

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F107011 (6/1/01) & F304582 (3/10/03)

CLEVELAND OSBORN, EMPLOYEE	CLAIMANT
ANDERSON ENGINEERING CONSULTING, EMPLOYER	RESPONDENT #1
ONE BEACON INSURANCE CO., CARRIER	RESPONDENT #1
TRANSPORTATION INSURANCE CO., CARRIER	RESPONDENT #2
SECOND INJURY FUND	RESPONDENT #3

OPINION FILED SEPTEMBER 17, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 20, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE KRISTOFER E. RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondents #1 represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

Respondent #3 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above style claims to determine the claimant's entitlement to additional workers' compensation benefits. On March 19, 2008, a pre-hearing conference was conducted in these claims from which a Pre-hearing Order of the same date was

filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Cleveland Osborn - the claimant, coupled with the deposition testimony of Dr. Robert E. Abraham, along with medical reports, the record generated as a result of the prior hearing of October 31, 2003, as well as rulings therefrom, and other documents comprise the record in this claim.

DISCUSSION

Cleveland Osborn, with a date of birth of February 2, 1948, is a high school graduate with some post-secondary education. After graduating high school in 1967, the claimant joined the United States Army and remained in same for fourteen (14) years - excluding the period 1970-72.

While in the military, in 1982 the claimant sustained an injury to his back which resulted in lumbar disc surgery at the L5 level. Claimant resumed his regular duties by September or October 1982. In 1984 the claimant was medically discharged from the armed services.

At the time of his medical discharge for the Army the claimant received a 30% service connected disability rating from the Veterans Administration - 10% for his back and 20% for his neck. The testimony of the claimant reflects that he did not really have any neck problems until a 1986 tractor trailer accident, however military physicians had told him that there was something that was not right about his neck. The claimant underwent two (2) cervical surgeries in connection with the injury to his neck growing out of the 1986 tractor trailer accident. The injury suffered by the claimant in the 1986, motor vehicle accident was not treated as a workers' compensation claim. The claimant remained in the employment of his employer at the time,

Thomas & Hartig, following the injury and recovery from surgeries until 1991 when he relocated to Arkansas. Claimant acknowledged that he experienced neck pain occasionally following the 1986 injury and subsequent surgeries, however denies that the same caused him to miss work once he recovered from the final surgery in 1987.

The claimant commenced his employment with respondent-employer in September 1992 and continued in the employment of same until October 1, 2003. Claimant last discharged employment duties for respondent-employer on March 11, 2003, after working three (3) hours before having to leave work due to severe pain and other symptoms in his back.

The claimant described his employment history succinctly:

I was in the Army almost fourteen years and got out on medical and then I worked for Thomas & Hardy in Phoenix, Arizona for about five years and then I moved back here and I was off about a year and I started working for Anderson Engineering and I worked for them up until 2003. (T. 19).

Claimant elaborated with respect to the physical demands of his job with respondent-employer:

Well, most of what I did was steel inspections and concrete inspections, picking up concrete samples and soil samples, making sure the asphalt concreted was done, inspecting steel, stuff like that. (T. 19).

While respondent #1 provided workers' compensation insurance coverage for respondent-employer the claimant suffered a work-related accident on June 1, 2001. Prior to 2001 the claimant had undergone three (3) surgical procedures relative to his neck, to include a fusion. The claimant's last neck surgery prior to 2001 was in 1998. In describing the residuals he experienced because of the neck injury and surgeries prior to 2001, the testimony of the claimant reflects

The reason I had a problem after that, I mean prior to that was because I had lost about thirty percent use of my neck but I never had that much problem with it, I mean it gets caught, what do you call it . .

No. I would hang up on me sometimes like that and it would be hard to move. Crick in my neck or whatever they call it. But my neck was in pretty good shape. (T. 28).

On June 1, 2001, the claimant sustained a work-related accident when he fell approximately nine feet into a hole landing on his back. The credible testimony reflects that the helmet that the claimant was wearing “busted upon the back side” as a result of the impact of the fall, which in turn pushed the claimant’s glasses off. In addition to the injury to his back, the evidence reflects both of the claimant’s elbows were black and blue and that he had a knot on the back of his head as a result of the accidental fall.

Respondent #1 provided workers’ compensation coverage on behalf of respondent-employer at the time of the claimant’s June 1, 2001, accident. The claimant’s back injury, which included vertebral fractures at T-12 and L-1, was accepted as compensable and corresponding medical and permanent partial disability paid on behalf of and to the claimant to correspond with a 5% anatomical impairment. Claimant was off work for approximately two (2) weeks following the June 1, 2001, accident before returning to the employment of respondent-employer.

The claimant asserts that in addition to the back injury, which was accepted as compensable by respondent #1, he also sustained injuries to his neck and elbows in the June 1, 2002, accident. On the day of the accident the claimant was seen at the emergency room of Baptist Memorial Hospital in Blytheville, and later discharged home. The claimant was later seen on June 5, 2001, by his family physician, Dr. Barry Hendrix, for complaints attributed to the June 1, 2001, accident.

The claimant was seen at Arkansas Methodist Hospital in Paragould on June 5, 2001.

The medical records relative to the afore visit reflect that the claimant provided a history of the June 1, 2001, accident as the basis for his injuries. The medial records also reflect that the claimant had bruising of both elbows, back pain, and a compression fracture in the lumbar spine. The claimant was seen by Dr. Terence P. Braden, III, D.O., on June 15, 2001, for complaints relative to the June 1, 2001, accident. At the time of his visit to Dr. Braden the claimant identified the following complaints as growing out of the June 1, 2001, accident: a large swollen knot on the back of the head, black and blue areas up and down his forearm, back pain, arm pain, neck pain, and elbow discomfort. Dr. Braden's June 15, 2001, report, relative to the claimant, reflects, in pertinent part:

He further reports that he has neck stiffness. He says he has always had neck stiffness since he has had three neck surgeries in the past, but it is more stiff than it was prior to his fall. He reports that he his left arm intermittently feels numb and weak, although it is not localized to any one part of the arm. It just feels like the whole arm is numb and weak, and this does not occur all the time, but it is present intermittently. He cannot not give a distinct idea of how often this occurs. (Oct. 31, 2003, transcript, R2X1, p. 18).

Diagnostic studies performed by Dr. Braden during the claimant's June 15, 2001, visit disclosed the presence of compression fractures of T-12 and L-1. Following a July 12, 2001, visit the claimant was referred by Dr. Braden to Dr. James C. Metcalf, a Memphis neurosurgeon, who performed the 1999 surgical removal of a spur from the claimant's neck, for further medical treatment in connection with the claimant's injuries growing out of the June 1, 2001 accident.

The medical in the record reflects that the claimant continued to treat with his family physician, Dr. Hendrix, for complaints growing out of the June 1, 2001, accident. A July 19,

2001, clinic note of Dr. Hendrix regarding a visit by the claimant reflects a chief complaint of problems with both elbows. Dr. Hendrix's examination of the claimant's elbows disclosed the presence of some erythema and swelling of both elbows. Dr. Hendrix diagnosed bursitis of both elbows, prescribed medication, and directed the claimant to return in two weeks.

The medical in the record reflects that while under the care of Dr. Metcalf, pursuant to the referral by Dr. Braden, the claimant underwent further examination and diagnostic testing relative to complaints growing out of the June 1, 2001, accident. Following his examination of the claimant on August 6, 2001, Dr. Metcalf's impression of the claimant's complaints were throacolumbar compression fracture and cervical radiculopathy. On September 6, 2001, the claimant underwent a cervical myelogram/cervical CT scan post myelography. The afore diagnostic studies disclosed postoperative changes at C6-7, as well as a component of cervical spondylosis at C5-6.

On October 31, 2001, the claimant was evaluated by Dr. Samuel E. Murrell, III, at Spine Memphis, pursuant to a referral of respondent #1. On November 5, 2001, Dr. Murrell saw the claimant in follow-up, and assessed the claimant's complaints as degenerative disc disease of the cervical spine, most severe at C5-6 and lumbar degenerative disc disease along with a history of T-12 and L1 end-plate fractures.

The claimant underwent a functional capacity evaluation on November 6, 2001. On November 19, 2001, after reviewing the results of the FCE Dr. Murrell opined that the claimant had reached maximum medical improvement and assigned a 5% permanent physical impairment as a result of the healed end-plate compression fractures. Dr. Metcalf saw the claimant on January 21, 2002, and opined that claimant had reached MMI as of January 22, 2002, and could

return to work with no restrictions. Dr. Metcalf concurred in the 5% impairment rating. The claimant returned to the employment of respondent following the above, however continued to experience complaints of back pain for which he sought and obtained medical treatment.

The claimant completed a Form AR-C on July 31, 2001, relative to the June 1, 2001, accident. The Form AR-C reflects that the claimant fell “into a foot water” and suffered injuries to “his back, neck, head, elbows, . . . and fingers on right hand”. On February 7, 2003, the claimant was seen by Dr. Hendrix with complaints of his right arm going numb, tingles; right shoulder pain; and neck hurting. Further the February 7, 2003, office note of Dr. Hendrix reflects that over a period of four to six weeks prior to the visit the claimant’s symptoms progressively worsened.

On March 10, 2003, the claimant sustained an injury to his low back within the course and scope of his employment at a time that respondent #2 provided workers’ compensation insurance coverage. The claimant was seen at the emergency room of Arkansas Methodist Hospital on March 11, 2003, for his low back pain. The claimant was later seen by Dr. Hendrix on March 12, 2003, and after a period of hospitalization pursuant to the direction of Dr. Hendrix in an effort to address the low back pain, claimant was referred to Dr. K. Dewayne Eubanks, a Jonesboro neurosurgeon.

On April 7, 2003, the claimant underwent cervical spine myelogram and lumbar myelogram at Regional Medical Center of NEA relative to his lumbar and cervical spine complaints, at the direction of Dr. Hendrix. The claimant was referred by Dr. Eubanks to Dr. Robert E. Abraham, another Jonesboro neurosurgeon. The compensability of the claimant’s March 10, 2003, low back injury was denied by respondent #2.

The claimant underwent surgery, in the form of a left L4-5 microdiscectomy, under the care of Dr. Abraham on April 25, 2003. At the time of a July 21, 2003, follow-up visit to Dr. Abraham the claimant relayed complaints of numbness in his right little finger, problems with his right elbow and right hand. The claimant underwent diagnostic studies, in the form of EMG/NCVs of the upper extremities, pursuant to the directions of Dr. Abraham. The claimant underwent ulnar nerve transposition surgery at the right elbow under the care of Dr. Abraham on or about October 1, 2003.

During his February 1, 2008, deposition Dr. Abraham testified regarding the findings/results of the claimant's September 2003, EMG and nerve conduction studies:

He had right elbow neuropathy at the elbow, and left elbow neuropathy at the wrist, and a left carpal tunnel syndrome. (JX #2, p. 33).

With respect to the nexus of the claimant's elbow complaints with the June 1, 2001, fall, the testimony of Dr. Abraham reflects:

Most of his compression was at the elbow itself. I didn't see much compression above the elbow at all. A lot of times that is consistent with an injury.

Those are similar, especially if he hit both elbows. But he also had some symptomatology on the left side at the wrist and he had a carpal tunnel over there too.

But the symptoms on the left side were just not as bad as the right. (JX #2, p. 28).

Dr. Abraham's testimony reflects that the claimant's injury relative to his upper extremities/elbows was consistent with a single acute incident. Dr. Abraham explained the impact of a "pretty good bang" on the wrist as the same related resulting carpal tunnel syndrome:

Fracture can do it. You can have just damage to the nerve itself.

You can have damage to those other ligament structures around the nerve that can give it.

The amount of tissue that you have around your median nerve in the wrist is really not that great. It's only about maybe a half-inch of material there. (JX. #2, p. 28-29).

Dr. Abraham estimates that the claimant reached the end of his healing period relative the right elbow ulnar nerve surgery within four to six week of the surgery and with a residual 5% anatomical impairment to the upper extremity based on the AMA Guides, 4th edition. (JX. #2). Further, Dr. Abraham assessed the claimant's anatomical impairment at between 17 to 20 % relative to the cervical region and 17% to the lumbar spine. Dr. Abraham explained regarding his method of rating:

Well, you know, when I'm giving a rating, I really don't split them up. Basically, how I find the patient at the time that I'm giving the rating is the way I give it. (JX #2, p. 25).

With respect to the March 10, 2003, lumbar spine injury and subsequent surgery, based on the AMA Guides, 4th Edition, the testimony of Dr. Abraham reflects that the claimant has a 3% anatomical rating, and that he reached the end of his healing period relative to same on November 24, 2003. (JX. #2).

The claimant has not worked since he last discharged employment duties for respondent on March 10, 2003. While the claimant has not undergone a functional capacity evaluation since reaching maximum medical improvement relative to the March 10, 2003, compensable injury on November 24, 2003, the credible evidence in the record nevertheless reflects that the claimant is severely restricted in his physical capabilities. The claimant is limited in the amount of lifting, bending, standing, and walking. The had restriction in the range of motion in his neck prior to his June 1, 2001, injury in the employment of respondent. The claimant is unable to drive long

distances with having to stop frequently due to complaints of pain in his neck, low back and lower extremity.

The medical does reflect that the claimant registered complaints of pain in the neck following the June 1, 2001, accident and that he received medical treatment in connection with same. Further diagnostic studies disclose objective evidence of injury to the claimant's cervical spine following the June 1, 2001, accident. Claimant concedes that he has not sought employment since either November 24, 2003, or April 9, 2004.

The testimony reflects that the claimant receives monthly VA disability benefits of \$2,200.00; Social Security disability benefits of \$1,100.00, and benefits through a MetLife investment of \$2,500.00. Claimant testimony also reflects that he owns a rent house.

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

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of these claims.
2. At all times pertinent the employee-employer relationship existed between the claimant and respondent-employer.
3. During the period June 1, 2001, through July 31, 2002, Respondent #1 provided workers' compensation insurance coverage on behalf of respondent employer.
4. On June 1, 2001, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$410.00/\$308.00, for temporary total/permanent partial disability.

5. On June 1, 2001, the claimant sustained compensable injuries to his low back, elbows, and neck arising out of and in the course of his employment when he fell approximately 9 ft. into a foot of water within a pipe.

6. Medical treatment rendered to the claimant relative to his neck and elbows subsequent to June 1, 2001, to include diagnostic studies, medication, and surgery, is reasonably necessary in connection with the treatment of the June 1, 2001, compensable injuries sustained in the employment of respondent-employer during the workers' compensation insurance coverage period of respondent #1.

7. The claimant was temporarily totally disabled for a period of six (6) weeks following the September/October 2003, right ulnar nerve surgery which resulted in a 5% permanent physical impairment to the right upper extremity, and is entitled to the payment of appropriate corresponding temporary total and permanent partial disability benefit by respondent #1.

8. Respondent #1 controverted the claimant's entitlement to the payment of temporary total disability, permanent partial disability, and medical benefits growing out of the June 1, 2001, injury to his cervical spine and elbow injuries.

9. Commencing August 1, 2002 through July 1, 2003, respondent #2 provided workers' compensation insurance coverage on behalf of respondent-employer.

10. On March 10, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$295.00/\$221.00, for temporary total/permanent partial disability.

11. On March 10, 2003, the claimant sustained an injury to his lumbar spine arising out of and in the course of his employment, which required medical treatment that was

reasonably necessary in the treatment of the injury, to include medication, diagnostic studies, and surgery, and which rendered the claimant temporarily totally disabled from engaging in gainful employment commencing March 11, 2003, and continuing through November 24, 2003.

12. Respondent #2 shall pay all reasonable hospital, and medial expenses arising out of the claimant's injury of March 10, 2003.

13. The claimant has sustained a permanent physical impairment in the amount of 3% to the body as a whole as a result of the March 10, 2003, compensable injury.

14. When the claimant's age, education, work history, permanent restriction and limitations are considered the evidence preponderates that he has been rendered permanently and totally disabled.

15. The claimant's present disability status is the product of the combination of his prior disability or impairment with recent compensable injury.

16. Respondent #3 has controverted the claimant's entitlement to permanent disability benefits in excess of 30 % above the 3% anatomical impairment growing out of the March 10, 2003, compensable injury.

CONCLUSIONS

The claimant was employed by respondent-employer as a foundation engineer from September 1992 until October 1, 2003. During the afore period of employment by the claimant two separate insurance companies provided workers' compensation insurance coverage on behalf of the employer. The claimant sustained compensable injuries during the coverage period of both insurance carries. Further, prior to his employment with respondent-employer the claimant had undergone several surgeries relative to his spine as a result of injuries sustained in the United

States Army and in a civilian motor vehicle accident. The claimant asserts entitlement to additional workers' compensation benefits as a result of the compensable injuries. The contentions/positions of the parties are as set forth their respective responsive pre-hearing filing.

The present claims are governed by the provisions of Act 796 of 1993 in that the claimant asserts entitlement to workers' compensation benefits as a result of injuries having been sustained subsequent to the effective date of the afore provision.

A prior hearing was conducted in these claims on October 31, 2003, and the record of that hearing, and the rulings generated therefrom have been incorporated in and made a part of the present record.

The claimant is a high school graduate with a date of birth of February 2, 1948. Accordingly, at the time of the most recent hearing the claimant was sixty (60) years of age. The claimant was in the U.S. Army for fourteen (14) years during which time he sustained an injury to his lumbar spine and underwent lumbar surgery at L5. The claimant received a medical discharge for the Army in 1984. In 1986, claimant sustained to injuries to his cervical spine in a motor vehicle accident and underwent two (2) surgical procedures. In 1998 the claimant underwent a third cervical surgery procedure.

On June 1, 2001, claimant suffered an acknowledged work-related accidental fall into a 9 ft. hole. The evidence preponderates that the claimant incurred external injuries to his head, and elbows in the accidental fall. Medical record relative to the treatment the claimant received in connection with the injuries/complaints growing out of the June 1, 2001, accident document objective findings of injury to the claimant's head, neck, lower and upper back, and elbows. Claimant received treatment in connection with his cervical complaints and the fracture of spine

at T-12 and L-1. The claimant also received medical treatment regarding upper extremity complaints of pain in his elbows, as well as pain and numbness in his fingers. The claimant reached the end of his healing period relative to the disc fracture on or about January 22, 2002, with 5% permanent physical impairment growing out of same.

The evidence preponderates that the claimant continued to complain of neck pain and symptoms and complaints with respect to the upper extremities subsequent to January 22, 2002. The claimant also receive medical treatment in connection with the afore. The claimant ultimately underwent surgery relative to the right ulnar nerve under the care of Dr. Abraham in late September/early October 2003.

There is no evidence of the claimant having complaints associated with his upper extremities prior to the June 1, 2001, accidental fall. The medical records document the presence of objective bruising on both of claimant elbows and arms following he June 1, 2001, accident. Dr. Abraham provided testimony regarding a nexus to the claimant's upper extremity complaints with the June 1, 2001, accidental fall. Further the medical treatment rendered to the claimant in connection with his upper extremity complaints and neck complaints was reasonably necessary in the treatment of same.

The evidence preponderates that the claimant's right and left elbow complaints/injuries arose out of and in the course of his employment as a result of the compensable June 1, 2001, accidental fall. The claimant was totally incapacitated and within his healing period as result of the surgical procedure relative to the ulnar nerve surgery on the right elbow from the date of the surgery until six (6) weeks thereafter. The claimant sustained a permanent physical impairment in the amount of 5% to the right upper extremity as a result of the right elbow injury.

Respondent #1 has controverted the claimant entitlement to all workers' compensation benefits, to include medical, temporary total and permanent partial, associates with the injuries to the claimant's neck and elbows growing out of the June 1, 2001, compensable injuries.

On March 10, 2003, the claimant sustained a compensable injury to his low back. Respondent #2 provided workers' compensation insurance coverage on behalf of respondent-employer. Responsive to an inquiry from counsel of respondent #2, in an April 9, 2004, Dr. Abraham opined that the claimant had reached maximum medical improvement with an impairment of 17% to the lumbar spine base on the AMA Guides Forth Edition. The April 9, 2004, correspondence provided the claimant with a maximum lifting restriction of 45 pounds. During his February 1, 2008, deposition Dr. Abraham noted that the 17% impairment to the claimant's lumbar spine was base on the condition of the spine, which included the prior surgical procedure growing out of the military injury, as well as the fractures growing out of the June 1, 2001, work-related injury. Based on the March 10, 2003, injury and surgical procedure growing out of same, the evidence preponderates that the extent of the claimant's anatomical impairment relative to the March 10, 2003, compensable injury is 3% to the body as a whole. Further, the evidence preponderates that the claimant reached maximum medical improvement as a result of the March 10, 2003, compensable low back injury on November 24, 2003.

Respondent #2 paid indemnity benefits to the claimant totaling \$17,770.63, covering the period March 11, 2003 through April 9, 2004, at the erroneous compensation benefits rate of \$410.00. As noted above, the claimant reached the end of his healing period and corresponding entitlement to temporary total disability benefits on November 24, 2003, rather than April 9, 2004. With the claimant's proper compensation benefit rates being stipulated as

\$295.00/\$221.00, for temporary total and permanent partial disability, the evidence preponderates that respondent #2 has overpaid indemnity benefits to the claimant. The overpayment is sufficient to cover the 3% permanent partial impairment incurred as a result of the March 10, 2003, compensable injury when the credit is applied. (R1, Supp. Exhibit).

Respondent #3, the Second Injury Fund, acknowledged liability in this claim and has accepted a 30% permanent partial disability in excess of the claimant's anatomical impairment growing out of March 10, 2003, compensable injury. The 30% wage loss accepted by respondent #3 has not been controverted. The claimant's attorney has provided valuable legal services to the claimant and is entitled to attorney fees on the afore benefits pursuant to Ark. Code Ann. §11-9-715 (a) (2)(C)(i).

The claimant is sixty (60) years of age with a high school education and some post secondary education. The claimant work history has consisted on heavy manual labor. The claimant has undergone at least three surgical procedures relative to his cervical spine, two surgical procedures regarding his lumbar spine, and a surgery relative to his right upper extremity. The claimant takes prescription medication for pain and muscle spasms. The claimant has severe restrictions on the range of motion in his cervical spine and lumbar spine. Further, is unable to lift significant weight on a consistent and regular basis; to bend repetitively; prolonge sitting or standing. Claimant has physical limitations relative to his upper extremities, neck, back, and lower extremities. The claimant has not been gainfully employed since March 10, 2003.

Ark. Code Ann. §11-9-519 (e) (1) defines permanent total disability to mean inability, because of compensable injury or occupational disease, to earn any meaningful wages in the

same or other employment. The claimant work history included driver of a tractor-trailer rig, working as a foundation engineer, and his military experience constructing bridges. The evidence preponderates that when the claimant's age, education, work experience, permanent restrictions and limitations are considered, that he has been rendered permanently and totally disabled within the preview of the Arkansas Workers' Compensation law. Respondent #3 has controverted the claimant's entitlement to permanent disability benefits in excess of 30% above his 3% anatomical impairment.

The assertion of Respondent #3 to credit pursuant to Ark. Code Ann. §11-9-411, against the claimant's VA benefits is not persuasive. The afore provision provides, in pertinent part:

- (a) Any benefits payable to an injured worker under this chapter shall be reduced in an amount equal to, dollar-for-dollar, the amount of benefits the injured worker has previously received for the same medical services or period of disability, whether those benefits were paid under a group health care service plan of whatever form or nature, a group disability policy, a group accident, health, or accident and health policy, a self-insured employee health or medical service contract.

The claimant's VA benefits does not fall with the category outlined in the above provision. The request of respondent #3 is respectfully denied.

AWARD

Respondent #1 is herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly rate of \$410.00, for a period of six (6) weeks to correspond with the total period of incapacitation growing out of the right ulnar nerve surgery as a result of the claimant's compensable right elbow injury from the June 1, 2001, compensable injury. Said sums accrued shall paid in lump without discount.

Respondent #1 is further ordered and directed to pay permanent partial disability benefits

to correspond with the claimant's 5% permanent physical impairment to the right upper extremity growing out of the June 1, 2001, compensable injury. Said sums accrued shall be paid in lump without discount.

Respondent #1 is further ordered and directed to pay all reasonable necessary medical expenses in connection with the claimant compensable injury of June 9, 2001, to include treatment in connection with the claimant's neck and elbows, in addition to the low back injury.

Respondent #2 is herein ordered and directed to pay permanent partial disability benefits at the weekly rate of \$221.00, to correspond with the claimant's 3% permanent physical impairment to the body as a whole as a result of the March 10, 2003, compensable injury. Respondent #2 may claim credit for sums heretofore paid in the discharge of the afore obligation.

Respondent #2 is further ordered and directed to pay all reasonably necessary medical, hospital and other apparatus expenses in connection with the treatment of the claimant's compensable injury of March 10, 2003, to include medical related travel.

Respondent #3 is herein ordered and directed to the claimant pay permanent total disability at the weekly compensation benefit rate \$295.00, as a result of the claimant having been rendered permanently totally disabled from the March 10, 2003, compensable injury in combination with his prior disabilities or impairments.

Maximum attorney fees are herein awarded on the controverted portions of the indemnity benefits herein awarded against respondent #1 and respondent #3, pursuant to Ark. Code Ann. §11-0-715.

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

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE