

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G201671

RICK YOUSEY, EMPLOYEE

CLAIMANT

MULTI CRAFT CONTRACTORS, INC., EMPLOYER

RESPONDENT

GALLAGHER BASSETT SERVICES, INC.
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 13, 2015

Hearing before ADMINISTRATIVE LAW JUDGE AMY GRIMES, in Springdale, Washington County, Arkansas.

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

Respondent represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On April 20, 2015, the above captioned claim came before the Workers' Compensation Commission in Springdale, Arkansas, for a hearing. A pre hearing conference was conducted on February 17, 2015, and a pre hearing order filed that same date. A copy of the pre hearing order has been marked as Commission's Exhibit No. 1 and with modification and no objection is made part of the record. The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The relationship of employee-employer-insurance carrier existed at all relevant times on February 24, 2012.
3. The date the compensable injury occurred is February 24, 2012.
4. There is no dispute over medical services.
5. The claimant is entitled to the maximum compensation rates.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Whether claimant is entitled to a 29% impairment rating to the body as a whole for

brain injury, as assessed by Dr. Back.

2. Whether claimant is entitled to a 100% impairment rating for total loss of vision, pursuant to A.C.A. §11-9-521, as assessed by Dr. Lawton
3. Whether claimant is entitled to facial disfigurement compensation and an impairment rating related to facial disfigurement.
4. Whether the claimant is entitled to a rating in the range of 15-24% to the body as a whole for uncontrolled facial neuralgic pain.
5. Attorney's fee.

The claimant contends that he sustained a compensable injury while working for respondent on or about February 24, 2012. At that time, claimant was in the course and scope of his employment with the respondent when he incurred injuries to his head, face, left eye, left hand, left foot, left rotator cuff, memory loss, jaw injury involving denture, broken nose, and miscellaneous other injuries. Claimant was issued a 100% impairment of ocular motility pursuant to Dr. Lawton; which pursuant to Ark. Code Ann. §11-9-521 equates to a total loss of vision in the left eye. Under this same statute, the eye is entitled to 105 weeks of payment at the temporary total disability rate, which calculates to \$61,320.00. The loss of vision in the claimant's left eye is one of the factors that makes him unable to pass a DOT physical and return to his previous occupation of driving a truck. On October 24, 2014, claimant's treating physician issued a 29% whole body impairment for the claimant's brain injury. The respondent contends that the claimant is not entitled to a 29% impairment for a brain injury. Included, but not limited to this defense, is that the claimant did not have measurable and objective findings to support the impairment. The respondents have accepted a 25% impairment to the eye.

The above stipulations are hereby accepted as fact. From a review of the record as a whole to include medical reports, documents, and having heard testimony and observed the demeanor of all

witnesses, the following decision is rendered.

FACTUAL BACKGROUND

The claimant in this matter is a 55-year-old male with limited education. The claimant stated that he began working for the respondent in 2004. The claimant's job was delivering heavy equipment. The claimant suffered a compensable injury on February 24, 2012. The accident and injuries that the claimant suffered were grave in nature. The claimant was moving an item of equipment using the "devil unit" when a boom flipped, slamming the claimant to the ground. The claimant's manager stated that the claimant was severely injured. Dr. Morse stated in his deposition that the claimant's injuries were the worst he had ever seen, adding that the claimant was lucky to be alive. The claimant was knocked unconscious and was barely able to breathe. A CT scan revealed that he had innumerable facial fractures bilaterally. The claimant suffered fractures to his cheek bones, nose, sinus bones, jaws and crushed eye sockets. He also suffered a sunken left eye and was unable to eat solid food for more than a year.

Due to the injuries to the claimant's left eye orbits he has permanent double vision and cannot pass a DOT physical. Dr. Lawton determined that the claimant suffered a 100% impairment of ocular motility. Further, Dr. Lawton determined that the claimant has 20/20 vision with correction and had a 25% vision loss in his left eye. The respondents have accepted the 25% loss of vision to the left eye. Dr. Lawton also stated that the claimant had surgery to repair his left eye issues, but was left with some residual problems of motility. He added that the claimant could see 20/20 with either eye, but they did not work together as a unit. He stated that the claimant's peripheral vision was normal in both eyes. Dr. Morse testified that the claimant's left eye was pushed back compared to the right, resulting in double vision. The claimant continues to work for the respondent, but with very modified job duties. He now primarily issues tools and keeps the shop clean. The claimant stated that he has short term

memory issues, numbness in his left cheek, and has lost most of his sense of taste and smell. He added that his speech is now slower. The claimant also testified that after the accident he was emotional all the time and was placed on an antidepressant. Dr. Back assessed a 14% whole body impairment of mental status and a 18% whole body impairment for emotional and behavioral impairments. A combination of those two ratings under the AMA Guidelines 4th Ed., results in a 29% rating for the claimant's brain injury. Dr. Back testified that his assessment was based on a totality of the evidence, the objective findings, clinical exams, test results and the claimant's subjective complaints. However, upon questioning by the respondent's attorney, Dr. Back stated that all of the testing that he administered came within the control of the claimant. He added that he did no testing in relation to Table 2 and 3 of the AMA Guidelines 4th Ed., at page 142, on which he based his impairment rating. He stated that he relied only on the mental, emotional and behavioral information given by the claimant and his wife. He added that the claimant's MRI performed by Dr. Morse was not included in his assessment, but only his testing and the observations of the claimant and his wife. Dr. Morse testified that the claimant's loss of taste, smell, amnesia, emotional issues and uncontrollable crying spells, cognitive changes and slower speech are classic symptoms seen with brain injuries such as the claimant's. The MRI of the claimant's brain performed by Dr. Morse on August 1, 2012 was normal.

The claimant testified that he continually gets headaches and suffers from facial numbness. He receives shots from Dr. Morse for the pain and headaches. Dr. Morse stated that it is common for people with head injuries such as the claimant's to have post trauma headaches. He added that the headaches were permanent and would not go away. Dr. Morse further stated that the claimant also possibly had an injured trigeminal nerve based on the zygoma and zygomaticofacial fractures reflected in the CT scan. He stated that he also reviewed the claimant's CT scan which reflected innumerable facial fractures, bilaterally. While Dr. Morse stated that there was no testing for the degree of trigeminal

nerve damage, he noted that the claimant had severe facial fractures. Dr. Morse stated that he assessed the claimant to have moderately severe uncontrolled facial neuralgic pain, resulting in a range of impairment between 15-24% based on the AMA Guidelines 4th Ed., at page 145, table 9. The claimant further testified that as a result of his injury, he has a crooked nose and a sunken left eye compared to his right eye. He now feels that his left eye is smaller than his right. The claimant continued that he has two scars on his nose and eye. He has screws and plates as a result of reconstruction surgery. The claimant also suffers from some loss of vision as well as double vision.

DISCUSSION

The Commission has first been asked to determine if the claimant is entitled to a 29% impairment rating to the body as a whole for brain injury. Such an assessment has been assessed by Dr. Back. The assessment of permanent impairment must be made using objective findings. Those findings cannot come under the control of the patient. Here, Dr. Back stated that his assessment was based specifically on tables two and three of the AMA Guidelines at page 142. He further stated that his testing and the information taken from the claimant and his wife were used to assess the 29% rating, all based on subjective information supplied by the claimant. The assessment of 29% to the body as a whole for brain injury was based on subjective neuropsychological tests including what he heard and observed from the claimant and his wife. This information does not meet the definition of objective medical findings as defined by statute. Dr. Back further stated that the MRI performed by Dr. Morse played no part in his assessment of the 29% rating. Therefore, the claimant is not entitled to a 29% impairment rating to the body as a whole for brain injury.

The Commission has next been asked to determine if the claimant is entitled to a 100% impairment rating for total loss of vision. Here, Dr. Lawton assessed an impairment to the left eye in the amount of 25%. He further noted that the claimant also suffered 100% impairment of ocular

motility. There is no question that the claimant has suffered some vision impairment. However, the evidence suggests that he has 20/20 vision with corrective lenses. There is also no question that this loss of vision precludes the claimant from passing a DOT physical and returning to his former position with the respondent. However, a review of the AMA Guidelines 4th Ed., reflects that a 100% impairment of ocular motility is equivalent to total loss of vision in one eye and a 25% impairment to the visual system or the total eyesight of the patient. The AMA Guidelines further set out three steps in determining the impairment of the total visual system. They are the determination of the percentage of loss of central vision of each eye, a determination of the loss of visual field of each eye - separately, and the percentage of ocular motility. The assessment of 100% of ocular motility does not equate to a 100% impairment to the total vision system. This claimant does not have a total loss of vision. He has an impairment to his vision. While there is no question that such an impairment has had a grave impact on the claimant's ability to perform his prior duties, there simply is no evidence or assessment that would allow the Commission to find the claimant to have a 100% vision impairment or total loss to his vision system. The claimant is not entitled to an assessment of 100% impairment to his vision system.

The Commission has next been asked to determine if the claimant is entitled to facial disfigurement compensation and an impairment rating. Arkansas Code Annotated §11-9-524 sets forth that the Commission shall award compensation for serious and permanent facial or head disfigurement in a sum not to exceed thirty five-hundred dollars. The Arkansas Court of Appeals has affirmed awards for facial disfigurement when a claimant had a watery looking red eye and a permanently dilated pupil. That claimant was splashed in the eye with ceramic glaze, Fayetteville School District v. Kunzelmann, 93 Ark. App. 160, 217 S.W.3d 149(2005). Clearly, the claimant in the case at bar has substantially more severe issues and injures to his face than the claimant in Kunzelmann. He suffers from a sunken eye,

scarring, bone fractures, and a crushed eye socket. The claimant, in this matter, is entitled to \$3500 in benefits for facial disfigurement compensation.

The claimant has also asked the Commission to determine the claimant's entitlement to an impairment rating based on the claimant's facial disfigurement. A review of the AMA Guidelines 4th Ed., 9.2 at page 229 reveals that this claimant is entitled to an impairment rating based on class three of the criteria for facial impairment. The third criterion sets out that the patient must have facial deformities, loss of an eye, nose injuries and impairment of the vision system. Clearly, the claimant suffers such injuries. Criteria three sets out that the claimant may be entitled to an impairment to the whole person in a range of 10-15%. After a review of the AMA Guidelines and the facts in this case, I find that the claimant is entitled to an impairment rating of 15% for facial disfigurement.

Lastly, the claimant has asked the Commission to determine his entitlement to a rating in the range of 15-24% for uncontrolled facial neuralgic pain. Here, the claimant underwent a CT scan that revealed that he suffered innumerable facial fractures. The respondent argues that Dr. Morse had no way to test for nerve pain and therefore there is no objective medical evidence that the claimant suffered from such nerve pain. However, Dr. Morse stated that while he had no tests for nerve pain, the claimant suffered numerous facial fractures, as confirmed by the CT scan. Dr. Morse based his assessment on the AMA Guidelines 4th Ed., page 145 Table 9. He added that based on a review of the CT scan and the AMA Guidelines, he would say that the claimant had moderately severe, uncontrolled facial neuralgic pain. I find that Dr. Morse's assessment using the CT scan and the fact that it showed the numerous fractures to the claimant's face is credible. The CT scan is an objective finding. The claimant, therefore, is entitled to an impairment rating of 20% for uncontrolled facial neuralgic pain.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant has failed to prove by a preponderance of the evidence that he is entitled to a 29% impairment for brain injury. There are no objective medical findings to support the assessment by Dr. Back.
2. The claimant has failed to prove that he is entitled to a 100% impairment to his total vision system, under A.C.A. §11-9-521. The respondents have accepted the 25% impairment to the left eye assessed by Dr. Lawton.
3. The claimant has proven that he is entitled to facial disfigurement in the amount of \$3500 and an impairment rating in the amount of 15% for facial disfigurement, based on the AMA Guidelines 4th Ed. 9.2 at page 229.
4. The claimant has proven that he is entitled to an impairment rating in the amount of 20% for uncontrolled facial neuralgic pain, based on the AMA Guidelines 4th Ed. Table 9 at page 145.
5. Based on the above findings and conclusions, the claimant's attorney is entitled to appropriate attorney fees in this matter.

ORDER

The claimant is not entitled to a 29% impairment rating to the body as a whole for brain injury or a 100% impairment rating for total loss of vision system. The respondents shall pay the claimant \$3500 for facial disfigurement and an impairment rating of 15% for such disfigurement. The respondents shall also pay, to the claimant, a 20% impairment rating for uncontrolled facial neuralgic pain. The claimant's attorney is entitled to an attorney fee based on the above findings.

IT IS SO ORDERED.

AMY GRIMES
ADMINISTRATIVE LAW JUDGE