

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504949

OCEANUS DOMINGUEZ-CASTRO, EMPLOYEE	CLAIMANT
CORDOVA CONSTRUCTORS, INC., EMPLOYER	RESPONDENT #1
COMMERCE & INDUSTRY INSURANCE CO., CARRIER	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED MAY 21, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 21, 2007, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents #1 represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE JUDY W. RUDD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to additional workers' compensation benefits. On November 21, 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 afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

Since the claimant has now obtained employment he no longer contends that he is permanently and totally disabled, and, as such, released respondent #2 as a party to the present claim. Respondent #2 was released as a party to the present claim and excused from the hearing.

In elaborating on their contentions, respondents take the position that the rating assigned the claimant is pursuant to the North Carolina Workers' Compensation Guidelines, and not pursuant to the Forth Edition of the AMA Guides; that the ratings are not correct; that the record should remain open in order to obtain a proper rating or the Commission should assign the impairment rating. Respondents have no objection to the rating assigned relative to the claimant's ankle injury, however maintain that the claimant's back problems were pre-existing or congenital and not associated with any acute injury as far as permanency is concerned. Respondents assert that since the injury is not the major cause of the permanency relative to the claimant's back, then what is left is a scheduled injury where wage loss is inapplicable. In the event there is a finding of wage loss, respondents take the position that no program of rehabilitation was requested and the claimant has returned to work. Accordingly, respondents assert that wage loss is an issue.

Finally, respondents assert that since the claimant is not a legal alien who has not made any application in any form to try and obtain citizenship, there is a federal statute which prohibits moving forward with regard to the present proceedings. Respondents acknowledge that the federal statute in question does not prohibit the claimant from receiving workers' compensation benefits.

Claimant maintains that the position of the respondents regarding the federal statute represents a new contention on which he is not prepared to respond, however he is aware that the

federal statute has been ruled upon affirmatively with respect to the claimant's entitlement to receive workers' compensation disability benefits. Claimant notes that the Arkansas Statute is similar to the Colorado statute that has been ruled on with a finding of no prohibition for illegal aliens receipt of workers' compensation benefits.

The testimony of Oceanus Dominguez-Castro, the claimant, coupled with medical reports and other documents comprise the record in this claim. Claimant secured a March 30, 2007, report from his North Carolina physician reflecting impairment ratings based on the AMA Guidelines for Rating Permanent Impairment, 4th Edition, which is bluebacked and designated a part of the record as Claimant's Supplemental Exhibit, as is the respondents' response of April 17, 2007.

DISCUSSION

Oceanus Dominguez-Castro, the claimant, with a date of birth of December 31, 1979, commenced his employment with respondent as a welder on February 7, 2005. In describing his job with respondent, claimant's testimony reflects:

Well, in a company like Cordova, or the ones I work for, well, it is to solder, connect - that's how that job is divided.. (T. 23).

Regarding the connecting aspect of his job with respondent, the testimony of he claimant reflects:

The connectors were one inside the building. Connecting the building. They put - they make standing up the columns with a crane or forklift. And then, let's say, they put up two or three columns. And one person puts the column, let's say, from here to there. And then at successive weights, like they start putting up the building. (T. 26).

Claimant's testimony reflects that most of his experience was with arc welding. The testimony in the record reflects that respondent-employer is in the business of putting large Home Depot

type buildings.

Claimant explained that was hired over the phone by personnel of respondent-employer. Claimant first worked for respondent at a job site in Mississippi. Later, claimant was transferred to Arkansas by respondent. Respondent secured lodging for the claimant in a motel while he worked on the Arkansas job. Claimant worked for respondents in Mississippi for approximately one week to a week and a half before being transferred to Arkansas. Claimant had likewise worked a similar length of time in Arkansas before he sustained his March 5, 2005, accidental injury.

The testimony of the claimant reflects that he was on top of the Home Depot building that was being constructed at the time of his March 5, 2005, accident:

I was on top of the building. I was welding, and we were putting down the lamination or rolling it out - I don't know how you call it. And we had finished rolling or placing down what is called a line. And then it was - the wind was blowing a little bit. It was a little windy. And they told me to weld it because possibly the lamination could blow away. And I went to get my welding line. I was bringing it. It was a little bit heavy and I was bringing it toward me, backwards. And when I wanted to turn around so that I could continue holding it face-forward, I gave - I stepped with my right foot, but there was nothing. I saw one of the lamination sheets just flew to the front. And that's where I fell. (T. 24-25).

Claimant fell through a hole in the roof of the build, thereby sustaining his injuries. The testimony of the claimant reflects that the type of welding that he was doing required him to lift 30 to 55 pounds.

The employment history of the claimant reflects that while in Mexico, before coming to the United States in 2000, he performed construction work, which entailed welding, industrial painting. Since being in the United States the claimant's employers have included the Precision

Company, in Kerry, North Carolina; Sonar Hill; Star Erectors, in Raleigh, North Carolina. The claimant performed work similar to that in the employment of respondent with the afore employers.

During his employment with respondents claimant earned \$15.00, per hour, working 60 to 70 hours per week. The parties stipulated that the claimant's average weekly wage during his employment with respondents was \$975.00. Following his March 5, 2005, compensable injury the claimant received medical treatment and later attempted to return to work.

The claimant secured employment at a Del Monte factory performing line duty work, however was unable to tolerate the standing which was required with the job. The job also required some heavy lifting. The testimony of the claimant reflects that the combined standing and lifting adversely affected his ability to continue performing the job at Del Monte, where he earned \$9.00, per hour for a 40-hour week. Claimant explained that the number of hours he worked was according to the period of production. (T. 30-31).

The claimant also made applications at other jobs, including construction. Claimant disclosed his physical limitations attributable to residuals of the March 5, 2005, compensable injury, when seeking employment:

Yes, I would tell them what I could do, what I could carry, and I think that they thought it wasn't true and that I was a person who didn't want to carry out my job well. (T. 31).

Claimant noted that there was a long period where he was unable to get a job.

Claimant recently secured employment with the Tetan Company, which is a construction company. Claimant explained the requirements of his current job, as compared to the duties he discharged in the employment of respondents:

Because here - because the company - it can be - they can be called small or commercial. And like I said before, in the companies that I worked for before, like Cordova, one had to weld, connect. Here, the categories are divided. I applied there to connect, or only to put in the screws. It's called bolt off. And there is the connecting to bolt. Welder - that is to say the welder - helper to help. And that's what I do now. (T. 32).

The testimony of the claimant reflects that in his current job lifting weight in excess of 40 pounds is done either with a fork lift or the assistance of another individual. Claimant noted that while he has to be on his feet during the day when discharging is job, there are places where he can sit and rest, occasionally. Claimant estimates that he will remain at the present job site, the construction of a Thermo Electric facility, for at least a year. Claimant earns \$14.00, per hour for a 48 to 50 hour work week.

The claimant has been employed by his present employer for approximately a month and a half. While the claimant did relay some of his physical restrictions attributable to the March 5, 2005, accident to his present employer, he did not fully disclose all of them:

I told them that I couldn't carry heavy. I really didn't tell them that many things, because I wanted to get a job. Otherwise, I wouldn't be able to get it. And, in fact, a person asked my supervisor why do I walk slowly - for what's wrong, and I didn't want to tell them because it is something that happens. (T. 34).

Claimant's testimony reflects that he is still concerned about being able to hold on to his present job because of his physical problems.

Regarding his physical problems, the claimant's testimony reflects that when he fell through the roof on March 5, 2005, he landed on a concrete floor and injured several parts of his body. Claimant asserts that prior to the March 5, 2005, accident he was physically healthy and did not have any problems with his neck, back, shoulders, feet or ankles. Claimant noted that

before the March 5, 2005, accident activities that he enjoyed away from work included fishing with his brother, going to the park and playing basketball, volleyball or soccer. Since the accident, claimant's testimony reflects that he is unable to engage in the afore activities. (T. 35).

Areas of the claimant's body injured in the March 5, 2005, accident include his neck, the area between his shoulder blades, and the area of his low back just above the belt line. Claimant observed, with respect to the residuals in his back from the accident:

And when I'm sitting like this, it's a little bit uncomfortable, and more in the back. When I sleep, well, I've got an orthopedic pillow, so I can sleep comfortably, but it's the same. (T. 36).

Claimant noted when he wakes up in the morning he sometimes has a ball in his right side and back, which on occasions has resulted in him missing time from work. Claimant also noted that he has had swelling in his right shoulder for up to four days.

The claimant testified regarding the residual problems with his feet and ankles growing out of the March 5, 2005, accident:

My feet and my ankle, let's say, they always hurt. The pain in there. When I go walking, I have to put my foot in this form, not the other way like people walk, because the end of my toes hurt. When I walk, and I am walking like this, not the sole. The sole of my feet hurt. On the inside of my foot, I always feel something there. It's there. I don't know. It's this part. I feel a ball there in the inside, and it is in that part from here to here, I still feel something. (T. 37).

Claimant noted that he is unable to crouch down and that he cannot squat. Claimant is unable to walk without wearing shoes equipped with inserts due to pain in his feet. The inserts are therapeutic and permanent. Claimant has undergone two (2) surgical procedures on his right ankle. Claimant has more symptoms on his right side than his left side. The claimant also described pain in his hip and legs, as well as his back. Claimant asserts that he continues to have

problems with his neck, which causes problems with sleep, as does his back. Claimant is unable ride in a vehicle for long periods of time or to drive for long distances.

Prior to securing his employment with Tetan, his current employer, the claimant described a typical date:

Well, only to be there in the house only - I don't know. Watching TV, studying English - sometimes I would draw or paint angles. I don't know - try to clean the trailer there. That would be all. (T. 45).

Since securing employment, claimant describes a typical day after getting home from work as activities of reading, taking a bath, eating and going to sleep. Claimant noted when he gets in from work he feels tired and has pain in his shoulder and back.

Claimant has family in Mexico, a wife and five year old child, that he has not been able to see for a long period. Claimant explained that he would like to go back to Mexico for a day or two to see his family, however the residuals of his injury makes it difficult to travel the distance.

On cross-examination, claimant acknowledged that his current employer, Tetan, is not aware of his legal status. Claimant has been in his current employment as a bolter for approximately one (1) month. The testimony of the claimant reflects that he has missed two (2) days of work in his current job due to problems with his back and neck growing out of the March 5, 2005, accident. The credible testimony of the claimant reflects, with respect to his work ethic:

I continued going. I had the pain there, but I had to continue going because probably they would tell me - well, I don't know. I'm not accustomed to be absent from jobs. Even though I had a cold or something hurts or I am sick, I still go there anyway. But that time, I didn't go. (T. 48).

Claimant is able to read and write in Spanish and has a valid driver's license. The testimony of the claimant reflects that when he was in Mexico he was going to high school,

however the did not complete high school. Claimant left school early in order to come to the United States to work. Claimant estimates that the drive, with his sister, from North Carolina to Little Rock, Ark., took 14 to 15 hours. The claimant's car was driven by his sister. Claimant noted that they stopped in a rest area at night en route from North Carolina to Arkansas.

Claimant acknowledged that he has not had any medical treatment relative to his March 5, 2005, compensable injury since April 2006. Claimant explained that he takes over-the-counter medicine for his pain. (T. 49-50).

The testimony of the claimant reflects that he was under the impression that the doctor responsible for authorizing his physical therapy wanted him to be seen by a neurosurgeon for further medical treatment. Claimant testified that the medical treatment was denied by respondent-carrier. The claimant's testimony reflects that he did not receive physical therapy relative to his feet and ankles until he was sent for his back. Claimant continues the physical therapy measures at home relative to his feet and ankles per the instruction of the physical therapist. (T. 52-54). Claimant explained that he does not like to take pills:

I felt, after the surgeries on my foot, I got some pain pills. I would take them, but my head wold feel bad. It's a reaction like this because I'm sleeping and somebody pushed me, is the reaction I get. (T. 54-55).

The medical in the record reflects that the claimant was seen at the emergency room of Rebsamen Medical Center on March 5, 2005, for treatment of the compensable injuries growing out of the accident in the employment of respondents. The ER records reflect that the claimant complained of pain and injuries to his neck, chest, abdomen, back, right knee, ankle, wrist, and left knee and ankle. (CX. #1, p. 1).

The claimant was seen by Dr. Thomas Rooney, a North Little Rock orthopedic surgeon, while at Rebsamen Medical Center n March 6, 2005. The consultation report relative to the afore reflects, in pertinent part:

RECOMMENDATIONS: I explained to the owner of the business that he most likely would need surgery on the right heel but not on the left. He is to be kept in a compression dressing with ice and nonweight bearing. He will be seen by someone in a few days in his hometown. I explained to the boss it is best to wait a few days prior to doing any surgery. He does not have any fracture blisters at present. He can be transferred with elevation and wheelchair. (CX. #1, p. 17).

During his admission at Rebsamen Medical Center the claimant underwent numerous diagnostic studies relative to his spine, extremities, and renal system, to include x-rays, CT scans, and ultra sound.

On March 7, 2005, the claimant was discharged from Rebsamen Medical Center. The discharge summary reflects discharge diagnoses of bilateral calcaneal fractures awaiting right calcaneous ORIF, post traumatic hematuria, and anemia. After reciting the claimant's course of treatment and diagnostic finding, the March 7, 2005, discharge summary concludes:

. . . He was discharged to home n 03/07/05. He is to maintain low sodium and low cholesterol diet, continue no weight bearing to feet, continue daily wrap of feet and ankles with ace wraps. He was discharged in improved condition. He was to be provided a PT screen for crutch teaching. He was to follow up with his orthopedic surgeon of choice within one week and his PCP in two weeks. (CX. #1, p. 28-29).

On March 9, 2005, the claimant came under the care and treatment of medical personnel at the University of North Carolina Hospitals-Chapel Hill, relative to his March 5, 2005, compensable injuries. X-rays of the claimant's lumbar spine and thoracic spine, performed during his March 9, 2005, admission are reflected in the radiologist report:

Lumbar spine: Five lumbar-type vertebral bodies are noted. There is a mild gaseous distention of both large and small bowel. There is contrast opacification of the renal collecting systems bilaterally as well as the urinary bladder. The sacrum is poorly evaluated given the contrast within the urinary bladder. No antero - or retrolisthesis is seen in the lumbar spine. There is cortical irregularity seen involving the anterior superior cortex of the L1 and L2 vertebral bodies extending to the superior endplates of both of these vertebral bodies. These findings are worrisome for an acute fracture. There is subtle anterior wedging seen at the T12 and L3 levels and an acute wedge compression fracture at these locations cannot be excluded.

Thoracic spine: The thoracic spine is imaged in its entirety. As stated above, there is mild anterior wedging at the T12 vertebral level. The thoracic spine is otherwise unremarkable.

IMPRESSION: 1. Acute fracture involving the L1 and L2 vertebral bodies as described above. Anterior wedging at the T12 and L3 vertebral bodies may represent wedge compression fractures. A dedicated CT examination of these regions is recommended for further evaluation of these findings. (CX. #1, p. 47).

After an initial period of treatment and diagnostic studies at UNC Hospital, the claimant was discharged on March 13, 2005. (CX. #1, p. 31-61). On March 23, 2005, claimant returned to UNC Hospital and underwent surgery relative to his right lower extremity compensable injury. (CX. #1, p. 62-70). On March 24, 2005, claimant was seen at the emergency room due to complaints of severe pain in the right lower extremity. (CX. #1, p. 70-75). Claimant was again seen at the emergency room on April 1, 2005. (CX. #1, p. 76-78).

On October 10, 2005, claimant was seen at UNC Hospital relative to back pain which he attributed to the March 5, 2005, compensable accident. The October 10, 2005, report of Dr. Justin Chandler relative to his evaluation of the claimant during the afore visit reflects, in pertinent part:

. . . . At that time, he suffered bilateral calcaneus fractures and

L1 and L2 compression fractures. He was treated nonoperatively for his left calcaneus fracture and had ORIF of his right calcaneus fracture by Dr. Dahners with subsequent hardware removal last month. He comes to us today in referral from Dr. Dahners for continued back pain since the date of injury. He has been wearing a corset for comfort and had no other treatment for his L1-L2 compression fractures. His main concern today is posterior back pain, which he describes as being localized diffusely over the posterior aspect of his neck and lumbar spine. He describes the pain as sharp pain occasionally, but mostly dull and aching pain. He states that this has been keeping him awake at night and feels he has to sleep on his side due to this. He denies any radiation into his buttocks or legs and denies any radiation into his arms. He feels that the pain is worst when lying down. This does not prevent him from sitting or walking. He states that the pain is improved somewhat when he is wearing the corset and worsened by walking long distances and lying flat on his back. . . .

* * *

DIAGNOSES:

1. Healed L1 and L2 anterior compression fractures.
2. Bilateral L5 spondylolysis.
3. Cervical strain.

ASSESSMENT/PLAN: For his lower back pain, which is likely related to his prior L1-L2 compression fractures and possibly some combination from his L5 pars defect as well as his cervical strain, we would recommend a course of physical therapy and a trial of nonsteroidal anti-inflammatories. We have recommended that he get the necessary approval from workman's compensation and then try to get into a physical therapy program. A copy of this will also be faxed to his WC case manager with the patient's approval. We also recommend a consultation with the physical medicine and rehabilitation service to coordinate his rehabilitation. (CX. #1, p. 82-85).

The October 10, 2005, report of Dr. Moe R. Lim, relative to his evaluation of the claimant on the same date reflects, in pertinent part:

ASSESSMENT AND PLAN:

- 1) Cervical strain s/p fall 6 months ago. No fracture. We recommend a full course of physical therapy for this.
- 2) Axial low back pain. This is likely multi-factorial from his healed lumbar fractures and from his active lumbar spondylolysis. In my opinion, the fractures are well visualized on the CT scan dated 3/9/05 although the

report does not indicate so. The fractures were also almost certainly acute and related to his fall at work as the fracture pattern is concordant with his injury mechanism and association with calcaneal fractures. His bilateral pars defects were likely present prior to the fall but were asymptomatic. The fall may have brought on the symptoms. The bony edema seen in the pedicles of L5 on the MRI dated 10-7-05 attest to the likelihood that some of his axial back pain is from the spondylolysis.

Fortunately, these problems can be all be treated with via nonoperative methods. I have recommended that he see a physical medicine rehab physician and a physical therapist for strengthening, range of motion and other modalities to treat his axial neck and low back pain. We will provide him with the necessary prescriptions and referrals once approved by Worker's Comp. . . . (CX. #1, p. 87)

Dr. Laurence E. Dahmer of the Department of Orthopaedics fo UNC School of Medicine in an October 25, 2005, correspondence addressed the nexus of the claimant's back pain and the March 5, 2005, compensable accident:

I would attribute Mr Domingueze-Castro's back pain to the fractures he had in his spine during this fall. I recognize that the radiologist did not note these fractures, however they are definitely present. I have referred Mr. Dominguez-Castro to a spine surgeon for any further treatment of them. (CX. #1, p. 88).

The claimant was seen in follow up on February 3, 2006, by Dr. Lim. Following his examination, Dr. Lim noted the claimant's diagnoses of continued axial back pain, healed L1 and L2 compression fractures, and bilateral L5 pars defects. The February 3, 2006, report reflects that the claimant was continuing to be treated by physical therapy. Dr. Lim, again, encouraged the claimant to be seen by the physical medicine rehabilitation physicians for nonoperative management of his axial back pain. (CX. #1, p. 90).

A February 6, 2006, limited duty restriction certificate authored by Mischo Alshire, DPT, with NovaCare Rehabilitation reflects the following physical restrictions were imposed relative

to the claimant's return to work: no standing longer than 30 minutes without a seated break; no lifting more than 20 pounds; no lifting from the floor or squatting ; no climbing ladders; and that the claimant would require a supportive chair for sitting task and should be allowed short breaks every 30 minutes to stretch and change positions. (CX. #1, p. 91).

On March 8, 2006, the claimant underwent a functional capacity evaluation. The FCE concluded:

Mr. Domingueze-Castro demonstrated consistently reliable efforts in his performance of his FCE. His body mechanics were true to the nature of his physical dysfunctions. Based on the results of this test, it would appear that Mr. Domingueze-Castro is not able to return to the job of welder because he was not able to perform today at a level that would be required of the job.

He presently would do well to get a job that required less standing and physical effort to his work including lifting and carrying anything greater than 20# with any frequency. In addition, he would likely benefit from physical therapy to improve his strength and flexibility in his back and legs to enable him to functionally improve. (CX. #1, p. 94).

On April 5, 2006, the claimant was evaluated by Dr. William A. Somers, an orthopedic physician, relative to his injuries growing out of the March 5, 2005, compensable accident.

Following his examination of the claimant and after reviewing prior pertinent medical reports and records, the report reflects, in pertinent part:

IMPRESSION:

1. Healed L1 and L2 compression fractures.
2. L5 pars defects, symptomatic secondary to injury.
3. Healed right calcaneus fracture with subtalar ankylosis.
4. Healed left calcaneus fracture.

DISCUSSION:

Regarding the L1 and L2 compression fractures, I am inclined to believe Dr. Dahner's assessment. I know him, I know his experience as a trauma physician and I believe that if he feels these are acute fractures, they should be rated as such. NCIC Guidelines

indicate a ten percent (10%) permanent partial impairment for fracture of one vertebral body, fifty percent (50%) of that for the second, so there should be a fifteen (15%) permanent partial impairment of the back associated with the L1 and L2 compression fractures. These are at MMI and no further treatment should be anticipated.

As far as the L5 pars defects, it is possible that they predated the injury. The Radiologist felt that they were old. The MRI scan in October 2005, however, indicated bone edema in the L5 pedicles. This edema certainly indicates evidence of stress and recent reaction in the area. Pars injuries can occur with the kind of fall that Mr. Dominguez-Castro sustained. This injury may not be at MMI. He has been seen and has had some physical therapy, but I am not sure that therapy specifically addressed the pars defects. . . . Unlike surgery for disc disease and degenerative arthritis in the lumbar spine, pars defects do not respond well to surgical intervention. This would require lumbosacral fusion and would keep him out of work for a minimum of six months. This kind of operation may make his back feel well enough to get back to work kind of welding work. I think it will take a minimum of three months of physical therapy directed specifically at the pars defect problem to see if that will work for the patient. I would give it no less than six months before considering any kind of surgical intervention. For this reason I do not believe that the pars defect problem is at MMI. If no further intervention is authorized, I would give him an additional ten percent (10%) permanent partial impairment of the back. Since these injuries occurred at the same time, they come out of the original one hundred percent (100%) and he would have a twenty-five percent (25%) permanent partial impairment of the back. This would include the two lumbar compression fractures and the injury to the posterior elements (pars defects) at L5. (CX. #1, p.98-99).

In a report of April 30, 2006, Dr. Dahners assessed the extent of the claimant's anatomical impairment relative to the injuries growing out of the March 5, 2005, accident. Dr. Dahners assessed 20% permanent physical impairment relative to the claimant's spine, 30% to the right foot, and 10 % for the left foot. (CX. #1, p. 100-101).

On March 30, 2007, Dr. Somers assessed the claimant's anatomical impairment relative to the March 5, 2005, compensable injuries based on the AMA Guidelines for Rating Permanent Impairment, 4th Edition. The March 30, 2007, report reflects, in pertinent part:

Based on the 4th edition, the PPI on the lumbar spine is: 17%. This is based upon table 75, fig. 64 and section 3.3b.

PPI for the left foot is 24% based upon tables 43 and 64. This book doesn't even mention midfoot motion, 50% of which can be lost with calcaneal fractures.

PPI for the right foot is 53% based upon table 56 for ankylosis of the subtalar joint with varus deformity.

These impairments are for the foot alone as that is what N.C. would rate. They can be converted to lower extremity values using the same tables and would be: 37% right and 15% left. . . (Claimant's Supplemental Ex.).

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

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 5, 2005, the relationship of employee-employer-carrier existed among the parties.
3. On March 5, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$466.00/\$350.00, for temporary total/permanent partial disability.
4. On March 5, 2005, the claimant sustained injuries to his lumbar spine, right ankle, and left ankle arising out of and in the course of his employment with respondents.
5. There is not a dispute regarding the payment of temporary total disability and medical benefits in this claim, or the point at which the claimant reached the end of his healing period.
6. The claimant has a permanent physical impairment in the amount of 17% to the

body as a whole relative to his lumbar spine, 37% to the right and 15% to the left lower extremities based on AMA Guide To The Evaluation of Permanent Impairment, 4th Edition, as a result of the March 5, 2005, compensable injuries in the employment of respondents.

7. In addition to his anatomical impairment relative to his lumbar spine, when the claimant's age, education, permanent restrictions and limitations, and work history are considered, the claimant has sustained a loss of earning capacity in the amount of 25% .

8. The respondent shall pay all reasonable hospital and medical expenses arising out of the injuries sustained by the claimant in his March 5, 2005, compensable accident.

9. The respondents have controverted the claimant's entitlement to permanent disability benefits relative to his lumbar spine, to include a finding of permanent physical impairment and permanent partial disability benefits in excess of the claimant's anatomical impairment.

CONCLUSIONS

The compensability of the injuries sustained by the claimant in his accidental fall on March 5, 2005, in the employment of respondents is not disputed. Claimant asserts that as a result of the injuries suffered in the March 5, 2005, accident he has sustained a loss of earning capacity in excess of his anatomical impairment. Claimant seeks corresponding permanent partial disability benefits as well as controverted attorney fees.

Respondents take the position that in light of the claimant's status as a illegal alien the Commission is without jurisdiction to conduct a hearing on his claimant for workers' compensation benefits. Respondents do not deny the claimant's entitlement to workers' compensation as a result of his compensable injury, but maintain that the claimant should return

to his native country in order to pursue his claim. Respondents also argue that the claimant did not a permanent impairment relative to his lumbar spine as a result of the March 5, 2005, compensable accident, but rather only scheduled permanent injuries. As a consequence of the afore, respondents maintain that the claimant is limited to permanent benefits corresponding to the schedule injuries to his lower extremities.

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

As noted above, the compensability of the injuries sustained by the claimant on March 5, 2005, is not disputed. Jurisdictionally, respondents assert that the claimant is prohibited from pursuing his claim for workers' compensation benefits before the Arkansas Workers' Compensation Commission due to his status as an illegal alien based on a federal statute. Ark. Code Ann. §11-9-707, provides that in any proceeding for the enforcement of a compensation claim, a prima facie presumption shall exist that the Workers' Compensation Commission has jurisdiction. Further, Ark. Code Ann. §11-9-105 (Repl. 2002) provides in pertinent part:

(a) The rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury or death, shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer . . .

Ark. Code Ann. §11-9-111, addresses the payment of compensation to alien dependents, which of necessity grow out of the compensable injuries of the employees. A distinction is not made regarding the legal status of the injured employee. Accordingly, I find that the Arkansas Workers' Compensation Commission has jurisdiction of this claim.

There is no evidence in the record to reflect that the claimant experienced any physical limitations or restrictions relative to his lumbar spine prior to the March 5, 2005, compensable injury in the employment of respondents. The claimant's employment history prior to the March 5, 2005, compensable accident consisted of heavy physical manual labor. Subsequent to the March 5, 2005, compensable accident, claimant has been assigned permanent restrictions on his employment activities relative to lifting, standing, squatting, and climbing, as reflected in the valid functional capacity evaluation. The physical limitations imposed on the claimant related to both his lumbar spine and lower extremity injuries, growing out of the compensable March 5, 2005, accident.

The evidence preponderates that the injuries to the claimant's lumbar spine, to included the compression fractures at L1 and L2, along with the aggravation of the previously asymptomatic L5 pars defects, are all the product of the compensable March 5, 2005, accident sustained in the employment of respondents. In assessing the extent of the claimant's anatomical impairment both Dr. Laurence Dahners and Dr. William Somers, have authored reports attributing the major cause of the residual impairment to the March 5, 2005, compensable injury. Further, utilizing the AMA Guides to the Evaluation of Permanent Impairment, 4th Edition, the evidence preponderates that the claimant has sustained a 17% permanent physical impairment to whole body relative to his lumbar spine as a result of the March 5, 2005, compensable injury. The claimant has also sustain a 37% permanent physical impairment to the right lower extremity and 15% permanent physical impairment to the left lower extremity as a result of the March 5, 2005, accident. Respondents have controverted the anatomical impairment relative to the claimant's lumbar spine injuries growing out of the March 5, 2005, accident.

The claimant has obtained employment earning \$14.00, per hour working 48 to 50 hours per week in his current employment. Since commencing his new employment claimant has missed several days from work attributable to residuals of his March 5, 2005, compensable injury. During his employment with respondent, the credible evidence reflects that the claimant earned \$15.00, per hour and worked a 60 to 70 hour week. The credible evidence in the record reflects that the extent of the claimant's physical activities is confined to working and recovering overnight in order to return to the work the next day. Claimant did not complete highschool, however he is able to read and write in Spanish. Claimant also has a valid driver's license. Though employed, the claimant has severe physical limitations on his employment activities to include limiting restrictions, prohibition on climbing ladders, squatting, standing, and frequent alternating positions. When the claimant's age, education, work experience, permanent physical restrictions and limitations are considered, the evidence preponderates that the claimant sustained a loss of earning capacity in the amount of 25% over and above his anatomical impairment. Respondents have controverted the claimant's entitlement to wage loss disability benefits.

AWARD

Respondents are herein ordered and directed to pay to the claimant permanent partial disability benefits at the weekly compensation benefit rate of \$350.00, to correspond with the claimant's anatomical impairment of 37% permanent physical impairment to the right lower extremity, 15% permanent physical impairment to the left lower extremity, 17% permanent physical impairment to the body as a whole relative to the claimant's lumbar spine, and 25% wage loss disability growing out of the March 5, 2005, compensable injury. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid

toward the afore obligation.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing and other apparatus expenses growing out of the claimant's compensable injury of March 5, 2005, to include medical related travel.

Maximum attorney fees are herein awarded to the clamant's attorney on the controverted portion of indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE