

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F411620

CARL L. WALDEN, EMPLOYEE	CLAIMANT
CENTRAL UTILITY PIPELINE, EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 13 , 2005

Hearing before Chief Administrative Law Judge David Greenbaum on August 8, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Robert Blatt, Attorney-at-Law, Fort Smith, Arkansas.

Respondents represented by Mr. Phillip Cuffman, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted August 8, 2005, to determine the extent of claimant's permanent disability.

A prehearing conference was conducted in this claim on May 25, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. However, the claimant dismissed the issue concerning a request for a penalty for late payment of medical bills. A copy of the Prehearing Order was introduced, without objection, as "Commission's Exhibit 1."

It was stipulated that the employment relationship existed between the parties at all relevant times, including April 14, 2004; that the claimant sustained a compensable cervical injury as the result of a motor vehicle accident on said date;

that he earned sufficient wages to entitle him to compensation rates of \$434.00 per week for temporary total disability and \$326.00 per week for permanent partial disability; and that the respondents had controverted the claim in its entirety for purposes of attorney's fees. It was further agreed that the claimant's healing period ended on July 26, 2004; that the respondents had paid appropriate temporary total disability benefits, to date, and had accepted, and were in the process of paying, a twenty percent (20%) whole body impairment assigned by Dr. Frank S. Letcher.

By agreement of the parties, the sole issue to be presented for determination concerned the claimant's entitlement to wage-loss disability, if any. Again, at the prehearing conference, the claimant raised an issue concerning whether a statutory penalty should attach due to non-payment or late payment of medical bills which was dismissed at the hearing because respondents had paid or were in the process of paying related medical expenses.

Claimant contended, in summary, that he had sustained substantial wage-loss in excess of the admitted impairment in an amount to be determined by this Commission; and that a controverted attorney's fee should attach to all permanent disability accepted and/or awarded. Conversely, the respondents maintained that the claimant was not entitled to wage-loss disability in excess of the admitted impairment.

The claimant was the only witness to testify. The record is composed solely of the transcript of the August 8, 2005, hearing containing numerous medical

reports.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that he is entitled to permanent partial disability benefits in the amount of sixty percent (60%) to the body as a whole as the result of his April 14, 2004, compensable injury and surgery, specifically, a twenty percent (20%) whole body impairment assigned by Dr. Frank Letcher, together with a forty percent (40%) wage-loss disability.

#### DISCUSSION

The relevant facts in this case are undisputed. The claimant, Carl L. Walden, is seventy-four (74) years old. The claimant has worked primarily in the construction industry his entire, adult life which has required heavy, manual labor. The claimant

was employed by Central Utility Pipeline for more than eighteen (18) years prior to April 14, 2004. The claimant was considered a working superintendent, but was required to perform strenuous activities, including lifting pipe fittings up to one hundred (100) pounds on a frequent basis. The claimant was a salaried employee, earning \$650.00 per week. In addition to his full-time employment, the claimant has been receiving social security early retirement since age sixty-two (62). The claimant was involved in a work-related motor vehicle accident on April 14, 2004, when he was rear-ended by another driver. The claimant sustained a cervical injury. His primary treating physician has been Dr. Frank S. Letcher, a neurosurgeon in Tulsa, Oklahoma. The claimant required an anterior discectomy and fusion at C5-6 and C6-7. As reflected by the stipulations, the parties agreed that the claimant's healing period ended July 26, 2004, at which time, Dr. Letcher opined that x-rays reflected excellent stability to the fusion sites and permitted the claimant to return to work free of physical restrictions. However, it is apparent from Dr. Letcher's June 23, 2004, report that the claimant was permitted to increase his level of activities back to normal with the exception of heavy, physical labor and athletics. It is equally clear from the claimant's job description that his work with the employer herein involved heavy, manual labor. Accordingly, the claimant exercised good judgment by not returning to work for his prior employer. The claimant did show a strong work ethic by seeking and obtaining work on his own. At the time of the within hearing, the claimant was employed by the Wilburton Housing Authority

in Wilburton, Oklahoma, performing light-duty, general maintenance. He stated that he was not required to lift more than twenty-five (25) pounds with his current employer. The claimant was earning \$8.00 per hour while working part-time only. The claimant candidly acknowledged that the reason he was only working part-time is because the position with the Housing Authority was not full-time employment. Although the claimant opined that he did not believe that he could work a full work-week, there is no credible evidence that he is restricted in any way, save, avoiding heavy lifting. It would also be reasonable that the claimant should avoid overhead work in light of his multiple level fusion.

The claimant sustained an injury to that portion of his body which is not scheduled under the Act. Therefore, the claimant's entitlement to permanent disability benefits is controlled by Ark. Code Ann. §11-9-522. Permanent disability compensation is paid where the permanent effects of a work-related injury incapacitate the worker from earning the wages which he was receiving at the time of the injury. When making a determination concerning the degree of permanent disability sustained by an injured worker with an unscheduled injury, the Commission must consider medical evidence demonstrating the degree to which the worker's anatomical disabilities impair his earning capacity, as well as other factors such as a worker's age, education, work experience, and other matters which may reasonably be expected to affect the worker's future earning capacity. Such other matters are motivation, post-injury income, credibility and demeanor.

*Glass vs. Edens*, 233 Ark. 786, 346 S.W.2d 685 (1961); *Curry vs. Franklin Electric*, 32 Ark. App. 168, 798 S.W.2d 130 (1990); *Cross vs. Crawford County Mem. Hosp.*, 54 Ark. App. 130, 923 S.W.2d 886 (1996). When it becomes evident that the worker's underlying condition has become stable and that no further treatment will improve the condition, the disability is deemed to be permanent. If the employee is totally incapacitated from earning a living at that time, he is entitled to compensation for permanent and total disability. *Minor vs. Poinsett Lumber & Manf. Co.*, 235 Ark. 195, 357 S.W.2d 504 (1962).

Unfortunately, in the instant claim, the claimant has not undergone a functional capacity evaluation. Further, the claimant did not seek, and the respondent did not provide the services of a vocational rehabilitation consultant to determine the claimant's vocational potential. However, in view of the claimant's advanced age, seventy-four (74), his prior work experience, and his significant physical impairment and restriction against heavy lifting, it appears that the claimant, on his own, secured suitable employment, earning substantially more than minimum wage, yet significantly less than the wages he was earning at the time of his compensable injury. After full consideration of the facts, issues, and the law, it is hereby determined that a wage-loss disability of forty percent (40%) to the body as a whole fairly and accurately reflects the extent of claimant's wage-loss disability.

#### AWARD

Respondent, St. Paul Travelers Insurance Company, is hereby directed and

ordered to pay, to the claimant, permanent disability benefits at the rate of \$326.00 per week, beginning July 27, 2004, and continuing for 270 weeks, representing an overall permanent disability of sixty percent (60%) to the body as a whole, specifically, the twenty percent (20%) admitted impairment and the forty percent (40%) wage-loss disability awarded herein.

All accrued benefits shall be paid in lump sum and without discount, and respondents may claim credit for all permanent disability previously paid.

Additionally, claimant's attorney, Mr. Robert Blatt, is hereby awarded the maximum statutory attorney's fee on this entire Award, to be paid pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge