STATE OF VERMONT
DEPARTMENT OF LABOR

Maurice Cook

v.

Precis Manufacturing

Opinion No. 08-16WC

By: Jane Woodruff, Esq.
Administrative Law Judge

For: Anne M. Noonan
Commissioner

State File No. FF-64127

OPINION AND ORDER

Hearing held in Montpelier, Vermont on June 5, 2015
Record closed on August 18, 2015

APPEARANCES:

Heidi Groff, Esq., for Claimant
Justin Sluka, Esq., for Defendant

ISSUE PRESENTED:

1. Did Claimant suffer a compensable injury arising out of and in the course of his employment on May 14, 2014?

2. If yes, to what workers' compensation benefits, if any, is Claimant entitled?

EXHIBITS:

Joint Exhibit I:	Medical records
Claimant's Exhibit 1:	Photo of the GS 21, Chevalier Surface Grinder
Claimant's Exhibit 2:	Claimant's affidavit
Claimant's Exhibit 3:	Videos of Steve Mika and NC Grinder
Claimant's Exhibit 4:	Claimant's work search logs
Claimant's Exhibit 5:	Claimant's Wage Statement (Form 25), Certificate of Dependency and Concurrent Employment (Form 10) and First report of Injury (Form 1)
Claimant's Exhibit 6:	Photo of the GS 21, Chevalier Surface Grinder
Claimant's Exhibit 7:	Dr. McLaughlin's deposition, June 1, 2015
Defendant's Exhibit A:	Rose Barber statement, May 15, 2014
Defendant's Exhibit B:	Letter from Claimant to Julie Charonko and Kelley Phelps, October 27, 2014

CLAIM:

Temporary total disability benefits pursuant to 21 V.S.A. §642
Permanent partial disability benefits pursuant to 21 V.S.A. §648
Medical benefits pursuant to 21 V.S.A. §640
Interest, costs and attorney fees pursuant to 21 V.S.A. §§664 and 678

Ruling on Defendant's Motion to Exclude Evidence

During the formal hearing Claimant introduced a video recording of the grinder in question, the Chevalier GS-21, Claimant's Exhibit #3. The recording consisted of two separate videos, both of which purported to show the work area between Claimant's workstation and that of his co-worker, Steve Mika. Defendant objected to the introduction of the second video on the grounds that it did not fairly and accurately portray the work area as it existed on May 14, 2014. Defendant's assertion was later corroborated by various witnesses' testimony.

Vermont's Rules of Evidence define "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." V.R.E. 401. Because the second video does not accurately depict the area in and around Claimant's workstation at the time of his alleged work injury, I conclude that it does not meet this standard. Under V.R.E. 402, therefore, it is not admissible.

Defendant's Motion to Exclude Evidence is hereby **GRANTED**.

FINDINGS OF FACT:

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was his employer as those terms are defined in Vermont's Workers' Compensation Act.

2. Judicial notice is taken of all relevant forms contained in the Department's file relating to this claim. Judicial notice also is taken of relevant portions of the *AMA Guides to the Evaluation of Permanent Impairment (5th ed.)* (the *"AMA Guides").*

3. Claimant is 57 years old and has worked for his entire life in jobs requiring the use of his hands. He began working for Defendant in March 2013 as a grinder operator. At the start of each day, his supervisor, Gerry Grimes, gave him the specifications of the parts he would need to grind during his shift.

4. Claimant did not suffer any disciplinary problems or other performance-related problems while in Defendant's employ. After six months, he received a $0.50 raise signifying that he was performing well. As of May 14, 2014 his average weekly wage was $590.44, which yielded a compensation rate of $393.63.

The Events of May 14, 2014 – Claimant's Version

5. On May 14, 2014 Mr. Grimes assigned Claimant to the GS-21 grinder, a machine that makes airplane parts of various sizes and shapes. The GS-21 has a magnetic table that oscillates back and forth under the control of the operator, who regulates the oscillation cycle's length and speed. The grinder has two speeds, and Claimant credibly testified that he always ran it at its fastest speed. The speed portrayed in Claimant's Exhibit 3 depicts the grinder moving at the slower speed, however. I find from Claimant's credible testimony that the table was not moving at this speed at the time of his alleged injury.

6. One of Claimant's responsibilities was to spray lubricant on the grinder table, to ensure that it remained cool and that parts moved smoothly on its bed. There is a side stop to prevent the lubricant from dripping off the table, but occasionally some leaks onto the floor nevertheless. Claimant credibly testified that he noticed a pool of lubricant collecting on the floor at the end of the table nearest the wall and closest to the operator's control box where he stood. He stopped the oscillating table, grabbed some rags and began wiping up the lubricant.

7. Claimant testified as follows: As he wiped the lubricant, he realized that the table had begun another oscillation cycle and was approaching him. Fearing that he would be pinned between the table and a set of shelves that was positioned against the wall, he stood up and put his right arm out to stop the table. As he did so, the table caught him in the "snuff box" region, the area where the thumb meets the wrist. His hand was pinned between his body and the table, such that the force of the table made him take a step sideways and back towards the wall, although he did not fall down. He immediately felt pain in his right wrist, and observed that had he not stood up when he did, the table would have hit him in the face. I find this testimony credible in all respects.

8. Claimant further testified that he turned off the GS-21 grinder and immediately sought out Mr. Grimes, who was not on the manufacturing floor, to report his injury. When he did so, Mr. Grimes was with Rose Barber, another employee. Claimant and Ms. Barber both credibly testified that although the skin in the area of Claimant's hand and wrist was neither broken nor visibly bruised, it was red.

9. Mr. Grimes asked Claimant if he wanted to go to the hospital, but he declined. Nevertheless, he ended his shift early and called in sick the next day due to the pain in his wrist. Thereafter, someone at the plant instructed him to seek treatment at Concentra, Defendant's occupational health provider.

The Events of May 14, 2014 – Defendant's Version

10. Claimant's co-employee, Steve Mika, also works for Defendant as a machine operator. The two became employed at approximately the same time, but did not train together. Mr. Mika has no relationship with Claimant outside of work.

11. On May 14, 2014 Mr. Mika was working the same shift as Claimant and was positioned on a machine approximately 30 feet away. He could see that lubricant had collected on the floor behind Claimant's machine and presumed that Claimant must have set the machine up incorrectly. Mr. Mika acknowledged that he had never trained on the GS-21 grinder and did not know how to operate it.

12. Mr. Mika testified as follows: He watched as Claimant went behind the GS-21 to wipe up the pooling lubricant. While Claimant was behind the machine, he observed the table re-engage and hit Claimant in his left shoulder or bicep area. The table "budged" Claimant, that is, the impact caused him to take a few steps backward. Mr. Mika could not recall which direction Claimant was facing when the table struck him.

13. Mr. Mika's testimony corroborated Claimant's version of events in every respect except as to where the table struck Claimant – in the right hand or wrist area, as Claimant alleged, or in the left shoulder or bicep area, as Mr. Mika asserted. Mr. Mika conceded that he could not see everything that transpired at Claimant's work station. In fact, he acknowledged on cross-examination that in his deposition he had testified that the table hit Claimant in the right shoulder or bicep area, not the left.

14. I find that the discrepancy between Claimant's and Mr. Mika's testimony regarding the precise area of impact is explained both by the distance from which Mr. Mika viewed the incident and by his imperfect recollection of the incident during his formal hearing testimony. Therefore, I find that Claimant's testimony that the table impacted him in the "snuff box" region of his right wrist is the most credible.

Claimant's Course of Treatment

15. On May 16, 2014 Claimant reported to Concentra to have his wrist examined, as Defendant had directed him. There he saw a nurse practitioner, Amber Jimerson, who diagnosed him with an acute and traumatic onset of right wrist tendonitis. She noted that Claimant had decreased active range of motion in his right wrist and limitations in both flexion and extension. As treatment, Ms. Jimerson referred him to physical therapy, gave him a wrist immobilizer splint and restricted his work to light duty with no use of his right arm.

16. A week later Claimant returned to Concentra, complaining that his symptoms had not improved. Ms. Jimerson recommended continued physical therapy and over the counter pain medications. She maintained his light duty work restrictions and suggested an orthopedic consult.

17. During this period Claimant also consulted with Dr. Bisaccia, a chiropractor. Dr. Bisaccia diagnosed a contusion injury to his right wrist with soft tissue involvement. He too recommended that Claimant continue with physical therapy and consult with an orthopedic surgeon.

18. Claimant first saw Dr. McLaughlin, an orthopedic surgeon, on July 10, 2014. Dr. McLaughlin reported that Claimant had been experiencing pain since suffering an injury at work on May 14, 2014 when a piece of wood impacted his right wrist. On examination, Claimant exhibited pain, tenderness and decreased range of motion in his right wrist. In addition, Dr. McLaughlin observed that his scapholunate ligament functioned poorly. When this ligament, which connects two small carpal bones, the scaphoid and the lunate, does not function properly, the two bones do not move in unison, which is very painful. As Ms. Jimerson had, Dr. McLaughlin restricted Claimant to light duty work with no use of his right arm.

19. Over the course of the next five months, Claimant engaged in conservative treatment for his right wrist injury, including injections and physical therapy. His light duty restrictions – no use of his right arm – remained in effect as well.

20. In September 2014 Claimant underwent diagnostic imaging studies, which revealed a full thickness scapholunate tendon tear as well as significant cartilage degeneration where the radial and scaphoid bones joined. As conservative treatment had failed, in November 2014 he discussed his surgical options with Dr. McLaughlin. The best of these was a proximal row carpectomy, in which the three small carpal bones immediately adjacent to the radius are removed. By doing so, the patient achieves pain reduction, albeit at the expense of range of motion in his or her wrist. Though not arthroscopic in nature, the surgery also affords an opportunity for direct visualization of the joint.

21. Claimant underwent surgery on December 19, 2014. In addition to removing the three carpal bones during the procedure, Dr. McLaughlin also performed a radial styloidectomy, in which he excised a small portion off the end of the radius, and removed the posterior interosseous nerve, which gives deep sensation in the wrist. Dr. McLaughlin credibly explained that these surgical procedures were all necessary in order to reduce the right wrist pain attributable to Claimant's work injury.

22. Claimant did well post-surgery. Over time, the pain in his right wrist decreased significantly and his strength and his range of motion increased. On March 19, 2015 Dr. McLaughlin discharged him with instructions to return only as needed.

Claimant's Job Security and Subsequent Termination from Employment

23. According to Claimant's credible testimony, on May 8, 2014 – six days prior to the injury at issue here – Mr. Grimes told him to look for another job. Mr. Grimes did not indicate what would happen if he did not do so, and did not give Claimant a time frame within which to find new employment. Claimant was surprised by Mr. Grimes' directive. While he was concerned about his position, he did not begin to look for a job.

24. After Claimant left work on May 14, 2014 he never returned to full time work with Defendant. When Ms. Jimerson first released him to return to light duty work, Defendant assigned him the task of picking up cigarette butts in the parking lot. Claimant performed that duty for a short period of time on one day and then he and Defendant mutually agreed to part ways.

25. I find from the uncontested evidence that Claimant has undertaken weekly work searches from the time that his employment for Defendant terminated up through the date of the formal hearing.

Expert Medical Opinions

(a) Dr.McLaughlin

26. Dr. McLaughlin acknowledged that Claimant likely suffered from arthritis in his right wrist even before his alleged May 2014 work injury. The medical records corroborate that Claimant had never treated for the condition, however. In Dr. McLaughlin's opinion, the work injury exacerbated the condition and caused it to become symptomatic. I find this analysis credible.

27. In Dr. McLaughlin's further opinion, all of the procedures he performed in the course of his December 2014 surgery, including the radial styloidectomy, were medically necessary in order to provide Claimant with the greatest possible pain relief. I find this analysis very credible.

28. Based on his clinical experience with wrist surgeries of the type Claimant underwent, Dr. McLaughlin estimated that he would not reach an end medical result until at least 12 to 18 months post-surgery, or sometime between December 2015 and May 2016. Aside from this general statement, Dr. McLaughlin failed to state an opinion, to the required degree of medical certainty, that Claimant's condition would likely continue to improve over the ensuing months, rather than either plateauing or worsening. For this reason, I find his end medical result opinion deficient.

29. Dr. McLaughlin did not rate the extent of Claimant's permanent partial impairment, and did not otherwise render an opinion on the issue.

(b) Dr. Johansson

30. At his attorney's request, Claimant underwent an independent medical examination with Dr. Johansson, an osteopath, on April 13, 2015. Claimant's attorney asked Dr. Johansson to assess whether Claimant had reached an end medical result and if so, to rate the extent of any permanent partial impairment referable to his work injury.

31. In Dr. Johansson's opinion, as of the date of his evaluation Claimant had reached an end medical result. By this point, Dr. Johansson noted, Dr. McLaughlin had discharged Claimant from his care, as he had completed his final course of physical therapy and was not anticipating any further treatment. From the fact that he deemed it appropriate to rate the extent of permanent impairment referable to the alleged work injury, I infer that in his opinion Claimant's condition had plateaued.

32. With reference to the *AMA Guides*, Dr. Johansson rated Claimant with 19 percent whole person impairment referable to his work injury. Dr. Johansson based his impairment rating on three components: range of motion, arthroplastic surgery and posterior interosseous nerve excision.

33. For the first component, Dr. Johansson used an inclinometer to measure the range of motion deficits in Claimant's right wrist across four planes, as follows: five percent loss in extension, five percent loss in flexion, two percent loss in radial deviation and three percent loss in ulnar deviation. As the *AMA Guides* instruct, he then added these values, for a total of 15 percent in lost range of motion.

34. For the second component of his rating, Dr. Johansson referenced the impairment values that the *AMA Guides* specify depending on which bones were involved in the surgical repair of Claimant's wrist. For the proximal row carpectomy, also known as a resection arthroplasty, Table 16-27 of the *AMA Guides* specifies 12 percent upper extremity impairment. For the radial styloidectomy, the same table specifies five percent upper extremity impairment. Using the Combined Values chart, these two surgical procedures yield a combined upper extremity impairment of 16 percent.

35. For the final component of his rating, Dr. Johansson applied Tables 16-11 and 16-15 of the *AMA Guides*. Noting first, that Claimant's grip strength was diminished, and second, that he exhibited some atrophy in the right thenar eminence (located in the palm of the hand, at the base of the thumb), Dr. Johansson calculated 25 percent motor deficit as a result of Claimant's posterior interosseous nerve excision under Table 16-11. The *AMA Guides* assign fifteen percent impairment for excision of the interosseous nerve (Table 16-15); thus, considering that Claimant had suffered only 25 percent motor deficit, Dr. Johansson assigned four percent impairment (0.25 x 15 percent, rounded up) for that component.

36. Applying the principles in Chapter 16 of the *AMA Guides*, Dr. Johansson used the three component ratings to calculate Claimant's total whole person impairment. First, he combined the 16 percent surgical impairment, Finding of Fact No. 34 *supra*, with the 15 percent range of motion impairment, Finding of Fact No. 33 *supra*, for a total of 29 percent impairment. Then he combined the four percent impairment referable to the interosseous nerve excision, Finding of Fact No. 35 *supra*, for a total upper extremity impairment of 32 percent. Under Table 16-3, this equates to 19 percent whole person impairment.

Dr. Boucher

37. At Defendant's request, Dr. Boucher, a board certified occupational medicine specialist, reviewed Claimant's medical records in December 2014. Dr. Boucher also reviewed a videotape of the GS-21 grinder in operation, as well as statements from co-workers as to the events surrounding Claimant's injury. Dr. Boucher conceded at the formal hearing that he was unaware that the GS-21 grinder had two speeds and that the video he reviewed depicted it running at the slower speed.

38. In Dr. Boucher's opinion, there is no causal relation between Claimant's right wrist complaints and his alleged May 14, 2014 work injury. He based his opinion on the following:

- Claimant suffered from severe, pre-existing arthritis in his right wrist;
- In the videotape he viewed, the grinder was moving too slowly to significantly impact Claimant's wrist; and
- His co-worker, Steve Mika, placed Claimant bending over, such that his wrist would not have been impacted in the first instance.

39. I find Dr. Boucher's opinion unpersuasive for two reasons. First, because I already have found Claimant's version of events credible, I must necessarily find Dr. Boucher's reliance on Mr. Mika's version instead to be unpersuasive. Second, and most important, Dr. Boucher conceded that he was unaware that the GS-21 grinder was operating at a faster speed than what the videotape he reviewed had depicted, thus completely undermining his conclusion that it was running too slowly to cause a significant impact.

40. Dr. Boucher agreed with Dr. Johansson that Claimant had reached an end medical result as of April 13, 2015. However, he disagreed that the alleged work injury had resulted in any permanent impairment. Rather, in his opinion Claimant's impairment was a consequence of his pre-existing unstable scapholunate disruption with arthritis.

41. As to the degree of permanent partial impairment (whether work-related or not), Dr. Boucher relied on Dr. Johansson's measurements regarding wrist motion and therefore agreed that the range of motion deficit was 15 percent. He also agreed that the proximal row carpectomy resulted in 12 percent impairment. Using the Combined Values chart, Dr. Boucher calculated 25 percent upper extremity impairment, which yields 15 percent whole person impairment.

42. Dr. Boucher disagreed with Dr. Johansson that the radial styloidectomy and posterior interosseous nerve excision could be included in Claimant's impairment rating. According to his interpretation of the *AMA Guides*, in cases involving proximal row carpectomy, it is improper to factor in additional impairment for radial styloidectomy. In his opinion, furthermore, because the posterior interosseous nerve only supplies extensor musculature, it plays no role in grip strength; thus, its excision could not have been of any consequence to Claimant's weakened grip, and should not have been included in his impairment rating.

43. Table 16-27 of the *AMA Guides*, which forms the basis for both experts' opinions on this issue, lists the ratable impairment of the upper extremity following arthroplasty of specific bones and joints. Regarding the procedures at issue here, the table assigns a ten percent upper extremity impairment for "carpal bone (isolated)," and a five percent impairment for "radial styloid (isolated)." Neither expert testified as to the meaning of the term "isolated," nor can I discern it from perusing the relevant sections of the *AMA Guides*. Lacking sufficient clarification on the issue, I cannot determine whether it is appropriate to include ratings for both the proximal row carpectomy and the radial styloidectomy, as Dr. Johansson did, or solely for the carpectomy, as Dr. Boucher did.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she must establish by sufficient credible evidence the character and extent of the injury as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden Lumber Co.*, 112 Vt. 17 (1941); *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

Did Claimant Suffer a Compensable Work Injury?

2. Claimant contends that he sustained a work injury to his right wrist on May 14, 2014 that ultimately required surgical intervention. Defendant counters that if in fact the grinder table hit Claimant on the right wrist, at best it caused only a flare-up of his pre-existing arthritis, for which he likely would have needed surgery even had the event not occurred when it did.

3. I have already found credible Claimant's version of events, *see* Finding of Fact No. 14 *supra*, and therefore I conclude that he has sustained his burden of proving that the work accident in fact occurred as he claims it did. The question remains, how extensive was the injury that resulted, and what treatment did it necessitate?

4. The parties proffered conflicting expert medical opinions on these issues. In such cases, the commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).

5. I conclude here that Dr. McLaughlin's opinion is the most persuasive. He was Claimant's treating orthopedic surgeon. He conceded that Claimant suffered from arthritis in his right wrist, but given that he was completely asymptomatic prior to the grinder incident, and only became symptomatic thereafter, that incident was likely the single disabling event. Thus, more probably than not, the work injury caused Claimant to need wrist surgery sooner than he would have otherwise.

6. Conversely, Dr. Boucher based his opinion solely on a records review, without having ever personally examined Claimant. He could not believe that Claimant had not suffered any right wrist pain prior to the work incident, but Claimant's credible testimony and the contemporaneous medical records established just the opposite – that he had no wrist pain, no functional limitations and no treatment prior to May 2014. Nor is there anything at all to justify Dr. Boucher's prediction that even without the trigger of a traumatic injury, Claimant's osteoarthritic symptoms would have worsened so dramatically and spontaneously on their own as to require surgery when he did. For that reason, I must reject Dr. Boucher's analysis.

7. It is a well-settled tenet of Vermont's workers' compensation law that the aggravation or exacerbation of a degenerative disease such as osteoarthritis can qualify as a work-related injury. *Stannard v. Stannard*, 2003 VT 52, ¶11, citing *Jackson v. True Temper Corp.*, 151 Vt. 592, 596 (1989) (internal quotations omitted). The causation test in these circumstances is "whether, due to a work injury or the work environment, the disability came upon the claimant earlier than otherwise would have occurred." *Id.* (internal citations omitted). Continued or exacerbated symptoms alone will not establish compensability unless the underlying disability has also worsened. *Id.*

8. Having determined that Dr. McLaughlin's expert medical opinion is both credible and convincing, I conclude here that the causation test enunciated in *Stannard* has been met. I accept as persuasive his analysis that the mechanism of Claimant's May 2014 injury – being hit on the right wrist by the GS-21 grinder table – caused his wrist to become symptomatic sooner than it would have given the normal progression of his arthritis. This trauma precipitated a worsening of the underlying disability, as manifested by his functionally limiting pain, furthermore. *See Stannard, supra* at ¶12, citing with approval *City of Burlington v. Davis,* 160 Vt. 183, 186 (1993) (Dooley, J., dissenting) (noting that the acceleration rule must be viewed "in relation to the overall condition of the body, particularly as it relates to [the claimant's] ability to work and function."). As a result, and in order to decrease his pain and increase his function, Claimant required surgery, including not only proximal row carpectomy, but also radial styloidectomy and posterior interosseous nerve excision.

End Medical Result

9. Vermont's workers' compensation rules define end medical result as "the point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected, regardless of treatment." Workers' Compensation Rule 2.1200. The date of end medical result marks an important turning point in an injured worker's progress, both medically and legally. Medically, it signals a shift in treatment from curative interventions, the goal of which is to "diagnose, heal or permanently alleviate or eliminate a medical condition," to palliative ones, which aim instead to "reduce or moderate temporarily the intensity of an otherwise stable medical condition." Workers' Compensation Rule 2.1310. *See also, Marsh v. Hannaford Brothers,* Opinion No. 15-15WC (July 6, 2015).

10. I conclude here that Drs. Johansson and Boucher provided the most credible and persuasive opinions as to end medical result. The very fact that they were able to rate the extent of Claimant's permanent impairment presupposes that his condition had become "static and well-stabilized," *AMA Guides* at §2.4. Although Dr. McLaughlin was the treating orthopedic surgeon, his end medical result determination was based on an estimate only – twelve to eighteen months post-surgery – and he did not indicate what further medical improvement he expected Claimant to realize during that period. His opinion thus failed to address the most critical element of the end medical result concept, which is whether the injured worker's condition has plateaued.

Permanency

11. It remains for me to determine what degree of permanent impairment Claimant suffered as a consequence of his work related injury. Again, the parties proffered conflicting expert medical opinions – Dr. Johansson rated 19 percent whole person impairment, while Dr. Boucher rated only 15 percent. The difference in the two ratings lies in Dr. Johansson's consideration of both the radial styloidectomy and the interosseous nerve excision as factors in his calculation.

12. As noted above, Finding of Fact No. 43 *supra*, even after considering both experts' testimony, I remain unclear as to whether the *AMA Guides* permits separate ratings following arthroplasty of *both* the carpal bones *and* the radial styloid, as Dr. Johansson calculated. Claimant bears the burden of proof on this issue, and therefore the lack of clarity on his expert's part is more damaging to his cause than that of Defendant's expert. For that reason, I conclude that the five percent upper extremity impairment that Dr. Johansson incorporated into his rating on account of the radial styloidectomy is unsupported.

13. As for the four percent upper extremity impairment that Dr. Johansson rated on account of Claimant's interosseous nerve excision, I conclude that his application of the *AMA Guides*, specifically Tables 16-11 and 16-15, was appropriate. I therefore accept his opinion in this regard as more credible than Dr. Boucher's.

14. I thus conclude from the credible evidence that Claimant's upper extremity impairment rating properly includes the following elements: (1) 15 percent for range of motion deficits; (2) 12 percent for surgical impairment on account of proximal row carpectomy; and (3) four percent for interosseous nerve excision. Using the *AMA Guides'* Combined Values chart, this yields a total upper extremity impairment of 28 percent, which according to Table 16-3 converts to a 17 percent whole person impairment.

15. As Claimant has prevailed on his claim for benefits, he is entitled to an award of costs and attorney fees. In accordance with 21 V.S.A. §678(e), Claimant shall have 30 days from the date of this opinion within which to submit his itemized claim.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. Temporary total disability benefits from May 14**,** 2014 through April 13, 2015, in accordance with 21 V.S.A. §642, with interest as calculated in accordance with 21 V.S.A. §664;

2. Permanent partial disability benefits in accordance with a 17 percent whole person impairment referable to the right upper extremity, a total of 68.85 weeks commencing on April 14, 2015, as calculated in accordance with 21 V.S.A. §648, with interest as calculated in accordance with 21 V.S.A. §664;

3. Medical benefits in accordance with 21 V.S.A. §640; and

4. Costs and attorney fees in amounts to be determined, in accordance with 21 V.S. A. §678.

DATED at Montpelier, Vermont this _____ day of June 2016.

_____
Anne M. Noonan
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.