

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311733

GARY MILLER	CLAIMANT
NABHOLZ CONSTRUCTION	RESPONDENT
ACIG INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT
RISK MANAGEMENT, TPA	RESPONDENT
SECOND INJURY FUND	RESPONDENT

OPINION FILED JANUARY 4, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by CONRAD ODOM, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

Second Injury Fund represented by TERRY PENCE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

The most recent hearing was held in this case on October 16, 2006, in Springdale, Arkansas. A pre-hearing order had been entered on June 20, 2006. This pre-hearing order purported to set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. However, subsequent to the entry of the pre-hearing order, the Second Injury Fund was joined as a party and the respondents accepted liability for a permanent physical impairment of 7% to the body as a whole. A copy of the pre-hearing order with these amendments noted thereon, together with a clarification concerning the issue over

additional medical services, was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. The prior Opinion of February 16, 2005 has become final and is res judicata of all issues raised and addressed therein.
2. The respondents accept liability for a 7% permanent physical impairment.

By agreement of the parties, the issues to be addressed at the present time were limited to the following:

1. The claimant's entitlement to additional medical services as recommended by Dr. Raben, after June 26, 2006.
2. The claimant's entitlement to permanent partial disability benefits for both permanent physical impairment and loss of wage-earning capacity.
3. Appropriate attorney's fee.
4. Second Injury Fund liability.

In regard to these issues, the claimant contends:

(a) Employee/Employer relationship existed on or about 10/15/03 and 10/23/03.

(b) On that date, claimant sustained a compensable injury.

(c) Claimants authorized treating physician is Dr. Tony Raben.

(d) Dr. Tony Raben has recommended pain management for some conservative care. Pain management has been controverted.

(e) Claimant has reached maximum medical improvement and respondents have accepted a 7% permanent impairment which they are currently paying.

(f) Claimant remains unable to return to same or similar employment. Further, employers has not offered claimants a job within restrictions and therefore claimant is entitled to permanent impairment in excess of his permanent impairment rating.

(g) Claimant is entitled to a controverted attorneys fee on all amounts awarded.

In regard to these issues, the respondents contend:

“The respondents contend they have paid all reasonable and necessary medical expenses arising out of the compensable injury; respondents contend the claimant is not entitled to any wage loss disability in excess of permanent anatomical impairment.”

In regard to these issues, the Second Injury Fund contends:

“It is the position of the Second Injury Fund that if claimant is suffering any wage loss disability, responsibility for same does not lie with the Second Injury Fund.”

DISCUSSION

I. THE CLAIMANT’S ENTITLEMENT TO ADDITIONAL MEDICAL SERVICES, AS RECOMMENDED BY DR. CYRIL RABEN, AFTER JUNE 26, 2006

The first issue to be addressed concerns the claimant’s entitlement to additional medical services, after June 26, 2006, as recommended by Dr. Cyril Raben. Clearly, the claimant is entitled to reasonably necessary medical services for his compensable lumbar injury. However, he must still show that the disputed medical services actually constitute reasonably necessary medical services for his compensable injury.

Medical services are “reasonably necessary” when they are necessitated by or connected with the compensable injury. These services must also have a reasonable expectation of accomplishing their intended purpose or goal, at the time the services are rendered. However, the claimant need not show that such services were in fact actually successful in accomplishing their intended purpose or goal.

In great part, the question of whether medical services are “reasonably necessary” is a medical question. Thus, substantial attention must be given to the medical evidence presented.

In the present case, the records of Dr. Cyril Raben (an orthopaedic surgeon and the claimant’s primary treating physician for his compensable injury) show that Dr. Raben opined, on May 8, 2006, that the claimant had achieved “maximum medical improvement” (MMI). At that time Dr. Raben also assessed a permanent physical impairment of 6 to 8% to the body as a whole for the claimant’s compensable lumbar condition. Further, Dr. Raben set out various permanent restrictions and limitations on the claimant’s potential physical activities.

On June 26, 2006, the claimant returned to Dr. Raben, complaining of an exacerbation of his symptoms. Dr. Raben noted that the claimant was, at that time, now complaining of pain and discomfort in both of his legs and hips, rather than only his left hip and leg. He also noted that the claimant now complained that his legs hurt worse than his back. Dr. Raben did not indicate any precipitating event or cause for the increase and/or change in the

claimant's symptoms. However, he observed on his physical examination that both the claimant's objective and subjective findings were unremarkable or negative, and appeared to be essentially unchanged from the findings on his previous examination in May of 2006.

At the time of the June 26, 2006 evaluation, Dr. Raben prescribed treatment in the form of oral medication, consisting of pain medication and anti-inflammatories. He again released the claimant to return for treatment only on an as needed basis (prn).

Clearly, Dr. Raben is the claimant's authorized treating physician. However, on June 26, 2006, Dr. Raben obviously did not feel that a follow up visit was necessary or appropriate at that time, as he did not schedule one. There is simply not sufficient evidence presented to determine, at this time, when and what type of future medical services by Dr. Raben might be "reasonably necessary."

From the claimant's testimony, pre-hearing questionnaire and testimony, it is apparent that the medical services he is now seeking, are in the form of a chronic pain management program. Dr. Raben's reports and records shows that he had considered the possible benefit of a chronic pain management program in December of 2005. At that time, further surgery in the way of a 360 degree multi level fusion was also being contemplated. The medical evidence, including the reports and records of Dr. Raben and Dr. Anthony Capocelli (a neurosurgeon) show that the surgical fusion was subsequently abandoned as a reasonable treatment modality.

Instead, additional medical treatment was proposed by Dr. Capocelli, in the form of a vigorous physical therapy program accompanied by the use of non steroidal anti-inflammatories and prescription pain medication for a period of several months, followed by an FCE Evaluation. Apparently, this treatment regimen was carried out, and the FCE evaluation was ultimately performed on April 18, 2006. No further mention of the necessity or reasonableness of a formal pain management program is found in any of the subsequent medical reports and records. This potential treatment modality appears to have been abandoned, along with the previously recommended multi-level lumbar fusion, by the claimant's treating physicians.

After consideration of all the evidence presented, it is my opinion that the greater weight of the evidence fails to show that a formalized program of chronic pain management is currently medically appropriate or reasonably necessary for the claimant's compensable injury. The evidence presented further fails to show that such a formalized program of chronic pain management would likely be of any benefit in improving or resolving the symptoms produced by the claimant's compensable injury, at the present time. Therefore, this type of medical service would not presently represent "reasonably necessary medical services" for the claimant's compensable injury.

In summary, the claimant has failed to show that, at the present time, he is entitled to any additional medical services at the respondents' expense, which has or is not being provided by the

respondent. His request for additional medical services in the form of a chronic pain management program must be denied.

II. PERMANENT PHYSICAL IMPAIRMENT

The next issue concerns the claimant's entitlement to permanent disability benefit for permanent physical impairment, under Ark. Code Ann. §11-9-522(a). In order to be entitled to such benefits, the claimant must not only prove that he has experienced a loss of use of his body as a whole, but must also prove that this loss or impairment is based upon objective and measurable physical or mental findings, Ark. Code Ann. §11-9-704(c)(1)(B). The claimant must further prove that the compensable injury was the "major cause" of the permanent impairment, Ark. Code Ann. §11-9-102(4)(F)(ii)(a).

Although it is the duty of this Commission to determine the existence and appropriate extent of permanent physical impairment (rather than any medical expert), expert medical evidence is still relevant. However, in order to be considered, such medical evidence must be stated within a reasonable degree of medical certainty, Ark. Code Ann. §11-9-102(16)(B).

In determining the existence and extent of permanent physical impairment, no consideration can be given to pain. In the case of spinal injuries (such as the present case), no consideration can be given to straight leg raising and range of motion tests, Ark. Code Ann. §11-9-102(16)(A)(ii). Finally, any determinations of the extent or percentage of physical impairment must be calculated in a manner that conforms to the Commission's current official rating

guide, The American Medical Association's Guide to the Evaluation of Permanent Impairment (Fourth Edition), Ark. Code Ann. §11-9-522(g).

In the present case, Dr. Cyril Raben, an orthopaedic surgeon, and the claimant's current primary treating physician, assessed a permanent physical impairment for the claimant's compensable lumbar injury of 6-8% to the body as a whole. He is not specific in regard to the method or manner he employed in arriving at these figures or the factors he considered.

However, the greater weight of the evidence presented shows that the claimant's compensable injury was in the form of a disc herniation that required surgical intervention. Based upon these facts alone, the Commission's official rating guide recommends a permanent physical impairment of 8% to the body as a whole, Table 75IID, page 113, American Medical Association's Guide to the Evaluation of Permanent Impairment (Fourth Edition). This assessment of permanent physical impairment would satisfy all of the statutory requirements imposed by the Act. The compensable injury would be the "major cause" of this degree or percentage of permanent physical impairment. This degree or percentage of permanent physical impairment would be based upon purely "objective and measurable physical findings." No consideration would be given to pain, straight leg raising tests, or loss of range of motion. Finally, this degree or percentage of permanent impairment would have been derived by use of the Commission's official rating guide. It should also be noted that this degree or percentage of

impairment would also be consistent with the impairment rating arrived at by Dr. Raben.

After consideration of all the evidence presented, I find that the claimant has proven by the greater weight of the credible evidence that his compensable lumbar injury has resulted in a permanent physical impairment of 8% to the body as a whole. The claimant would be entitled to permanent partial disability benefits for this degree or percentage of permanent physical impairment, under Ark. Code Ann. §11-9-522(a).

III. SECOND INJURY FUND LIABILITY

The next issue to be addressed is the applicability of Ark. Code Ann. §11-9-525 and potential liability of the Second Injury Fund. Under Ark. Code Ann. §11-9-525, certain pre-requisites must be met in order for this section to be applicable and the Second Injury Fund to have any liability.

The first of these pre-requisites is that the claimant must have been experiencing some degree of permanent partial disability or impairment, at the time of his compensable injury on June 26, 2006. In determining the existence of pre-existing disability or impairment, the same statutory requirements apply as would apply to a determination of the existence of permanent disability or impairment from a compensable injury.

Applicable case law provides that there can be no permanent disability, unless there is some degree of permanent physical impairment, Wal Mart Stores, Inc.v. Connell, 340 Ark. 475, 10 S.W. 3rd, 727, (2000). Therefore, the initial question to be resolved is

whether the evidence establishes that the claimant was experiencing some degree of percentage of permanent impairment prior to and at the time of the compensable injury giving rise to this claim.

Any permanent impairment must be based upon "objective and measurable physical or mental findings." It must also be calculable in a manner that would conform to the Commission's current official rating guide. In determining its existence or extent, no consideration can be given to pain. In the event of injuries to the spine, no consideration can also be given to loss of range of motion or the results of straight leg raising tests. Finally, any medical reports addressing the issue of the existence of any pre-existing permanent impairment must be stated within a reasonable degree of medical certainty.

In the present claim, the only evidence presented to prove the existence of pre-existing permanent physical impairment is a narrative report from a Robert T. Howell. This report is dated November 16, 2001, and is on the letterhead of the Family Medical and Chiropractic in Dallas, Texas. I have no knowledge of the qualifications and credentials of Mr. Howell. In fact, I cannot ascertain from the evidence presented whether he is a chiropractor, a medical doctor, an osteopathic doctor, a nurse practitioner, a physical therapist, a nurse, or has any particular medical expertise or qualification.

Among other things, this report states that the claimant had a previous lumbar discectomy in 1986. Obviously, such a condition and procedure would result in some degree of permanent impairment.

However, none of the claimant's subsequent medical records mention any prior back injury or back surgery and the claimant denies any prior significant back injury.

It is difficult to conceive that the claimant could have been seen by a number of physicians, two of which were board certified orthopaedic surgeons with particular expertise in the area of the treatment of back conditions, and none of these physicians would have noted findings indicative of a prior lumbar laminectomy. No mention of any findings compatible with such a procedure is noted in the multiple radiographic and MRI studies performed on the claimant following his current compensable injury. I find it impossible to believe the claimant could have received the extensive thorough work ups by multiple physicians, following his current compensable injury, and yet no one would have at least observed the tell tale scarring on his back that would have undoubtedly resulted from any prior lumbar laminectomy. Therefore, I can only conclude that Mr. Howell was in error in regard to this prior lumbar laminectomy in 1986.

In his report, Mr. Howell further notes that the claimant had pre-existing bilateral carpal tunnel syndrome, for which he had corrective surgery in 1991. He further indicates that following this surgery these difficulties "resolved." The Commission's official rating guide does not provide for the assessment of permanent physical impairment merely because a claimant has experienced carpal tunnel syndrome, including carpal tunnel syndrome requiring surgical intervention. Unless there was

significant complications, no permanent physical impairment rating is merited for this condition under the Guide. In the present case, there is no evidence of complications and the bilateral carpal tunnel syndrome is noted to have completely healed or “resolved.”

Mr. Howell also mentions that the claimant was currently experiencing “cervical and thoracic segmental dysfunction secondary to sprains of the intersegmental tissues, complicated by retrograde peripheral nerve stimulation.” The record contains no objective evidence to support such a diagnosis. In his report, Mr. Howell assesses a 5% permanent physical impairment to the body as a whole for these supposed conditions. He indicates that this assessment is derived from the American Medical Association’s Guide to the Evaluation of Permanent Impairment, (Third Edition). It is further apparent that at least a portion of this assessed permanent impairment is based upon a loss of range of motion of the cervical spine. This loss would not represent an appropriate finding to support the assessment of any permanent physical impairment under the Arkansas Workers’ Compensation Act. He also appears to take this 5% impairment rating and combines it with a 6% rating, which he has assigned for “specific disorders IIC,” to arrive at a total of a 5% permanent physical impairment for the claimant’s cervicothoracic condition.

After a review of the Commission’s current rating guide, I can find no specific percentage of permanent physical impairment recommended for a cervical or thoracic sprain, even when

complicated by “retrograde peripheral nerve stimulation.” Although Mr. Howell also indicates that this sprain has resulted in cervical and thoracic “segmental dysfunction,” his reports and records fail to show any objective evidence of such “dysfunction.”

Mr. Howell further assesses a permanent physical impairment of 22% to the right upper extremity and 19% to the left upper extremity for what he diagnoses as bilateral ulnar nerve peripheral nerve entrapment, bilateral radial nerve tunnel syndrome, bilateral cubital nerve tunnel syndrome, bilateral elbow epichondylitis, and left fourth digit flexor ‘trigger finger’. He indicates that the claimant has already undergone a right wrist ganglion and right ulnar nerve transposition and a right radial tunnel release. He further states that the claimant has had a surgical release of his left radial tunnel and a left anterior subcutaneous ulnar nerve transposition. Although he indicates that NCV/SEP (?) showed multiple abnormalities on two occasions, the actual test results are not included.

Most importantly, this report of Mr. Howell indicates that the claimant was under active medical treatment for these various upper extremity complaints and would likely need two additional surgeries. It is clear from his report that any assessment of permanent physical impairment for the claimant’s upper extremity complaints is premature and should be reserved until after completion of the additional treatment. Finally, this report of Mr. Howell indicates that his preliminary assessment of permanent physical impairment for the claimant’s upper extremity complaints

is based solely on loss of range of motion. He does not specify whether this loss of range of motion is based upon passive or active motion.

No subsequent medical evidence was introduced, concerning the claimant's cervicothoracic or right upper extremity difficulties. The only other evidence that has been introduced concerning difficulties or loss of use of the claimant's upper extremity, is the claimant's testimony. In regard to these difficulties, the claimant testified that he still has an open and ongoing workers' compensation case in Texas concerning these difficulties, that he continues to have complaints and experience limitations as a result of these difficulties, and that he continues under active medical treatment for these difficulties. However, he testified that these difficulties did not prevent him from working.

From the evidence presented, it is impossible to determine if these injuries or conditions have become "fixed" or permanent or were producing and degree or percentage of permanent impairment at the time of the compensable injury giving rise to this claim.

The evidence presented is also insufficient to allow a determination of the existence of permanent physical impairment that would coincide with the methods and procedures employed and the Commission's official rating guide. It must be noted that this guide does not automatically provide any degree of permanent impairment based merely upon the existence of the various conditions identified in Mr. Howell's report (i.e. bilateral carpal tunnel syndrome, bilateral ulnar nerve entrapment, bilateral radial

nerve syndrome, bilateral cubital nerve tunnel syndrome, bilateral elbow lateral epichondylitis, left fourth trigger finger, the surgical removal of a right wrist ganglion, a right ulnar nerve transposition, a right radial nerve release, a left radial tunnel release, and a left interior subcutaneous ulnar nerve transposition). Absent unusual complications, these conditions are generally considered as not meriting any specific degree or percentage of permanent physical impairment.

In summary, it is simply my opinion that the greater weight of the credible evidence fails to establish that the claimant was experiencing any permanent physical impairment at the time of his compensable injuries on October 15 and October 23, 2003. Therefore, there could also not be pre-existing permanent disability and Ark. Code Ann. §11-9-525 is inapplicable to the present claim. The Second Injury Fund would have no liability in this claim and should be dismissed.

IV. PERMANENT FUNCTIONAL DISABILITY OR LOSS OF WAGE-EARNING CAPACITY

The final issue is the matter of the existence and extent of any permanent functional disability or loss of wage-earning capacity, which has been caused by the claimant's compensable lumbar injuries. The burden rests upon the claimant to prove the existence and extent of permanent functional disability or loss of wage-earning capacity. Again, he must also show that his compensable injury was the major cause of this permanent functional disability.

The determination of the existence and extent of permanent functional disability is controlled by the provisions of Ark. Code Ann. §11-9-522(b). In reaching a determination on this issue, consideration is to be given to the extent of the actual permanent loss of use or permanent physical impairment, together with such matters as the claimant's age, education, prior work experience, and any and all things reasonably expected to affect his future earning capacity.

The record shows the claimant to be 55 years old. He has a formal education through the sixth grade with a subsequent GED. He has received on the job training in welding. His prior employment has consisted of welding, wood mill work, car detailing, general factory work, foundry work, over the road truck driving, structural iron work, and some mechanic work on large trucks. In the past, the claimant had a commercial driving license. At the time of the claimant's accident, he was earning \$12.50 per hour and averaging at least \$660.00 per week.

The claimant testified that he experienced constant pain in his lower back and left leg, which frequently caused his left leg to "draw." At the hearing, the claimant exhibited extensive pain behavior in the form of moaning and groaning and frequently alternating between sitting and standing. He testified that the doctor had told him that he cannot work. The claimant indicated that he was currently on social security disability and had made no attempt to look for work since he was terminated by the respondent.

The claimant testified that he was only able to drive 45 minutes at a time, that he could only stand 15 to 20 minutes. at a time, that he could only sit for approximately 30 minutes at a time, and had difficulties bending, stooping, and lifting. He stated that he didn't "get around like he used to" and that he had difficulties riding his motorcycle.

However, he testified that he was able to work in his garden. In regard to the surveillance video, he acknowledged that he was able to lift the "deck blocks" which weighed approximately 20 pounds. He was further able to bend over the fender of his truck and work on his ignition wiring and shift linkage. He further testified that he did bicycling and other hamstring exercises, which had been prescribed by his physical therapist.

On April 18, 2006, a functional capacity evaluation was performed on the claimant that was interpreted as unreliable because of inconsistent and submaximal effort on the part of the claimant during testing. However, this testing showed that the claimant was at the least physically capable of occasionally lifting up to 30 pounds, and pushing or pulling up to 40 pounds. He could also occasionally stoop, crouch, kneel, climb stairs, and reach overhead with weights up to 3 pounds. He could frequently handle, finger or manipulate objects and push or pull carts. He could also frequently walk, stand, or sit.

The medical reports of Dr. Raben show that, following the functional capacity evaluation, Dr. Raben only restricted the claimant from engaging in employments that required lifting more

than 20 pounds on an occasional basis (up to 8 times day) or over 10 pounds on a frequent basis. He also restricted the claimant from employment positions requiring prolonged sitting, standing, walking or bent over postures (i.e. more than 20 minutes at a time). Finally, he restricted the claimant from engaging in any employment positions that would require repetitive bending or twisting at the waist or that involved significant vibration or jarring. For the most part, the restrictions imposed by Dr. Raben would be similar to those commonly imposed on patients undergoing a surgical correction of herniated lumbar discs.

In determining the claimant's actual physical limitations, I have given greater weight to the actual abilities shown on the surveillance tape and the restrictions imposed commonly associated with permanent injuries such as those experienced by the claimant. Clearly, the commonly imposed restrictions and limitations for injuries such as that experienced by the claimant would prevent the claimant from performing heavy manual labor positions, positions requiring prolonged standing, walking, or sitting, and positions requiring repetitive bending or twisting. These restrictions would preclude the claimant from the majority of the employment positions he held prior to his current compensable injury. He would no longer be physically capable of general construction work, iron work, over the road truck driving, foundry work, or auto mechanic work.

However, there would still remain available to the claimant a sufficient number of employments for which he would otherwise be qualified, as to present him with a reasonable expectation of

obtaining regular gainful employment (if he so desired). These position would be in the areas of light factory work, clerical work, sales, security or night watchman positions, and light delivery driving. I have no doubt that the claimant will never return to regular employment, but I feel this would be due to choice and not necessity.

However, these remaining employments are clearly more limited in number and would pay significantly less than the wages the claimant could have earned in his prior employment positions, including the position that he held with the respondent. Therefore, I find that the claimant has sustained some permanent functional disability or loss of wage-earning capacity. After consideration of the various factors required by the Act, including the claimant's motivation, I find the proper degree or percentage of permanent disability for loss of wage-earning capacity to also be in the amount of 8% to the body as a whole. This would be in addition to the 8% permanent partial disability to which the claimant is entitled for permanent physical impairment. Thus, the claimant has a combined permanent partial disability of 16% to the body as a whole, which includes for both permanent physical impairment and permanent functional disability or loss of wage-earning capacity.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On all relevant dates, including October 15, 2003, and October 23, 2003, the relationship of employee-employer-carrier-TPA existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$440.00 for total disability and \$330.00 for permanent partial disability.

4. On October 15, 2003, and October 23, 2003, the claimant sustained compensable injuries to his low back or lumbar spine, in the form of a herniated disc which required surgical correction.

5. The respondents have provided the claimant with all reasonably necessary medical services for his compensable injuries through the present time. The claimant has failed to prove that a formal program of chronic pain management would be reasonably necessary, at the present time.

6. The claimant's healing period from the effects of his compensable injuries has ended.

7. The claimant has sustained a permanent physical impairment of 8% to the body as a whole, as a result of his compensable lumbar injuries. He would be entitled to permanent partial disability benefits from the respondents for this permanent partial disability.

8. The greater weight of the credible evidence presented fails to prove that Ark. Code Ann. §11-9-525 is applicable to the present claim. Specifically, the greater weight of the credible evidence presented fails to prove that the claimant has experienced

permanent physical impairment or disability at the time of the compensable injuries giving rise to this claim. Thus, the Second Injury Fund of the State of Arkansas would have no liability in this case.

9. The claimant has sustained a permanent partial disability for permanent functional disability or loss of wage-earning capacity in the amount of 8% to the body as a whole as a result of his compensable lumbar injuries. Thus, he is entitled to receive a cumulative permanent partial disability of 16% to the body as a whole, from the current respondent-carrier. This would include permanent partial disability due to both permanent physical impairment and permanent functional disability or loss of wage-earning capacity.

10. The respondents have previously controverted this claim in its identity.

11. A reasonable fee for the claimant's attorney would be the maximum statutory attorney's fee on all permanent partial disability benefits herein awarded.

ORDER

The respondents employer-carrier shall pay to the claimant permanent partial disability benefits for a 16% permanent partial disability to the body as a whole and shall be entitled to credit for any permanent partial disability benefits previously paid.

The respondents employer-carrier shall remain liable for all reasonably necessary medical services required by the claimant for

his compensable lumbar injuries. This liability is subject to the medical fee schedule established by this Commission.

The respondents employer-carrier shall pay to the claimant's attorney the maximum statutory attorney's fee on all permanent partial disability benefits awarded. One-half of this fee is the obligation of the respondents in addition to such benefits. The remaining one-half of this fee shall be withheld by the respondents from such benefits.

For the reasons heretofore set out in this Opinion, the Second Injury Fund of the State of Arkansas is dismissed from this claim.

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.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE