

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F001124

LARRY D. COUCH, EMPLOYEE	CLAIMANT
FIRESTONE TUBE COMPANY, EMPLOYER	RESPONDENT #1
GALLAGHER BASSETT SERVICES, CARRIER	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED AUGUST 15, 2005

A hearing was not held in this case; it was submitted on joint stipulations and briefs filed by the parties before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III.

Claimant was represented by Aaron L. Martin, Attorney at Law, Fayetteville, Arkansas.

Respondent #1 was represented by Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

Respondent #2 was represented by Judy W. Rudd, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held in this claim on April 19, 2005; a Prehearing Order was filed on that same date. As reflected in the Prehearing Order, the parties agreed that this claim would be submitted for adjudication upon agreed joint stipulations and briefs. The parties also agreed that the facts are not in dispute and that the issue remaining is a question of law.

The agreed joint stipulations submitted by the parties, which are hereby accepted, are as follows:

1. The employee-employer-carrier relationship existed between the parties on

January 10, 2000 when Claimant sustained a compensable injury to his left and right shoulders and neck.

2. Claimant's average weekly wage was \$671.04 which yielded compensation rates of \$394.00 for total disability and \$296.00 for partial disability.

3. Claimant reached the end of his healing period and maximum medical improvement on September 29, 2003.

4. By Administrative Law Judge Opinion of September 23, 2004, Claimant was found to be permanently and totally disabled.

5. Respondent #1 paid permanent and total disability benefits pursuant to the Administrative Law Judge Opinion.

6. Respondent #1 paid an 18% permanent partial anatomical rating to the body as a whole for the compensable cervical injury, a 9% permanent partial anatomical rating to the body as a whole for the compensable left shoulder injury, and a 3% permanent partial anatomical rating to the body as a whole for a compensable right shoulder injury, as of January 4, 2005 totaling \$39,960.00.

As stated in the Prehearing Order, and as agreed by the parties, the sole issue to be resolved is as follows:

1. Whether Respondent #1 must first pay Claimant's permanent anatomical impairment rating benefits in full, and then begin paying the first \$75,000.00 of benefits for permanent and total disability; or whether the permanent anatomical impairment rating benefits paid to Claimant can be credited against the first \$75,000.00 of permanent and total disability benefits Respondent #1 must pay, thereby reducing the balance of the \$75,000.00 due.

THE RECORD

The parties agreed that this matter would be submitted for adjudication on agreed joint stipulations and briefs. In addition, this Opinion makes reference to the Prehearing Order, as well as an earlier Opinion filed September 23, 2004. Therefore, in order to clearly identify those items relied upon to produce this Opinion, the following documents are identified and will be "blue-backed" or otherwise designated as the record in this matter:

1. the Opinion filed September 23, 2004;
2. the Prehearing Order filed April 19, 2005;
3. the Agreed Joint Stipulations of Respondents #1 and #2 received May 31, 2005;
4. the Brief of Respondent #2, received May 18, 2005; and,
5. the Brief of Respondent #1 received June 3, 2005.

DISCUSSION

Prior to the filing of the September 23, 2004 Opinion, Respondent #1 accepted and paid Claimant for an 18% impairment rating due to his compensable cervical spine injury and a 9% impairment rating due to his compensable left shoulder injury. In that Opinion, Claimant was assigned a 3% impairment rating due to his right shoulder injury and was found to be permanently totally disabled. Respondent #1 did not appeal that Opinion. The stipulations, as well as Respondent #1's brief, indicate that Respondent #1 paid a collective total of \$39,960.00 for these three impairment ratings, and that Respondent #1 is also paying Claimant \$394.00 per week in permanent and total disability benefits.

Respondent #2 argues that Respondent #1 is not entitled to a credit for the \$39,960.00 paid on Claimant's impairment ratings, against the \$75,000.00 permanent total disability benefits obligation contained in Ark. Code Ann. § 11-9-502(b)(1). Stated another

way, Respondent #2 argues that, after paying the \$39,960.00 for these impairment ratings, Respondent #1 must still pay Claimant \$75,000.00 before Respondent #2 becomes liable for Claimant's permanent total disability benefits.

Both parties acknowledge that the issue presented is addressed by Thomas v. Legacy Ins. Servs., Full Workers' Compensation Commission Opinion filed May 4, 2005 (F100487). Indeed, Respondent #2 candidly states in its brief that it "understands that this issue has been decided unfavorably to it by the Full Commission" in its Thomas opinion; Respondent #2 raises this issue for preservation on appeal.

In Thomas, after considering the facts presented and reviewing the applicable statutes, the Commission stated that "when a determination of permanent total disability has been made, the benefits paid by a respondent after the end of the healing period are classified as permanent and total disability benefits under Ark. Code Ann. § 11-9-502(b)." Thomas, supra. The Commission then affirmed the Administrative Law Judge's finding that the respondent employer and its carrier were entitled to a credit for the amount of permanent anatomical impairment rating benefits ultimately paid to the claimant against the first \$75,000.00 they were obligated to pay, thereby reducing the balance of the \$75,000.00 due from the respondent employer and its carrier under § 11-9-502(b)(1).

I find that Thomas controls this case. Further, based upon the foregoing, I find that Respondent #1 is entitled to credit in the amount of \$39,960.00 for payment of permanent partial anatomical disability benefits, against its \$75,000.00 maximum liability pursuant to Ark. Code Ann. § 11-9-502(b)(1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.

2. The employee-employer-carrier relationship existed between the parties on January 10, 2000 when Claimant sustained a compensable injury to his left and right shoulders and neck.

3. Claimant's average weekly wage was \$671.04 which yielded compensation rates of \$394.00 for total disability and \$296.00 for partial disability.

4. Claimant reached the end of his healing period and maximum medical improvement on September 29, 2003.

5. By Administrative Law Judge Opinion of September 23, 2004, Claimant was found to be permanently and totally disabled.

6. Respondent #1 paid permanent and total disability benefits pursuant to the Administrative Law Judge Opinion.

7. Respondent #1 paid an 18% permanent partial anatomical rating to the body as a whole for the compensable cervical injury, a 9% permanent partial anatomical rating to the body as a whole for the compensable left shoulder injury, and a 3% permanent partial anatomical rating to the body as a whole for a compensable right shoulder injury, as of January 4, 2005 totaling \$39,960.00.

8. Based upon Thomas v. Legacy Ins. Servs., Full Workers' Compensation Commission Opinion filed May 4, 2005 (F100487), and the facts of this case, I find that Respondent #1 is entitled to credit in the amount of \$39,960.00 for payment of permanent partial anatomical disability benefits, against its \$75,000.00 maximum liability pursuant to Ark. Code Ann. § 11-9-502(b)(1).

ORDER

Respondent #1 and Respondent #2 are ordered to pay benefits in accordance with this Opinion.

IT IS SO ORDERED.

D. FRANKLIN AREY, III,
Administrative Law Judge

DFA/ml