

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F112440

CHARLES MAHAN	CLAIMANT
TRI STATE METAL WORKS	NO. 1 RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, INC. INSURANCE CARRIER	NO. 1 RESPONDENT
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	NO. 2 RESPONDENT

OPINION FILED JANUARY 19, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents No. 1 represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

Respondent No. 2 represented by JUDY RUDD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

Initially this case was set for a hearing on April 7, 2005, on several issues as set forth in a pre-hearing order dated January 6, 2005. Subsequent to the hearing, the parties entered into an agreed order which was filed with this Commission on May 16, 2005, resolving all but one of the issues to be decided at the full hearing. The parties agreed that agreed joint stipulations would be entered into and briefs would be submitted on the issue yet to be determined.

All parties have agreed that the issue to be determined at this time is whether Respondents No. 1 must first pay the claimant's anatomical ratings prior to payment of any permanent and total disability benefits to which the claimant may be entitled and

whether Respondents No. 1 are entitled to credit for payment of permanent partial anatomical disability benefits against its \$75,000.00 maximum liability pursuant to Ark. Code Ann. §11-9-502(b)(1).

The parties have entered into the following stipulations;

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. The employer/employee/carrier relationship existed between the parties on October 23, 2001, when the claimant sustained a compensable hernia and injury to his back.

3. The claimant's average weekly wage yielded a compensation rate of \$298.00 for total disability.

4. The claimant reached the end of his healing period and maximum medical improvement on March 11, 2004.

5. The claimant is permanently and totally disabled.

6. Respondents No. 1 accepted a 20 percent permanent physical impairment rating to the body as a whole for the claimant's low back and a 100 percent permanent physical impairment rating for loss of the claimant's left testicle.

The documentary evidence submitted in this matter consists of the agreed joint stipulations marked Joint Exhibit No. 1 and the briefs of Respondents No. 1 and Respondent No. 2.

#### DISCUSSION

The parties in the present matter have stipulated that the claimant was permanently and totally disabled. The parties have also stipulated that the claimant's healing period ended on March

11, 2004. There is also a joint stipulation that Respondents No. 1 have accepted a 20 percent permanent physical impairment rating to the body as a whole for the claimant's low back and 100 percent permanent physical impairment rating for loss of the claimant's left testicle. Thomas v. Legacy Insurance Services, Claim Number F100487, Full Commission opinion, May 4, 2005, sets forth that;

Respondent No. 1 must therefore pay the claimant "weekly benefits" representing permanent total disability pursuant to Ark. Code Ann. §11-9-502(b) from the date of the end of claimant's healing period, until the respondent-carrier has paid the claimant \$75,000. Benefits paid pursuant to Ark. Code Ann. §11-9-522(a) are partial benefits and once a determination of permanent and total disability has been made, the benefits due a claimant are no longer governed by 11-9-522 but are found in Ark. Code Ann. §11-9-502(b) and Ark. Code Ann. §11-9-519(e). Thus, when a determination of permanent total disability has been made, the benefits paid by a respondent after the end of the healing period are classified as permanent and total disability benefits under Ark. Code Ann. §11-9-502(b). The statute then provides, "all benefits in excess of seventy-five thousand dollars (\$75,000) shall be payable from the Death and Permanent Total Disability Trust Fund."

Based on the stipulations entered into by the parties as well as the decision rendered by the Full Commission on May 4, 2005, in the Thomas v. Legacy Insurance Services case, Respondents No. 1 are entitled to a credit for the amount of permanent anatomical impairment benefits paid to this claimant against the first \$75,000 of permanent and total disability benefits Respondents No. 1 must pay, thereby reducing the balance of the \$75,000 due from Respondents No. 1.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. The employer/employee/carrier relationship existed between the parties on October 23, 2001, when the claimant sustained a compensable hernia and injury to his back.

3. The claimant's average weekly wage yielded a compensation rate of \$298.00 for total disability.

4. The claimant reached the end of his healing period and maximum medical improvement on March 11, 2004.

5. The claimant is permanently and totally disabled.

6. Respondents No. 1 accepted a 20 percent permanent physical impairment rating to the body as a whole for the claimant's low back and a 100 percent permanent physical impairment rating for loss of the claimant's left testicle.

7. Respondents No. 1 are entitled to a credit for the permanent anatomical impairment rating paid to his claimant against the \$75,000 of permanent and total disability benefits. See discussion above and also see Thomas v. Legacy Insurance Services, Full Commission opinion filed May 4, 2005.

ORDER

Respondents No. 1 are entitled to a credit for the amount of permanent anatomical impairment paid to this claimant towards its first \$75,000 of permanent and total disability benefits.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE