

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409640 (09/09/04)

FARRELL HIGHFILL, EMPLOYEE	CLAIMANT
AMERICAN RAILCAR INDUSTRIES, EMPLOYER	RESPONDENT #1
HARTFORD INS. CO. OF MIDWEST, CARRIER	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED AUGUST 30, 2010

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 4, 2010, at Paragould, Greene County, Arkansas.

Claimant represented by the HONORABLE PHILLIP WELLS, Attorney at Law, Jonesboro, Arkansas.

Respondents #1 represented by the HONORABLE JARROD RUSSELL, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to permanent total disability benefits growing out of his September 9, 2004, compensable injury. On March 22, 2010, a pre-hearing conference was conducted in this claim, 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 contentions of the parties relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Farrell Highfill – the claimant, and Dodie Highfill, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Farrell Don Highfill, the claimant, with a date of birth of December 1, 1944, achieved an eleventh grade education, however later obtained a G.E.D. while in the U.S. Army. During the two (2) years that the claimant was in the Army he was a heavy equipment operator of cranes and dozers. Claimant testified that he was employed by respondent for six (6) years before his accident of September 9, 2004, and that he never missed a day's work. Claimant added that in 2002 he was employee of the month.

In describing his adult employment work history, the testimony of the claimant reflects:

I was a car dealer for about twenty-five (25) years. Then I worked at Sun Light; they made grills. And, when they closed, I went to work at A.R.I. ; American Railcar Association. (T. 8-9).

Claimant described his job duties in the employment of respondent #1:

I was a crane operator. I put the sides on the railcars; picked it up off the table - - transfer table - - with the crane, and put it on the sides and then worked all the pushers to push it up on the car while the guys welded it. (T. 9).

Other than his job as a car dealer, the testimony of the claimant reflects he does not have any type of managerial skills or business skills.

The compensability of the claimant's September 9, 2004, injury is not disputed. In describing the mechanics of the compensable injury the testimony of the claimant reflects:

There was a - - we had changed cars; we had started building another car. And when we started doing that car, I had to pick the side

up with a spreader bar. And it's got clamps on it. And when we got done with this car, they had me to set the spreader bar right there, at the end of the transfer table. And, so when we started building this other car, we used another spreader bar. And we didn't have room on the floor for it, so we left it on the table. And the date of the accident, I had to ask them, for two (2) weeks, to put that spreader bar in a rack, but when the transferred that side over that, as soon as that side hit the end of the transfer table, the bar was right up against it, which I was standing right there, under it, and it just fell over - - fell over on me.

It got from my knees down. I had on them steel-toed shoes, and it had mashed the steel down to where it had popped my four (4) little toes on my left foot out, and it popped the side out of my big toe. They had to cut my boots off of me. And they was - - the doctor was going to have to take the toe. But I found out that I had a bone infection - - mellitus, or something like that. And, so they were going to put a skin graft over it, to graft over the hole. When they done that, I got a staph infection out of it.

My left leg - - it broke it. I had a compound fracture; bone was sticking out in three (3) places. Then it crushed my right leg and right foot. They put plates, pins and screws in it. (T. 9-11).

In describing the weight of the spreader bar, the testimony of the claimant reflects:

Four (4) ton. And the thing of it was, when it fell on me, the crane would not go all the way to the ground to pick it up, because it's not made to. So they had to - - they went and got - - I never lost consciousness, or nothing - - and they went and got a chain, and put it on the hook and hooked it to the spreader bar. And then they got about forty (40) guys over there, so when they picked it up, to try and keep it from rolling on me - - on my legs - - while they were picking it up. And after they got it up off of me, they told me later they put it in the rack. (T. 11).

The claimant received emergency medical treatment immediately after the accident. In describing the condition of his legs and body following the accident and his course of medical treatment in connection with same, the claimant testified:

Not good. I wasn't - - I wasn't healing. I spent three (3) hours a day, six (6) days a week in a hyperbaric chamber for three

(3) months. They thought that would help it heal up, but it still wouldn't heal. So another doctor said it - -

Well, I laid in a hospital for a year and a half. And it took a year and a half for it to start healing up. (T. 11-12).

The testimony of the claimant reflects that he was in a hospital bed at home for the year and one-half (1 ½). In describing how he accomplished his daily needs - - eating and bathroom use - - during the afore period, the testimony of the claimant reflects:

She (wife) got a port-a-potty. And I would work myself down to the end of the bed, and just take my arms, and just literally pick myself up and put myself on it. And, then, when I got through, pick myself up and get back in the bed. I couldn't walk none; couldn't even stand up. (T. 13).

Regarding his progress following the year and one-half of being bedridden, claimant testified:

Well, they put me in rehab, which, seriously, I thought you just get out of the wheelchair and walk. But I found out that, you know, ten (10) seconds was all that I could stand up the first time I was in that - - the first time I tried to stand up. And while I was in rehab, they - - after I got to where I could walk, and they were trying to build my legs - - all the bones in my feet are fused together; I don't have no foot actions.

And they was trying to - - they had me there, and they was putting me on a pivot board, and throwing a big ball, like you play handball with. And I was supposed to catch it at different angles. And it just so happened that he throwed [sic] it one time and it hit me in the eye, and that's why my eye waters. But I got - - I got some permanent eye damage out of that; had to go to Dr. Myers, over in Memphis. And he done three (3) surgeries on it. (T. 14).

Clamant acknowledged that he begin to improve gradually. During the next couple of years, the testimony of the claimant reflects:

About - - a little over two (2) years, I was in rehab. I was under the impression - - which I had talked with the rehab guys, and I told them, I said, "I would just like to be able to squat down, or be able to get on my knees." And they said, "No, sweat," you know? But, when I got released, I still couldn't squat down or get on my knees.

But they said that they had went - - as far as they could go.

The claimant underwent physical therapy at the rehab center.

The testimony of the claimant reflects regarding the type of problems he continue to experience as residuals of the September 9, 2004, compensable injury:

I have trouble with my feet swelling; I've got to keep them elevated. I'd say three quarters (3/4) of the day I keep them elevated. Plus, at night, I keep them elevated on pillows at night. If I don't do that, my feet will swell up so much they hurt inside my shoes.

They gave me orthopedic shoes - - can I say that?

But they make these with a rocker in them because I laid in the hospital be so long that I got drop foot on both feet. And so they made these shoes with rockers in them so I could walk. (T. 16).

The claimant testified that the only physician he continues to treat with is his foot doctor, which he sees every three (3) months:

He cuts my toenails, and basically just checks my feet over and makes sure everything's going good. (T. 16).

The claimant takes prescriptions in connection with the treatment of his compensable injuries.

Claimant testified:

Well, they started me off on a strong pain killer, but - - it did kill the pain, but I was looking at the future, and I thought if I started out with something like that, I'd be getting probably hooked on it. So they started me out, I told them I would take the least thing they had, and that was a ten (10) milligram Valium. (T. 17).

The claimant continued to take two (2) ten (10) milligram Valium daily. Claimant noted that while the afore meds help "a little bit", he does not think he could take enough to take all the pain away.

It is the assessment of the claimant that his condition is going down more that it is

improving. In elaborating on the afore, claimant testified:

I've got - - I have leg spasms, or leg and feet spasms, or charlie horses; they just, like, you know, my feet are just - - it feels like they are just straightening out, but they're not. I don't know how to explain it, but it feels like you're having charlie horses, and then they shake. (T. 18).

The testimony of the claimant reflects that his left knee was also injured in the September 9, 2004, accident. The claimant testified regarding the symptoms in his knee:

The knee is kind of numb. As a matter of fact, my right foot - - over half of it - - is numb; has no feeling in it. And, then, right under my knee it doesn't have any feeling in it. And, then, the lower part, down there. (T. 18).

Claimant testified that he has numbness in both knees. The testimony of the claimant reflects that he uses a cane on a daily basis to get around.

In terms of daily activities, the testimony of the claimant reflects relative to his walking around the house and outside:

Well, I was walking the dog to get some exercise. But the longer time goes, the less I could walk without just really having - - sometimes it would get the pain going plumb up to my hip, here. And it's either stop and rest or if I could, sit down.

But, now - - I was walking about a block and a half, but now I just walk about half a block. (T. 19).

The claimant testified that he gained forty (40) pounds while he was laying in the hospital bed, which he has not lost. The claimant's present weight is two hundred and sixty (260) pounds.

The claimant has undergone open heart surgery - - four (4) bypass. Regarding the right eye complaint, from being hit in the eye during physical therapy, the claimant testified:

Well, it waters all the time, and just really don't see good. Matter of fact, I went to the eye doctor yesterday, and they prescribed some glasses for me. (T. 20-21).

The claimant continued, regarding other health issues:

Oh, yeah, I'm a diabetic. I wasn't a diabetic until I got hurt, and they found out I was a diabetic then.

I take two (2) pills a day; once in the morning and once in the evening. (T. 21).

The claimant also takes blood pressure medicine. The testimony of the claimant reflects that before the September 9, 2004, accident, he was in generally good health:

Yes, Sir. There wasn't nothing I couldn't do, or - - that I wanted to do. It just really bed me down, you know, like little things around the house, you know? Had to have a garbage disposal put in, which I could have done myself. But in the condition I'm in now, I couldn't do it. So - - (T. 21-22).

The claimant provided testimony regarding how he spends an average day and the impact of the accident on his normal activities:

Not doing much of anything. I do mow the yard on a riding mower; that's about it. (T. 22).

The claimant has to elevate his feet while watching television or reading. While the claimant continues to drive an automobile, regarding the frequency of doing so, his testimony reflects:

Really not - - no more than I have to, because if I, like, take a trip to Memphis, I don't drive; I ride because I have to elevate my feet, you know, going over there. If I don't, they swell up. (T. 22).

The claimant underwent a functional capacity evaluation which was deemed reliable and disclosed that he was capable of engaging in light work activity. The testimony of the claimant reflects that his physical condition prevents him from doing a sedentary job, where he would sit eight (8) hours a day in a chair, because of the need to elevate his feet. Claimant estimates that he cannot stand for longer than ten (10) or fifteen (15) minutes without having pain and problems

with his legs and feet. The testimony of the claimant reflects that he has to recline and lay down in order to take the pressure off his feet and legs, which he does as often as he can - - three quarters (3/4) of day with his feet elevated. The claimant has an ottoman that he places a pillow on to elevate his feet. The testimony of the claimant reflects that he has difficulty lifting objects. Claimant explained that he does not do any lifting because it causes him pain. The claimant testified that he is hard of hearing.

During cross-examination the claimant testified regarding the welding school that he attended in the past:

Well, they send you to a welding school before you can go to A.R.I; you have to go to welding school no matter whether you weld, or not, you still have to go to welding school and pass welding before they'll hire you.

No, they don't hand out certificates. They just tell you, you passed. (T. 25).

The claimant did not weld as a part of his job duties in the employment of respondent #1. The testimony of the claimant reflects that while employed by Sunbeam and Sunlight in Paragould, he worked in the shipping department, loading trucks as a forklift operator.

The claimant testified that in operating a car dealership for twenty (20) plus years, he and his wife ran it, and that two (2) other individuals helped. Regarding his role in the operation, the claimant testified:

No, I would do it all. I'd go to St. Louis, buy the cars, bring them in. The guys would detail them, and I would take them to auction. And, then, turn around and go back to St. Louis and do it over again. (T. 26).

The testimony of the claimant reflects that while he had a lot in Paragould, it was not a retail

lot, explaining:

I didn't try to sell to the public. All I sold was to car dealers. In other words, if another car dealer want to buy my car, before I detailed it, I sold cars like that. But I didn't - - like, as new car place, you know, has a used car? I didn't sell cars to the public, like that. (T. 26-27).

The claimant's business was one of offering cars to dealers at auction.

The testimony of the claimant reflects that for a short period of time he work for Central Chevrolet. Regarding the point in time that the afore occurred, the claimant testified:

Well, Sunbeam or Sunlight, they work you six (6) months, and then you're off. They work you all winter and then you're off in the summer. And while I was laid off, I thought I'd try something else. And, so I went down to Central Chevrolet, and tried to sell cars down there, but it wasn't my cup of tea. (T. 27-28).

Claimant estimated that he tried sell cars for a period of three (3) or four (4) months. The position was salary plus your commission.

The claimant also has some rental property that he manages himself. In describing the properties, the claimant testified:

It's just buildings; one a mechanic's in - - well, there's a mechanic in both of them. (T. 28).

Both properties are located in Paragould. Claimant acknowledged that at one time he had a trailer on property that he owned, however not the trailer is sitting empty. Claimant testified that now he has to hire out all of the maintenance on the properties. Before his September 9, 2004, accident claimant performed the maintenance on the properties:

I did everything before the accident, but I haven't been able to do nothing since. (T. 29).

The testimony of the claimant reflects that he drives around the properties every week or two:

I just try and make sure nothing's been stolen or broke in, or something like that. (T. 30).

The claimant's testimony reflects that he does not do any type of shopping for the family.

Regarding his use of the cane, the claimant's testimony reflects:

I started out, when I got out of the wheelchair, when I started walking, I had to have that three-legged cane - - or the walker. And then when I went from the walker, I went to the three-legged cane. It was like this, here, except I had three (3) legs on it.

Yes, Sir. And, then, I went from that to this cane, here. (T. 30).

As to his ability to walk without the use of the cane, the claimant testified:

It's my equalism [sic]. Like, if I was standing up, without this cane, talking to you - -

- - I could just, all of a sudden, take off backward. Or I've got a dent in my car because I fell in the car to keep from falling on the ground.

It's more for balance. Plus it take a little pain - - it takes a little pressure off this - - my right foot hurts me a lot worse than my left one does. (T. 31).

Claimant noted that both of his feet have been fused:

Well, it hurts in both of them, but I've got more, I reckon, damage to my right foot. (T. 31).

The claimant has not returned to the use of the three-prong cane, walker, or wheelchair since he started using the cane.

The testimony of the claimant reflects that he has no trouble getting on the riding lawnmower to mow his yard. Regarding the point in time that he reduced the length of his walk to half a block, the claimant testified:

When I found out that it was hard for me to make it back

from going all the way down to the end of the street.

On, I'm going to say probably about a year ago; year and a half. (T. 32-32).

The claimant elaborated with respect to the three-quarters of the day that he keeps his feet elevated:

No, I sit just continuously - - unless I get up to go to the bathroom, or eat, or something like that.. (T. 33).

In elevating his feet, the claimant testified that he tries to keep them above his hip. When riding in a vehicle the claimant elevates his feet by moving the seat back and putting his feet on the dash.

Regarding the point in time that he began elevating his feet following the September 9, 2004, accident, the testimony of the claimant reflects:

Well, I was really doing it in physical therapy. But I'm going to say - - well, I elevate them at night all the time. But when I was in therapy, I probably elevated them, maybe, six (6) hours a day then. But they wasn't swelling as bad. Seems like, as time's gone on, that my feet's got worse. And they swell - - they swell faster and seem likely the swell up longer. (T. 34-35).

The claimant testified that the swelling in his feet is visible, and that if he stays up on the too long "it would be hard to get my shoes off". (T. 35). The claimant continued:

Like, probably they would swell up in thirty (30) minutes, but not to that extent. But if it was where - - I have had to stand up a couple hours, and even with the cane, they still both swell up.

No, it don't take two (2) hours. But I'm saying in about two (2) hours, it would be enough that it would be bad to get my shoes off. (T. 35-36).

The testimony of the claimant reflects that he has swelling in his feet every day. Claimant observed that because he sleeps with his feet elevated they are not swollen when he wake up in the morning.

The claimant underwent the functional capacity evaluation in 2006 and was released to light duty. Following his light duty release the claimant returned to respondent-employer #1 and attempted to obtain light duty work, however nothing was available. Claimant acknowledged that he did not go anywhere to look for work, nor has he looked for any type of work - - part-time or full-time - - since. Claimant concedes that he has not sought any type of training, vocational, or otherwise. (T. 37).

The testimony of the claimant reflects his every three (3) months visit to Dr. Hayes is a scheduled appointment. During the visit, Dr. Hayes examines the claimant's feet and cut his toenails. Further, the claimant testified, regarding his visit to Dr. Hayes:

Yes, he's - - I got something - - I had something come up on it.
I don't know what it was. But he had me to put some salve on it. (T. 38).

In addition to the heart surgery, the claimant has also had an aneurism as well. The claimant's testimony reflects, regarding the aneurism:

No, Sir. They said they couldn't operate on it until it was five
(5) centimeters, and it's three point eight (3.8) centimeters now. (T. 39).

The testimony of the claimant reflects that his health insurance will pay for the recent prescription for glasses associated with the injury to his left eye he sustained while undergoing physical therapy for his compensable injury. Claimant added that the physical therapy center has agreed to be responsible for paying the deductible portion of the expense. The testimony of the claimant reflects, regarding any loss of vision in the eye attributable to the accident of being hit in the eye during physical therapy:

Yes, Sir. I had to have - - Dr. Myers done three (3) surgeries
on it. And, then, Dr. Stank, here, in Jonesboro, he done cataract surgery
on it. (T. 41).

The claimant testified that Dr. Beam (ph) with the Veteran Administration Hospital is the physician that prescribes the Valium that he takes in connection with the pain in his feet growing out of the September 9, 2004, compensable accidental injuries. Further, the claimant's testimony reflects that he pays for the prescription out of his pocket.

Mrs. Dodie Highfill testified that she and the claimant have been married for forty-two (42) years. Mrs. Highfill's testimony regarding the claimant's condition before and after the September 9, 2004, accident reflects:

Okay. Before the accident, he could do anything he wanted to do. He was a hard worker; never missed a day of work; was always taking care of everything at the house; didn't have to hire anything done. Since the accident, he can't seem to do anything. He has to keep his feet elevated, really, or they swell really bad. And he had to hire everything done; it's just - - he can't do nothing. (T. 43-44).

Mrs. Highfill testified that the claimant uses the cane all the time. Mr. Highfill's testimony reflects that if the claimant fails to keep his feet elevated they swell as if they are going to burst. Regarding the amount of time the claimant keeps his feet elevated during the day, Mrs. Highfill testified:

I would say if he's not up, getting himself something to eat, or going to the restroom, he's got his feet elevated, because that's how fast they swell. He even tries to elevate them at night, when he's sleeping. (T. 44).

The testimony of Mrs. Highfill reflects regarding her knowledge of the claimant's pain and discomfort in his feet and legs:

Just burning. He can't walk. He can't even walk our dog anymore. If he's gone over five (5) minutes, I'm going to look for him. He just - - he has a lot of pain in his feet and his legs. (T. 44).

Mrs. Highfill testified that in the past six (6) months the claimant's condition has gotten worse.

There is not a dispute regarding the nature of the claimant's injuries growing out of the September 9, 2004, compensable or the treatment received in connection with same. The medical in the record reflects that the claimant received initial medical treatment in connection with the September 9, 2004, injuries at the Regional Medical Center at Memphis. The September 16, 2004, Discharge Summary reflects, in pertinent part:

HISTORY: This is a 59-year-old status post industrial accident with crushed bilateral lower extremities, a 4 ton beam fell on his legs. The patient fell to seated position. No loss of consciousness.

EXAM: On exam, his legs had open tib fib fracture on the left and deformity of the right foot. Chest, pelvis, and C-spine films were negative. He had excellent pulses bilaterally. No evidence of compartment syndrome. Orthopaedics was consulted for him to be taken to the operating room. He was taken for D & I and closed reduction internal medullary rode of left tibia and a Lis-Franc repair of his right foot. He also had a left first phalanx fracture, which is not operative. He also noted some blisters on his right foot, which was planned to debride and treat with Silvadene cream. He was managed by orthopaedics and surgery while on the floor. He began rehabilitation with physical therapy. He progressed well through his course. He was seen by wound care clinic for the blisters on 09/15/2004, at which time, they were dressed with Silvadene, Sulfamylon, wrapped with Ace and Kerlix and planned to be for dressing change with same on the following day by Home Health. His status per physical therapy at discharge was nonweightbearing right lower extremity, weightbearing to tolerance left lower extremity, postop hard sole shoe, wheelchair for home use. (JX. # 1, p. 6).

The medical in the record reflects that on December 4, 2004, the claimant was admitted to St. Bernards Medical Center where he under went operative procedures relative to an open wound on the right foot dorsum, and septic joint, interphalangeal, left big toe. (JX. #1, p. 20-21). On April 19, 2005, the claimant was admitted to Baptist Memorial Hospital in Memphis. The April 22, 2005, Discharge Summary relative to the afore admission reflects, in pertinent part:

This is a 60-year-old, white male with left great toe osteomyelitis, who has been receiving intravenous Vancomycin per right arm PICC line at home for approximately one week before he noticed right arm swelling. With this, I ordered removal of the right arm PICC line and a venous Doppler of the right upper extremity for which he came to Baptist East on 04/19/05. The venous Doppler was remarkable for extensive thrombus in the right cephalic vein onto the junction of the cephalic with the subclavian vein. I discussed with Dr. Ed Muir, and I made arrangements for direct admission to Baptist East Hospital for anticoagulation. I started him on Loverox and Dr. Muir started the Coumadin, which he was tolerating well. I asked Dr. Sue Ishikawa to see him while he was in the hospital, and I also asked Dr. Patricio Ilabaca to see in consultation for Hickman placement.

* * *

DISCHARGE DIAGNOSIS:

1. Right upper extremity thrombus, post PICC line placement.
2. Left great toe osteomyelitis with positive Methicillin-resistant Staph aureus cultures.
3. Status post crush injury, status post surgeries.
4. Hypertension.

SPECIAL PROCEDURES:

1. Left subclavian line placement. (JX. #1, p. 39-40).

On July 11, 2006, the claimant underwent a functional capacity evaluation. The FCE report reflects, in pertinent part:

RELIABILITY AND CONSISTENCY OF EFFORT

The results of this evaluation indicate that Mr. Highfill gave a reliable effort, with 46 of 46 consistency measures within expected limits. Analysis of the data connected during Mr. Highfill's evaluation indicated that he did put forth consistent effort during the evaluation. In addition to all of Mr. Highfill's coefficients of variance being within expected limits, he also exhibited other signs of appropriate effort. Mr. Highfill's movement patterns were minimal and his subjective ratings of pain were consistent with his movement patterns. Mr. Highfill also demonstrated a consistent dynamic lifting profile and cross validation of Mr. Highfill's dynamic strength to his isometric strength levels

revealed consistent data as well. Mr. Highfill did not exhibit any self-limiting behavior during his test. He also did not demonstrate magnification of his symptoms at any time.

* * *

FUNCTIONAL LIMITATIONS

Mr. Highfill did not demonstrated the ability to lift over 40 lbs. from the floor level and did this with poor lifting mechanics and with limited ankle AROM. This was consistent with his demonstrated ankle limitations. Mr. Highfill exhibits the ability to carry up to 20 lbs. and did so with the use of a cane in his non-carrying hand. Mr. Highfill demonstrates limited functional ability with all general mobility tasks. He ambulates at a low pace while using his cane and exhibits limited tolerance to prolonged standing (limited to the occasional classification). Mr. Highfill also exhibits limited ability to maintain his balance with general mobility tasks. He did not exhibit the ability to perform kneeling or crouching as well. He exhibits no functional deficits with use of the UE's for reaching, handling or fingering. It is also noted the Mr. Highfill also became short of breath from test such as the walking test. His cardiovascular condition is very poor.

CONCLUSIONS

Mr. Highfill completed functional testing on this date with reliable results.

Overall, Mr. Highfill demonstrated the ability to perform work in the LIGHT work classification as defined by the US Depart. of Labor over an 8 hour workday with limitations/restrictions as noted above. Although he did lift 40 lbs., which is in the Medium category, his limitation with standing, walking, carrying and general mobility limited him to the Light classification. (JX. #1, p. 58-59).

On September 28, 2006, Dr. Edward A. Perez assessed the claimant's anatomical impairment growing out of the September 9, 2004, compensable injuries:

IMPAIRMENT RATING: Mr. Highfill was initially injured on 12/9/04. He had injuries to the bilateral lower extremities and IM nailing of the left tibia and debridement of his left toe with eventual left toe osteomyelitis and a Lisfranc injury on the right. At this time, his significant limitations are his lack of ankle motion bilaterally,

just up to the neutral bilaterally. He is using a rocker bottom sole with a severe rocker bottom deformity based from his Lisfranc joint on the right. He also has fixed toes 2-4 fixed at the DIP and PIP. His FCE recommends, because of his inability to walk well and balance issues and generalized lower extremity weakness, that he be placed into a permanent restriction of a light work specification as defined by the US Department of Labor over the course of an 8 hour workday. With respect to his impairment rating, based on the Guide to the Evaluation of Permanent Impairment, 4th Edition, his midfoot deformity from his Lisfranc injury gives him a severe rocker bottom deformity which is an 8% whole body and 20% lower extremity impairment according to table 64. His toe 2-5 ankylosis give him a 2% whole body and 6% lower extremity impairment rating according to table 61. His lack of ankle dorsiflexion, according to table 42, where he has mild deformity with 0 degrees of dorsiflexion bilaterally gives him a 3% whole body and 7% lower extremity for each lower extremity. Based on the combined values chart, he has a severe rocker bottom deformity which is 8%. 8% + 2% for the Fixed angle of the toes is 10%. 10% + 3% is 13%. 13% + 3% is 16% for a total of 16% whole body impairment rating. (JX #1, p. 73).

The record also reflects the presence of photographs of the claimant's injuries. (JX #1).

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

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employment relationship existed on September 9, 2004, when the claimant sustained compensable injuries to his lower extremities, during which time the claimant earned an average weekly wage of \$537.00, with corresponding compensation benefit rates of \$358.00/\$269.00, for total/permanent partial disability.

3. The claimant reached the end of his healing period/maximum medical improvement on September 28, 2006, with a residual anatomical impairment of 16% to the body as a whole.

4. When the claimant's age, education, work experience, permanent restriction and limitations are considered the evidence preponderates that the claimant has been rendered permanently and totally disabled within the preview of the Arkansas Workers' Compensation Act, pursuant to Ark. Code Ann. §11-9-519.

5. Respondents #1 shall pay all reasonably necessary medical, hospital, nursing, and other apparatus expenses growing out of the claimant's compensable injury of September 9, 2004.

6. Respondents #1 have controverted the claimant's entitlement to permanent total disability benefits.

AWARD

The compensability of the claimant's September 9, 2004, accidental injuries is not disputed. The claimant contends that as a result of the compensable September 9, 2004, injury he has been rendered permanently and totally disabled and is entitled to corresponding permanent total disability benefits as well as controverted attorney fees. Respondents #1 maintain that the claimant has been paid all appropriate benefits as a result of the compensable injury. Further, respondents #1 maintain that the claimant suffered scheduled injuries and is precluded from wage loss disability over the impairment. Respondent #2 contend that if the claimant is found to be permanently and totally disabled it stands ready to commence weekly benefits pursuant to Ark. Code Ann. §11-9-502.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions.

Permanent Total Disability

The compensability of the claimant's September 9, 2004, injuries in the employment of respondents #2 is not disputed. The claimant presents credible testimony regarding the nature of his injuries, the medical treatment received in connection with the treatment of same, and the various complications suffered as consequences of the compensable injuries.

Permanent impairment is any permanent functional or anatomical loss remaining after the healing period has been reached. *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). An injured employee is entitled to the payment of compensation for the permanent functional or anatomical loss of use of the body as a whole whether his earning capacity is diminished or not. *Id.*

In the present claim, the claimant's treating orthopedic surgeon has, using the *AMA Guides to Permanent Impairment, 4th Edition*, determine the extent of the claimant's anatomical impairment as a result of the September 9, 2004, compensable injuries at 16% to the body as a whole. Dr. Perez in his September 28, 2006, impairment assessment refers to specific findings and tables of the *AMA Guides* in arriving the claimant's impairment rating, to include use of the combined values chart.

The claimant asserts that he is entitled to permanent total disability benefits as a result of the compensable September 9, 2004, injuries and residuals therefrom. Ark. Code Ann. §11-9-519 (e)(1), provides:

“Permanent total disability” means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.

The burden of proof is on the employee to prove inability to earn any meaningful wage in the same or other employment.

The evidence in the record reflects that the claimant, whose employment history has consisted of activities requiring him to be mobile and on his feet in the discharge of same, now required the use of a cane to walk, stand and for balance. Further, the claimant must elevate his feet three quarters (3/4) of the day to avoid or reduce swelling in his feet. A reliable functional capacity evaluation places the claimant in light work classification because of the restrictions and limitations growing out of the September 9, 2004, compensable injuries. The claimant is severely limited in walking, standing, and kneeling. The claimant also has restrictions on the amount and frequency of lifting that he is capable of performing.

The claimant, with a date of birth is sixty-six (66) years of age. At the time of his September 9, 2004, injury the claimant was sixty (60) years old. The claimant has undergone numerous surgeries in connection with the treatment of the injuries and complications growing out of the compensable injury. When released to light duty work the claimant reported to respondent #1, however none was available. The claimant has limited to no movement in his feet due to the compensable injuries and surgeries. In addition pain, swelling, and numbness in his lower extremities, the lack of balance.

The claimant's employment history consisted of operating heavy equipment, both in the military and in his six (6) years of employment with respondent #1. The claimant was also a car dealer and operated a forklift in the shipping department at Sun Light for several years. For a

period of three (3) to four (4) months claimant worked as a car salesman. The evidence in the record preponderated that the claimant has been rendered permanently totally disabled, because to the September 9, 2004, compensable injuries, to earned any meaningful wages in the same or other employment. Respondents #1 have controverted the claimant's entitlement to permanent total disability benefits.

AWARD

Respondents #1 are herein ordered and directed to pay to the claimant permanent total disability benefits at the week compensation benefit rate of \$358.00, for the period commencing with the end of his healing period of September 28, 2006, and continuing until such time they have paid their statutory obligation, pursuant to Ark. Code Ann. §11-9-502. Said sums accrued shall be paid in lump without discount.

Respondents #1 are further ordered and directed to pay all reasonably necessary hospital, nursing, medical, and other apparatus expenses growing out of and in connection with the treatment of the claimant's September 9, 2004, compensable injuries, to include medical related travel.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

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