

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306117

JOHNNY L. BROWN, EMPLOYEE	CLAIMANT
LITTLE ROCK CRATE & BASKET COMPANY, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE COMPANY, INSURANCE CARRIER and AIG CLAIM SERVICE, TPA	RESPONDENT

OPINION FILED DECEMBER 22, 2004

Matter before Chief Administrative Law Judge David Greenbaum, submitted on December 17, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. John P. Talbot, Attorney-at-Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

By agreement of the parties, the above-styled claim is being submitted on a stipulated record without the necessity of a formal hearing.

A prehearing conference was conducted in this case on November 10, 2004. At the prehearing conference, it was agreed that the employment relationship existed at all relevant times, including May 29, 2003; that the claimant sustained a compensable injury to the right lower extremity on said date; that he earned sufficient wages to entitle him to compensation benefits at the rate of \$119.00 per week for both temporary total disability and permanent partial disability; that respondents had controverted additional temporary total disability beyond that previously paid, and had also controverted permanent impairment benefits in excess of seventy percent

(70%) to the right lower extremity. At the prehearing conference, the parties agreed that one issue requiring adjudication was the date claimant's healing period ended, as well as claimant's entitlement to additional temporary total disability, if any. The only remaining issue concerned the extent of claimant's permanent impairment.

At the prehearing conference, claimant maintained that he reached maximum medical improvement on July 15, 2004; that he was entitled to temporary total disability through said date; that he was entitled to permanent impairment benefits equivalent to the total loss of use of the right lower extremity based upon the facts of his claim, as well as the AMA Guidelines; and that a controverted attorney's fee should attach to any additional benefits awarded. Conversely, respondents contended that it had paid all appropriate temporary total disability. With regard to permanent impairment benefits, respondents maintained that it had accepted and was paying the impairment rating assigned by Dr. Gruenwald which it contended was all that the claimant was entitled. The parties agreed that these limited issues could be submitted based upon a comprehensive set of stipulations, together with legal briefs. The parties were directed to submit a comprehensive set of stipulations, signed by both parties, on or before December 15, 2004. Contemporaneous with the written stipulations, the parties were directed to file simultaneous briefs, at which time the issues would be submitted on the record. Thereafter, the parties submitted a comprehensive set of stipulations which are set out below:

STIPULATIONS

1. The employee/employer/carrier relationship existed at all times.
2. The claimant suffered a compensable injury on or about May 29, 2003.
3. The claimant was earning sufficient wages to entitle him to a compensation rate of \$119.00 per week for both total and partial disability benefits.
4. Respondents paid temporary disability benefits appropriately through July 15, 2004, the date of maximum medical recovery.
5. The claimant's injury involves an amputation of his right leg below the knee.
6. The claimant was fitted for a prosthesis in March, 2004.
7. Claimant's treating physician, Dr. J. Michael Gruenwald, assigned a permanent impairment rating of seventy percent (70%) to the lower extremity on July 15, 2004.
8. Respondents have accepted the seventy percent (70%) impairment rating, but they controvert permanent impairment benefits in excess of the seventy percent (70%) to the right lower extremity.

As reflected by the stipulations, the claimant's entitlement to additional temporary total disability has been resolved. The sole remaining issue before this Commission is the extent of claimant's permanent impairment.

From a review of the record which is comprised of the Prehearing Order filed November 15, 2004; the claimant's documentary evidence exhibit dated September 1, 2004, consisting of forty-five (45) pages of medical records; the stipulations agreed to by the parties; as well as their respective letter briefs, the

following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties, aforementioned, are hereby accepted as fact.
3. The claimant has sustained a scheduled, permanent injury, specifically, amputation of right leg below the knee and is, therefore, entitled to permanent partial disability benefits beginning July 16, 2004, and continuing for 131 weeks pursuant to Ark. Code Ann. §11-9-521(a)(4)(Repl. 2002).

DISCUSSION

This is a claim which should have never required litigation. I am constrained to comment that this appears to be another case which should have been amicably resolved if the parties communicated with each other in order to narrow the issues and clarify their respective positions. As reflected above, the parties were able to dismiss one of the two (2) issues after being required to file a comprehensive set of stipulations. However, they have apparently chosen to litigate a claim for a scheduled impairment involving 2.2 weeks of disability, equivalent to \$261.80. This is an irrational decision. Although if I knew at the time of the prehearing conference

what I know now, this claim would have been immediately assigned for mandatory mediation pursuant to Commission Rule 26. Rather than protract the litigation process, as well as add additional, needless costs of litigation, I have elected to address the dispute. This decision is based in part upon the fact that the law is clear and unambiguous as to claimant's entitlement. The parties have stipulated that the claimant's injury involved amputation of his right leg below the knee. Accordingly, he is entitled to permanent impairment benefits of 131 weeks pursuant to A.C.A. §11-9-521(a)(4). Respondents' argument that the claimant's scheduled injury is governed by Commission Rule 34 which designates that the American Medical Association's Guides to the Evaluation of Permanent Impairment, 4th Edition, must be used in the assessment of anatomical impairment is without merit. Clearly, the statute controls over the Commission Rule and the Guides.

Ark. Code Ann. §11-9-522(g) directed the Commission to adopt an impairment rating guide to be used in assessing anatomical impairment. The Commission therefore established Rule 34 which adopted the Guides to the Evaluation of Permanent Impairment (4th Ed. 1993) published by the American Medical Association. To the extent that the Guides allow subjective criteria for establishing an impairment rating, the Guides must yield to the statutory definition of anatomical impairment as defined by the Arkansas General Assembly. *Rizzi vs. Sam's Wholesale Club*, Workers' Compensation Commission E515370 & E112991 (April 1, 1999).

The Legislature has established the claimant's entitlement for the scheduled loss of his right leg. The Commission is not required to consult the AMA guidelines because the amputation of the leg below the knee is clearly objective and measurable. Further, any argument concerning the use of a prosthesis is irrelevant to impairment. Prosthetic devices are medical treatment which is not at issue. Accordingly, I hereby make the following:

AWARD

Respondent, American Home Assurance Company and AIG Claim Service, its TPA, is hereby directed and ordered to pay, to the claimant, permanent impairment benefits at the rate of \$119.00 per week beginning July 16, 2004, and continuing for 131 weeks.

All accrued benefits shall be paid in lump sum and without discount.

Additionally, claimant's attorney, Mr. Gary Davis, is hereby awarded the maximum statutory attorney's fee of \$65.45 on the controverted 2.2 weeks of impairment, one-half ($\frac{1}{2}$) of which is to be paid by the respondents and one-half ($\frac{1}{2}$) to be paid out of the claimant's benefits.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge