

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501449

BENJERMAN GILBRETH	CLAIMANT
WILLSTAFF CRYSTAL	RESPONDENT
AMERICAN HOME ASSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 19, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by MELISSA ROSS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on February 6, 2006, in Springdale, Arkansas. A pre-hearing order was entered in this case on November 29, 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. Immediately prior to the commencement of the hearing, an additional stipulation was offered, that being that the respondents had accepted liability for permanent partial disability benefits attributable to a 10% permanent physical impairment to the right long or second finger, as assessed by Dr. Allard. A copy of this pre-hearing order with that amendment noted thereon, was made Commission's Exhibit No. 1 to the hearing.

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

1. On December 3, 2004, the relationship of employee-

employer-carrier existed between the parties.

2. The appropriate weekly compensation rates are \$213.00 for total disability and \$160.00 for permanent partial disability.
3. On December 3, 2004, the claimant sustained a compensable injury to his right middle finger.
4. There is no dispute over medical expenses or temporary disability benefits, at the present time.
5. The respondents have accepted liability for a 10% permanent physical impairment to the right long or middle finger.

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

1. The extent of permanent physical impairment and appropriate permanent partial disability benefits.
2. Appropriate attorney's fees.

In regard to these issues, the claimant contends:

“Claimant was injured on December 3, 2004. His right middle finger tip was cut off when he was working on a jammed machine at Baldor Electric.”

In regard to these issues, the respondents contend:

“Respondents contend that all appropriate benefits have been and are continuing to be paid with regard to this claim.”

DISCUSSION

The central issue in this case is the extent of the permanent physical impairment that has resulted from the claimant's compensable injury of December 3, 2004. There is no question that

the claimant has sustained some degree of permanent physical impairment, as a result of the effects of this compensable injury. In fact, the respondents have accepted liability for permanent partial disability benefits attributable to a 10% permanent physical impairment to the second finger that was assessed by Dr. Mark Allard, the claimant's primary treating physician. Thus, the burden rests upon the claimant to prove that he has sustained permanent physical impairment in excess of 10% to his second finger.

The evidence shows that the claimant sustained a crush type injury to the end of his second finger on December 3, 2004. There was extensive trauma and damage to the soft tissue of the distal phalanx of the finger and a severe commuted fracture or fragmentation of the distal portion of the distal phalanx of the second third finger. This resulted in the immediate loss of the claimant's finger, nail, skin, and extensive soft tissue, as well as some bone fragments of the distal portion of the claimant's distal phalanx of the right finger.

The medical evidence indicates that the extensive commuted fracture of the distal phalanx or phalange healed in such a manner as to cause the tip or "tuft" of this bone to be grossly deformed. This bony deformity produced significant continuing symptoms and limited the claimant in the use of this finger and his hand in general.

On July 19, 2005, Dr. Allard performed a corrective surgical procedure (an ostectomy) to remove that portion of the distal

phalanx of the claimant's second finger where the commuted fracture had not properly fused or healed. This corrective surgery resulted in an approximate 20% loss or amputation of the distal phalanx or phalange of the claimant's second finger. This degree of loss was calculated by the measurement of x-rays by Dr. Allard.

It was Dr. Allard's opinion that this 20% loss of the distal phalanx or phalange represented a 10% permanent physical impairment to the claimant's right long or second finger. Although Dr. Allard did not indicate whether or not this rating was calculated in a manner that conformed to the Commission's official rating guides, (i.e. the Fourth Edition of The American Medical Association's Guides to the Evaluation of Permanent Impairment), such a fact is immaterial. As the type of injury sustained by the claimant was in the form of an "amputation," I find that the appropriate method for assessing the degree of permanent physical impairment is controlled by the provisions of Ark. Code Ann. §11-9-521(b) and Rule 099.12 of this Commission, rather than any method suggested by the official rating guide.

Rule 099.12 of the Commission states:

"Loss by amputation of one-half or less than one-half of the terminal phalange of a member shall be one-half of the loss of the phalange, or one-fourth of the digit. Loss of more than one-half of the terminal phalange of a member shall constitute loss of the phalange, or one-half of the finger. Loss of more than one phalange by amputation shall constitute loss of a digit, or all of the finger. More than one phalange means any bony loss in excess of the first phalange by reason of amputation but not the surgical rounding of the joint, or the smoothing of the articular surface, done for the convenience of the injured employee.

Ordinarily, the base of the nail may be used as a gage of half of the phalange. In disputed cases, more accurate measurement may be made by the use of x-rays."

In the present case, the evidence presented clearly shows that the claimant has lost, by amputation, less than one-half of the terminal or distal phalange (phalanx) of his second finger. While actual amputation may not have occurred simultaneous with the initial injury, the subsequent surgical amputation was directly required or necessitated by physical damage caused by the compensable injury. This subsequent amputation was obviously done for therapeutic and corrective purposes (i.e. to alleviate the claimant's continuing symptoms of pain and sensitivity and to restore use or function of the finger), rather than merely for the convenience of the claimant or cosmetic purposes.

Therefore, it is my opinion that the claimant has experienced, by amputation, a permanent physical impairment that would be in the amount of one-fourth or 25% of his right second finger. Under Ann. §11-9-521(a)(8), he would be entitled to 9.25 weeks of permanent partial disability benefits for this loss.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On December 3, 2004, the relationship of employee-employer-carrier existed between the parties.
3. On December 3, 2004, claimant earned wages sufficient to entitle him to weekly compensation benefits of \$213.00 for total disability and \$160.00 for permanent partial

disability.

4. On December 3, 2004, the claimant sustained a compensable injury to his right second finger.
5. There is no dispute, at the present time, over the claimant's entitlement to the payment of medical expenses or temporary disability benefits and all such appropriate benefits have or will be paid.
6. The respondents have accepted liability for and have paid permanent partial disability benefits equivalent to a 10% permanent physical impairment to the middle or second finger.
7. The claimant's compensable injury of December 3, 2004, resulted in the amputation of 20% of the distal phalange of his right second finger.
8. Under Ark. Code Ann. §11-9-521 and Rule 099.12 of this Commission, the claimant would be entitled to permanent partial disability benefits attributable to a 25% permanent physical impairment or loss by amputation of the second finger of his right hand (9.25 weeks).
9. The respondents have controverted the claimant's entitlement to any permanent partial disability benefits in excess of that attributable to a 10% permanent physical impairment of the second or middle finger.
10. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted permanent partial disability benefits herein awarded.

ORDER

The respondents shall pay to the claimant permanent partial disability benefits equivalent to a 25% permanent loss or impairment of the second finger of his right hand and are entitled to credit for all permanent partial disability benefits previously paid.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee, based upon the controverted permanent partial disability benefits herein awarded. One-half of this fee is the obligation of the respondents in addition to any benefits herein awarded to the claimant. The remaining one-half of this fee is to be withheld by the respondents from the additional permanent partial disability benefits herein awarded to the claimant.

All benefits herein awarded have heretofore accrued and are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge