

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F201109

ANDREANA TALLEY, Employee	CLAIMANT
ARKANSAS ONE-CALL SYSTEMS, INC., Employer	RESPONDENT
AIG CLAIM SERVICES, INC., Carrier	RESPONDENT

OPINION FILED DECEMBER 16, 2004

Before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by CONRAD ODOM, Attorney, Fayetteville, Arkansas.

Respondents represented by JOHN TALBOT, Attorney, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

In lieu of a hearing the parties have agreed to submit this case to the Commission for consideration based upon stipulations, documentary evidence, and briefs. The issue to be determined is the correct calculation of claimant's permanent impairment to her right shoulder.

The parties have agreed to the following stipulations:

1. Claimant was and is a utility locator for respondent Arkansas One-Call Systems, Inc.
2. The employer/employee relationship existed between claimant and respondent Arkansas One-Call Systems, Inc. on or about January 28, 2002.
3. On or about January 28, 2002, claimant was involved in a car accident while in the course and scope of her employment with respondent Arkansas One-Call Systems, Inc., and she sustained compensable injuries in that car accident.
4. Claimant's average weekly wage was \$519.00, giving a TTD rate of \$346.00 and a PPD rate of \$260.00.
5. Respondents have paid benefits to claimant under the workers' compensation law consisting of medical expenses and TTD benefits.

6. Claimant has received a permanent impairment rating from Dr. Moffitt, as outlined in his letter dated April 22, 2004.

After having had the opportunity to review the parties' stipulations, the documentary evidence presented, and the briefs submitted by the parties, I make the following findings of fact and conclusions of laws:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties are hereby accepted as fact.
2. As a result of the compensable injury to her right shoulder, claimant is entitled to permanent partial disability benefits in the amount of \$4,680.00.

FACTUAL BACKGROUND

The parties have stipulated that claimant was involved in a motor vehicle accident while working for the respondent and that she suffered various compensable injuries as a result of that accident. The medical records indicate that one of these injuries was to claimant's right shoulder. Claimant was treated conservatively for that shoulder by several treating physicians and was eventually sent to Dr. Gary Moffitt for an independent medical evaluation. Dr. Moffitt evaluated the claimant on April 15, 2004 and authored a letter dated April 22, 2004 addressing claimant's medical condition. Included in Dr. Moffitt's letter is an assignment of a permanent physical impairment rating relating to the claimant's right shoulder injury. Respondent in a letter dated May 24, 2004 indicated that it was paying claimant permanent partial disability benefits based upon a ten percent rating to the right shoulder. According to the letter this would calculate to 24.4 weeks of benefits payable at the rate of \$260.00 for a total of \$6,344.00. Claimant has filed this claim contending that her permanent disability benefits should be calculated based upon a rating to the body as a whole, not a rating to the shoulder.

ADJUDICATION

I agree with claimant's argument that the injury to claimant's shoulder is an injury to the body as a whole for workers' compensation purposes pursuant to *Taylor v. Pfeiffer Plumbing & Heating Company*, 8 Ark. App. 144, 648 S.W. 2d 526 (1983). However, a medical rating of ten percent to the shoulder does not automatically translate to a ten percent rating to the body as a whole. This is evident from a review of Dr. Moffitt's letter of April 22, 2004. While Dr. Moffitt did assign the claimant a permanent physical impairment rating in an amount equal to ten percent to her shoulder, he also indicated that this would translate to a whole person impairment of four percent.

In this case it is a 10% joint impairment so that equates to 3.6 whole person impairment rating which is rounded up to a 4% whole person impairment.

Thus, while a shoulder injury is considered an unscheduled injury which is to be considered an injury to the body as a whole; medically, an impairment rating to the shoulder does not automatically equate to that same percentage of impairment to the body as a whole. Instead, the percentage of shoulder impairment must be translated into a percentage of whole body impairment. The primary benefit in finding that a shoulder injury is an unscheduled injury is that a claimant may be entitled to wage loss, whereas if the injury was a scheduled injury a claimant would not be entitled to wage loss unless they were permanently totally disabled.

In support of her contention claimant cites *Pyles v. Triple F. Feeds of Texas, Inc.*, 270 Ark. 729, 606 S.W. 2d 146 (1980), for the proposition that the Workers' Compensation Act is to be liberally construed in favor of the claimant with doubtful cases resolved in the favor of the claimant. However, this decision by the court was from 1980 before Act 10 of 1986 which changed the law to state that the Commission is to weigh the evidence impartially without giving the benefit of the doubt to either party. See *Wade v. Mr. C.*

Cavanaugh's, 298 Ark. 363, 768 S.W. 2d 521 (1989).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant is entitled to permanent partial disability benefits for her shoulder injury in the amount of \$4,680.00 based upon a whole body impairment of four percent as assigned by Dr. Moffitt. Although Dr. Moffitt assigned the claimant an impairment of ten percent to her shoulder, he also indicated that this translated to a whole body impairment of four percent. A four percent whole body impairment would entitle claimant to eighteen weeks of benefits. Eighteen weeks of benefits multiplied by claimant's compensation rate of \$260.00 per week results in a total of \$4,680.00. Since respondent has apparently paid benefits in excess of that amount, claimant is not entitled to any additional permanent disability benefits as a result of her shoulder injury.

ORDER

Claimant is entitled to permanent partial disability benefits in an amount equal to \$4,680.00 as a result of permanent impairment to her right shoulder.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE