

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500586

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| JAMES LAFFERTY   | CLAIMANT   |
| AFFILIATED FOODS                                       | RESPONDENT |
| LIBERTY MUTUAL INSURANCE COMPANY,<br>INSURANCE CARRIER | RESPONDENT |

OPINION FILED OCTOBER 25, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by NEAL HART, Attorney, Little Rock, Arkansas.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on August 2, 2005, in Fort Smith, Arkansas. A pre-hearing order was entered in this claim on July 5, 2005. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On June 29, 2004, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$453.00 for total disability and \$340.00 for permanent partial disability.
3. On June 29, 2004, the claimant sustained a compensable injury to his right shoulder.

4. There is no dispute at present over the payment of medical expenses or temporary total disability benefits.

By agreement of the parties, the issue to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to a second opinion on the extent of permanent physical impairment.

In regard to this issue, the claimant contends:

"Claimant has been provided with (for lack of a better term) an "inverse" impairment rating by Dr. Stephen Heim. This rating: 1. Makes no rational sense, and 2: Is contrary to the AMA Guides, 4<sup>th</sup> Edition. In order to clarify the issue, claimant respectfully requests that the Commission direct respondents to pay for an IME conducted by the state's preeminent shoulder surgeon, Dr. David Collins."

In regard to this issue, the respondents contend:

"The claimant has requested that the Commission order an Independent Medical Evaluation (IME) because the claimant and his attorney do not like the impairment rating assessed by the claimant's treating physician Dr. Stephen Heim. Dr. Stephen Heim has evaluated and treated the claimant for several years and has performed three surgical procedures on the claimant's right shoulder for two or more injuries, the last of which was the work related injury of June 29, 2004. The claimant's dissatisfaction with Dr. Heim appears solely to be based upon the fact that as a result of the last shoulder surgery, the claimant's permanent impairment was reduced from 30% to the right upper extremity or 18% to the body as a whole to 17% to the upper extremity or 10% to the body as a whole. The respondents contend that there is no authority under the Arkansas Workers' Compensation Act or the Rules of the Commission for the respondents to be ordered to pay for an IME under any circumstances; in the alternative, the respondents contend that even if the Commission does have the authority to order the respondents to pay for an IME, that

authority does not extend to the circumstances of this case where the claimant and his attorney are simply dissatisfied with the fact that Dr. Stephen Heim, who treated the claimant both before and after the June 29, 2004 injury, has stated that the claimant's permanent impairment is less now than it was before the June 29, 2004 injury."

#### DISCUSSION

\_\_\_\_\_The sole issue presented for resolution, at the present time, is the claimant's entitlement to another expert medical opinion on the extent of permanent physical impairment produced by his compensable injury of June 29, 2004. There is no express provision of the Act that entitles the claimant to this requested "second opinion," as a matter of right. Certainly, this Commission has the authority to order medical evaluations, at the respondents' expense, where such an evaluation is necessary to protect the interests of all parties concerned. However, these evaluations are at the discretion of this Commission.

In the present claim, the only expert medical opinion on the existence and extent of permanent physical impairment is that expressed by Dr. Stephen Heim, in his notation of April 21, 2005. In this report, Dr. Heim assessed a permanent physical impairment of 17% to the upper extremity or 10% to the body as a whole for the claimant's most recent injury. However, it is apparent from his report that this assessment of permanent physical impairment is not calculated in a manner that would conform to the Commission's official rating guide, as required by Ark. Code Ann. §11-9-522(g). Dr. Heim clearly states that his assessment was made based upon methods set out in the American Medical Association's Guides to the

Evaluation of Permanent Impairment (Fifth Edition), whereas the current official rating guide is the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fourth Edition).

Historically, assessments of permanent physical impairment were exclusively the function of medical experts. While this Commission could select between the competing ratings of multiple experts, it was not allowed to arrive at an appropriate rating on its own.

However, this is no longer the case. The assessment of permanent physical impairment has been removed from the exclusive province of the medical profession. Under the current Act, it is the responsibility of this Commission to determine the specific percentage or degree of permanent physical impairment in a manner that conforms to the various requirements of the Act and not the medical experts. While expert medical opinion on this issue may still remain helpful, it is no longer absolutely necessary or controlling.

Clearly, Dr. Heim's assessment of permanent physical impairment, as made in his report of April 21, 2005, would not be an appropriate assessment under the Act. However, there would appear to be sufficient medical evidence already in existence to permit a determination of the extent of permanent physical impairment by this Commission, in a manner that would conform to the Act. There is simply no necessity for the delay and added expense of an evaluation and "second opinion" by another medical expert.

The medical evidence presented shows that the claimant's current compensable injury resulted in a second extensive arthroplasty involving his shoulder. I would note that a portion of the surgical or operative report on this procedure is missing from the current record. From what has been presented, it would appear that a determination of the extent of permanent physical impairment could readily be calculated by referring to page 46 and 47, including table 19, of the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fourth Edition). The respondents' argument that the last rating of Dr. Heim was in place of his prior rating, rather than in addition to it, can also be resolved without the necessity of a "second opinion."

After consideration of all the evidence presented, it is my opinion that an additional evaluation and assessment of permanent impairment by another physician is not necessary to protect the rights and interests of all parties concerned. If the parties cannot agree on the appropriate degree of permanent physical impairment, this matter can be resolved by this Commission without the necessity of an additional evaluation and/or rating by another medical expert. Therefore, the claimant's request for such an evaluation and "second opinion" is denied.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 29, 2004, the relationship of employee-employer-carrier existed between the parties.

3. On June 29, 2004, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$453.00 for total disability and \$340.00 for permanent partial disability.
4. On June 29, 2004, the claimant sustained a compensable injury to his right shoulder.
5. There is no dispute, at the present time, over the claimant's entitlement to reasonably necessary medical services at the respondents' expense, and all such expenses have or are being paid.
6. There is no dispute, at the present time, over the claimant's entitlement to temporary disability benefits. All such benefits accruing to date have apparently been paid.
7. The claimant has failed to show by the greater weight of the credible evidence that an evaluation and the rendering of a "second opinion" by a medical expert selected by this Commission is necessary or appropriate in this case.
8. The respondents have controverted the claimant's entitlement to an evaluation and "second opinion" on the extent of permanent physical impairment, resulting from his compensable injury of June 29, 2004.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny the claimants request for an evaluation and

the rendering of a “second opinion” in regard to the extent of permanent physical impairment produced by his compensable injury of June 29, 2004.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge