

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F500401

ROBERT GOSSAGE, EMPLOYEE	CLAIMANT
CALDWELL FABRICATION & WELDING, INC., EMPLOYER	RESPONDENT NO. 1
COMMERCE & INDUSTRY INSURANCE CO. c/o AIG CLAIM SERVICES (TPA), INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED APRIL 23, 2008

Hearing before Administrative Law Judge Barbara Webb on January 24, 2008, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Mr. M. Keith Wren, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. David L. Pake and Mr. David B. Simmons, Attorneys at Law, Little Rock, Arkansas.

Respondent No. 3 represented by Ms. Judy W. Rudd, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on January 24, 2008, before Administrative Law Judge Barbara Webb. A Pre-hearing Order was entered in this case on September 4, 2007. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Pre-hearing Order was made Commission's Exhibit No. 1

to the hearing record. The following stipulations as submitted by the parties in the Pre-hearing Order and as amended on the record are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on December 22, 2004, when claimant sustained a compensable injury.
3. Respondents No. 1 have accepted and made payments toward a 15% impairment rating.
4. Claimant's healing period ended on August 1, 2006.

ISSUES

By agreement of the parties, the issues presented are as follows:

1. Claimant's compensation rate.
2. Claimant's entitlement to permanent and total disability benefits or, in the alternative, wage loss benefits.
3. Controversion and attorney's fees.
4. If wage loss is awarded, whether there is Second Injury Fund liability on this claim.

The record consists of a one volume transcript of the January 24, 2008 hearing, consisting of the testimony of Robert Gossage, Carol Ann Gossage, and Heather Taylor, and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order); Claimant's Exhibit No. 1 (medical records); Respondents' No. 1 Exhibit No. 1 (medical records); Respondents' No. 1 Exhibit

No. 2 (non-medical records); Respondent No. 2 Exhibit No. 1 (medical records); Respondent No. 2 Exhibit No. 2 (non-medical records); Respondent No. 3 Exhibit No. 1 (Rudd Letter).

FACTUAL BACKGROUND

Gossage is 38 years old (DOB: 1/24/70). He completed the tenth grade and subsequently received a GED. He received additional vo-tech training as a machinist and took a trigonometry class in a college correspondence class. He has a criminal felony history for forgery, hot checks, robbery, burglary, theft of property, and felon in possession and has been in prison several times. He has worked a variety of jobs in both skilled and semi-skilled occupations including handy man, farm mechanic, carpentry, remodeling, sales clerk, cable installer, forklift operator, and machine operator.

Gossage began working for Caldwell Fabrication in November of 2004, as a material handler. His job duties included operating a crane and moving I-beams, pipes, and other material to other workers. On December 22, 2004, he was injured when he fell against an I-beam and injured his lower back. He sought immediate medical treatment at Jefferson Regional Medical Center. Tests showed no evidence of a fracture or dislocation of his lumbar spine. He presented for evaluation to Dr. Whipple with complaints of minor paresthesia in both legs on December 29, 2004. He returned on January 3, 2005, reporting that his low back pain was improving. On January 10, 2005, he reported that he was having persistent back pain with a new onset of radicular pain into the left leg. An MRI of the lumbar spine was performed on January 12, 2005, revealing a disc herniation at L4-L5 with spinal stenoses and

bilateral foraminal narrowing. He was treated conservatively with pain medication and muscle relaxers. On March 28, 2005, Gossage returned to Dr. Whipple complaining of continuing back pain and a new onset of seizures. He was referred to Dr. Steve Cathy, a neurosurgeon, for further examination of his back and to Dr. Silas for further evaluation of the seizure activity. On April 14, 2005, Dr. Silas noted that the EEG performed on March 28, 2005, was unremarkable with no evidence of seizure disorder. On May 16, 2005, he was diagnosed with cardiomyopathy. On May 23, 2005, he returned to Dr. Whipple with complaints that "The Effexor he gave me on Friday made me feel funny and have seizures" and reported going to the emergency room. His use of Effexor was discontinued and he was placed on Klonopin to help with the seizures and his anxiety. On May 31, 2005, he returned to Dr. Cathy for follow-up with continued complaints of chronic lower back pain with radiation to both lower extremities. Dr. Cathy noted that he originally planned to perform a lumbar decompression/ posterolateral interbody fusion, but was unable to perform the surgery in light of the subsequent diagnosis of serious cardiac problems and "a seizure disorder related to his long term use of tramadol for pain". On July 29, 2005, he returned for a follow-up evaluation for his cardiac condition to Dr. Mahmood. Based on the evaluation, he was considered low risk for non-cardiovascular surgery and authorized to proceed with the recommended back surgery. On September 20, 2005, he was evaluated by Dr. Saer who recommended posterior stabilization fusion with interbody fusion at L4-5. On November 25, 2005, he underwent the surgical fusion procedure. Following the surgery, he continued to return for follow-up with complaints of discomfort and weakness in his left side. He

was referred for physical therapy. On August 1, 2006, Dr. Saer noted that Gossage was still having trouble with his back but that the use of a TENS unit had helped. He noted that the claimant had reached maximal medical improvement and rated him with a 15% whole body impairment using the AMA Guides, 4th Edition. He noted that the claimant was functionally at a sedentary demand level.

On October 22, 2007, Gossage underwent a vocational rehabilitation evaluation by Heather Taylor. She noted that the claimant had not worked since his injury in December of 2004, had not looked for work since his injury, and had no plans to return to the workforce in the future. She observed that Gossage had prior work experience in semi-skilled and skilled occupations. She also observed that he had excellent academic abilities in reading, spelling, and arithmetic, which would make him a good candidate for retraining. She noted that his felony background and prison record could be a barrier to his successful return to the workforce.

At the hearing, Gossage testified that he currently stays at home and takes care of his two small children while his wife is in nursing school and works as a volunteer Youth Director for approximately 30 children at his church. He testified that he attended Youth Camp, taken his children on fishing trips and would swim at the lake for water therapy. He testified he had applied for a part time job with a company that installs satellite systems which he learned about from a friend at church but was not successful due to layoffs caused by financial difficulties in the company.

He testified that his medications affect his ability to concentrate. He testified that he would like to attend seminary but that it would be difficult for him to attend since it would require him to travel from Star City to Little Rock. He stated seminary

would be more of a possibility if his wife took a nursing job with Children's Hospital when she completed her nursing training. He testified that his last seizure occurred in September of 2006 and that he had begun driving again.

Heather Taylor was also called as a witness. She testified that she was a vocational rehabilitation counselor. She has a Master's Degree in rehabilitation counseling and an undergraduate degree in social work. She has worked as a certified rehabilitation counselor since 1999 and worked with hundreds of clients in workers' compensation. She performed a vocational evaluation on the claimant in a report dated October 22, 2006. She explained that she met with the claimant for a vocational interview and reviewed all available medical records and conducted labor market research and a transferrable skills analysis. She subsequently met with the Gossage in November of 2007 to show him some videos about the interview process and to prepare a draft resume for him. She testified that she did not believe that Gossage was motivated to return to work since he had only applied for one job. She testified that she had seen no medical records that indicated that the claimant could not work a regular full-time work week. She explained that her search had revealed a number of sedentary and light duty jobs within the claimant's restrictions which paid the same amount of wages or more than he was making at the time of his injury. She noted that the claimant was receiving social security and that he had made no effort to locate suitable jobs or education/retraining programs that might facilitate or expedite his return to the workforce.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on December 22, 2004, when claimant sustained a compensable injury.
3. Respondents No. 1 have accepted and made payments toward a 15% impairment rating.
4. Claimant's healing period ended on August 1, 2006.
5. Based on preponderance of the evidence that claimant's average weekly wage was \$280.00 at the time of the accident, the applicable compensation rate for temporary total and permanent partial disability payments is \$187.00.
6. Claimant has proven by preponderance of the evidence that he is entitled to additional temporary total and permanent partial disability indemnity benefits based on the shortfall between the rate of \$151.00, the rate that compensation was previously paid, and \$187.00, the proper rate of compensation.
7. Claimant has failed to prove by a preponderance of the evidence that he is entitled to permanent and total disability benefits in that he has been released to return to sedentary work.
8. Claimant has failed to prove by a preponderance of the evidence that he is entitled to wage loss benefits.

9. The preponderance of the evidence demonstrates that there is no Second Injury Fund liability in this case since claimant's permanent partial impairment is directly related to his December 22, 2004 work-related injury.

DISCUSSION

The claimant contends he sustained a compensable injury on December 22, 2004, to his lower back. The claimant contends he was prescribed Tramadol for his work related injury and as a result developed a seizure disorder due to long term use of this drug. The claimant contends he was released with a 15% permanent partial impairment rating to the body as a whole on August 1, 2006, by Dr. Edward Saer. The claimant contends that respondents have incorrectly calculated claimant's wage rate; that the correct average weekly wage is \$272.15; that respondents refuse to correct claimant's compensation rate, and that claimant's attorney should be paid an attorney's fee based upon all of the benefits in controversy including all of the indemnity benefits which were paid at the incorrect compensation rate. The claimant contends that he is permanently and totally disabled or, in the alternative, is entitled to wage loss.

Respondents No. 1 contends that indemnity benefits were paid at the rate of \$125.00 per week rather than the correct rate of \$151.00 per week and that the underpayments were corrected and paid with an attorney's fee. The respondents contend that all other appropriate benefits have been paid with regard to this matter. The respondents further contend that claimant is not permanently and totally disabled and/or is not entitled to wage loss.

The Second Injury Fund contends there is no Second Injury Fund liability in this claim.

The Death and 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 and Permanent Total Disability Trust Fund liability. If the Second Injury Fund is found to not 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.

I. Calculation of average weekly wage and applicable compensation rates

The claimant contends that respondents have incorrectly calculated claimant's wage rate; that the correct average weekly wage is \$272.15; that respondents refuse to correct claimant's compensation rate, and that claimant's attorney should be paid an attorney's fee based upon all of the benefits in controversy including all of the indemnity benefits which were paid at the incorrect compensation rate. Respondents No. 1 contends that indemnity benefits were paid at the rate of \$125.00 per week rather than the correct rate of \$151.00 per week and that the underpayments were corrected and paid with an attorney's fee.

The evidence reveals that at the time of the accident, the claimant had only worked for Caldwell Fabrication for approximately six weeks. During that time, the claimant had missed work due to a number of personal reasons. The wage records

offered into evidence do not clearly reflect the number of hours worked. However, the testimony established that the claimant was hired by Caldwell Fabrication to work a forty hour week at the rate of \$7.00 per hour. Based on the above testimony, the correct average weekly wage is \$280.00, resulting in an applicable weekly compensation rate for temporary total disability and permanent partial disability of \$187.00. Mack Coal Company v. Hill, 204 Ark. 407, 162 S.W.2d 906 (1942). Respondents admit that benefits were paid at the rate of \$151.00 per week. Therefore, I find that the claimant has proven that he is entitled to additional temporary total disability and permanent partial disability benefits based on the difference between \$151.00 (the amount paid) and \$187.00 (the proper rate). I further find that claimant's attorney should be paid an attorney's fee based upon difference in the amount of indemnity benefits owed and those which were paid at the incorrect compensation rate.

II. Permanent and Total Disability

The Arkansas Workers' Compensation Law provides that when an injured worker's disability condition becomes stable and no further treatment will improve that condition, the disability is deemed permanent. In order to be entitled to any wage loss disability in excess of permanent anatomical impairment, the claimant must first prove by a preponderance of the evidence that he sustained permanent physical impairment as a result of the compensable injury. Needham v. Harvest Foods, 64 Ark. App. 141, 987 S.W.2d 278, (1998). The Arkansas Workers' Compensation Law provides that when an injured worker's disability condition

becomes stable and no further treatment will improve that condition, the disability is deemed permanent. If the employee is totally incapacitated from earning a livelihood at that time, he is entitled to compensation for permanent and total disability. See, Minor v. Poinsett Lumber & Manufacturing Co., 235 Ark. 195, 357 S.W.2d 504 (1962).

According to Ark. Code Ann. § 11-9-519(e)(1), "Permanent total disability means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment."

The claimant in this case has failed to prove by a preponderance of evidence that he is unable to earn any meaningful wages in any capacity. Dr. Saer's medical report on the claimant of August 1, 2006, shows that the claimant had reached maximum medical improvement with a 15 % whole body impairment and noted that claimant could work in a sedentary work capacity. There is absolutely no medical evidence whatsoever suggesting the claimant is totally unable to work. Although claimant had other medical problems, i.e. high blood pressure, heart problems and seizures, the evidence demonstrates that those other conditions have been successfully treated and have improved. The claimant is able to speak, hear, and see without impediment. He is able to read and write. He is able to engage in physical activities which are consistent with the types of physical abilities required for at least sedentary work. He drives himself as needed. He mows his yard. He volunteers and works as the Youth Minister at his church. He performs household chores and takes care of two small children.

If an employee unreasonably waives rehabilitation or job placement assistance, the injured employee will not be entitled to any permanent benefits in excess of the anatomical impairment. Ark. Code Ann. § 11-9-505(b)(3). Ark. Code Ann. § 11-9-505(b)(3) specifically provides that:

The employee shall not be required to enter any program of vocational rehabilitation against his or her consent; however, no employee who waives rehabilitation or refuses to participate in or cooperate for reasonable cause with either an offered program of rehabilitation or job placement assistance shall be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment established by objective physical findings. Ark. Code Ann. § 11-9-505(b)(3).

At the hearing, the claimant testified that he did not think he could do any work due to his ongoing use of medication and continuing symptoms and did not believe any employer would hire him in his condition. His personal belief was contrary to the opinion of Dr. Saer, who opined the claimant could work in a sedentary capacity, and the vocational expert, Heather Taylor, who also recommended the claimant could work in a sedentary or light duty work capacity, or perhaps in an even greater capacity if educated or trained further.

In the present case, the claimant testified that he believed that his physical problems, criminal background, and lack of transferrable skills effectively rendered him permanently and totally disabled, because there was not a readily-available, on-going market for employing him. The claimant offered the testimony that the

claimant could not promise a level of dependability or quality of work that would make him a viable candidate for the purportedly few suitable jobs available. The claimant's argument was essentially not that he was *unable* to perform sedentary work with a sit-stand option (he admitted on cross-exam that he probably could do such work at least part-time), but rather that odd-lot factors precluded him from obtaining such a suitable job. The claimant further tried to shift the burden to respondents No. 1 by looking to them to identify what specific, locally-available jobs were regularly and continuously available to him over the past few years. The claimant's odd-lot, burden-shifting approach is expressly prohibited by Ark. Code Ann. § 11-9-521(f). The issue is not whether suitable work exists for the claimant, or whether he would be competitive for it. Rather, the sole issue in adjudicating his claim for permanent total disability is whether he is *capable* of earning some meaningful wages in at least some capacity. The evidence, including the claimant's own admissions, demonstrates that he is capable.

III. Wage Loss

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. Emerson Electric v. Gaston, 75 Ark. App. 232, 58 S.W.3d 848 (2001). To be entitled to any wage-loss disability benefit in excess of permanent physical impairment, a claimant must first prove, by a preponderance of the evidence, that he or she sustained permanent physical impairment as a result of a compensable injury. Wal-Mart Stores, Inc. v. Connell, 340 Ark. 475, 10 S.W.3d 727 (2000). The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other

matters affecting wage loss, such as the claimant's age, education, and work experience. Emerson Electric v. Gaston, *supra*.

In determining wage loss disability, the Commission may take into consideration the worker's age, education, work experience, medical evidence and any other matters which may reasonably be expected to affect the worker's future earning power. Such other matters are motivation, post-injury income, credibility, demeanor, and a multitude of other factors. Glass v. Edens, 233 Ark. 786, 346 S.W.2d 685 (1961); City of Fayetteville v. Guess, 10 Ark. App. 313, 663 S.W.2d 946 (1984). Curry v. Franklin Electric, 32 Ark. App. 168, 798 S.W.2d 130 (1990).

In considering factors that may affect an employee's future earning capacity, the Commission considers the claimant's motivation to return to work, since a lack of interest or a negative attitude impedes the assessment of the claimant's loss of earning capacity. Emerson Electric v. Gaston, *supra*. In the instant case, the respondents contend that the claimant has demonstrated a complete lack of motivation to seek suitable work or to further his education or training to facilitate his re-entry to the workforce. The claimant testified at the hearing that with the exception of one failed job application, he has made no efforts whatsoever even to look for work that he might potentially be able to do—even part-time. The claimant further testified since 2004, he has made no efforts whatsoever to look into other retraining or rehabilitation programs. To the contrary, the evidence demonstrates that claimant has pursued other activities such as fishing, swimming, camping, and working as a volunteer youth minister. In addition, the evidence demonstrates that the claimant is currently receiving social security disability payments which when

combined with the workers' compensation benefits exceed the amount of wages he earned while working.

The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. Oller v. Champion Parts Rebuilders, 5 Ark. App. 307, 635 S.W.2d 276 (1982).

In addition, Ark. Code Ann. § 11-9-102(4)(F)(ii)(Repl. 2002) provides:

(a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.

(b) If any compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment.

“Major cause” is defined as more than 50% of the cause. Ark. Code Ann. § 11-9-102(14)(Repl. 2002). Further, “disability” is defined as an “incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury.” Ark. Code Ann. § 11-9-102(8) (Supp. 1999).

Considering the context in which the terms “permanent benefits” and “disability” are used in Ark. Code Ann. § 11-9-102(5)(F)(ii), the amendments of Act 796 clearly impose a requirement on a claimant seeking compensation for a permanent decrease in earning capacity to show that the compensable injury was

the major cause of any decrease in earning capacity to obtain an award of permanent disability benefits.

The respondents further contend that to the extent the claimant asserts wage loss disability based on seizures that there is no legal basis to award wage loss in connection with a mental injury since it is governed by the mental injury statute which limits benefits to twenty-six weeks. Claimant contends that this issue was not properly raised in the Pre-hearing Order and that alternatively, the seizure activity is not encompassed in the mental injury statute since it is a neurological condition as opposed to a mental condition. Based on the preponderance of the evidence, I find that it is not necessary to reach a decision on the applicability of the mental illness statute to the present facts. In the instant case, the claimant's seizure activity has been successfully resolved in that the claimant has not suffered a seizure for over one year and the driving status of claimant has been restored by his treating physicians. Moreover, I would note that there is no permanent impairment rating based on seizure activity in the evidence before me. Therefore, I find that any prior seizure activity is not relevant to the consideration of wage loss.

In the instant case, the preponderance of the evidence clearly demonstrates that claimant is able to return to work. Although Dr. Saer has released the claimant to return to sedentary and/or light duty work, the claimant has not sought subsequent employment. The vocational expert testified that one of the difficulties in finding work for the claimant was his lack of willingness to work. The rehabilitation expert testified that her test results and observations revealed that the

claimant was bright and capable. Based on my review of the credible evidence, I find that claimant does not appear to be motivated to return to work. Therefore, Gossage's request for wage loss and/or permanent total disability benefits is denied.

In the instant case, the preponderance of the evidence demonstrates that claimant has not sustained wage-loss disability. The claimant is only age 38 and has taken college-level studies. His work history reveals skills in both skilled and semi-skilled work. The preponderance of the evidence demonstrates that the claimant has reached maximum medical improvement and is capable of performing at least light duty work and should be able to secure steady employment without difficulty in replacing his wages at the level before his injury. Therefore, after considering the claimant's age, education, work experience, medical evidence, as well as his lack of motivation to return to full time work, I find that the claimant is not entitled to wage loss disability benefits as a result of his compensable low back injury over and above his physical permanent impairment. See, Johnson v. McKee Foods, ___ Ark. App. ___ (CA 06-1045, April 11, 2007).

IV. Second Injury Fund

The respondent employer argues that the Second Injury Fund has liability for any anatomical impairment or for any wage loss that the claimant might have sustained. In Mid-State Construction Co. v. Second Injury Fund, 295 Ark. 1, 746 S.W.2d 539 (1998), the Arkansas Supreme Court set forth the test for determining Second Injury Fund liability:

It is clear that liability for the Fund comes into question only after three hurdles have been overcome. First, the employee must have suffered a compensable injury in his present place of employment. Second, prior to that injury the employee must have had permanent partial disability or impairment. Third, the disability or impairment must have combined with the recent compensable injury to produce the current disability status. (Original emphasis.)

The last injury “combines” when it, considered with the previous injury, causes a greater disability than the disability produced by the last injury considered alone. See Hawkins Constr. v. Maxell, 52 Ark. App. 116, 915 S.W.2d 302 (1996), *rev’d on other grounds*, 325 Ark. 133, 924 S.W.2d 789 (1996). In other words, if the more recent injury alone would have caused the claimant’s current disability status, the Second Injury Fund has no liability. In addition, “where there is medical evidence that the two injuries combined to produce the current disability rating, contradictory evidence that the claimant was able to return to the same type of labor after his first injury is not determinative of [Second Injury Fund’s] liability.” POM, Inc. v. Taylor, 325 Ark. 334, 337, 925 S.W.2d 790, 791 (1996). Further, an employee’s ability to return to the same work following a prior injury is simply not determinative of the Second Injury Fund’s liability. POM, Inc. v. Taylor, 325 Ark. 334, 925 S.W.2d 790 (1996).

Before the Second Injury Fund can be liable to pay for an injury, “the claimant’s prior impairment must have been of a physical quality sufficient in and of itself to support an award of compensation had the elements of compensability existed as to the cause of the impairment.” See Midstate, 295 Ark. at 6, 746 S.W.2d

at 542. As the court in Midstate explained, “[i]t is the substantial nature of the impairment which is emphasized...” Id.

It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Morelock v. Kearney Company, 48 Ark. App. 227, 894 S.W.2d 603 (1995). It is important to note that the claimant’s testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985); Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994). While claimant meets the first two requirements by demonstrating that he has a permanent partial disability arising from his work-related compensable injury, there is simply no medical or other credible evidence offered to demonstrate that his current disability is any greater than the disability which has been attributed to his on-the-job injury. Based on the preponderance of the evidence in this case, I find that there is no Second Injury Fund liability.

AWARD

The respondents are hereby directed and ordered to pay additional temporary total and permanent partial indemnity benefits and attorney’s fees in accordance with the findings of fact and conclusions of law set forth herein. All accrued sums shall be paid in a lump sum without discount, and this award shall

earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

See, Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge