

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F107516

JAVIER VAZQUEZ		CLAIMANT
USA TRUCK, INC. SELF INSURED	NO. 1	RESPONDENT
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	NO. 2	RESPONDENT

OPINION FILED FEBRUARY 24, 2006

Before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant not represented by counsel.

Respondent No. 1 represented by J. RODNEY MILLS, Attorney, Fort Smith, Arkansas.

Death & Permanent Total Disability Trust Fund represented by JUDY RUDD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A dispute has arisen between the respondent self insured employer and the Death & Permanent Total Disability Trust Fund of the State of Arkansas. Both parties have waived their right to a hearing and have agreed to the submission of this dispute on the stipulations and briefs.

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

1. Employee-employer-insurance carrier (sic) relationship existed on June 25, 2001, when the claimant sustained compensable injuries to his lumbar spine, compensable thermal burns, compensable post-traumatic stress disorder, and compensable chronic obstructive pulmonary disease from smoke inhalation.

2. The claimant's average weekly wage was \$787.92 entitling him to the maximum compensation rates of \$410.00/\$308.00.
3. The claimant reached the end of his healing period and maximum medical improvement on September 11, 2002.
4. Dr. Ana Acevedo (Martinez) assigned the claimant a 62% permanent anatomical impairment rating to his body as a whole for the June 25, 2001, compensable injuries with a compensable value of \$85,932.00.
5. The claimant was rendered permanently and totally disabled as a result of his June 25, 2001, compensable injuries.
6. Respondent No. 1 will complete payment of \$75,000.00 in permanent disability benefits on March 15, 2006.
7. Respondent No. 2 will assume payment of permanent total disability benefits as of March 16, 2006, pending the final outcome of the litigation of the carrier's credit for payment of the anatomical impairment rating.

By agreement of the parties, the only issue to be litigated at the present time is:

"Whether Respondent No. 1 is entitled to credit for payment of the permanent disability benefits and has accepted and is paying this matter at \$75,000.00 maximum liability pursuant to Ark. Code Ann. §11-9-502(b)(1)."

In regard to this issue, the respondent self insured employer contends that it is liable only for \$75,000.00 in permanent total disability benefits, which it commenced paying on or about September 12, 2002.

The respondent Death & Permanent Total Disability Trust Fund contends that the respondent self insured employer is first liable for the monetary equivalent of the permanent physical impairment rating assessed and is not entitled to credit against its \$75,000.00 limit under Ark. Code Ann. §11-9-502(b)(1) for this monetary equivalent of the claimant's permanent physical impairment.

#### DISCUSSION

\_\_\_\_\_This Opinion is a mere formality. The Commission has previously rejected the Death & Permanent Total Disability Trust Fund's argument and have found that the respondents are entitled to credit against the \$75,000.00 limit established by Ark. Code Ann. §11-9-502, for all compensation they have paid for permanent disability. I am bound by and agree with the Commission's well reasoned opinion. Clearly, permanent physical impairment is not a separate and distinct entity from permanent disability, as the Fund argues. It is merely a factor to be considered in assessing the extent of permanent disability (albeit an essential one).

Therefore, I find that the current respondents are entitled to credit against the \$75,000.00 limit for permanent total disability benefits that is provided by Ark. Code Ann. §11-9-502(b)(1) for all permanent disability benefits paid by the respondent on and after September 12, 2002.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On June 25, 2001, the relationship of employee-self insured employer existed between the parties.
3. On June 25, 2001, the claimant earned an average weekly wage of \$787.92, which would entitle him weekly compensation benefits of \$410.00 for total disability (both temporary and permanent) and \$308.00 for permanent partial disability.
4. There is no dispute, at the present time, over the payment of medical expenses and all such expenses have and are being paid.
5. There is no dispute, at the present time, over the claimant's entitlement to temporary disability benefits and all such appropriate benefits have been paid.
6. The claimant's healing period ended on September 11, 2002. The claimant's compensable injuries of June 25, 2001, were the major cause of a permanent physical impairment in the amount of 62% to the body as a whole.
7. The claimant has been rendered permanent totally disabled a result of the effects of his compensable injuries of June 25, 2001.
8. The respondent USA Truck has paid permanent total disability benefits at the weekly rate of \$410.00 since September 12, 2002. This respondent will complete payment of its \$75,000.00 limit, provided by Ark. Code Ann. §11-9-502 on March 15, 2006.
9. Commencing on March 16, 2002, the Death & Permanent

Disability Trust Fund of the State of Arkansas shall be liable to the claimant for continued permanent total disability benefits.

10. The respondent USA Truck, Inc. is not required by the Act to first pay the monetary equivalent of permanent partial disability benefits based upon the permanent physical impairment rating, prior to receiving a credit against the \$75,000.00 maximum limit established by Ark. Code Ann. §11-9-502.

ORDER

The respondent USA Truck shall continue to pay to the claimant permanent total disability benefits through March 15, 2006.

The respondent USA Truck shall continue to be liable for all expenses incurred by the claimant for reasonably necessary medical services for his compensable injuries.

The Death & Permanent Total Disability Trust Fund of the State of Arkansas shall be liable to the claimant for continuing permanent total disability benefits commencing on March 16, 2006.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge