

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F010950 & F100346**

**DONALD L. HEAGWOOD,  
EMPLOYEE**

**CLAIMANT**

**HELENA - WEST HELENA PUBLIC SCHOOL DISTRICT,  
SELF-INSURED EMPLOYER**

**RESPONDENT NO. 1**

**RISK MANAGEMENT RESOURCES,  
BENEFITS ADMINISTRATOR**

**RESPONDENT NO. 1**

**SECOND INJURY FUND**

**RESPONDENT NO. 2**

**OPINION FILED JULY 14, 2003**

Hearing conducted April 24, 2003, before Administrative Law Judge Richard B. Calaway in Helena, Phillips County, Arkansas, with

Mr. Zan Davis, Attorney at Law, Little Rock, Arkansas, appearing for the claimant,

Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas, appearing for Respondents No. 1, and

Mr. David Pake, Attorney at Law, Little Rock, Arkansas, appearing for Respondent No. 2.

**STATEMENT OF THE CASE**

This is a dispute over the extent of the claimant's permanent disability as a result of two admittedly compensable injuries to his left knee.

The claimant contended that he has been rendered permanently and totally disabled due to the combination of the effects of his compensable injuries and the effects of a prior 20% impairment to the body as a whole from previous back surgery, together with wage loss factors, such as his age, education, and past work experience. An attorney's fee for controversion was also requested. Other possible issues were reserved.

Respondents No. 1 contended that, because the claimant's injuries are "scheduled" injuries, he is not entitled to wage loss disability benefits unless he has been rendered permanently totally

disabled. They further contended that his compensable injuries have not rendered him permanently totally disabled and, consequently, he is limited to benefits for his anatomical impairment which have already been paid. Alternatively, they contended that if the claimant is entitled to additional permanent disability benefits, such benefits should be the responsibility of the Second Injury Fund.

The Fund contended that the claimant cannot prove that he is permanently totally disabled. Specifically, they contended that the claimant's injury of January 2, 2001, did not render him permanently totally disabled and was not the major cause of any wage loss disability, in light of the claimant's prior and subsequent injuries. Alternatively, they contended that Ark. Code Ann. §11-9-522 limits the claimant's permanent total disability benefits to five years.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times, including May 5, 1999, when the claimant suffered a compensable injury to his left knee, and January 2, 2001, when he suffered an additional compensable injury to his left knee; no impairment rating was given for the 1999 injury; a 2% impairment rating was given for the 2001 injury; the 1999 injury required surgery which was performed November 15, 2000; and Respondents No. 1 were previously ordered to reimburse Blue Cross/Blue Shield for expenses related to the November, 1999, surgery.

3. The preponderance of the evidence fails to show that the claimant has been rendered permanently totally disabled as a result of his compensable injuries alone or in combination with effects of prior permanent disabilities or impairments.

### **DISCUSSION**

The claimant had two periods of employment with the Helena - West Helena Public School District. His first employment there was as a mechanic's helper, greasing buses, driving buses, and doing related work as directed, as long as it did not involve heavy lifting, due to a previous back injury and surgery. Then, for a short time, he returned to work at the West Helena Police Department, after which the school district offered him a job as a supervisor which he accepted.

During his employment with the school district, on or about May 5, 1999, he injured his left knee when he fell from a ladder. He testified that this problem stayed with him until Dr. Sherman performed knee surgery November 15, 2000. The claimant stated that his surgeon never took him off light duty, because of continuing pain in his knee. His second compensable left knee injury occurred January 2, 2001, when he slipped and fell as he got out of his truck, bending his left knee in underneath him, re-injuring it. After this incident, he saw Dr. John Wilson and then Dr. Herbert Hahn, who performed surgery and assigned the 2% impairment rating. Previously, while working for Mohawk Rubber, he injured his back, underwent surgery in 1978, and received a 20% whole body rating and was advised to avoid heavy lifting and frequent repeated bending and stooping. In 1997, he injured his neck with a shop door fell on his head. He also has arthritis and has suffered other knee injuries. At the time of the hearing, he was 63 years old and had completed the sixth grade, although he had additional job related training later in life. As stated above, the parties now disagree over his entitlement to permanent disability benefits.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10 (2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

Permanent disability benefits for certain injuries, including knee injuries, are listed in a “schedule” provided by Ark. Code Ann. §11-9-521 and are payable pursuant to the schedule without regard to actual loss of earnings or the ability to earn where, as here, there is permanent anatomical impairment. See, eg, International Paper Co. v. Remley, 256 Ark. 7 (1974). However, wage loss disability actually exceeding the level of anatomical impairment is not compensable for a scheduled injury unless it reaches the level of permanent total disability. Anchor Construction Co. v. Rice, 252 Ark. 460 (1972). If such permanent total disability is the result of the combination of the effects of prior permanent impairments or disabilities and the current compensable injuries, the Second Injury Fund may have responsibility for wage loss disability exceeding the anatomical impairment attributable to the current compensable injuries. Ark. Code Ann. §11-9-525. In determining permanent disability, consideration should be given to the medical evidence, the claimant’s age,

education, experience, and other matters affecting wage loss. Glass v. Edens, 233 Ark. 786 (1961). Under previous law, a claimant might be considered permanently totally disabled if he fell into the “odd-lot category” because he was able to work only a small amount and had negligible overall job prospects. See, e.g., M. M. Cohn Co. v. Haile, 267 Ark. 734 (Ark. App. 1979). However, the odd-lot doctrine is no longer applied under current law. Ark. Code Ann. §11-9-519 (f).

The claimant testified that he was totally disabled, primarily because his prior back injury limits his ability to sit while his knee injury limits his ability to work in a standing position. However, as to the back injury, the record shows that the claimant was able to return to work and engage in various fairly physically demanding activities. For example, he began to work for the police department as a dispatcher but later became a full time police officer after attending the Arkansas Law Enforcement Academy in Camden. He testified that the physical requirements of that job sometimes included arresting people, fighting with suspects, working traffic accidents and similar activity. As a mechanic’s helper for the school district, he changed oil, greased buses, checked tire pressure, kept them clean inside, and repaired seats when they had been cut. He stated that he did not engage in much lifting but did have to crawl under the buses in order to change the oil and grease the buses. He also taught safety driving after bus drivers were required to take the CDL testing. Although he had little formal education, he was able to learn about the test requirements and do paperwork, as well as be able to park a bus and drive it through cones. He stated that most buses had automatic transmissions. He testified that sitting was about the only thing that bothered him about this job.

The claimant testified that he returned to work after the knee injury but was suspended in July, 2001, after a fight with a co-worker. He stated that after the suspension he did not return to

work because he was hurting so bad and felt he was going to be moved to another job involving heavy lifting of supplies, which he did not think he could do. He also stated that he could not get down and check the buses as before because of his knees and stuff. He testified that, as a supervisor for the school district, he had 49 people working for him and had to be sure he had enough people driving buses and that mechanics were taking care of the 39 school buses he had to run, so that he stayed pretty busy. He further testified that he could no longer work and could not do any of his previous jobs. Vocational rehabilitation was neither offered by the respondents nor sought by the claimant. He has not made any application for employment.

The medical record is generally consistent with the claimant's testimony concerning knee problems and prior back injury. However, he has worked successfully since the 1978 back surgery and his current knee impairment is fairly slight. Moreover, Dr. Hahn has indicated that the claimant was capable of returning to sedentary employment. The claimant's work history indicates that he has had supervisory responsibility and has successfully dealt with sedentary employment, including fairly demanding paperwork, in spite of his limited formal education. Thus, even though work is more difficult now for the claimant, it appears that he can return to less physically demanding work and should not be considered permanently totally disabled, especially if permitted to alternate between sitting and standing, unless he is entitled to the benefit of the doubt on this issue, or the odd-lot doctrine is applied to his case.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully denied and dismissed.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge