

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408425

EARL WHITE	CLAIMANT
CERTIFIED HR SERVICES	RESPONDENT
PROVIDENT PROPERTY & CASUALTY INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 20, 2006

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

Claimant represented by R. GUNNER DELAY, Attorney, Fort Smith, Arkansas.

Respondents represented by MICHAEL WHITE, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 17, 2006, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on November 30, 2005. 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. The prior opinion is res judicata and the law of this case.

3. The respondents have accepted and paid a 9 percent whole body impairment rating.

4. The respondents are entitled to a credit of \$1,310.67 for over payment of benefits.

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

1. Wage loss over the 9 percent permanent partial impairment.
2. Attorney's fees.

In regard to the foregoing issues the claimant contends that he is entitled to a 9 percent impairment rating and wage loss over and above his impairment rating.

In regard to the foregoing issues the respondent contends that it just received the impairment rating of Dr. Blankenship from claimant's counsel. The rating has been submitted to the respondent for consideration. However, Respondent denies claimant's entitlement to wage loss disability.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1 and the prior opinion dated July 27, 2005, marked Commission's Exhibit No. 2. The parties submitted a joint medical exhibit marked Joint Exhibit No. 1. All these documents were entered without objected.

#### DISCUSSION

The claimant testified that he was thirty-four years old and had finished the twelfth grade at Coyle High, in Coyle, Oklahoma. The claimant testified that the only other training he has since high school has been going to truck driving school. The claimant testified that his work experience since high school has been primarily hard manual labor indicating that he has worked laying brick, farming and welding but basically his work background

involved truck driving. The claimant testified that prior to his accident the work he did for the respondent involved moving furniture, loading furniture and delivering furniture. The claimant testified that as a result of his back injury he underwent surgery which he understood to be a fusion. The claimant testified that after his surgery he underwent physical therapy and eventually a functional capacity evaluation. The claimant testified that it was his understanding that Dr. Blankenship had given him a 9 percent whole body impairment rating as a result of his back injuries. The claimant testified that it was his understanding that his physical limitations include not sitting or standing for long periods of time and he is not to lift thirty to forty-eight pounds at a steady pace and he was not to lift anything over fifty pounds.

The claimant testified that after he was released by Dr. Blankenship he has just done some odds and ends type jobs such as raking leaves or mowing some lawns. The claimant testified that his case worker is encouraging him to get into some kind of vocational retraining but he has not heard back from her. The claimant testified that the insurance carrier sent a lady to visit with him who indicated that she was going to help him find a job based on his limitations. The claimant testified that approximately three or four months passed before he heard back from her by letter setting forth that he should apply for some truck driving jobs and a position at the post office. The claimant testified that he did contact some trucking firms but once they

were aware of his physical limitations, he was not hired. The claimant testified that he then went to the temporary employment service and has been working for the past two or three days at Gerber working part time stacking boxes. The claimant testified that for Gerber he has been working three days a week eight hours a day. The claimant testified that stacking boxes for eight hours has caused him physical discomfort and he has called his doctor who recommended that he take ibuprofen or aspirin. The claimant testified that he earned seven dollars an hour working at this temporary job. The claimant testified that he also has been working for First Baptist Fort Smith at a temporary job which started in January but will end the last of February. The claimant testified that he works Fridays and Saturdays from eight to four refereeing games and earns seven dollar an hour at this part time job. The claimant testified that he takes two ibuprofen and an aspirin each morning and then he takes two ibuprofen before he goes to bed at night. The claimant testified that since he has been working he often takes medication during his lunch break. The claimant testified that he has discomfort in his low back every day and that with his refereeing of the games at the church, he can feel that his limping has started all over again. The claimant has learned that he just has to take it easier when he gets home, gets his rest and takes his ibuprofen and to get enough sleep so that he can deal with his physical problems. The claimant testified that now his activities with his children are extremely limited and the activities which he and his children and his wife used to enjoy

together are seriously altered. The claimant testified that since he does these different odd jobs when he gets home he has to rest or lay down in order to be able to work.

On cross examination, the claimant testified that besides mowing lawns and raking leaves he did try to work with one of his buddies laying brick but he could not do this work. The claimant explained that the games he referees for the church involve youth groups from the fifth grade down to kindergarten. The claimant testified that these games just involve half of a basketball court for him to cover since they will have two different games going at the same time. The claimant testified that he helps his wife a little around the house but he mostly helps take care of the yard. The claimant again testified that he mostly has worked as a truck driver during his working past but has also obtained different types of jobs through temporary agencies. The claimant testified that he has had a small six hours a week job at a restaurant where his wife worked and that for a time he was sort of self employed while working on a farm. The claimant testified that he also worked laying brick with Richard Dillard. The claimant testified that when he would work through a temporary service he would be sent out to jobs such as some of the plants or factories to fill in where needed. The claimant testified that he has also worked at the Stockman, Oklahoma, livestock auction herding, sorting, loading and unloading cattle.

The medical records indicate that the claimant underwent a functional capacity evaluation on September 8, 2005. Based on the

results of the evaluation, it was recommended that the claimant could return to employment at a medium physical level with a limit of lifting up to fifty pounds. Dr. Blankenship writes on September 214, 2005, after reviewing the claimant's functional capacity evaluation that he would give the claimant a permanent restriction of no lifting over fifty pounds and agrees that the claimant is capable of doing minimum physical work with a lifting demand of twenty to fifty pounds on an occasional basis. Dr. Blankenship writes that the claimant is released to lift up to twenty-five pounds on an unlimited basis. On September 27, 2005, Dr. Blankenship assessed the claimant with a 9 percent whole body impairment.

After a complete review of this case, I find that the claimant has proven by a preponderance of the evidence that he is entitled to a 9 percent disability rating over and above his 9 percent whole body impairment rating. This would give the claimant a total of 18 percent to the body as a whole disability rating. The respondents should pay this additional 9 percent wage loss. This finding of wage loss is based on the claimant's education, work experience, lack of transferable job skills to a more sedentary or medium type employment, the claimant's physical restrictions and past work experience.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. The prior opinion is res judicata and the law of this case.

3. The respondents have accepted and paid a 9 percent whole body impairment rating.

4. The respondents are entitled to a credit of \$1,310.67 for over payment of benefits.

5. The claimant has proven by a preponderance of the evidence that he is entitled to wage loss in the amount of 9 percent over and above his 9 percent impairment rating. This would give the claimant a total of 18 percent disability rating. See discussion above.

6. The respondents should pay wage loss to this claimant in the amount of 9 percent to the body as a whole.

7. The respondents have controverted this claimant's entitlement to wage loss.

8. 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 wage loss in the amount of 9 percent over and above his 9 percent impairment rating.

The respondents should pay wage loss to this claimant in the amount of 9 percent.

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.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE