

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F203782

**TONY J. KITT,
EMPLOYEE**

CLAIMANT

**ORR MOTORS
OF HOT SPRINGS,
EMPLOYER**

RESPONDENT NO. 1

**SENTRY SELECT
INSURANCE CO.,
INSURANCE CARRIER**

RESPONDENT NO. 2

SECOND INJURY FUND

RESPONDENT NO. 3

OPINION FILED MAY 16, 2005,

Pursuant to a hearing conducted February 17, 2005, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. C. Burt Newell, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant;

Mr. Joseph H. Purvis and Mr. Gary B. Rogers, Attorneys at Law, Little Rock, Arkansas, appearing for Respondents No. 1 and 2; and

Mr. Terry Pence, Attorney at Law, Little Rock, Arkansas, appearing for Respondent No. 3.

STATEMENT OF THE CASE

This is a dispute over the anatomical impairment suffered by the claimant as the result of his admittedly compensable injury which was followed by two surgeries.

The claimant contended that he should be compensated for an additional 16% impairment rating assessed by his surgeon, Dr. Wayne Bruffett, after the claimant's final surgery. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant had already received benefits for a 12% impairment rating, after his first surgery, and was entitled only to an additional 4% as a result of the rating given by Dr. Bruffett.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant suffered a compensable injury to his lumbar spine August 24, 2001; Respondents No. 1 and 2 initially paid benefits for anatomical impairment in the amount of 12%; thereafter, following an additional surgical procedure, Dr. Wayne Bruffett assigned an impairment rating of 16% March 15, 2004; and pursuant to the rating given by Dr. Bruffett, additional permanent impairment benefits in the amount of 4% were paid on behalf of Respondents No. 1 and 2.

3. The preponderance of the evidence shows that the claimant's anatomical impairment as a result of his compensable injury, as assessed by Dr. Bruffett, is 16% to the body as a whole and has been paid by Respondents No. 1 and 2, so that no additional benefit is owed for anatomical impairment.

DISCUSSION

The claimant suffered a compensable injury to his low back August 24, 2001, during his employment as a service manager and systems administrator for the respondent employer at its motor vehicle sales business in Hot Springs, when he slipped on a hose and landed on his left side and back. Payment of benefits was initiated by the insurance carrier and included temporary total disability benefits, medical expenses, and benefits for permanent anatomical impairment.

Prior to this injury, the claimant had suffered injuries to his back which had resulted in two surgeries. Dr. Anthony Russell performed these surgeries, as well as the first surgery following the current compensable injury. Dr. Russell has assessed the claimant's impairment, beginning with a 10% rating to which he added an additional 2% after additional surgery.

Following his most recent injury, the claimant underwent the third surgery performed by Dr. Russell and a fourth surgery performed by Dr. Wayne Bruffett. Dr. Bruffett released the claimant in March, 2004, and referred him to Dr. William Ackerman for pain management care. Dr. Ackerman's care ended in October, 2004, after a drug screen was positive for marijuana. Dr. Bruffett assessed the claimant's impairment initially at 15% and then added an additional percent according to a note April 12, 2004. The parties disagreed over the interpretation of Dr. Bruffett's impairment rating. In short, the respondents took the position that the 16% merely indicated 4% in addition to the claimant's previous 12% anatomical impairment, while the claimant understood the rating to mean simply an additional 16%. Dr. Bruffett's deposition was taken, as was Dr. Ackerman's.

In his deposition, Dr. Bruffett seemed to give testimony that supported the theory of the questioner of the moment. For example, on page 32, Dr. Bruffett agreed that his rating of 15% was based on the procedure that he did and the expected consequences of that procedure. However, on pages 35 and 36, he agreed that instead of adding an additional 16% to the pre-existing 12%, he added 3% to the 12% and later added an additional 1%, so that the 16% was his assessment of the claimant's impairment when Dr. Bruffett viewed the claimant in March, 2004. Moreover, Dr. Bruffett's testimony on pages 17 and 18 tends to indicate that the effect of the previous surgeries were included in the 16% impairment rating even though he began the process of rating by assessing

the last surgery first, rather than the first surgery first. In short, the deposition testimony shows that the claimant's total impairment is 16%, rather than, in effect, 28% to the body as a whole.

Because benefits have been paid on behalf of Respondents No. 1 and 2 in an amount totaling 16% to the body as a whole, no additional benefit is owed for anatomical impairment. However, the claimant specifically reserved additional issues, such as wage loss disability, which are not addressed in this opinion.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge