

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E700242**

**TOM H. WILLIAMS, EMPLOYEE**

**CLAIMANT**

**WILLAMETTE INDUSTRIES, INC., EMPLOYER  
SELF-INSURED**

**RESPONDENT**

**OPINION FILED OCTOBER 27, 2003**

Hearing before Administrative Law Judge Dail Stiles on September 25, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Silas H. Brewer, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Norwood Phillips, Attorney at Law, El Dorado, Arkansas.

A hearing was held on September 25, 2003, to determine the claimant's entitlement to permanent partial disability benefits.

It was stipulated that the claimant sustained a compensable injury on January 5, 1997. It was stipulated that appropriate periods of temporary total disability benefits have been paid, as well as medical benefits.

The claimant contends that he is entitled to a whole body rating as opposed to a scheduled rating as a result of his compensable injury of January 5, 1997. The claimant further contends he is entitled to some wage loss disability as a result of his compensable injury.

The respondents controvert any additional indemnity benefits contending that the claimant is limited to ratings to his lower extremities and is not entitled to a whole body or unscheduled rating.

**STATEMENT OF THE CASE**

The claimant worked for the respondent employer as a forklift operator. On January 5, 1997, he was run over by a large forklift driven by a co-employee. The claimant said he was in an area which was very loud, and that he

had earplugs in and did not hear the forklift. The claimant stated that the backup alarm on that particular forklift was not working. The claimant had his right leg run over and received a crushing injury to his foot, ankle and leg.

The claimant was initially treated by Dr. Michael Young, an orthopedist in Hot Springs, and came under the care of Dr. Robert Olive, an orthopedist in that same group.

The claimant's right foot and ankle was initially put in a cast. The claimant said later in 1997, he had a sudden pain in his right leg and as he flinched to get off the right leg, he fell and broke his left leg sustaining a compound fracture. That incident was accepted as a compensable consequence of his compensable injury of January 5, 1997.

The claimant continued to treat with Dr. Olive, the orthopedist in Hot Springs, but ultimately came under the treatment of Dr. James Lillich, an orthopedist in Shreveport. Prior to the referral to Dr. Lillich in Shreveport, the claimant stated that he had had six or seven surgical procedures to his ankles performed by Dr. Olive. The claimant suffered from infections in left leg and developed osteomyelitis. After the claimant started treating with Dr. Lillich, it was found that he had also developed staff infection in the left leg.

On June 24, 1999, the claimant had his left leg amputated above the ankle and below the knee.

The claimant did return to work for the respondent employer and tried to work in a program as a millwright. The claimant said he ultimately just physically could not perform the tasks required to be a millwright and went back working as a forklift driver. The claimant said that the forklift he worked on after returning to work had a closed-in cab, and that it was extremely hot and uncomfortable. The claimant said that he would sometimes go to the bathroom and take the prosthesis off his leg

and dump the sweat from it. The claimant asked his employer to make an accommodation for him under the Americans with Disabilities Act. The claimant testified that after he had made the request for an accommodation relative to A.D.A., he discovered a power saw on the floor on the shift he was working. The claimant said he thought the power saw belonged to one of the contractors at the plant, and he was afraid one of the forklift drivers was going to run it over. The claimant said he picked up the saw and put it in what he described as a common utility locker as opposed to a private locker. The claimant was ultimately accused of attempting to steal the saw and was dismissed. It was the claimant's opinion that he was dismissed because he had asked for an A.D.A. accommodation.

Subsequent to his termination from the respondent employer, the claimant drew a period of unemployment benefits and sought some employment. The claimant began work at the Hot Spring County Memorial Hospital in June of 2002 as a maintenance tech monitoring the boiler and air handlers for the hospital. The claimant states that he works a total of 16 hours a week at a pay rate of \$10.84 an hour. The claimant testified that he also draws Social Security disability and has done so since some time in 1999. At the time of his compensable injury, the claimant was making \$12.30 an hour and working an average of 40 hours a week.

The claimant stated that he continues to take a daily regimen of pain medications, including Neurontin and Oxycontin. The claimant said he takes the Neurontin five times a day and Oxycontin three times a day. The claimant testified that as a result of a rectus graft performed at the direction of Dr. Lillich, that he experiences difficulty in trying to lift things. The rectus graft was the removal of some muscle from the claimant's abdomen and placed at the infection site of his left ankle in order to attempt to increase blood flow to the site in an attempt to retard and arrest the staff infection, which ultimately did not succeed. In any event, the

claimant stated that because of loss of muscle in his abdomen, that if he lifts heavy objects, he feels that it shifts the load over to his other side and that it restricts his ability to lift.

The claimant completed high school and worked as a machinist for Orbit Valve in Little Rock for approximately three years. The claimant has also worked at an auto parts store, ultimately becoming a store manager. The claimant worked for Napa Auto Parts in Malvern, Arkansas, for approximately ten years. The claimant has also worked for a construction company as an equipment supervisor.

The claimant stated that he does not feel that he can perform any of the jobs he has had in the past and does not feel that he could work at a regular job which would demand that he put in an eight hour day. The claimant said that he could not walk and stay on his feet for over a couple of hours before he would experience enough pain and discomfort that he would have to sit down or rest. The claimant stated that he felt could walk maybe a couple of blocks before he would start to experience discomfort.

On May 17, 2000, Dr. Lillich, an orthopedist in Shreveport, Louisiana, authored a progress report which states:

Mr. Williams returns today doing relatively well. He is still having a considerable amount of pain in his left knee related to the degenerative arthritis. He is wearing his prosthesis on the right side. He has been doing relatively well for this. We are going to continue treatment of the arthritis within the left knee with use of Celebrex. Hopefully, this will keep much of his pain and swelling down.

In reference to my previous note of March 15<sup>th</sup>, I failed to include the impairment ratings for the degenerative arthritis of his left knee and also some impairment related to his abdominal surgery where the previous rectus graft was taken. Again, based on the MA Guide Evaluation of Permanent Impairment, Fourth Edition, regarding his knee, due to the loss of the cartilage interval within the medial compartment, also in his patellofemoral joint, he has an 8% impairment of the

whole person and 20% impairment of the lower extremity. Also, based on the palpable defect in the supporting structures of the abdominal wall, which place him in a Class I type impairment with an 8% impairment of the whole person. Then, using the combined values chart of the two 8% impairments listed above, one for the knee and one for the abdominal wall, this gives an impairment rating of 12%. Again, combining this with the 30% impairment previously listed increases his overall whole person impairment to 34% total for all items listed.

This includes the below the knee amputation, the arthritis present within the left knee and the defect in the abdominal wall from his previous surgery. Also, this includes the previous arthrodesis of the foot and early degenerative arthritis of the ankle. . . .

### **FINDINGS OF FACT**

1. The claimant is entitled to a 34% whole body physical impairment rating pursuant to Dr. James Lillich's progress report of May 17, 2000.
2. The claimant is entitled to a 50% wage loss disability as a result of his compensable injury of January 5, 1997, and the compensable consequences which followed.
3. Respondents have controverted the whole body physical impairment rating and the wage loss disability.

### **DISCUSSION**

#### **Physical Impairment Rating**

The respondents in this case argue that Dr. Lillich misapplied the A.M.A. Guides when assessing a whole body rating to the claimant. Dr. Lillich's rating and explanation for that rating in his progress report of May 17, 2000, coupled with the claimant's testimony that the removal of muscle from his abdominal wall, which he described to be as big as his "fist," persuades me that the claimant is entitled to the whole body impairment rating as opposed to a scheduled rating.

Wage Loss Disability

The wage loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. Grimes v. North American Foundry, 42 Ark. App. 137, 856 S.W.2d 309 (1993). The Commission is charged with the duty of assessing wage loss disability on the basis of medical evidence, age, education, experience and other matters reasonably expected to affect the claimant's earning power. Rooney v. Charles, 262 Ark. 695, 560 S.W.2d 797 (1978); City of Fayetteville v. Guess, 10 Ark. App. 313, 663 S.W.2d 946 (1984).

In the instant case, the severity of the claimant's injuries coupled with his age and work experience have significantly diminished his capacity to earn wages.

**AWARD**

Respondents are directed to pay the claimant permanent partial disability benefits in accordance with the findings of fact above.

Respondents are directed to continue to pay reasonable, necessary and related medical expenses the claimant has and may incur as a result of his compensable injury.

Respondents are directed to pay the claimant's attorney, Mr. Silas Brewer, the maximum attorney's fee on this award pursuant to Ark. Code Ann. §11-9-715.

IT IS SO ORDERED.

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DAIL STILES  
Administrative Law Judge