

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F201084**

<b>JACK HARRISON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>HAI SERVICES, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>VALLEY FORGE INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED APRIL 3, 2006**

Hearing before Administrative Law Judge J. Mark White on February 9, 2006, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Greg Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. Frank Newell, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On February 9, 2006, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on December 5, 2005, and a Prehearing Order was entered that same day. A copy of the December 5, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the claimant reached the end of his

healing period on August 19, 2005; and that this claim was the subject of a prior Administrative Law Judge Opinion filed August 19, 2004, which opinion is now final. The stipulations, findings of fact, and conclusions of law set forth therein are hereby incorporated by reference.

The parties agreed that the issues to be presented were whether the claimant is entitled to additional permanent partial disability benefits; and controversion and attorney's fees. At the hearing, the parties agreed to waive the issues of rehabilitation benefits and additional medical treatment.

The claimant contends that he has sustained a fifty percent (50%) permanent impairment to the left lower extremity, which rating remains unpaid; and that respondents should be ordered to pay attorney's fees as permitted by law.

Respondents contend that Dr. Robert Holladay's August 19, 2005 permanent physical impairment rating is invalid to the extent that it includes a component for pain; and that deducting invalid components from Dr. Holladay's fifty percent (50%) rating to the leg yields a thirty-seven percent (37%) rating to the leg. At the hearing, the respondents acknowledged the claimant is entitled to a permanent anatomical impairment rating of at least 37% to the left lower extremity for his compensable injury, and the respondents indicated their intent to immediately compensate the claimant for this 37% impairment rating, including attorney's fees.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of 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 evidence that he is entitled to permanent partial disability benefits in the amount of 37% to the left lower extremity, which rating the respondents have agreed to pay.
4. The respondents have controverted all benefits sought herein, specifically including the entire permanent anatomical impairment of 37% to the left lower extremity.

## DISCUSSION

### I. History

The claimant sustained a compensable injury to his left knee on January 7, 2002, when he bent over to pick up a piece of conduit and his knee “popped.” The respondents accepted the injury as compensable and paid benefits. Two arthroscopic surgeries failed to relieve the claimant’s symptoms, and the treating physician, Dr. Jeffrey DeHaan, ultimately recommended a total knee replacement. In an Opinion filed August 19, 2004, a total knee replacement was found to be reasonably necessary in connection with the compensable injury, and the claimant was awarded additional indemnity and medical benefits. That decision was not appealed by either party.

Dr. DeHaan performed the total knee replacement surgery on December 2, 2004. The medical records reflect that the claimant’s condition improved after surgery, despite some continued pain. A functional capacity evaluation performed June 29, 2005, found the claimant capable of performing medium-level work, though the evaluation report noted that the claimant gave an “unreliable effort.” On August 19, 2005, Dr. Robert Holladay evaluated the claimant and assigned him a permanent anatomical impairment rating of 50% to the left lower extremity. No other anatomical impairment rating has been assigned by any other physician.

## II. Adjudication

Permanent impairment is “any permanent functional or anatomical loss remaining after the healing period has been reached.” *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994), citing *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). Any determination of permanent physical impairment must be supported by objective and measurable physical or mental findings. Ark. Code Ann. § 11-9-704(c)(1)(B). Benefits for permanent impairment may be awarded only upon a showing that the compensable injury was the major cause of the impairment. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a). Complaints of pain may not be considered in determination of anatomical or physical impairment. Ark. Code Ann. § 11-9-102 (16)(A)(ii)(a).

Dr. Holladay’s written opinion clearly sets forth the method he followed in assigning the claimant an impairment rating of 50% to the left lower extremity. Dr. Holladay worked from Tables 64 and 66 of Chapter 3 of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> Edition (hereinafter “*AMA Guides*”). Table 66 assigns points for pain, range of motion, and stability, with points deducted for flexion contracture, extension lag, and alignment. *AMA Guides*, § 3.2i. The final point total is then transferred to Table 64 to calculate a percentage of impairment. *Id.* Dr. Holladay reached the 50% anatomical impairment rating by

assigning 10 points for continual moderate pain; had he not considered pain, an additional 40 points would have been added to the point total, reducing the final impairment rating to the 37% accepted by the respondents.

In its present form, the Workers' Compensation Act flatly prohibits consideration of pain in the assignment of a permanent impairment rating. Ark. Code Ann. § 11-9-102 (16)(A)(ii)(a). Though the Commission has adopted the *AMA Guides* as an impairment rating guide, such adoption is "exclusive of any sections which refer to pain." A.W.C.C. Rule 099.34 (July 1, 1995). Therefore, I must conclude that in determining the impairment sustained as a result of a total knee replacement, residual pain may not be taken into account.

Given the above, I find that the claimant has proven by a preponderance of the evidence that he is entitled to permanent partial disability benefits only in the amount of 37% to the lower extremity, which rating the respondents have already accepted and agreed to pay.

## **AWARD**

The claimant has proven by a preponderance of the evidence that he is entitled to permanent partial disability benefits in the amount of 37% to the left lower extremity, which rating the respondents have accepted and agreed to pay. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Greg Giles, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted and awarded herein, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge