

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E701701

DEWEY JAMES	CLAIMANT
UNIVERSAL PACKAGING CORP.	NO. 1 RESPONDENT
HARTFORD FIRE INS. CO. INSURANCE CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	NO. 3 RESPONDENT

OPINION FILED MARCH 14, 2007

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

Claimant represented by RANDY SHOCK, Attorney, Fort Smith, Arkansas.

Respondents No. 1 represented by MICHAEL RYBURN, Attorney, Fort Smith, Arkansas.

Respondent No. 2 represented by TERRY PENCE, Attorney, Little Rock, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held on January 11, 2007, 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 7, 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 September 12, 1995, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his right knee on September 12, 1995.

4. The claimant is entitled to the maximum compensation rate for 1995.

5. Medical expenses have been paid.

6. A 10 percent impairment rating was accepted and is being paid by Respondents No. 1.

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

1. Claimant's entitlement to permanent and total disability.
2. Additional impairment for the claimant's right knee injury.
3. The claimant's entitlement to temporary total disability from February 11, 2006, to a date to be determined.

4. Attorney's fees.

5. Whether the claimant's healing period is ongoing subsequent to February 10, 2006.

In regard to the foregoing issues the claimant contends that on or about September 12, 1995, the claimant suffered an accidental injury to his right knee arising out of and in the course of his employment. As the result of the injury and its compensable consequences and complications, the claimant has undergone two (2) total knee replacement surgeries, a septic knee, rampant staff infection and remains within his healing period. Necessary medical services for the injury, its consequences and complications have

not been provided in full by respondents. Respondents have ceased paying temporary total disability and begun making permanent partial disability payments. Claimant is entitled to the award of additional medical treatment, additional temporary total disability payments or, in the alternative, permanent and total disability, as well as, a maximum statutory attorney's fee on all benefits awarded.

In regard to the foregoing issues Respondents No. 1 contend that the claimant was treated for the 1995 injury and paid for a 10 percent rating to the leg. He eventually required a total knee replacement. He has now been released with a 50 percent rating. The major cause of the PPD is degeneration and arthritis, not the 1995 injury. The claimant is 64 years old. If he is PTD, benefits stop at age 65. Respondents No. 1 further contend that they are entitled to a credit of 10 percent toward the rating which they have accepted for the claimant's compensable injury which is now rated at 50 percent. Respondents No. 1 contend that they controverted the higher impairment rating on October 19, 2006, therefore if the 50 percent rating is found to be appropriate only 40 percent would be controverted.

In regard to the foregoing issues Respondent No. 2, the Second Injury Fund, contends that the claimant's injury is scheduled and he cannot prove he is permanently and totally disabled as a result of the compensable injury. The Second Injury Fund does not have liability in this claim. Further, § 11-9-411 is applicable in that claimant's group health care insurance, Aetna, has paid benefits

and claimant should be required to provide the pertinent information and/or releases as required under § 411.

In regard to the foregoing issues Respondent No. 3, the Death & Permanent Total Disability Trust Fund, 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 & Permanent Disability Trust Fund liability. If the Second Injury Fund is found not to 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 claimant submitted medical records marked Claimant's Exhibit No. 1. Respondents No. 1 and Respondent No. 2 submitted the deposition of Dr. Charles Barnes which is marked Joint Exhibit No. 1. Respondent No. 2 submitted medical records which are marked Respondent No. 2's Exhibit No. 1 and the claimant's response to interrogatories marked Respondent No. 2's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was 64 years old and had been married for thirty-seven years. The claimant testified that he finished three and a half years of college attending on a football scholarship. The claimant testified that after college he played

two years of professional football, one with the Houston Oilers and the other with the Arkansas Diamonds. The claimant testified that he began working for the respondent in 1970. The claimant testified that his job with the respondent was to run a printing press.

The claimant testified and the parties have stipulated that he sustained a compensable injury to his right knee on September 12, 1995. The claimant testified that prior to this accident, he had no problems with his knees even throughout his football career he had no problems with his knees and even did some jogging. The claimant agreed that initially he had arthroscopic surgery performed by Dr. Sherrill and in 1997 come under the care of Dr. Alberty. The claimant agreed that Dr. Alberty performed a procedure on his knee in 1999 and continued under the doctor's treatment until April 1, 2005. The claimant testified that Dr. Alberty performed a total knee replacement in 2005 and following that surgery he developed a staph infection. The claimant testified that the staph infection filled his whole body and he even had pus coming out of his ears. The claimant testified that this infection has affected his hearing even to today's date. The claimant testified that he still carries the staph infection and at times it comes out in different ways. The claimant testified that a year ago he had staph pneumonia and almost died. The claimant testified that he was referred to Dr. Barnes who in May 2005 removed the knee that Dr. Alberty had put in. The claimant testified that in July 2005 Dr. Barnes put in another knee which he

currently has. The claimant testified that Dr. Barnes put in a medicine block explaining that he had to spend two and a half months in a hospital bed in his living room with a PIC line to his heart and that nurses came out everyday to put medicine in and to change the batteries as well as to clean the dressing. The claimant testified that after July 2005 he began doing physical therapy to rehabilitate his leg and he is still undergoing physical therapy. The claimant testified that it was in March 2006 that he was hospitalized with the staph pneumonia and he was in the hospital from six to seven days. The claimant testified that prior to this hospitalization, Dr. Ross became his treating physician. The claimant testified that under Dr. Ross' direction, he has been going to physical therapy at Crawford County Rehabilitation where they have worked with his knee with various types of treatments, machines and stimulation. The claimant testified that this physical therapy at Crawford County went on for approximately four weeks. The claimant testified that Dr. Ross has since sent him to Dr. Schroeder with Healthsouth where he has undergone pool therapy as well as worked with a stimulator machine. The claimant testified that the pool therapy really helps his knee as well as his back.

The claimant testified that prior to his first knee replacement in April 2005, he was working a full work schedule as well as able to drive. The claimant testified that he was also able to engage in other physical activities such as working out with weights and fishing. The claimant testified that he has been

unable to return to work following his April 2005 surgery. The claimant testified that he was 6' 2" and currently weighs approximately 320 pounds. The claimant testified that when he played professional football he weighed approximately 260 pounds and just prior to his April 2005 surgery he weighed 265 pounds. The claimant testified that the one day that he did try to return to work, he experienced swelling in his leg, ankle, and foot. The claimant testified that he has continuous pain in his right leg and with any type of activity or strain the pain level goes up. The claimant testified that he also has balance problems and as a result of this has fallen several times destroying several walkers. The claimant testified that he falls two or three times a week and as a result of these falls his back is beginning to give him problems. The claimant testified that he is no longer able to drive because he cannot trust his leg to move when needed. The claimant testified that he experiences numbness and tingling in his feet and they go to sleep real easy, he has trouble lifting because he is not as strong as he used to be, he cannot stoop down and get things off the ground, and climbing stairs is a very slow process. The claimant testified that as a result of these various limitations, he has suffered from depression because he cannot do the things he used to do. The claimant testified that he could not return to his former employment with the respondent due to the requirement of walking and standing all day. The claimant testified that he sleeps with his foot elevated on a pillow and he is usually better in the morning. The claimant testified that he

takes ten pills every morning and three pills at night. The claimant testified that it was his intension to return to work after his first knee replacement in April 2005, but it did not turn out that way.

On cross examination by Respondents No. 1, the claimant testified that he did not finish college, but did complete three and a half years. The claimant testified that after he finished his professional football career, he did a few odd jobs and then he began working for the respondent. The claimant testified that while he was playing football both for college and professionally he did not have any problems with his knees. The claimant testified that the only sports injuries he has incurred are to his arms, one playing football and the other playing softball. The claimant testified that the work that he did for the respondent was a skilled position and that he continued learning the job for the thirty-five years that he worked. The claimant testified that he did not think that he could teach anyone else to do the work because he would not be able to do the standing that would be required. The claimant testified that he is receiving social security retirement. The claimant testified that prior to his 1995 accident he had no arthritis or problems with his knees but that now he has arthritis in his right knee. The claimant testified that he has no problems with his left knee or any other of his bodily joints. The claimant agreed that the first procedure he had done on his right knee was a scope but was able to return to work after a couple of weeks. The claimant testified that approximately

two years later Dr. Alberty had to go in and clean out some cartilage from his knee in hopes of keeping it from locking up. The claimant testified that his exercise and jogging program ended after his 1995 accident. The claimant testified that between 1997 and 2005 his knee kept getting worse and worse. The claimant testified that he has never been able to go back to work after Dr. Alberty did his first knee replacement. The claimant stated that he developed an infection in his knee approximately one week after his knee surgery and he just kept getting sicker and sicker. The claimant testified that Dr. Alberty told him that his problems were mental so he went to Dr. Ross who diagnosed the staff infection. The claimant testified that he next was seen by Dr. Barnes who did another knee replacement. The claimant testified that he did not think his knee was any better after the second knee replacement because it is still locking, popping and hurts all the time. The claimant testified that due to Dr. Barnes' attitude they quit seeing him and returned to see Dr. Ross who continues to be his primary physician. The claimant testified that he spends his time doing nothing. The claimant testified that sometimes he will go to work with his wife and sit around and visit with the people at the Abilities Unlimited.

The claimant agreed that it was after his knee replacement in 2005 that he became unable to work. The claimant testified that he still considers himself an employee of the respondent and is receiving benefits through them although not any kind of pension or retirement benefits.

On redirect examination, the claimant testified that in April 2005 he had approximately \$100,000.00 in a 401K plan. The claimant testified that currently he has zero in this plan because he had to use it for house payments, keeping his house up and paying bills.

Betty Ann James testified that she was the wife of the claimant. Mrs. James testified that prior to the claimant's injury in 1995, the claimant would jog, work out at the gym, mow the grass, take care of the cars, go fishing, and they traveled a lot. Mrs. James testified that since his surgery in April 2005 these activities have pretty much stopped. Mrs. James testified that the claimant has problems getting up and down out of a chair, he suffers a lot of pain, he has started having nightmares since his staff infection, and he sleeps with a BiPAP machine due to his sleep apnea. Mrs. James testified that the claimant cannot put his own shoes and socks on, cannot help around the house, and cannot lift the grand kids. This witness testified that the claimant has problems holding a conversation because of his memory problems which he developed in the hospital following his knee surgery. This witness testified that prior to April 2005 the claimant did not suffer from depression. Mrs. James testified that prior to the claimant's accident he had taken blood pressure medications as well as a low dosage of a thyroid medication, but neither one of these health concerns caused him any problem, inability to do his work, or earn a living.

On cross examination by Respondents No. 1, Mrs. James testified that the night after the claimant's first surgery done by

Dr. Alberty, the claimant had some sort of a seizure. This witness testified that from that point on the claimant has had problems with nightmares and forgetting things.

The medical records which are extensive, indicate that the claimant was first operated on by Dr. Alberty on March 9, 1999. At the time the claimant was discharged following this surgery, Dr. Alberty assessed the claimant with having post traumatic calcification, superior lateral pole of the patella, on the right; later tracking of the patella with malalignment and post traumatic chondromalacia of the patella, severe. The medical records set forth that Dr. Alberty continued to follow the claimant after his first surgery for continuing complaints of discomfort. At one point the claimant was to use a brace and he has continued on medications as well as exercises. Also injections have been administered to the claimant throughout the years of 1999, 2000, 2001, 2002, and 2003. Dr. Alberty's notes throughout these years indicate that the claimant continues to work twelve hours a day on a four-day work week. During the year of 2004 Dr. Alberty notes that the claimant is still experiencing symptoms and even an increase in symptoms in his knee. The claimant underwent an MRI of his right knee on November 15, 2004. Dr. Alberty writes on November 22, 2004, that he has gone over the claimant's MRI which has multiple findings involving some abnormalities in the meniscus but also the medial compartment arthritic changes and cartilaginous defects along the lateral pole of the patella. Dr. Alberty recommended Synvisc injections. On March 4, 2005, Dr. Alberty

writes that the claimant's Synvisc injections were beneficial but the claimant's pain has resurfaced. Dr. Alberty notes that the claimant is probably going to need a total knee replacement and that an x-ray of the claimant's knee shows degenerative change and narrowing of the medial compartment. The claimant underwent a total knee replacement and total synovectomy of his right knee on April 1, 2005, performed by Dr. Alberty. On April 15, 2005, Dr. Alberty notes that the claimant has some serious drainage from the distal part of the incision of his total knee replacement. Dr. Alberty writes that cultures were taken and the claimant's wound was dressed. On April 18, 2005, Dr. Alberty notes that the culture taken at his office had a rare growth and the culture taken from the ER has a heavy growth of strep aureus. Dr. Alberty recommended that the claimant begin physical therapy, wear his brace and prescribed medications. Dr. Alberty continued to follow the claimant where it is noted on May 3, 2005, that the claimant has increased discomfort and by May 6, 2005, Dr. Alberty notes that the claimant continues to obviously be clinically depressed.

The claimant was seen by Dr. James Mulhollan on May 17, 2005. After reviewing the claimant's medical records and tests, Dr. Mulhollan writes that the claimant has several open spots that appear to be suture reactions except there is a significant amount of somewhat yellowish drainage coming from the lower one. Dr. Mulhollan continues to write that there is erythema all about the lower one third of the midline incision that extends down over the upper tibia. The doctor further notes that the claimant is

somewhat swollen and tender. Dr. Mulhollan writes that in his opinion there is a fairly high probability of post operative wound infection and recommended that the claimant be seen by an orthopedist in the Fort Smith area. Dr. Mulhollan writes that he thinks that an adequate evaluation will include at least aspiration and culture of the joint, possibly a white blood cell scan and perhaps other diagnostic studies depending on the claimant's appearance when evaluated. The claimant's ears were examined by Dr. Michael Gwartney on May 21, 2005. Upon examination, Dr. Gwartney notes that the claimant's ear channels bilaterally are markedly edematous and swollen with significant erythema. The doctor writes that there is a small amount of purulent material in each channel and the claimant's tympanic membranes are difficult to visualize secondary to the edema and swelling in the ear channels. The claimant was diagnosed with otitis externa bilaterally for which the doctor prescribed ear drops. The claimant underwent surgery at St. Vincent's Health Systems on May 23, 2005, where Dr. Barnes performed a resection and arthroplasty, placement of antibiotic spacer of the claimant's right knee. The claimant was discharged from St. Vincent's on June 3, 2005, to be taken home by ambulance. It is noted that arrangements have been made for a hospital bed, bed side commode and home health will see him in one week to remove his staples and sutures. Dr. Lowry Barnes operated on the claimant again on July 11, 2005, this time for failed right total knee replacement as well as status post resection arthroplasty, right knee, for infected right knee replacement. The claimant was

discharged from St. Vincent's on July 17, 2005, with instructions to continue his Coumadin and Prophylaxis and that he is to work aggressively on therapy. Dr. Barnes writes on January 27, 2006, that he has discussed the claimant's problems with Dr. Reginald Rutherford and fortunately the claimant's tests show no evidence of reflex sympathetic dystrophy or a problem with his prosthesis. Dr. Barnes writes that Dr. Rutherford reports that there is no neurologic deficit according to the electro diagnostic studies, but notes that he does have some valvular changes in his veins and a referral to Dr. Tirado was made. The claimant was seen by Emilio Tirado on February 3, 2006. After taking the claimant's history and reviewing his various tests, Dr. Tirado writes that the claimant has significant pitting edema in both legs and has early signs of venous insufficiency in his right lower extremity and right foot but not near severe enough to require surgical intervention. Dr. Tirado recommended bilateral full length support stockings and gave the claimant a prescription for same. Dr. Barnes writes on February 10, 2006, that as of this date the claimant has reached maximum medical improvement and would assess the claimant with a 50 percent impairment rating to his right lower extremity. The claimant underwent a functional capacity evaluation on February 20, 2006. The evaluator notes that the results of the tests are reliable and that the claimant demonstrates the ability to perform work at the light physical demand classification and that he does exhibit the ability to sustain this level of work over the course of an eight-hour work day.

The claimant was seen by Dr. Ross on March 14, 2006, noting that he has been appointed the doctor of record for the claimant subsequent to his infected total knee replacement that required a reoperation. Dr. Ross sets forth that he has visited with Dr. Tirado and they agree that the claimant has chronic vasculitis, cellulitis, venous insufficiency, a lot of stasis dermatitis with a few stasis ulcers, all of which are well healed. Dr. Ross opines that the claimant is also having a lot of systemic symptoms such as night sweats, loss of appetite, weight gain, and severe edema in both lower extremities. The claimant was given a diet as well as prescribed water aerobics and exercise. The claimant was seen by Dr. Stephen Carney on March 16, 2006, for his cellulitis and hypothyroidism. The claimant was admitted to the Summit Medical Center on March 20, 2006, due to generalized fatigue as well as a low grade fever and chills. Dr. Suh Norbert Niba writes that due to the fact that the claimant has had generalized bacteremia and endocarditis could be a factor. The doctor recommended TED hose, to closely monitor his oxygen saturations, and medications were prescribed. The doctor notes that if the claimant does not improve over the next few days they will consider an infectious disease consult and subsequent white blood cell count. Dr. William Swindell writes on March 24, 2006, that he has reviewed the claimant's history as well as given him a physical examination and reviewed the claimant's laboratory work. Dr. Swindell writes that his first thought is that the claimant's knee is still infected and that the claimant has osteomyelitis in his right knee joint. The

doctor writes that the claimant does have left lower lobe pneumonia for which he was prescribed medication. Dr. Swindell recommended treating the pneumonia, draw sedimentation rate and check other lab work. Dr. Swindell writes that he agrees that there is concern about the claimant's sleep apnea syndrome due to his increasing weight and his difficulty breathing at night. The doctor writes that sleep study and CPAP would probably be very appropriate and might be significantly beneficial and help lower his blood pressure. Dr. Niba writes on March 28, 2006, that the claimant is being discharged from the hospital with a diagnosis of pneumonia, right lower extremity cellulitis, complications from total knee replacement with ensuing vascular insufficiency, hypertension, obstructive sleep apnea, and hypothyroidism. It is noted that the claimant was given medications for his various problems and that he tolerated physical therapy. Dr. Ross writes on April 19, 2006, to the claimant's case manager that when he first saw the claimant the claimant's right knee was markedly edematous, hot, and there was a purulent drainage from the knee replacement incision. Dr. Ross notes that after consulting with Dr. Evans, it was agreed that the claimant had infection in his knee and he was admitted to St. Edwards Mercy Medical Center. Dr. Ross notes that sometime that evening the claimant's condition worsened and that he developed septic shock and was transferred to Little Rock. Dr. Ross writes that ultimately the claimant's knee was removed and a spacer was placed in by Dr. Barnes who then later replaced the knee with another prosthesis. Dr. Ross writes that due to the claimant's

long history of edema, pain, and some sort of dermatological reaction, there was concern that he had or was developing reflex sympathetic dystrophy but that had been ruled out. Dr. Ross writes that the claimant was also evaluated by a vascular specialist who opined that there was possibly some vasculitis that was causing the claimant's ongoing pain, swelling, and bulbous lesions that were developing about the skin of the incision itself. Dr. Ross writes that a couple of months ago the claimant was admitted to the hospital due to weight loss and extreme malaised. The doctor notes that the claimant was febrile and intervenous fluids, antibiotics, and bed rest for five days were administered which improved his leg and knee. Dr. Ross opines that the claimant has reached maximum medical improvement, noting that he is not going to be able to return to the type of employment that he previously accomplished and would only be able to perform very sedentary work no more than two to three hours a day. Dr. Ross notes that the claimant underwent a functional capacity evaluation in February 2006 and the doctor writes that he would agree with the evaluation. Dr. Ross also wrote that he would agree with Dr. Barnes' that the claimant is entitled to a 50 percent impairment rating to the right lower extremity. Dr. Ross writes to the claimant's attorney on November 14, 2006, that it is his opinion that the claimant is permanently and totally disabled due to his knee injury and its subsequent complications. Dr. Ross writes that the claimant has significant soft tissue injury to the right knee compartment, the vasculature and the nerves, to leave him with such edema, chronic pain, chronic

inflammation, swelling, and loss of the ability of that knee to support him to the point that he cannot work. Dr. Ross writes that it is his opinion that the claimant's compensable knee injury is the major cause of his need for total knee replacement and the related treatments and current disability which has followed.

Dr. Lowry Barnes testified by way of deposition on November 20, 2006, stating that when he first saw the claimant, his issues were not alignment of his knee but infection. Dr. Barnes stated after reviewing the claimant's 1995 MRI of his right knee that the significance of the test showing the claimant had degenerative joint disease means that the claimant had arthritis at that time and that coupled with the medial meniscus tear suggested further operative problems in the future for the claimant. Dr. Barnes was asked that once the meniscus surgery was done, is there any way to tell whether that had any part to play in the claimant developing arthritis? Dr. Barnes responded, "No way to know." Dr. Barnes testified that the major reasons for a knee replacement are pain and loss of function secondary to arthritis. Dr. Barnes testified that he rated the claimant with a 50 percent impairment to the lower extremity based on his poor result due to his knee replacement. On cross examination by the claimant's attorney, Dr. Barnes testified that the risk of infection is increased since the claimant has had a staph infection previously. Dr. Barnes testified that he would be surprised if the claimant was still having problems with infection because when he had a work up last done on him he did not have an infection. Dr. Barnes was asked if

chronic swelling would tend to move the claimant's rating toward a poor result rather than an excellent result after a knee replacement? Dr. Barnes responded, "Yes, if it was something that the evaluator could see."

After a complete review of this matter, I find that the claimant has failed to prove by a preponderance of the evidence that he is permanently and totally disabled. The claimant is a very articulate, pleasant gentleman who has an outstanding work ethic as demonstrated by his many years of work for the respondent. By his own testimony, the work which he did for the respondent was a skilled position and his functional capacity evaluation indicates that he is capable of doing sedentary type work. I do find, however, that the claimant has proven by a preponderance of the evidence that he is entitled to additional impairment to his right lower extremity in the amount of 50 percent. This 50 percent rating was given by Dr. Barnes and subsequently affirmed by Dr. Ross. It is noted that the respondents have previously accepted and had paid or are paying a 10 percent impairment rating to the claimant's right lower extremity, therefore, they should pay an additional 40 percent to this claimant. The claimant has further proven that he is entitled to additional temporary total disability from February 11, 2006, to April 19, 2006, when Dr. Ross set forth that the claimant has reached maximum medical improvement. Subsequent to Dr. Barnes impairment rating on February 11, 2006, the claimant underwent hospitalization and extensive treatment for an ongoing infection as well as other problems. Dr. William

Swindell, an infection specialist, writes during the claimant's hospitalization that, in his opinion, the claimant's knee is still infected and he does not see much evidence to convince him that it is not infected. Therefore, even though Dr. Barnes rated the claimant for his right lower extremity on February 11, 2006, I find that he reentered a healing period as a result of his compensable injuries and did not again reach maximum medical improvement until April 19, 2006. Therefore, Respondents No. 1 should pay temporary total disability to this claimant from February 11, 2006, to April 19, 2006.

FINDINGS & CONCLUSIONS

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

2. On September 12, 1995, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his right knee on September 12, 1995.

4. The claimant is entitled to the maximum compensation rate for 1995.

5. Medical expenses have been paid.

6. A 10 percent impairment rating was accepted and is being paid by Respondents No. 1.

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

8. The claimant has proven by a preponderance of the evidence that he is entitled to additional impairment for his right lower extremity in the amount of a total of 50 percent. The respondents have previously accepted and are paying a 10 percent impairment to the right lower extremity, therefore, they shall pay an additional 40 percent to the claimant for this increased rating. See discussion above.

9. The claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability from February 11, 2006, to April 19, 2006. See discussion above.

10. The respondents have controverted the claimant's request for additional benefits.

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

ORDER

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

The claimant has proven by a preponderance of the evidence that he is entitled to additional impairment for a total of 50 percent to his right lower extremity. The respondents have previously accepted 10 percent impairment to the claimant's right lower extremity, therefore, they shall pay an additional 40 percent impairment to this claimant.

The claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability from February 11, 2006, to April 19, 2006.

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