

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305653

MICHAEL CHAMLEE, EMPLOYEE **CLAIMANT**

**MEYERS BAKERIES, INC.,
SELF-INSURED EMPLOYER** **RESPONDENT**

CROCKETT ADJUSTMENT, TPA **RESPONDENT**

OPINION FILED OCTOBER 20, 2004

Hearing before Administrative Law Judge J. Mark White on September 9, 2004, in Texarkana, Miller County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. John D. Davis, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 9, 2004, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on July 26, 2004, and a Prehearing Order was entered that same day. A copy of the July 26, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including May 18, 2003; that on May 18, 2003, the claimant sustained a compensable injury to his left upper extremity; that respondents accepted the May 18, 2003, injury as compensable and paid some benefits; and that an order was entered February 10, 2004, granting the claimant a change of physician to Dr. Clemens Soeller.

The parties agreed that the sole issue to be presented was whether the claimant is entitled to permanent partial disability benefits.

The claimant contends that he sustained a compensable injury to his left shoulder and that surgery was performed on the left shoulder by Dr. Bud Dickson; that Dr. Dickson determined that the claimant had no permanent anatomical impairment to his left shoulder; that in making this determination, Dr. Dickson compared the performance of his left shoulder to that of his right shoulder; that surgery was performed on his right shoulder on June 20, 2000, resulting in an impairment to the right upper extremity of 18%; that the range of motion and strength of his right shoulder is limited; and that Dr. Dickson therefore should not have based an opinion of impairment to the left shoulder on the comparative performance of his right shoulder.

Respondents contend that they rely on Dr. Dickson's determination that the claimant sustained no anatomical impairment as a result of his compensable injury;

that Dr. Soeller has ignored their request for information as to the claimant's permanent physical impairment, if any; and that if they receive an impairment rating from Dr. Soeller, they will evaluate the rating and advise the claimant of their position.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent partial disability benefits.

DISCUSSION

The sole issue herein is whether the claimant is entitled to permanent partial disability benefits for his compensable shoulder injury. Permanent impairment is “any permanent functional or anatomical loss remaining after the healing period has been reached.” *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994), citing *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). An injured employee is entitled to the payment of compensation for the permanent functional or anatomical loss of use of the body as a whole whether his earning capacity is diminished or not. *Id.* The Commission has adopted the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) (hereinafter “*AMA Guides*”) for use in assessing the extent of permanent anatomical impairment. A.W.C.C. Rule 34 (July 1, 1995).

The claimant sustained a compensable injury to his right shoulder on May 18, 2003, when a wrench he was working with gave way. The injury caused “a rupture of the long head of the biceps tendon in or near his” left shoulder, as diagnosed by Dr. D. Bud Dickson. Dr. Dickson’s earliest note identifies the injury as being in the right shoulder, but later notes and the claimant’s testimony establish that the injury was actually to the left shoulder. Dr. Dickson performed arthroscopic surgery to repair the rupture on May 29.

On December 4, Dr. Dickson released the claimant from his care and wrote as follows in his notes:

On 12/02/03 [the claimant] had a Cybex evaluation conducted at [sic] Medical Park Hospital. The Cybex evaluation actually indicates that his involved left shoulder is stronger than the uninvolved right shoulder. In addition to the increased strength to the biceps tendon on the involved side he also has a full arc of motion about his left shoulder and elbow. Accordingly he will have no permanent loss of physical function associated with this injury.

The claimant disputes Dr. Dickson's conclusion that he sustained no permanent impairment as a result of the compensable injury. Specifically, the claimant points to the fact that his *right* shoulder – uninjured in this work accident – was already disabled, in that some years prior he had been assigned an 18% impairment rating to the body as a whole for the right shoulder. Because the right shoulder was already impaired, the claimant argues, it is unfair to base a rating of the compensable left shoulder injury on a performance comparison with the already-impaired right shoulder.

The claimant is correct in contending that Dr. Dickson improperly used a comparison to reach his finding of no impairment. The *AMA Guides* provide only one method for determining impairment of the shoulder. I can find nothing in the *Guides* indicating or suggesting that comparison be made between the two

shoulders, and I do not know why Dr. Dickson relied on a comparison. The *Guides* instead provide that impairment is calculated by measuring only the affected shoulder's range of motion in three functional units: flexion and extension, abduction and adduction, and internal and external rotation. *AMA Guides* § 3.1j.

Nonetheless, I cannot find that the claimant has suffered any permanent impairment as the result of his compensable injury. As just noted, permanent impairment of the shoulder is determined within the *AMA Guides* by the shoulder's range of motion. Dr. Dickson indicated in his note that the claimant has "a full arc of motion about his left shoulder and elbow," and there is no evidence in the record to show that the claimant's range of shoulder motion is limited. There may have been a loss of strength in the claimant's left shoulder, but the *Guides* do not provide for an impairment rating based upon loss of strength.

I find that the claimant has failed to prove by a preponderance of the evidence that he sustained any permanent impairment as the result of his compensable injury. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent partial disability benefits.

AWARD

The claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent partial disability benefits. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge