

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601587

|                                                       |            |
|-------------------------------------------------------|------------|
| BEN MORRIS                                            | CLAIMANT   |
| J & H PAINTING & CARPENTRY, INC.                      | RESPONDENT |
| GALLAGHER BASSETT SERVICES, INC.<br>INSURANCE CARRIER | RESPONDENT |

OPINION FILED JUNE 22, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL MAYTON, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 5, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 14, 2007. 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 January 28, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to his right hand and thumb.

4. The claimant is entitled to the maximum weekly compensation rate.

5. Medical expenses have been paid.

6. The claimant received temporary total disability benefits while he was off work.

7. The claimant was originally released to return to work at restricted duty and work was made available to the claimant within his restrictions. During that time, the respondents paid temporary partial disability to the claimant.

8. The claimant was eventually released to full duty and returned to work for the respondent, working his normal hours at full duty including overtime.

9. The claimant continued to work for the respondent until he was suspended for reasons unrelated to his compensable injury. The claimant received a traffic ticket in September 2006 which caused him to lose his CDL license. As a result, he is not working at the present time. The claimant's CDL license can be reinstated in April 2007.

10. The claimant's right thumb was amputated as a result of his compensable injury.

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

1. Payment for the loss of the claimant's right thumb.
2. Attorney's fees.

In regard to the foregoing issues the claimant contends that he was injured on January 28, 2006. His right hand, wrist, right shoulder and right knee were injured when he was unloading a backhoe and it rolled on top of his hand.

In regard to the foregoing issues the respondents contend that all benefits to which the claimant is entitled have been paid and have not been controverted. All temporary disability benefits to which the claimant was entitled have been paid and have not been controverted. The related medical expenses have been paid. The respondents are continuing to provide reasonable and necessary medical care for the claimant. According to the claimant's treating physician, Bruce Silverberg, the claimant has reached a plateau in therapy and formal physical therapy has been discontinued at this time. The claimant has returned to work for the respondent employer and the respondent employer has made work available to the claimant within his restrictions. In the event it is determined that the claimant is going to undergo a toe to hand transfer, the parties will determine the best physician available to perform this procedure provided that it is reasonable and necessary.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted a packet of documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted a packet of documentary evidence marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The parties have both agreed that no testimony is necessary since the only issue at present is whether the claimant is entitled to payment of permanent partial disability due to the amputation of

his right thumb even though he has not reached the end of his healing period as to his right hand injuries. There was some discussion between the parties as to the possibility of the claimant undergoing a procedure to transfer a toe to where his right thumb had once been so that he could have possibly more use of his hand. There was also discussion concerning the possibility of trying to lengthen the claimant's thumb to perhaps give him better use of his hand but both parties agreed that his thumb was amputated.

The respondents argued that since the claimant is still undergoing medical treatment for his thumb as well as his right hand and until all of these matters are resolved the respondents should not be responsible for the payment of the claimant's right thumb amputation. The claimant's attorney argued that although other procedures are being considered in hopes of regaining better use of the claimant's right hand, the fact remains that the claimant's thumb has been amputated and he is entitled to the statutory impairment rating for this loss. The claimant's attorney also stated that her client is very concerned about having a toe put on his hand. Ms. Brooks stated that her client knows what is wrong with his hand, that his foot is fine and he is very concerned about having that procedure done.

The parties were asked if the claimant's amputation was a total amputation and the parties agreed that it was. The respondents' attorney stated that they are not denying that the claimant will be entitled to the statutory impairment rating for

the loss of his right thumb but their position is that he is just not entitled to it yet.

The parties have stipulated and the medical records verify that the claimant underwent an operation to amputate his right thumb at the distal proximal phalanx level with a dorsal flap transposition and closure. The medical records set forth that during this procedure treatment was administered to the claimant's right hand for injuries received. The medical records set forth that the claimant presented a history of a work injury on January 28, 2006, while he was hitching a trailer that rolled onto his right thumb and hand. It is noted that this trailer weighed approximately eight tons and that the claimant sustained a serious crush injury to his right thumb and hand.

There is no question that this man has sustained a compensable injury to his right hand resulting in serious right hand problems as well as amputation of his right thumb. Although the claimant is still undergoing medical treatment for his right hand and considering a couple of procedures which might possibly give him more use of his right hand by extending his right thumb or transferring a toe to where his thumb had once been, the fact remains that the claimant had his right thumb amputated. The parties have stipulated that his right thumb was amputated. It is my opinion, based on the information in this case, that the claimant is entitled to payment for the loss of his right thumb. Ark. Code Ann. §11-9-521(a)(6) sets forth that the amputation of a thumb is worth seventy-three weeks of benefits. Therefore, I find

that the respondents should pay to this claimant seventy-three weeks of permanent partial disability in the amount of \$366.00 per week for the loss of his right thumb.

#### FINDINGS & CONCLUSIONS

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

2. On January 28, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to his right hand and thumb.

4. The claimant is entitled to the maximum weekly compensation rate.

5. Medical expenses have been paid.

6. The claimant received temporary total disability benefits while he was off work.

7. The claimant was originally released to return to work at restricted duty and work was made available to the claimant within his restrictions. During that time, the respondents paid temporary partial disability to the claimant.

8. The claimant was eventually released to full duty and returned to work for the respondent, working his normal hours at full duty including overtime.

9. The claimant continued to work for the respondent until he was suspended for reasons unrelated to his compensable injury. The claimant received a traffic ticket in September 2006 which caused him to lose his CDL license. As a result, he is not working at

the present time. The claimant's CDL license can be reinstated in April 2007.

10. The claimant's right thumb was amputated as a result of his compensable injury.

11. The claimant is entitled to payment for the loss of his right thumb in the amount of seventy-three weeks at the rate of \$366.00 per week. See discussion above as well as Ark. Code Ann. §11-9-521(a)(6).

12. The respondents have controverted the claimant's entitlement to payment for his amputated thumb prior to his reaching maximum medical improvement for his entire hand.

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

#### ORDER

The claimant is entitled to payment for the loss of his right thumb in the amount of seventy-three weeks at the rate of \$366.00 per week to be paid by the respondents.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE