

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D917561

STEVEN TREAT	CLAIMANT
MADISON COUNTY JUDGE	NO. 1 RESPONDENT
AAA RISK MANAGEMENT SERVICES INSURANCE CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT
DEATH & PERMANENT DISABILITY TRUST FUND	NO. 3 RESPONDENT

OPINION FILED JULY 7, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by MARK MARTIN, Attorney, Fayetteville, Arkansas.

Respondents No. 1 represented by MATTHEW MAULDIN, Attorney, Fayetteville, Arkansas.

Respondent No. 2 represented by DAVID PAKE, Attorney, Little Rock, Arkansas.

Respondent No. 3 represented by JUDY RUDD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 11, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 20, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. On April 19, 1989, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his back on April 19, 1989.

4. The claimant is entitled to a weekly compensation rate of \$203.85 for temporary total disability and \$154.00 for permanent partial disability.

5. Respondents No. 1 accepted a 15 percent permanent partial impairment rating.

6. The back surgery of May 10, 2002, has been accepted by Respondent's No. 1 and they have accepted the follow up therefore.

7. The claimant had proven by a preponderance of the evidence that his bowl surgery and subsequent complications thereto are a compensable consequence of his compensable injury.

8. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability up through May 10, 2004. Dr. Knox has set forth that the claimant reached maximum improvement on this date.

9. Respondents No. 1 has failed to prove an entitlement to a credit for temporary total disability from March 24, 2004, to May 10, 2004. See discussion above.

10. The claimant is entitled to an impairment rating of 25 percent to the body as a whole. See discussion above.

11. The respondents should pay to this claimant an additional 10 percent permanent partial impairment.

12. The claimant has failed to prove by a preponderance of the evidence that he is permanently and totally disabled.

13. The claimant has proven by a preponderance of the evidence that he is entitled to wage loss in the amount of 25 percent over and above his 25 percent whole body impairment rating. See discussions above.

14. There is no Second Injury Fund liability in this matter. See discussion above.

15. Respondents No. 1 should pay 35 percent wage loss to this claimant over and above the additional 10 percent impairment which they have previously been ordered to pay. See discussion above.

16. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

By agreement of the parties the issues to litigate are limited to the following:

1. The claimant's correct impairment rating.
2. Permanent and total disability or wage loss over the impairment.
3. Second Injury Fund liability.
4. Controversion.
5. Respondents No. 1's entitlement to a credit for over payment of temporary total disability from March 24, 2004, to May 10, 2004.

In regard to the foregoing issues the claimant contends that he sustained an injury to his spine on April 9, 1989, while in the employment of the Madison County Sheriff's Office. His primary

treating physician is D. Luke Knox, M.D. Dr. Knox treated the claimant conservatively and assessed a 10 percent anatomical impairment on January 26, 1990. The claimant's condition deteriorated and he eventually underwent a back surgery under the care of Dr. Knox on May 10, 2002. Dr. Knox later determined that the claimant reached his maximum medical improvement on May 10, 2004, and assessed an additional 15 percent anatomical impairment on top of the previously assessed 10 percent anatomical impairment for a total of 25 percent to the body as a whole. The respondents controverted the claimant's entitlement to temporary total disability and medical benefits associated with surgical complications after May 10, 2002. An opinion was handed down by the Honorable Elizabeth Danielson, favorable to the claimant, and the respondents appealed. The claimant ultimately prevailed on appeal and the respondents thereafter paid temporary total disability benefits from May 10, 2002, to May 10, 2004. The respondents also paid for medical bills associated with surgical complications. The respondents have voluntarily paid an additional 5 percent anatomical impairment on top of 10 percent previously paid for a total of 15 percent. It is the claimant's position that he is entitled to an additional 10 percent anatomical impairment for a total of 25 percent. The claimant contends entitlement to permanent and total disability and a controverted attorney's fee.

In regard to the foregoing issues Respondents No. 1 contend that they are investigating the extent of claimant's anatomical impairment. Respondents No. 1 contend that claimant cannot prove

entitlement to PTD benefits based on Ark. Code Ann. §11-9-522(b)(c); alternatively, in the event that claimant is awarded PTD benefits, Respondents No. 1 contend that claimant's preexisting right eye problems, which, when combined with his current injury to his low back, produce his current level of disability, therefore, Respondents No. 1 contend that the Second Injury Fund is liable for any PTD or wage loss benefits. Respondents No. contend that payment of anatomical PPD benefits should be applied toward Respondents No. 1's maximum liability of \$75,000.00 for PTD benefits. Respondents No. 1 contend that they are entitled to a credit for an overpayment of TTD benefits between March 24, 2004, the date claimant's campaign for Sheriff began, and May 10, 2004, the date Dr. Knox opined that claimant reached MMI. Respondents No. 1, at the hearing, restated their contentions. See hearing transcript.

In regard to the foregoing issues Respondent No. 2 contends that the claimant cannot prove he is entitled to permanent and total disability benefits. Second, he cannot prove entitlement to any amount of permanent partial disability benefits. Third, Respondents No. 1 cannot prove that there is a "combination of disabilities or impairment" within the meaning of the Second Injury Fund law. Fourth, alternatively, if there is a combination, such combination is not greater than the disability or impairment flowing from the last work injury at the employer, considered alone and of itself.

In regard to the foregoing issues Respondent No. 3 contends that pursuant to Ark. Code Ann. §11-9-525(b)(1), Second Injury Fund liability must be determined prior to consideration of the Death and Permanent Total Disability Trust Fund liability. If the Second Injury Fund is found to not have liability and the claimant is found to be permanently and totally disabled, the Trust Fund stands ready to commence weekly benefits in compliance with Ark. Code Ann. §11-9-502. Therefore, the Trust Fund has not controverted the claimant's entitlement to benefits.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The opinion dated November 15, 2002, which was affirmed and adopted by the Full Commission July 29, 2003, is incorporated by reference. The claimant submitted a packet of medical documentation marked Claimant's Exhibit No. 1 and an additional packet of information marked Claimant's Exhibit No. 2. Respondents No. 1 submitted a surveillance tape and documentation which are marked Respondents No. 1's Exhibit No. 1, medical exhibits marked Respondents No. 1's Exhibit No. 2, non medical which is marked Respondents No. 1's Exhibit No. 3 and the deposition of Doin Wayne Dahlke which is marked Respondents No. 1's Exhibit No. 3. Respondent NO. 2, the Second Injury Fund, submitted documentation marked Respondent No. 2's Exhibit NO. 1.

The claimant objected to Respondents No. 1's Exhibit No. 1, the surveillance tape, as well as Respondents No. 1's Exhibit No. 3, non medical information. After discussion and argument from all

parties, these exhibits were admitted over the claimant's objection. The claimant also objected to the deposition which was marked Respondents No. 1's Exhibit No. 4. After consideration of argument from the parties as well as the briefs submitted concerning the claimant's objection, I find that the deposition should be admitted over the claimant's objection.

DISCUSSION

The claimant testified that he was fifty-four years old and had graduated from Berryville High School. The claimant testified that he has attended several classes through the Arkansas Law Enforcement Academy. The claimant testified that just out of high school he worked at Holiday Island laying water pipe for approximately six months. The claimant testified that in May 1972 he began working for the Carroll County Sheriff's Department as a deputy doing general law enforcement work. The claimant agreed that law enforcement work includes a multitude of different tasks and sometimes requires lifting or subduing disruptive people. The claimant testified that he began working for the respondent on January 1, 1976, and worked there until December 31, 1998. The claimant testified that when he started working for the respondent he worked as a deputy doing general law enforcement work, worked his way up to the Chief Deputy position and was appointed sheriff by the Governor when the then serving sheriff tragically died. The claimant testified that he served as acting sheriff until December 31, 1998. The claimant explained that he could not run for the

position and that he had opposed the newly elected sheriff and, therefore, was not rehired. The claimant testified that his next job was with Washington County in their sheriff's department working court security or as a bailiff in the circuit court system. The claimant testified that after a year and a half at this particular job he had to take early retirement due to the difficulties he was having with pain in his lower back. The claimant testified that he had planned to work at least thirty years and then enter into the drop program before retiring. The claimant testified that his physical condition was deteriorating so rapidly that his ability to work was affected, therefore, he chose to take early retirement. The claimant explained that if he had been able to carry out his plan of working thirty years and then entering into the drop program, his retirement benefits would have been substantially greater. The claimant testified that when he initially retired he was drawing around \$1,800.00 per month and that currently he is drawing approximately \$2,300.00 a month noting that there is a 3 percent increase every July.

The claimant testified that since he ended his job as court officer in June 2000 he and his wife began a business out of their home named T & T Security. The claimant explained that this business is a check recovery business and his role in the business was primarily going around to the different businesses to pick up checks, bring them home and then go to the post office and pick up the mail. The claimant testified that he also answered the phone for the business while his wife did all the bookkeeping and

paperwork. The claimant testified that he would estimate that he worked roughly two to three hours a week in this check recovery business and stated that since the business started in 2001 it has never grossed \$10,000.00 per year. The claimant testified that since this check recovery business began, the number of checks which they handle has decreased due to the automated check clearing system used by several businesses. The claimant testified that they have expanded this business to include repossession of personal property and farm inspections. The claimant testified that his son helps with this business as well as occasionally they contract some labor.

The claimant testified that he is also self employed as a firearms instructor, explaining that he teaches conceal/carry classes. The claimant testified that these classes are given to certify people who wish to carry a concealed weapon within the state. The claimant testified that he has probably put on fifty of these classes since 2001 and that he does charge anywhere from nothing to \$100.00 per person for these classes. The claimant testified that the most he has ever earned in one year for these classes was \$1,100.00. The claimant testified that he ran for sheriff of Madison County in 2004. The claimant testified that the campaign lasted a couple of months and that his son helped him during the campaign. The claimant testified that he lost this race and even if he had won he would not have been able to physically perform the job due to his pain. The claimant testified that his hobbies include shooting and riding his motorcycle. The claimant

testified that he and his wife had been to some out of state bike rallies and they have also attended some local rallies. The claimant testified that when they go to out of state rallies he transports his motorcycle on a trailer. The claimant testified that on these trips his wife helps with the driving and that they stop whenever they need to. The claimant testified that the last time he rode his motorcycle was in October 2005. The claimant was asked about a surveillance tape which had been introduced into evidence and the claimant admitted that it was he and his wife on the motorcycle. The claimant testified that on that trip which was in the last part of September early part of October, he and his wife road from Huntsville to Fayetteville to meet friends at Jose's and then they drove back.

The claimant testified and the parties have stipulated that he sustained a compensable injury to his low back while working for the respondent on April 19, 1989. The prior opinion dated November 15, 2002, discusses the claimant's medical history as it relates to his compensable injury. The claimant initially underwent back surgery in late 1989 performed by Dr. Luke Knox. Following this surgery the claimant continued to have problems but was able to return to work with limitations. Dr. Knox assessed the claimant with a 10 percent whole body impairment as a result of his back problems and surgery. The November 15, 2002, opinion discusses at length the claimant's second back surgery performed by Dr. Luke Knox on May 10, 2002. Complications arose as a result of this back surgery and the claimant also underwent surgery to repair a

ruptured bowel and the placement of a temporary colostomy performed by Dr. Magness on May 15, 2002. On June 14, 2002, the claimant was readmitted to the hospital for the removal of a foreign body in his left paracolic gutter. Dr. Magness performed this operation and removed a 14 inch by 14 inch surgical sponge. While still in the hospital on June 24 it was discovered that the claimant had developed abscesses in his abdomen which required that Dr. Ben-Avi put in drainage tubes to drain the multiple abscesses. When the claimant was released from the hospital on July 1, 2002, he had instructions that the closure of his colostomy would have to be postponed allowing time for the infections to completely resolve. Dr. Jerry Doorman reversed the claimant's colostomy on August 5, 2002, and the claimant was discharged from the hospital on August 12 with medications.

The claimant testified that besides all the problems relating to his back and the consequences thereof, he also has been diagnosed with chronic lymphonmic leukemia in March 2005. The claimant testified that he has been treated at M.D. Anderson in Houston for this problem and it is his understanding that it is currently in remission. The claimant testified that he was involved in a rear-end collision in January 2004 when a lady hit him. The claimant testified that he was treated at Springdale Memorial Hospital in the ER but has not required any follow up treatment after being released from the emergency room. The claimant testified that Dr. Knox has also treated him for problems which he has experienced with his right arm and his cervical area.

The claimant remembers that he as undergone physical therapy and these problems have resolved.

The claimant testified that the respondent hired Edie Nichols to assist him in finding employment. The claimant testified that Ms. Nichols has reviewed Dr. Knox's records and has listed at least 75 to 80 jobs to him. The claimant testified that he has applied for approximately fifty of those jobs. The claimant explained that the reason he had not applied for all 80 of the jobs was because he was out of the state for two weeks, that there were times he just has not felt like it and he has had probably fifty doctors appointments or physical therapy sessions since September 2005. The claimant testified that he primarily has contacted perspective employers by sending a letter with a resume' attached. The claimant testified that to date no one has offered him a job.

The claimant testified that since May 10, 2002, he has seen Dr. Knox, Dr. Davis, Dr. Cooper, Dr. Cannon and Dr. Brooks. The claimant testified that Dr. Brooks provides his pain medication and that Dr. Cannon is his pain specialist. The claimant remembered that Dr. Cooper is his family doctor and Dr. Knox is his neurosurgeon. The claimant testified that currently he is taking Hydrocodone, Tylenol 3, that he wears duragesic patches and takes two different kinds of muscle relaxers as well as an aid for sleeping. The claimant testified that he also takes Darvocet-N100 for pain. The claimant testified that even with all of these medications he still has pain in his lower back and into his left buttock. The claimant testified that he underwent a functional

capacity evaluation in July 2005. The claimant remembers that this evaluation took approximately one hour and when he began having problems during the evaluation in the form of muscle spasms which were visible enough for the therapist to note in his report the evaluation ended. The claimant testified that the evaluator noted that some of the tests were being left out. The claimant testified that he had a definite increase of discomfort by the end of his evaluation. The claimant testified that since November 2005 his condition has progressively gotten worse. The claimant testified that currently he is taking more medications than he was in November 2005. The claimant testified that on a bad day he is unable to get out of bed and just stays there and takes medication. The claimant testified that on a good day he will get up and walk around a little bit and do a few things. The claimant testified that in order to climb stairs he has to take one step at a time and that if he walks for any length of time he gets very tired and starts having back spasms. The claimant testified that it was his understanding that his treating physicians are considering some type of spinal cord stimulator, noting that he has already undergone one test which was not successful and that now a morphine pump is being discussed. The claimant testified that he was unaware of any job which he would be able to do on a regular basis due to his pain and fatigue.

On cross examination, the claimant testified that the narcotic medications which he takes causes him to be constipated. It was pointed out to the claimant by the respondents' attorney that in

his deposition he had indicated that his colon problems were not limiting him as to his ability to work. The claimant testified that his functional capacity evaluation took approximately one hour and that if the tester's report showed that it took three to four hours, he would disagree with this assessment. The claimant did agree, however, that his one hour assessment did not take into account the intake interview and filling out the paperwork. The claimant testified that Mr. Dahlke, the FCE evaluator, told him that there was a part of the test that was not going to be done but did not state a reason why. The claimant agreed that during the twenty-two years he was chief deputy for the respondent, many of his duties involved supervising the other deputies, administrative tasks and hiring. The claimant agreed that one of the first things he did after retiring in June 2000 was go rafting on the Colorado River in July 2000. The claimant also agreed that the following year was when he began T & T Security which is his hot check business. The claimant testified that he sustained an injury to his right eye at birth and is considered legally blind in his right eye. The claimant agreed that he ran for sheriff of Madison County in the spring of 2004. The claimant testified that during this campaign he had hand outs, weekly newspaper ads as well as yard signs. The claimant agreed that in May 2005 approximately two months before his functional capacity evaluation he attended an all Harley blowout motorcycle rally in Gulfport, Mississippi. The claimant agreed that he and his wife attended Biketoberfest in Daytona, Florida in October 2005. The claimant also agreed that it

was in November 2005 that he began his physical therapy again. After lengthy questioning the claimant admitted that currently he is drawing more money through retirement and social security than he did at the time of his injury in 1989.

On cross examination by Respondent No. 2, the Second Injury Fund, the claimant stated that he does not have 100 percent vision loss in his right eye, noting that he can see figures. The claimant testified that he is legally blind but he can see images out of his impaired eye. The claimant testified that he has never been given an impairment rating as to the amount of loss in his eye. The claimant testified that he has never had a job which had to be modified due to his right eye nor has his eye impairment caused him any obstacle with employment or caused him to earn less money. The claimant testified that he has never missed any work because of his right eye and he was never laid off or refused a job because of his eye condition. The claimant testified that he currently has problems with constipation caused by his narcotic medications and for this he takes fiber, laxatives and enemas.

On direct examination, the claimant's wife, Athena, testified that she was an occupational nurse and had been working for Tyson Foods for the past fourteen years in this capacity. Mrs. Treat testified that since November 2005 the claimant appears to her to be in more pain, needs stronger pain medications, has decreased his activities and is more fatigued. Mrs. Treat also testified that the claimant looks physically pale and often times will break into a sweat as well as his gait is more unsteady and he needs help even

putting on his shoes sometimes. This witness testified that on occasion she helps her husband with his showers, shampoo, bathing and even at times taking his pain medications and with his bowl care. Mrs. Treat testified that since November 2005 the claimant has had days when he did not even get out of bed or take a shower and then he will have better days when he is up and about some. This witness testified that her husband has not ridden his motorcycle since November 2005 because of his pain. Mrs. Treat testified that the side affects of the claimant's medications include sleeplessness, cloudy thinking, decreased mobility and that his though process is not as clear. Mrs. Treat testified that because of the uncertainty of her husband's pain level it is impossible to make plans day by day.

On cross examination by Respondents No. 1, Mrs. Treat testified that following her husband's retirement he did take a trip to Colorado rafting, that he has participated in several motorcycle rallies locally as well as out of state and that he participates in their business, T & T Security, in a very limited capacity. Mrs. Treat testified that she helped her husband with his application letters for employment and that they also consulted his doctor, Dr. Knox, as well as their attorney.

The medical records which are extensive set forth that the claimant underwent surgery for his April 1989 back injury on November 16, 1989, performed by Dr. Luke Knox. On January 26, 1990, Dr. Knox assigned a 10 percent impairment rating based on the claimant's bilateral hemilaminectomy at L3-4. The previous opinion

dated November 15, 2005, addresses extensively the claimant's second back surgery which was done by Dr. Knox on May 10, 2002. This surgery involved a bilateral hemilaminectomy at L2-3 as well as a bilateral hemilaminectomy diskectomy and fusion at L3-4. Following this surgery the claimant had extensive complications which are thoroughly discussed and set forth in the November 15, 2002, opinion. Following this second back surgery and its multiple complications, Dr. Knox continued to follow the claimant and on June 9, 2004, assessed the claimant with an additional 15 percent impairment to the body as a whole. For this rating Dr. Knox indicates that he referred to the A.M.A. Guides, Forth Edition, in arriving at the 15 percent impairment rating for the claimant's last surgery. Dr. Knox sets forth that this 15 percent rating would be in addition to his previous rating which he had assessed in 1990. In follow up correspondence dated June 30, 2004, in response to the respondents' case worker's inquiries, Dr. Knox again assesses the claimant with a 15 percent impairment rating for the surgery which he performed on the claimant in May 2002 and again states that this would be in addition to the 10 percent impairment rating which the claimant was assessed following his 1989 surgery. Dr. Knox writes again on August 12, 2004, that the claimant reached maximum medical improvement on May 10, 2004, indicating that the delay in his reaching MMI would encompass his post operative complications which have previously been discussed. Dr. Knox again sets forth that the claimant's permanent partial impairment is 25 percent which is derived from the 15 percent from

his most current surgery added to his previous impairment rating of 10 percent.

The claimant underwent a functional capacity evaluation on July 12, 2005, administered by Doin Dahlke. Mr. Dahlke writes that the results of this evaluation suggests that the claimant gave a reliable effort with 52 of 52 consistent measures within expected limits. This evaluator sets forth that the claimant pasted all criteria for validity and demonstrated no signs of symptom magnification or other inappropriate illness responses. During the test it is noted that when the claimant was performing some lifting exercises, he developed spasms on the right side of his lower back which the evaluator, in his comments, sets forth that they were obvious spasms. In Mr. Dahlke's deposition he sets forth that he could not have used the terminology obvious spasms if he had not seen the spasm. After the intake, history and assessment of the various test performed, Mr. Dahlke assessed the claimant with being able to perform work activities within the light category. In the evaluator's deposition, he indicated that the tests performed set forth that the claimant's ability to work indicates what he can do within an eight-hour period, not what he could do in a forty-hour week.

After a review of this rather large record, I find that the claimant has proven by a preponderance of the evidence that he is entitled to a permanent partial impairment rating of 25 percent to the body as a whole as assessed by Dr. Luke Knox. It must be remembered that this case is a 1989 compensable injury and the

standards as set forth in Act 796 are not applicable in this matter. Dr. Knox assessed the claimant with a 10 percent impairment rating following his bilateral hemilaminectomy on January 26, 1990. Dr. Knox performed a bilateral hemilaminectomy at the L2-3 level as well as a bilateral hemilaminectomy diskectomy and fusion at L3-5 on the claimant on May 10, 2002, for which he assessed the claimant with an additional 15 percent impairment. Dr. Knox clearly, in the several letters which he has penned concerning the claimant's impairment rating, set forth that the 15 percent impairment rating is over and above the initial 10 percent impairment rating which he had assessed the claimant following his first surgery. Therefore, the claimant is entitled to a 25 percent to the body as a whole impairment rating. Respondents No. 1 have accepted a 15 percent impairment for this claimant, therefore, they shall pay an additional 10 percent permanent partial impairment to this claimant.

I further find after evaluation and consideration of all the evidence presented in this matter, that the claimant has failed to prove by a preponderance of the evidence that he is permanently and totally disabled. I do find, however, that the claimant has proven by a preponderance of the evidence that he is entitled to wage loss in the amount of 25 percent over and above his 25 percent impairment rating thus giving him a total disability rating of 50 percent. This assessment is based on the claimant's age, education, transferable job skills, impairment rating, physical restrictions and his ongoing medical treatment for his compensable

injury. I do not find that the Second Injury Fund has any liability in this matter. The basis for the claimant's 50 percent disability rating is based solely on his compensable injury and the limitations it has created. It is noted that the claimant has testified that he does have right eye blindness but that this has never caused him any problems with employment or limited his functions in any way to earn. Therefore, Respondents No. 1 shall pay for the additional 25 percent wage loss which this claimant is entitled to.

Respondent No. 1 has requested a credit for over payment of temporary total disability from March 24, 2004, to the end of the claimant's healing period on May 10, 2004. It is noted that the claimant was seeking employment at this time by running for sheriff of Madison County and as a part of his campaign literature projected what he would plan to do if elected to this position. Although the campaign and election were held in the spring of 2004, the claimant would not have taken office until the following January 2005. Dr. Knox has clearly set forth that the claimant did not reach maximum medical improvement until May 10, 2004, it is noted that the claimant was contending that he would be able to perform the functions of a sheriff five to seven months after the date of his maximum medical improvement. Therefore, I find that Respondents No. 1 is not entitled to a credit for an over payment of TTD.

FINDINGS & CONCLUSIONS

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

2. On April 19, 1989, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his back on April 19, 1989.

4. The claimant is entitled to a weekly compensation rate of \$203.85 for temporary total disability and \$154.00 for permanent partial disability.

5. Respondents No. 1 accepted a 15 percent permanent partial impairment rating.

6. The back surgery of May 10, 2002, has been accepted by Respondent's No. 1 and they have accepted the follow up therefore.

7. The claimant had proven by a preponderance of the evidence that his bowl surgery and subsequent complications thereto are a compensable consequence of his compensable injury.

8. The claimant has proven by a preponderance of the evidence that entitled to temporary total disability up through May 10, 2004. Dr. Knox has set forth that the claimant reached maximum improvement on this date.

9. Respondents No. 1 has failed to prove an entitlement to a credit for temporary total disability from March 24, 2004, to May 10, 2004. See discussion above.

10. The claimant is entitled to an impairment rating of 25 percent to the body as a whole. See discussion above.

11. The respondents should pay to this claimant an additional 10 percent permanent partial impairment.

12. The claimant has failed to prove by a preponderance of the evidence that he is permanently and totally disabled.

13. The claimant has proven by a preponderance of the evidence that he is entitled to wage loss in the amount of 25 percent over and above his 25 percent whole body impairment rating. See discussions above.

14. There is no Second Injury Fund liability in this matter. See discussion above.

15. Respondents No. 1 should pay 25 percent wage loss to this claimant over and above the additional 10 percent impairment which they have previously been ordered to pay. See discussion above.

16. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he is entitled to a whole body impairment rating of 25 percent to the body as a whole. Therefore, Respondents No. 1 should pay an additional 10 percent permanent partial impairment to this claimant.

The claimant has failed to prove by a preponderance of the evidence that he is permanently and totally disabled.

The claimant has proven that he is entitled to wage loss in the amount of 25 percent over and above his whole body impairment

of 25 percent thus giving him a total disability rating of 50 percent.

There is no Second Injury Fund liability in this matter.

Respondents No. 1 should pay 25 percent wage loss to this claimant over and above his impairment rating.

Respondents No. 1 have failed to prove by a preponderance of the evidence that they are entitled to a credit for overpayment of temporary total disability from March 24, 2004, to May 10, 2004.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

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

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

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE