

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G102781/G102783

JAMES E. BASSHAM, Employee	CLAIMANT
CITY OF SPRINGDALE, Employer	RESPONDENT
MUNICIPAL LEAGUE WCT, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 19, 2012

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by J. CHRIS BRADLEY, Attorney, No. Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 29, 2012, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 27, 2012, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer relationship existed between the parties at all relevant times.
3. Claimant sustained a compensable injury to his lumbar spine on February 23, 2010.
4. The claimant sustained a compensable injury to his left knee and thoracic and lumbar spine on May 17, 2010.
5. Respondent has paid no indemnity benefits.

Prior to the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$696.00 which would entitle him to compensation at the rate of \$464.00 for total disability benefits and \$348.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment for his low back.
2. Claimant's entitlement to permanent partial disability benefits based on a 9% rating assigned by Dr. Knox.
3. Attorney fee.

At the time of the hearing Attorney Bradley agreed to check with the respondent's adjuster and make a determination as to whether or not it would authorize claimant to receive medical treatment from Dr. Luo. Subsequent to the hearing Attorney Bradley confirmed by e-mail that Dr. Luo is authorized to provide medical treatment to the claimant. A copy of this e-mail has been blue-backed and will be considered a part of the record. This leaves as the only issue claimant's entitlement to permanent partial disability benefits based upon a rating assigned by Dr. Knox. With regard to that issue, claimant noted at the time of the hearing that in Dr. Knox's most recent report he assigned the claimant a 9% impairment rating as opposed to an 8% impairment rating.

The claimant contends that Dr. Knox assigned an 9% permanent partial disability impairment rating to claimant's lumbar spine on August 20, 2012 which has been controverted by the respondent. Claimant further contends his attorney is entitled to an attorney fee.

The respondents contend it has paid all appropriate medical benefits and that the respondent does not owe benefits for an impairment rating.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and

conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 27, 2012, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$696.00 which would entitle him to compensation at the rate of \$464.00 for total disability benefits and \$348.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to permanent partial disability benefits based upon a 9% impairment rating to the body as a whole as assigned by Dr. Knox.

FACTUAL BACKGROUND

_____The claimant is a 36-year-old man who obtained his GED and began working for the respondent in 2006 as a maintenance supervisor. Claimant's job duties included mowing, repairing water lines, and keeping park areas clean. Since his injuries claimant has taken on more of a supervisory role, supervising twelve employees.

The claimant suffered two compensable injuries while working for respondent. The parties have stipulated that claimant suffered a compensable injury to his lumbar spine on February 23, 2010 when he injured his back while helping move a tree which had a 250-pound root ball. Claimant testified that he did not miss any work as a result of that injury and did not seek any medical treatment.

Claimant suffered a second compensable injury to his left knee and thoracic and lumbar spine on May 17, 2010. Claimant testified that on that date he was fixing a leak at

the aquatic park when his foot got caught in a cord, causing him to fall on his left knee and “jolt” his back. Claimant testified that he had an immediate pop in his back and nonstop pain which is still present. Claimant has not missed any work as a result of his injury, but has received and continues to receive medical treatment.

The first medical record in evidence is a report from the emergency room from Northwest Medical Center in Springdale dated December 11, 2010, at which time claimant presented with complaints of low back pain. While it is clear that claimant had been receiving medical treatment prior to that time, those records are not in evidence. As a result of claimant’s complaints on that date an MRI scan was ordered and claimant was instructed to receive follow-up care from Dr. Knox.

In a report dated January 6, 2011, Dr. Knox indicated that he believed claimant’s complaints were muscular in nature. He recommended that claimant undergo physical therapy and return to work without restrictions. He also indicated that claimant should return for a follow-up evaluation in three weeks.

Apparently, claimant did not return to Dr. Knox for his follow-up appointment but instead was referred by respondent to Dr. Moffitt. Dr. Moffitt’s notes indicate that claimant had declined the MRI scan as recommended by the physicians in the emergency room. Dr. Moffitt’s medical reports indicate that he treated claimant with physical therapy and allowed him to work without restrictions. In a report dated February 17, 2011, Dr. Moffitt noted that while physical therapy was helping claimant’s condition there was one area of his lumbar spine that was persistently hurting. Because of that constant complaint of pain in a localized area Dr. Moffitt ordered an MRI scan of claimant’s lumbar spine.

The MRI scan was performed on March 2, 2011, and revealed a small disc protrusion impinging on the thecal sac at the L3-4 and L4-5 levels. It also revealed a diffuse annular bulge impinging on the thecal sac at the L5-S1 level. Claimant subsequently returned to Dr. Moffitt who in a report dated March 4, 2011 indicated that

claimant suffered from a musculoligamentous strain with spasm. He also noted that claimant suffered from degenerative conditions and finally it was his opinion that claimant had reached maximum medical improvement with no permanent impairment. Claimant subsequently was evaluated by Carolyn Nutter, P.A., and she referred claimant to Dr. Knox for an additional evaluation.

Claimant was evaluated by Dr. Knox on March 17, 2011, and he noted that claimant suffered from pain in the thoracic spine, lumbago, degeneration of lumbar or lumbosacral intervertebral disc and lumbar intervertebral disc without myelopathy. Dr. Knox prescribed claimant medication and ordered a thoracic MRI scan.

In a report dated June 30, 2011, Dr. Knox indicated that claimant should continue with his current medication and again recommended a thoracic MRI scan. He also ordered the claimant a TENS unit.

When claimant returned to Dr. Knox on August 10, 2011, Dr. Knox noted that claimant's thoracic MRI scan was unremarkable, but that his "lumbar MRI scan demonstrated significant disc protrusions at 3-4 and 4-5." He went on to opine that claimant had reached maximum medical improvement and that based upon the AMA Guides he had suffered a permanent physical impairment in an amount equal to 8% to the body as a whole. Finally, he noted that surgery would not benefit the claimant and that he should receive follow-up treatment from Nutter.

Claimant subsequent to the release by Dr. Knox has continued to receive treatment from Nutter who has referred claimant to Dr. Luo for additional medical treatment and he has also been evaluated at the Indian Clinic in Oklahoma. As previously noted, respondent has agreed to authorize medical treatment from Dr. Luo.

Claimant has filed this claim contending that he is entitled to permanent partial disability benefits based upon a 9% rating assigned by Dr. Knox.

ADJUDICATION

_____ Claimant has the burden of proving by a preponderance of the evidence that he is entitled to permanent partial disability benefits for his compensable injury. Here, claimant contends that he is entitled to permanent partial disability benefits in an amount equal to 9% to the body as a whole based upon an impairment rating assigned by Dr. Knox in his report of August 20, 2012.

As previously noted, Dr. Knox in his report of August 10, 2011 stated that claimant had reached maximum medical improvement and he assigned claimant a permanent physical impairment rating in an amount equal to 8% to the body as a whole based upon the AMA Guides. In response to this impairment rating respondent sent various medical records to Dr. Christopher Brigham. Dr. Brigham is an occupational medical physician. Dr. Brigham is the president and founder of Brigham & Associates in Hawaii which specializes in impairment ratings. Dr. Brigham authored a report dated May 18, 2012 opining that claimant had a zero percent impairment rating. In his report, Dr. Brigham states that Dr. Knox incorrectly cited the table in the *Fifth Edition of the AMA Guides* as opposed to the *Fourth Edition*. In addition, he states in his report that Dr. Knox based his rating on findings of disc protrusions at the L3-4 and L4-5 levels. Dr. Brigham states that degenerative disc disease is commonly seen among asymptomatic individuals and those findings do not serve as a basis for rating impairment.

In response to this report from Dr. Brigham, Dr. Knox authored a letter dated August 20, 2012, addressing this issue. First, he noted that based upon the MRI scan of the lumbar spine dated March 2, 2011, the claimant had abnormalities involving three discs. These included the diffuse asymmetric bulging and small protrusions at L3-4 and L4-5 as well as an annular bulge at the L5-S1 level which were impinging upon the thecal sac. Dr. Knox then specifically referred to the *Fourth Edition of the Guides to the Evaluation of Permanent Impairment* and noted that based upon these findings claimant would be

entitled to a 7% permanent partial disability for one level and that the guides called for an additional 1% per level for the other two levels for a total of 9%.

After my review of the opinions of both Dr. Brigham and Dr. Knox, I find that the opinion of Dr. Knox is entitled to greater weight than that of Dr. Brigham. First, Dr. Knox has physically examined the claimant while Dr. Brigham has not. Furthermore, Dr. Knox is a neurosurgeon while Dr. Brigham is an occupational medicine physician. I also note that a basis of Dr. Brigham's opinion is his statement that degenerative disc disease is commonly seen among asymptomatic individuals. While degenerative disc disease may be commonly seen among asymptomatic individuals, claimant is not asymptomatic. Instead, he admittedly suffered two compensable injuries to his low back while working for the respondent which resulted in the need for medical treatment which is ongoing. Furthermore, the findings on the lumbar MRI scan are objective findings.

I also note that Dr. Knox's rating is consistent with the fourth edition of the guides as adopted by the Commission. Finally, I note that Dr. Knox is a physician who is well known to this Commission for his treatment of spinal injuries. Based upon all of the foregoing evidence, I find that the opinion of Dr. Knox is entitled to greater weight than that of Dr. Brigham.

Accordingly, based upon the opinion of Dr. Knox that claimant has a permanent physical impairment rating in an amount equal to 9% to the body as a whole based upon the *Fourth Edition of the AMA Guides* which I find to be in accordance with the guides, I find that claimant is entitled to permanent partial disability benefits in an amount equal to 9% to the body as a whole.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to permanent partial disability benefits in an amount equal to 9% to the body

as a whole as assigned by Dr. Knox. Respondent has controverted claimant's entitlement to these indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$318.33.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE