

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIMS NOS. E710724 & E903941

DONALD J. CATLETT

CLAIMANT

ARKANSAS ALUMINUM ALLOYS, INC.

RESPONDENT EMPLOYER

**WAUSAU
SECOND INJURY FUND**

**RESPONDENT CARRIER NO. 1
RESPONDENT NO. 2**

ORDER AND OPINION FILED SEPTEMBER 9, 2004

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE DONALD C. PULLEN, Attorney at Law, Hot Springs, Arkansas.

Respondents No. 1 represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on July 30, 2004. A prehearing conference was held on April 28, 2004 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference and prior to the hearing, the parties agreed to the following stipulations:

1. There was a compensable injury on March 23, 1999.
2. The compensation rates are \$315/236.

3. Respondents No. 1 accepted a 25% permanent impairment rating.

4. The end of the healing period was March 13, 2001.

5. Respondent No. 2 has accepted a 35% wage loss.

The claimant contends that he is permanently and totally disabled and entitled to attorney's fees.

Respondent No. 1 contends the only issue is wage loss benefits and if wage loss benefits are owed, the responsibility lies with the Second Injury Fund.

Respondent No. 2 contends that it has accepted 35% in wage loss disability and that the claimant cannot prove entitlement to wage loss benefits over the 35% rating accepted.

Issues to be litigated:

1. Permanent and total disability.
2. Attorney's fees.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, 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. There was a compensable injury on March 23, 1999.

2. The compensation rates are \$315/236.
3. Respondents No. 1 accepted a 25% permanent impairment rating.
4. The end of the healing period was March 13, 2001.
5. Respondent No. 2 has accepted a 35% wage loss.
6. The claimant has proven by a preponderance of the evidence that he is permanently and totally disabled and Respondent No. 2 is liable for benefits.

DISCUSSION

The claimant, 62 years of age, sustained a compensable injury on March 23, 1999, when he fell. The claimant sustained four broken ribs and a low back injury requiring surgery on January 6, 2000. The claimant has not worked since his injury. The claimant has undergone treatment at the pain clinic and had an epidural injection by Dr. James Arthur as well as taking prescription medication. The claimant began his employment with the respondent employer in 1996, where he worked as a mechanic. The claimant worked for Reynolds from 1969 to 1995 as a mechanic and took retirement since the business closed.

The claimant testified to having pain going down his legs. When he would sit, he had difficulty getting up. According to the claimant, he spends most of his time now sitting in a chair with a muscle stimulator and heating pad. The claimant testified that before his injury he was an avid fisherman, boater and hunter, but is unable to do those activities now. He can drive his truck. The claimant can sit for about 20 minutes, can walk some but cannot stand any length of time without great pain nor bend or stoop. The claimant estimated that he spent 90% of his time in the recliner chair. In addition to the claimant's back problems and his high blood pressure, he indicated that he has a

little breathing problem and his left knee bothers him now. The claimant had a myocardial infarction in 1982 and also has allergies.

The claimant began drawing social security disability benefits in September 1999 and became medicare eligible in November 2001. The claimant also receives retirement benefits from his previous employer. According to the claimant, he went back to the employer and walked around some but did not actually perform any work and this was before his surgery. He has not attempted any employment since the surgery and feels he is incapable of working.

The claimant contends that he is now permanently and totally disabled and entitled to disability benefits in excess of the 25% permanent impairment rating accepted and paid by Respondent No. 1 and in excess of the 35% wage loss benefits accepted by Respondent No. 2.

When determining the degree of permanent disability sustained by an injured worker, the Commission must consider the degree to which the worker's future wage earning capacity is impaired. In addition to medical evidence demonstrating the degree to which the worker's anatomical disabilities impair his earning capacity, the Commission must also consider other factors, such as the worker's age, education, work experience, and any other matters which may affect the worker's future earning capacity. Ark. Code Ann. §11-9-522; *Tiller v. Sears*, 27 Ark. App. 159, 767 S.W.2d 544 (1989). When it becomes evident that the worker's underlying condition has become stable and that no further treatment will improve the condition, the disability is deemed to be permanent. If the employee is totally incapacitated from earning a livelihood at

that time, he is entitled to compensation for permanent and total disability. *Minor v. Poinsett Lumber & Mfg. Co.*, 235 Ark. 195, 357 S.W.2d 504 (1962).

In the present case, the claimant has proven by a preponderance of the evidence that he is permanently and totally disabled and Respondent No. 2 is liable for benefits associated.

The claimant completed the eleventh grade of school and obtained a GED. He also completed some courses in refrigeration and repair of appliances as well as receiving a millwright's degree from a vo-tech school. The claimant has a medical history that includes hypertension, polyarthritis, allergic rhinitis, myocardial infarction in 1982, trauma to the right ankle with fracture and tendon repair in 1982, resection of benign fatty tumor of right arm, sinus surgery in 1972, left knee arthroscopy in 1981, L 2-3 laminotomy in October 1997, four rib fractures in 1999 and low back surgery in 2000. Dr. James Arthur, the treating physician, opined in a letter dated March 14, 2001, that he believed the claimant had reached MMI and assigned a 25% permanent impairment rating but further stated that he did not expect the claimant to be able to return to work. The claimant's January 12, 2004, medical report lists the following medications the claimant currently takes: Bextra, Norco, Flexeril, Cozaar, Zyrtec, Clarinex, Albuterol and Atrovent MDI's, Nasacort inhaler, Niacin and Lipitor. (Cl. Exh. No. 1, p. 39.)

After considering the credible testimony of the claimant, reviewing his extensive medical history, his work injuries and considering all the wage loss factors, I find the claimant is permanently and totally disabled and Respondent No. 2 is liable for benefits. The medical records indicate that the claimant reached the end of his healing period on

March 14, 2001. The claimant's work history has involved strenuous physical work and he now is unable to stand, sit or walk for more than 20 minutes and cannot bend or stoop without considerable pain and takes a number of medications, which includes pain medication. Respondent No. 2 remains liable, since the claimant's previous disability and impairments combined with the claimant's most recent compensable injury has produced the claimant's current disability status. See, *Mid-State Const. Co. v. SIF*, 295 Ark. 1, 746 S.W.2d 539 (1988).

ORDER

The claimant has proven by a preponderance of the evidence that he is permanently and totally disabled and Respondent No. 2 is liable for benefits.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715, *Coleman v. Holiday Inn*, 31 Ark. App. 224, 792 S.W.2d 345 (1990) and *Chamness v. Superior Industries*, W.C.C. E019760 (Opinion filed March 4, 1992).

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE