

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F302526**

**JIMMY F. SINGLETON, EMPLOYEE** **CLAIMANT**

**CITY OF PINE BLUFF, EMPLOYER** **RESPONDENT NO. 1**

**ARKANSAS MUNICIPAL LEAGUE  
WORKERS' COMPENSATION TRUST,  
INSURANCE CARRIER** **RESPONDENT NO. 1**

**DEATH AND PERMANENT TOTAL  
DISABILITY TRUST FUND** **RESPONDENT NO. 2**

**OPINION FILED MAY 12, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on February 11, 2005, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Mr. Kenneth A. Harper, Attorney at Law, Monticello, Arkansas.

Respondents No. 1 represented by Mr. M. Keith Wren, Attorney at Law, Little Rock, Arkansas, standing in for Mr. J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2, the Death and Permanent Total Disability Trust Fund, waived appearance at the hearing, as its issues were not ripe for consideration.

\_\_\_\_\_A hearing was held on February 11, 2005, to determine the extent of claimant's anatomical impairment, if any, and to determine claimant's entitlement to wage loss, if any.

The parties have stipulated to the existence of the employee-employer relationship on March 1, 2003, when claimant sustained compensable injuries to his head and left ankle. It was further stipulated that claimant's earnings were sufficient to entitle him to weekly indemnity benefits of \$440.00 for temporary total disability and \$330.00 for permanent partial disability benefits. The parties additionally stipulated that claimant reached the end of his healing period and maximum medical improvement on March 25, 2004.

\_\_\_\_\_ Claimant contends that he sustained a compensable injury on March 1, 2003, to both his left ankle, where he suffered a gunshot wound, as well as his head/brain area, where he suffered at least one severe blow. Claimant contends that he has experienced blurred vision, constant severe headaches, and ankle pain that causes him to walk with an antalgic gait, as well as other problems, as a compensable consequence of his injuries. He further contends that he has received an anatomical impairment rating of 8 percent to his left ankle and 30 percent to the body as a whole, as a result of his injuries. Claimant asserts that he is permanently and totally disabled. In the alternative, claimant contends he is entitled to his anatomical impairment ratings, as well as wage loss on his body-as-a-whole rating, and attorney's fees.

Respondents contend that claimant is not permanently and totally disabled. Respondent-carrier No.1 contends that it has paid and continues to pay reasonable and necessary medical benefits for claimant's compensable injuries. It contends that

claimant's eye problems, particularly his glaucoma, is neither a compensable injury nor a compensable consequence of his March 1, 2003, injury. Respondents No. 1 further contend that the claimant's healing period ended on or about March 25, 2004, when his physician, Dr. Barry Baskin, issued his opinion as to claimant's mental status impairment, emotional impairment, and an impairment to claimant's lower extremity.

Respondents No. 1 disagree with Dr. Baskin's impairment ratings and contend that the claimant has no ratable impairments and is not entitled to wage loss disability. Respondents No. 1 controvert any impairment ratings claimant has received from any doctor. Respondents No. 1 assert that bullet fragments in the ankle are not a rateable condition and that there is no objective basis for a rating based upon an antalgic gait or any other objective findings to sustain or support an anatomical impairment rating to the ankle.

With regard to claimant's head injury, respondents contend that there are no objective findings to support a permanent impairment rating for a head or mental injury. Respondents No. 1 assert that the report of Dr. Oglesby, which indicates that claimant does not have an impairment rating for his head injury, is entitled to more weight and credibility than that of Dr. Baskin, who is a physiatrist and who is the physician who issued claimant's anatomical impairment ratings.

In the alternative, respondents No. 1 contend that, should claimant be entitled to indemnity benefits for post-traumatic stress syndrome or for any other reason, respondents No. 1 shall have credit for benefits paid after March 25, 2004. Lastly, respondents No. 1 contend that if claimant is unable to work, his disability is due to claimant's non-compensable illnesses and conditions coupled with his current emotional state. Respondents No. 1 contend that claimant is not entitled to wage loss or permanent and total disability based upon the fact that if there is any anatomical impairment to the ankle, claimant is only entitled to the benefits allowed under Ark. Code Ann. § 11-9-521, as that injury is a scheduled injury.

Respondent No. 2, the Death and Permanent Total Disability Trust Fund, being implicated only in the event that the claim is found to be compensable and permanent and total disability is awarded, contends that respondents No. 1 must first pay permanent partial disability in the form of the anatomical ratings for claimant's compensable injury before payment of permanent total disability benefits. Additionally, respondent No. 2 contends that respondent-carrier No. 1 is not entitled to credit against its \$75,000.00 maximum for payment of the claimant's permanent partial anatomical ratings for the compensable injuries.

#### **STATEMENT OF THE CASE**

Claimant is a thirty-nine-year-old man who was working as a patrol officer for respondent-employer on March 1, 2003, when he was involved in an altercation.

Claimant testified that he has been a police officer since he was twenty-one, and had began working for respondent-employer on January 5, 2003. Claimant has had highly specialized certified training as a firearms instructor, as well as a radar instructor, and a K-9 instructor.

Claimant testified that on the night of March 1, 2003, he had been patrolling his assigned zone for about an hour when he came upon a vehicle that was stopped in the road with the hood half-way up. He testified that he thought the vehicle was having mechanical problems, so he checked out with the radio dispatcher as a “motorist assist.” Claimant testified that there was an individual standing at the front of the vehicle and, when claimant got out of his patrol unit, the two of them met walking to one another at the bed of the individual’s pick-up truck. Claimant testified that, at that time, he could smell the odor of what he believed to be marijuana.

Based upon the odor of marijuana, claimant then began a pat-down search of the individual and, when claimant was searching on the left side, the individual came around with his right hand and stuck a pistol in claimant’s stomach. Claimant testified that he dropped his flashlight and grabbed the gun with one hand and the individual’s arm with claimant’s other hand, to try to control the direction of the gun. The two began to struggle, fighting over the gun, all the while claimant was trying to keep it down range. The gun discharged into claimant’s left ankle. Claimant testified that he did not even realize at that time that he was shot. Claimant testified that as he

and the individual continued to struggle, claimant was knocked unconscious by the other individual who had been in the truck. Claimant has no memory of what took place between the time he was knocked unconscious and the time that he arrived at Jefferson Regional Medical Center.

Claimant testified that he was shot in the boot, right up under the thumb hold, and that the bullet traveled down his boot and into his ankle joint. He testified, and medical records confirm, that there are still bullet fragments in his ankle today, lodged between the nerve and an artery. Medical records reflect that claimant's physicians believed it would be better to leave the bullet fragments in his ankle, rather than attempt to surgically remove them.

Further, as a result of the blow to claimant's head by the second individual, claimant also sustained a concussion. Claimant testified that pavement was imbedded in his right eyebrow. Claimant testified, his wife testified, and medical records are clear that, as a result, he has had some subtle memory problems, nightmares, severe depression, severe headaches, blurred vision, and has been diagnosed as having post-traumatic stress disorder. Claimant testified, and medical records indicate, that prior to this incident, claimant had no need to wear prescription glasses but is now required to and has, further, been diagnosed with glaucoma.

Claimant testified that he continues to have pain in his ankle and that he has had a headache every day since March 1, 2003. Claimant testified regarding a laundry

list of medications he takes for pain and eye pressure, shaking/tremors, short-term memory loss, depression, sleeplessness, nausea, and muscle spasm. Claimant testified that he “could not function” without these medications, which he had no need to take prior to this incident. Claimant testified, however, that the medications he takes prevent him from doing lots of things. Claimant testified that he has gained at least forty pounds since the incident and has no sex drive at all. He testified that he can no longer teach firearms classes and cannot run sufficiently to pass a physical exam.

Claimant testified that he attempted to work for a period of time following the incident for the Drew County Sheriff as a criminal investigator. However, after he worked a couple of hours each day for three days, claimant simply “could not handle it.” He testified that, due to the extent of his injuries, he had to take early retirement from the police force. He, therefore, draws his retirement, as well as social security disability. Claimant testified that although he does receive retirement and disability benefits, he now has no insurance or other benefits.

Claimant’s wife, to whom he has been married for fifteen years and with whom he shares an eleven-year-old daughter and an eighteen-year-old son, testified that she gives him all his medications. She testified that his personality has changed since the incident, that he is depressed and unable to cope, and is irritable. She testified that she has to give him medication to settle him down at times.

Claimant testified, and medical records indicate, that claimant has been seen by numerous doctors, including a neurologist and ophthalmologist. All records indicate that claimant suffers from blurred vision, and claimant was diagnosed post-injury with glaucoma; however, no medical opinion was offered to connect claimant's glaucoma with this injury.

Claimant was eventually sent by respondents No. 1 to Dr. Barry Baskin, a rehabilitation specialist. Claimant testified that he continues to see Dr. Baskin every three months and that Dr. Baskin keeps his medications filled. Claimant further testified that he continues to see his family physician, Dr. McKeever, every month.

Dr. Baskin's clinic notes of March 25, 2004, state, in part, as follows:

Mr. Singleton is 1 year out from his injury. He has mild residual traumatic brain injury type findings. He has diagnosis of post traumatic stress disorder. He has residual antalgic gait on the left due to a gunshot wound in the left foot. Left foot pain. Again, mild cognitive deficits.

Using the AMA Guidelines Fourth Edition, Page 142, Table 2, under mental status impairments, Mr. Singleton has a mild mental status impairment but he is able to perform satisfactorily most activities of daily living. He has an 8% impairment to the whole person based on mental status impairment. In Table III, Page 142, emotional and behavior impairment, Mr. Singleton would have an impairment in the mild category which would give him a 10% whole person impairment rating. Due to the patient's post traumatic headaches, which seem to be migraine in nature, he would have an 8% whole person impairment rating. Due to the patient's bullet wound to the left foot with antalgic gait using Table 13, Page 148,

he would have an 8% impairment rating to the whole person.

Using the combined chart on Page 322, Mr. Singleton would have 30% impairment to the whole person . . . .

Dr. W. R. Oglesby, the Medical Director of Delta Counseling Associates, opined as follows in a letter written on August 5, 2004, to respondent-carrier No. 1:

This is in response to your 4/29/2004 letter and a 3/25/04 clinic note from Barry D. Baskin, M.D., regarding Mr. Jimmy Singleton. My verbal response was given to you on the telephone on 7/27/04.

Mr. Jimmy Singleton was seen at Delta Counseling Associates earlier this year and terminated treatment only after a few visits. His diagnoses were Depression and Post Traumatic Stress Disorder, which are treatable conditions from which full recovery was *expected*. Any mental impairment he may have had at the time of his visits here was *considered* temporary.

We usually do not give disability or impairment ratings, however, in reviewing Dr. Baskin's Clinic Note, I *do not agree* with his conclusion regarding the percentage of mental impairment *or that Mr. Singleton was at a point of maximum improvement*.

[Emphasis added.]

#### **FINDINGS OF FACT**

1. The stipulations agreed to by the parties herein are accepted as fact;
2. Claimant has proven by a preponderance of the evidence that his  
ophthalmic problems and conditions, as well as his post-traumatic stress

disorder are compensable consequences of his compensable injuries of March 1, 2003;

3. Claimant is entitled to treatment, both past and future, for complaints associated with his March 1, 2003, injuries, including his ophthalmic difficulties, specifically blurred vision, as well as post-traumatic stress disorder;
4. Claimant is entitled to indemnity benefits for post-traumatic stress syndrome; respondents No. 1 shall have credit for any benefits paid after March 25, 2004.
5. Claimant is entitled to the 8 percent rating to his lower extremity, as well as the 30 percent rating to the body as a whole;
6. Claimant has experienced a 50 percent wage loss over and above his 30 percent impairment rating to the body as a whole.
7. Respondents have controverted the compensability of claimant's ophthalmic injuries, claimant's entitlement to the impairment ratings given, as well as claimant's entitlement to wage loss disability.

### **DISCUSSION**

A claimant has the burden of proving the compensability of his claim by a preponderance of the evidence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998); *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d

677 (1998). An accidental injury is caused by a specific incident, identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i) (2003). For an accidental injury to be compensable, the claimant must show that he sustained an accidental injury; that it caused internal or external physical injury to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. *Id.* Additionally, the claimant must establish a compensable injury by medical evidence, supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16). The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

It is within the Commission's sole discretion to determine the credibility of each witness and the weight to be given to their testimony, *Johnson v. Hux*, 28 Ark. App. 187, 772 S.W.2d 362 (1989), and it is not required to believe or disbelieve the testimony of any witness. *Green v. Jacuzzi Brothers*, 269 Ark. 733, 600 S.W.2d 448 (Ark. App. 1980). The Commission may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Univ. of Ark. Med. Sciences v. Hart*, 60 Ark. App. 13, 958 S.W.2d 546 (1997).

Further, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003). It is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra*; *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

In this case, Dr. Baskin, to whom claimant was sent by respondents No. 1, issued impairment ratings to claimant. Dr. Oglesby, whom respondents contend offers a more credible opinion than Dr. Baskin, admits that at the time claimant was seen by Delta Counseling, his condition was “considered temporary” and that he was suffering from conditions from which a full recovery is “expected.” However, in noting that he disagreed with Dr. Baskin’s impairment ratings, Dr. Oglesby also noted that he “disagreed” that claimant had, as of March 25, 2004, reached maximum medical improvement. In this examiner’s opinion, Dr. Baskin’s opinion and ratings of impairment are credible.

Further, claimant testified, and the medical records reflect, that claimant had no prior eye problems before this incident. He was not having problems and was not

seeking medical treatment for his eyes prior to March 1, 2003. While it is true that claimant was diagnosed, post-injury, with glaucoma and no medical opinion was offered to connect claimant's glaucoma with this injury, the fact remains that he did not have problems with his eyes prior to the incident, but immediately began complaining of blurred vision following March 1, 2003. His ophthalmic problems are obviously, in this examiner's opinion, a compensable consequence of his March 1, 2003, compensable head injury.

In regard to wage loss disability, claimant's entitlement to permanent disability benefits is controlled by Ark. Code Ann. § 11-9-522 (Repl. 2002), which states in pertinent part:

(b)(1) In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

Pursuant to this statute, when a claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission has the authority to increase the anatomical rating, and it can find a claimant totally and permanently disabled based upon wage-loss factors. *See Whitlatch v. Southland Land & Development*, CA 03-736 (Ark. App. 1-21-2004); *Cross v. Crawford County*

*Memorial Hospital*, 54 Ark. App. 130, 923 S.W.2d 886 (1996). The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Emerson Electric v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. *Eckhardt v. Wills Shaw Express, Inc.*, 62 Ark. App. 224, 970 S.W.2d 316 (1998). In considering factors that may affect an employee's future earning capacity, the court considers the claimant's motivation to return to work, since a lack of interest or a negative attitude impedes our assessment of the claimant's loss of earning capacity. *Ellison v. Therma Tru*, 71 Ark. App. 410, 30 S.W.3d 769 (2000).

Here, the claimant's obvious deep level of depression clearly affects his motivation to return to work. However, he testified that he had attempted to work for the Drew County Sheriff as a criminal investigator and found that, due to the effects of his medication, as well as his inability to concentrate as a result of his head injury, and his pain, he was unable to "handle" the work. Moreover, claimant is a very young man, who was a highly trained and experienced police officer, but now realizes that he will most likely be unable to return to the law-enforcement field. In this examiner's opinion, there are many jobs which claimant would otherwise be more than suitable to attempt; however, due to the severity of his injuries and the pain with

which he lives daily, it is unlikely that he would be able to ever return to the workforce in any full-time, meaningful capacity.

It is this examiner's opinion that claimant has met his burden of proving by a preponderance of the credible evidence that he is entitled to compensation for his eye injuries, post-traumatic stress disorder, the impairment ratings issued by Dr. Baskin, and wage loss disability experienced over and above the impairment rating.

**AWARD**

Respondents are directed to pay the claimant benefits in accordance with the findings of fact above.

Respondents are directed to pay the claimant's attorney, Mr. Kenneth A. Harper, the maximum attorney's fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge