition. Employer appealed WCJ Liebau's decision to the Board. Before the Board, Employer argued that WCJ Liebau erred by granting Claimant's claim petition for specific loss benefits because Claimant's medical expert related his loss to carpal tunnel syndrome and the description of his accepted work-related injury did not include that diagnosis. Upon review, the Board disagreed because the stipulation entered into by the parties and accepted by WCJ Stokes stated that Claimant was alleging a neck and right arm injury as a result of an incident in which he "felt numbness down the right side of his forearm into his hand" and the parties agreed that the evidence showed that Claimant did sustain a work-related injury and that he had surgery, "involving a posterior cervical foraminotomy on the right side for a condition diagnosed as a foraminal stenosis on the right at C7-T1."

The Board also rejected Employer's argument that the accepted injuries described as "right arm and neck" did not include an injury to the right hand or wrist or carpal tunnel syndrome; therefore, Claimant was required to establish that the loss of use of his right hand was causally related to work. The Board stated that Claimant's alleged loss of use of his right hand was not so far removed from the accepted right arm injury as to require him to establish causation because the parties agreed in the stipulation that the work-related incident occurred in which Claimant felt numbness from his forearm into his hand. The Board

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record shows that the correct date is "January 12, 2006."

determined that in such a situation, Employer bore the burden of establishing that the subsequently alleged injury to Claimant's right hand was not causally related to work. In addition, the Board pointed out that Dr. Jacob did not relate Claimant's loss of use of his right hand solely to carpal tunnel syndrome, but also related his loss to his cervical injury, which was recognized in the stipulation between the parties.

Finally, the Board determined that WCJ Liebau's finding that Claimant lost the use of his right hand for all practical intents and purposes was supported by substantial evidence. Accordingly, the Board affirmed WCJ Liebau's decision. This appeal followed.

Herein, Employer raises two issues: (1) Whether the Board erred in affirming WCJ Liebau's decision in finding that Claimant's alleged loss of use of his right hand was not so far removed from the accepted right arm injury as not to require Claimant to establish causation between his accepted work-related injury and the subsequent alleged injury of carpal tunnel syndrome; and (2) Whether the Board erred in affirming WCJ Liebau's finding that Claimant lost the use of his right hand for all practical intents and purposes and awarding specific loss of the right hand was supported by substantial evidence.

Initially, we note that this Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence. Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995).

In support of the first issue raised, Employer argues that Claimant failed to establish a causal connection between the accepted work-related injuries

and the carpal tunnel syndrome which has allegedly resulted in the specific loss of the right hand. Employer contends that Claimant must not only prove that he has suffered the loss of use but also that the loss of use is causally related to the February 20, 2001 work injuries that were accepted by Employer. Employer contends that the injuries that were accepted by way of the stipulation and approved by WCJ Stokes on April 25, 2003, were described as “right arm and neck” and that the parties specifically agreed that the work injuries necessitated Claimant’s September 20, 2001, neck surgery, which was performed to address Claimant’s foraminal stenosis at C7-T1.

Upon review of the stipulation, we agree with Employer that the accepted work-related injuries were only to Claimant’s right arm and neck. Paragraph 1 of the stipulation provides specifically as follows:

1. This case is currently in litigation on a Claim Petition alleging a work related injury on February 20, 2001, to Claimant’s right arm and neck when he was working as a forklift driver for [Employer] and was pushing a plate onto a dock when he felt numbness down the right side of his forearm into his hand. A timely Answer filed on behalf of [Employer] has denied all material allegations.

R.R. at 129a. Thus, paragraph 1 sets forth what Claimant was alleging in his claim petition with respect to what parts of his body were injured, how he was injured, and what symptoms he experienced as a result of his injury. The language of paragraph 1 clearly states that Claimant was alleging that he suffered a work-related injury on February 20, 2001, to his right arm and neck; that he injured his arm and neck when he pushed a plate onto a dock; and that he experienced numbness down the right side of his forearm into his hand as a result of the injury to his right arm and neck.

Paragraph 3 of the stipulation provides specifically as follows:

3. The evidence shows that Claimant did sustain a work related injury and that his treatment has included that with Dr. Richard Buonocore who performed surgery to Claimant's cervical spine at the Crozer-Chester Medical Center on September 20, 2001, involving a posterior cervical foraminotomy on the right side for a condition diagnosed as foraminal stenosis on the right at C7-T1.

Id. at 130a. It is clear from paragraph 3 that Employer accepted a cervical injury and subsequent treatment to Claimant's neck to relieve the injury on the right at C7-T1 level of Claimant's cervical spine. We note that there is no indication in the stipulation that Claimant received any treatment for an injury to his right arm. Therefore, the stipulation simply does not support the conclusion that Employer accepted a work-related injury to Claimant's right hand. Just because Claimant alleged that he experienced numbness down the right side of his forearm and into his hand as a result of the injury to his neck does not mean that Claimant actually suffered an injury to his hand. At most, the numbness can merely be classified as a symptom of the injury to Claimant's neck.

Accordingly, we conclude that in the stipulation, Employer only accepted work-related injuries to Claimant's right arm and neck and did not accept a work-related injury to Claimant's right hand as a result of Claimant's February 20, 2001, injury. Thus, the Board erred in determining otherwise. As such, we now turn to which party had the burden of proof.

The Board determined that because the alleged injury to Claimant's right hand was not so far removed from the accepted right arm injury as to require him to establish causation because the parties agreed in the stipulation that the work-related incident occurred in which Claimant felt numbness from his forearm into his hand. Therefore, Employer bore the burden of establishing that the



subsequent alleged injury in the nature of severe carpal tunnel to Claimant's right hand was not causally related to the work injury.

This Court recognizes that where a claimant alleges a subsequent condition is related to an injury or condition which is of a very similar nature and/or affects the same body parts which have been recognized as compensable, then the burden remains with an employer to establish an independent cause for the same. See Visteon Systems v. Workers' Compensation Appeal Board (Steglik), 938 A.2d 547 (Pa. Cmwlth. 2007); City of Philadelphia v. Workers' Compensation Appeal Board (Fluek), 898 A.2d 15 (Pa. Cmwlth.), petition for allowance of appeal denied, 590 Pa. 662, 911 A.2d 937 (2006). However, where no reasonable nexus or obvious relationship exists between the accepted injury and a subsequently claimed physical condition, the claimant must still bear the burden of establishing the work-relatedness of a condition before an employer will bear the burden of disproving any continuing disability related to that subsequently alleged condition. City of Philadelphia.

Herein, Claimant alleged a specific loss of his right hand due to severe carpal tunnel. There is no reasonable nexus or obvious relationship between the accepted injury to Claimant's right arm and neck in the stipulation and Claimant's severe carpal tunnel. Clearly, a cervical injury or injury to one's neck is not the same body part as a hand. In addition, for specific loss purposes, an arm and a hand are considered two separate body parts. See Section 306(c) of the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §513. Accordingly, we cannot conclude that Claimant's arm and neck injuries and his alleged severe carpal tunnel are so obviously connected or of the same body part that the burden should rest on Employer to disprove that any continuing disability was not related to the work injury. As such, Claimant bore the burden of proving

that his severe carpal tunnel was work-related. Our review of the record reveals that Claimant failed to meet this burden.

Dr. Jacob testified on behalf of Claimant with regard to the severity of Claimant's carpal tunnel and the loss of the use of his right hand for all practical intents and purposes. However, Dr. Jacob did not testify that Claimant's carpal tunnel itself was work-related. Dr. Jacob only testified that the loss of the use of Claimant's right hand for all practical intents and purposes was attributed to a combination of Claimant's cervical injury and the severe carpal tunnel syndrome.<sup>3</sup> Dr. Jacob never opined that Claimant's severe carpal tunnel was related to any work duties Claimant was performing for Employer. Without specific credible expert medical expert testimony opining that Claimant's separate condition of severe carpal tunnel was work-related, WCJ Liebau erred in awarding Claimant benefits for a specific loss of his right hand.

Accordingly, the Board's decision is reversed.<sup>4</sup>

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JAMES R. KELLEY, Senior Judge

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<sup>3</sup> We note that Dr. Jacob did not render any testimony as to the connection between Claimant's carpal tunnel syndrome and any work-related injury to Claimant's right arm.

<sup>4</sup> In light of our disposition of the first issue raised in this appeal by Employer, we need not address whether Claimant established that he had lost the use of his right hand for all practical intents and purposes.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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	Petitioner	:	
		:	
v.		:	No. 249 C.D. 2008
		:	
Workers' Compensation Appeal		:	
Board (Kozak),		:	
	Respondent	:	

**ORDER**

AND NOW, this 23rd day of October, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter is reversed.

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JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Foamex, :  
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 v. : No. 249 C.D. 2008  
 : Submitted: August 1, 2008  
 Workers' Compensation Appeal Board :  
 (Kozak), :  
 Respondent :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

*OPINION NOT REPORTED*

DISSENTING OPINION

BY JUDGE SMITH-RIBNER

FILED: October 23, 2008

I respectfully dissent from majority's decision to reverse the Workers' Compensation Appeal Board (Board) and Workers' Compensation Judge (WCJ) and to deny the claim petition of Anthony Kozak (Claimant) on the ground that he failed to meet his burden to show that the injury to his right hand was work related. The majority states that Dr. Thomas W. Jacob testified on behalf of Claimant with regard to the severity of Claimant's carpal tunnel syndrome and the loss of use of his hand for all practical intents and purposes. It asserts that "Dr. Jacob did not testify that Claimant's carpal tunnel syndrome itself was work related. Dr. Jacob only testified that the loss of use of Claimant's right hand for all practical intents and purposes was attributed to a combination of Claimant's cervical injury and the severe carpal tunnel syndrome." Majority opinion, slip op. at 10. The majority further asserts: "We note that Dr. Jacob did not render any testimony as to the connection between Claimant's carpal tunnel syndrome and any work-related injury to Claimant's right arm." *Id.* n3.

I agree with Claimant that the majority's assertions simply are not accurate. As Claimant emphasizes, Dr. Jacob testified as follows:

Q. While I'm thinking of this – you testified that he has a loss of use for all intents and purposes of the right hand. To what do you attribute that loss to?

A. A combination of his cervical injury and the severe carpal tunnel syndrome.

Q. Are they the ones that were work related?

A. Yes.

Deposition of Dr. Jacob, N.T. 14; R.R. 105a. This is testimony by Dr. Jacob that the loss of use of the hand is due to a combination of the cervical injury (i.e., the neck injury that was accepted in the stipulation) and the carpal tunnel syndrome and that both were related to Claimant's work. Although Foamex (Employer) had full opportunity to cross-examine Dr. Jacob, it did not pursue this point, focusing only on the extent of the loss of use of Claimant's hand. As the Board noted, questions of credibility and of the weight to be afforded evidence are for the WCJ, who may accept or reject the testimony of any witness in whole or in part. *Lombardo v. Workers' Compensation Appeal Board (Topps. Co., Inc.)*, 698 A.2d 1378 (Pa. Cmwlth. 1995). The majority may disagree as to the weight the WCJ afforded Dr. Jacob's testimony, but it is simply not accurate to state that he offered no testimony at all on this point.

In addition, I disagree with the majority's characterization of Paragraph 1 of the Stipulation, which states:

1. This case is currently in litigation on a Claim Petition alleging a work related injury on February 20, 2001, to Claimant's right arm and neck when he was working as a forklift driver for [Employer] and was pushing a plate onto a dock when he felt a numbness down the right side of his forearm into his hand.

Paragraph 3 states that the evidence shows that Claimant sustained a work-related injury and that his treatment has included surgery by Dr. Richard Buonocore to Claimant's cervical spine on September 20, 2001 involving a posterior cervical foraminotomy on the right side for a condition diagnosed as foraminal stenosis on the right at C7-T1. Claimant argues that the Board correctly determined that this case falls within the principle stated in *Visteon Systems v. Workers' Compensation Appeal Board (Steglik)*, 938 A.2d 547 (Pa. Cmwlth. 2007), that where a claimant's ongoing disability is related to an injury or condition that is of a very similar nature or affects the same body parts that have been recognized as compensable, then the burden remains with the employer to show an independent cause for the disability. Claimant argues that a carpal tunnel injury is an injury to the right arm and hand, which Employer stipulated were the areas of the body involved in the work injury.

I do not find it necessary to rely on this analysis in view of my conclusion regarding the effect of Dr. Jacob's testimony. Nevertheless, I strongly object to the majority's statement that just because Claimant alleged that he experienced numbness "down the right side of his arm and into his hand as a result of the injury to his neck does not mean that Claimant actually suffered an injury to his hand. At most, the numbness can merely be classified as a symptom of the injury to Claimant's neck." Majority opinion, slip op. at 8. This constitutes a statement of a medical opinion by the Court, which is not competent to render its own medical opinions. It is not based upon any finding by the WCJ, who is the finder of fact in the workers' compensation system. *Lombardo*.

Finally, on the question not reached by the majority, namely whether Claimant established that he lost the use of his hand for all practical intents and purposes, I conclude that correct legal reasoning and substantial competent evidence supported the determination of the WCJ, which the Board affirmed.

Claimant quotes *Jacobi v. Workers' Compensation Appeal Board (Wawa, Inc.)*, 942 A.2d 263, 267 - 268 (Pa. Cmwlth. 2008) (citations and footnote omitted):

When a claimant alleges that his injury has resolved into a specific loss, he has the burden of proving that he has permanently lost the use of his injured body part for all practical intents and purposes.... A specific loss requires more than just limitations upon an injured workers' occupational activities; a loss of use for all practical intents and purposes requires a more crippling injury than one that results in a loss of use for occupational purposes.... However, it is not necessary that the injured body part be one hundred percent useless in order for the loss of use to qualify as being for all practical intents and purposes.... Whether a claimant has lost the use of a body part, and the extent of the loss of use, is a question of fact for the WCJ.... Whether the loss is for all practical intents and purposes is a question of law....

Employer acknowledges that specific loss benefits are an exclusive remedy and that they preclude consideration of any disability that normally flows from that injury. *Mathies Coal Co. v. Workmen's Compensation Appeal Board (Henry)*, 538 A.2d 590 (Pa. Cmwlth. 1988). Nevertheless, Employer argues that the Court has held that the "all practical intents and purposes" test requires that a loss be more severe than would prevent the injured party from using the injured member in employment, citing *Wise v. Workers' Compensation Appeal Board (City of Philadelphia)*, 810 A.2d 750 (Pa. Cmwlth. 2002), and *U.S. Steel Corp. v. Workmen's Compensation Appeal Board (Elkins)*, 333 A.2d 836 (Pa. Cmwlth. 1975). It asserts that Claimant's evidence fails to meet this test because Claimant and his medical expert agreed that he has been able to work at his full duty position as a forklift operator/handler for the last several years on a full-time basis.

The Board cited *Gindy Mfg. v. Workmen's Compensation Appeal Board (Burgos)*, 378 A.2d 492 (Pa. Cmwlth. 1977), where the claimant was unable

to perform various of his job duties due to his work injury (partial amputation of three middle fingers on one hand), and he had pain and was unable to button his shirt or pick up small objects. Claimant did not testify that he performed his job duties differently, although he stated that he used his left hand for some tasks, and did not testify to a complete inability to perform fine motor functions. Employer asserts that the WCJ disregarded competent medical evidence of Dr. William H. Kirkpatrick, who noted among other things complaints of weakness and numbness in the fingers but also ability to pinch between the thumb and the index finger, no pain and ability to use a hammer or screwdriver, although with difficulty.

Claimant argues in response that specific loss benefits under Section 306(c) of the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §513, are payable without regard to whether the loss results in actual disability. *See Lente v. Luci*, 275 Pa. 217, 119 A. 132 (1922). Employer's reliance upon *Wise* and *U.S. Steel Corp.* is misplaced, because those cases concern a claimant's attempt to argue the former "industrial use" test, i.e., that the claimant was entitled to specific loss benefits if the injury permanently prevented him from working at the pre-injury employment. That test had been replaced by the "for all practical intents and purposes" standard. The Court in *Wise*, 810 A.2d at 753, stated that "[g]enerally, the all practical intents and purposes test requires a more crippling injury than the industrial use test in order to bring the case under Section 306(c). However, it is not necessary that the injured member of the claimant be of absolutely no use" in order for him to have loss of use for all practical intents and purposes. In *Olszewski v. Workmen's Compensation Appeal Board (McGraw Edison Co.)*, 546 A.2d 1322 (Pa. Cmwlth. 1988), the Court determined that a loss of fifty percent of the use of a whole finger is not equivalent to an entire loss of



half a finger. The case does not state a rule that a claimant must show a loss of ability to perform 50 percent of the things that he or she formerly could perform.

Claimant cites *Gindy Mfg.* as the better comparison. The claimant had three middle fingers partially amputated and was able to pick up two sheets of paper with effort, able to shift a car automatic gearshift using his palm, unable to grasp manual tools properly or to operate certain power tools properly, unable to button his shirt or to pick up small objects. Here, Claimant has lost the ability to oppose his thumb to his fingers and does not have functioning muscles in his hand. He argues that with a hand cut off he might still be able to work the levers on a forklift but he would not have a hand, an appendage capable of fine manipulation.

I note that the WCJ credited Claimant's detailed testimony as to the extreme weakness in his hand and his inability to use it for many purposes such as eating or carrying groceries or to use it for any length of time. He credited Dr. Jacob's testimony that Claimant has lost the use because he has lost fine motor functions, coordinated movements and sustained fine motion or use of the thumb and the fingers and that the condition is permanent and progressive. A claimant is entitled to specific loss of use benefits regardless of whether the injury results in loss of earning power. *Faulkner Cadillac v. Workers' Compensation Appeal Board (Tinari)*, 831 A.2d 1248 (Pa. Cmwlth. 2003). The credited testimony of Claimant and Dr. Jacob was sufficient to establish the facts as to loss of use and to establish loss for all practical intents and purposes as a matter of law.

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DORIS A. SMITH-RIBNER, Judge