

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F101517**

<b>LONNIE WILLIAMS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>KLAASMYER CONSTRUCTION CO., EMPLOYER</b>	<b>RESPONDENT</b>
<b>AMERICAN EMPLOYERS INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED APRIL 3, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 10, 2006, at Forrest City, St. Francis County, Arkansas.

Claimant represented by the HONORABLE JAMES W. STANLEY, JR., Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to additional workers' compensation benefits.

On January 10, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Lonnie Williams, the claimant, coupled with medical reports and other documents comprise the record in this claim. Additionally, the two (2) prior hearing records and

rulings generated as a result of same are incorporated in this hearing record.

### **DISCUSSION**

Lonnie L. Williams, the claimant, with an eighth grade education, commenced his employment with respondent on June 24, 1996, as a construction laborer. On December 30, 2000, claimant sustained a compensable injury to his spine. Prior hearings in this claim addressed the claimant's entitlement to a change of treating physician and continuing medical and indemnity benefits.

The testimony of the claimant reflects that over the past couple of years treatment relative to his compensable injury has been furnished by Dr. David Thrash, a Forrest City chiropractic physician. Claimant receives manipulations regarding his low back and neck under the care of Dr. Thrash. While the claimant noted that Dr. Thrash has directed him to apply a ice pack to the back of his neck, he has not been directed to perform any home exercises.

Claimant maintains that he was referred to Dr. Lee P. Woodruff, D.P.M., by a Jonesboro physician for treatment regarding complaints of pain in the bottom of his feet. Claimant asserts that Dr. Woodruff attributed his feet complaints to his compensable low back injury.

Regarding the physical restrictions and limitations attributable as residuals of his compensable injury, the claimant testified that his low back goes out on him sometimes when he bends over and experiences pain in the area. Claimant asserts he experiences spasms/tightness in his neck and shoulders resulting in limitations in twisting or rotating both is neck. Claimant's testimony reflects that he takes over the counter medication for his pain.

Claimant denies that he has suffered any other injuries since his December 30, 2000, compensable accident. Claimant testified that his neck "feels a whole lot better now", which he

attributes to the chiropractic treatment. (T. 14). At the time of the hearing claimant testified that he did not have any restrictions in the range of movement in his neck or back, noting that he was not hurting. Claimant observed that when experiencing pain in his back he has limitations on how far he can bend, twist, move or flex with respect to his back.

Claimant acknowledged that he had not attempted to return to work in any capacity since he left the employment of respondent, nor has he looked for any jobs. Claimant testified that he has not checked into vocational rehabilitation regarding the prospects of being retrained in some other field or endeavor. Claimant asserts that he is unaware of any kind of work that he could do in light of his age, education, past work experience with the back and neck problems he is experiencing as a result of the compensable injury. Claimant's source of income is social security disability.

Claimant maintains that he is unable to stand on his feet for any significant period of time, no more than ten (10) minutes. Claimant noted that he is unable to walk for more than a couple of blocks without his feet hurting. Claimant also observed that if he sits for a long period of time his back tightens up and hurt. Claimant testified that difficulties with his neck interfere with him from performing routine activities/chores around his house.

Claimant's testimony reflects that his feet complaints are major limiting problems. Further claimant maintains that he has experienced problems with his memory which he attributes to the blow to his head that he suffered in the December 30, 2000, accident. During a prior hearing before the Commission claimant testified that he had been problems with his feet hurting since he broke his leg, which occurred in a 1999 automobile accident, before the December 30, 2000, compensable accident.

Claimant's testimony reflects that Dr. Thrash is the only physician to evaluate and treat both his neck and low back complaints in recent years. Dr. Thrash has assessed the claimant with a 10% whole body impairment rating. The testimony of the claimant reflects that the impairment rating of Dr. Thrash was based on claimant's range of motion and pain.

Claimant acknowledged seeing Dr. L'Heureux, a West Memphis orthopedic surgeon, in September 2004. Claimant also testified that he was aware that Dr. L'Heureux released him without any permanent impairment.

Regarding his work history, the testimony of the claimant reflects that he has work construction jobs, performed plaster work, worked in a factory operating machinery. Claimant testified that he is unable to read and write, however he can perform simple arithmetic. Claimant's testimony does reflect that he attended the Job Corps, however he denies that he has any kind of specialized skills.

Claimant's testimony reflects that he spends his days at home watching television. Claimant lives alone, cleans his house, buys his groceries, cooks and owns an automobile, which he drives.

The evidence in the record reflects that on February 21, 2001, claimant underwent a functional capacity evaluation at Crittenden Physical Therapy Services which concluded that he was capable of doing work at the time, although he complained of neck and back pain that would flare up occasionally. (RX. #1, p. 9-10). On March 29, 2001, Dr. Guy L'Heureux completed a Form AR-3 regarding the claimant in which he opined that the claimant reached maximum medical improvement as of March 30, 2001, with a 0% permanent physical impairment. (RX. #1, p. 13-14).

Following a September 8, 2005, visit Dr. David P. Thrash authored a report entitled Report of Consultative Examination regarding the claimant. The report reflects the impression of the claimant's complaints as chronic traumatic cervical sprain/strain and chronic traumatic lumbar sprain/strain. The report further reflects, in pertinent part:

The following impairment rating has been given to Mr. Williams after an orthopedic and neurological evaluation was performed on September 8, 2005. It is my opinion that this patient has reached the point of maximum medical improvement under my care. It is also my that this patient has sustained a 6% permanent physical impairment to the body as a whole. This impairment rating is based on continued pain in the lower back and neck, loss of range of motion in both the lower back and neck as well as non-verifiable radicular complaints affecting the left lower extremity and both shoulders. Both the lower back and neck conditions fall into the diagnosis related estimate category 2 impairments in the Fifth Edition of the AMA Guides to the Evaluation of Permanent Impairment. (CX. #1, p. 4).

On November 3, 2005, claimant was evaluated as a new patient by Dr. Lee P. Woodruff, D.P.M., for complaints of pain involving the bottom of both feet. Following his examination of the claimant, Dr. Woodruff recited as a working diagnosis, "paresthesias related to neuropathy of unknown origin, possibly secondary to lumbar stenosis". (CX. #1, p. 5).

The medical in the record reflects that claimant was initially seen by Dr. Guy L'Heureux, a West Memphis orthopedic physician, on January 16, 2001, for complaints associated with the December 30, 2000, compensable injury. Claimant had previously been treated by Dr. L'Heureux from February 18, 1999 to October 23, 2000, for a fracture to his left tibia and fibula. The January 16, 2001, report of Dr. L'Heureux reflects that claimant had continued to have complaint of some discomfort in his left lower extremity at times attributable to the earlier injury. Following the January 16, 2001, evaluation regarding the December 30, 2000, compensable

injury Dr. L'Heureux diagnosed the claimant's complaints as "sprain grade I cervical spine and sprain grade I lumbar spine". (RX. #1, p. 4).

While under the care and treatment of Dr. L'Heureux claimant under went a MRI scan of his cervical spine and of his brain, both of which were within normal limits. Dr. L'Heureux opined that the claimant reached maximum medical improvement relative to the December 30, 2000, accident on March 29, 2001, and that there was no permanent physical impairment related to the injury. (RX. #1, p. 7).

On September 2, 2004, claimant was again evaluated by Dr. L'Heureux relative to the December 30, 2000, compensable injury. The September 2, 2004, report regarding the evaluation by Dr. L'Heureux concludes:

OPINION: It is my opinion that the condition of Mr. Williams has not deteriorated between March 2001 and now. There are a few signs of increasing symptoms, but overall the patient seems to be describing symptoms of mild intensity, but there are no objective findings that support his symptoms.

My final opinion is that there is no change in my evaluation of March 2001 and that the patient had reached maximum medical improvement on that day, March 29, and today I determine that there is no partial permanent impairment related to this accident of December 30, 2000. (RX. #1, p. 18).

After a thorough consideration of all of the evidence comprising the record in this claim, to include the testimony of the claimant, review of medical reports and other documentary evidence, and application of the appropriated statutory provisions and case law, I make the following:

### **FINDINGS**

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

2. On December 30, 2000, the relationship of employee-employer-carrier existed among the parties.

3. On December 30, 2000, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$333.00/\$250.00, for total/permanent partial disability.

4. On December 30, 2000, the claimant sustained an injury arising out of and in the course of his employment.

5. The claimant's healing period ended March 29, 2001, relative to the compensable December 30, 2000, injuries.

6. The claimant has failed to sustain his burden of proof by a preponderance of the evidence that he suffered a physical impairment supported by objective and measurable physical or mental findings, pursuant to Ark Code Ann. §11-9-704 (c)(1)(B), as a result of the December 30, 2000, accident.

7. Absent a finding of a specific percentage of permanent physical impairment, claimant had failed to prove entitlement to permanent partial disability benefits and wage loss benefits.

### **CONCLUSIONS**

The claimant suffered compensable injuries to his cervical spine and lumbar spine on December 30, 2000. Claimant now asserts that as a result of the December 30, 2000, compensable injury he is entitled to permanent disability benefits to correspond to his assessed permanent physical impairment and permanent partial disability/wage loss benefits. Respondents deny that the claimant has suffered any permanent physical impairment as a result of the December 30, 2000, accident.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The compensability of the claimant's December 30, 2000, accidental injuries is not disputed. Claimant received medical treatment under the care of Dr. Guy L'Heureux, a West Memphis orthopedic physician, from January 16, 2001, through March 29, 2001, when he was released as having reached maximum medical improvement with no residual permanent physical impairment relative to the December 30, 2000, injury. During the course of claimant's treatment under the care of Dr. L'Heureux diagnostic studies were performed to include MRI scans of the claimant's cervical spine and brain. The test results were within normal limits. During a September 2004, subsequent examination/evaluation of the claimant Dr. L'Heureux concluded that there were no objective findings to support the claimant's symptoms.

Based on his evaluation of the claimant Dr. David P. Thrash, a Forrest City chiropractic physician, concluded that the claimant had a 10% permanent physical impairment to the whole person, 4% of which was attributable to pre-existing degenerative arthritis and 6% as a result of the December 30, 2000, compensable accident. In his report Dr. Thrash noted that the impairment rating of the claimant was based on the Fifth Edition of the AMA Guides to the Evaluation of Permanent Impairment. The report further reflects that the rating was based on "continued pain lower back and neck" as well as "loss of range of motion in both the lower back and neck".

Ark. Code Ann. §11-9-704 (c)(1)(B), provided that "any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental

findings”. Objective findings are those findings which cannot come under the voluntary control of the patient. Further, when determining physical or anatomical impairment complaints of pain may not be considered, and range of motion tests are not considered objective finding. Ark.

Code Ann. § 11-9-102 (16). The claimant has failed to sustain his burden of proof by a preponderance of the evidence that he sustained any permanent physical impairment as a result of the December 30, 2000, compensable injury.

Wage loss factors are the extent to which a compensable injury has effected a claimant’s ability to earn a livelihood. *Sapp v. Phelps Trucking, Inc.*, 64 Ark. App. 221, 984 S.W.2d 817 (1998). In order to be entitled to wage loss disability benefits in excess of physical impairment, claimant must first prove, by a preponderance of the evidence, that he sustained permanent physical impairment as a result of the compensable injury. *Wal-Mart Stores, Inc., v. Connell*, 340 Ark. 475, 10 S.W.3d 882 (2000).

As noted above, in the instant claim the claimant has failed to sustain his burden of proof by a preponderance of the evidence that he suffered any permanent physical impairment as a result of the December 30, 2000, compensable injury. Correspondingly, the claimant’s claim of entitlement to permanent partial disability/wage loss benefits has not been sustained by a preponderance of the evidence. Claimant’s claim for permanent partial disability benefits growing out of the December 30, 2000, compensable injury is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**Andrew L. Blood, Administrative Law Judge**