

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F013498

FRANCES TUCKER,
EMPLOYEE

CLAIMANT

GEORGIA-PACIFIC CORPORATION,
SELF-INSURED EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT SERVICES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 31, 2005

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by the HONORABLE EDDIE WALKER,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE SUSAN M.
FOWLER, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed January 20, 2005. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation
Commission has jurisdiction over this
claim;
2. The stipulations agreed to by the
parties and set forth above are hereby
accepted as fact;

3. Dr. Kulik's assessment of a 19 percent impairment rating to claimant's foot is appropriate and is in accordance with Arkansas law;

4. Claimant has failed to prove that she is entitled to a separate and additional impairment rating to the body as a whole;

5. Claimant's attorney is entitled to attorney's fees for the additional periods of temporary total disability previously controverted but herein accepted;

6. Respondents have controverted claimant's entitlement to attorney's fees for the additional periods of temporary total disability previously controverted but herein accepted.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the January 20, 2005 decision of the Administrative Law Judge, including all

findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The Majority is affirming and adopting an Administrative Law Judge's decision that denied the claimant certain additional permanent partial disability benefits. For the reasons set out below, I respectfully dissent from this decision.

The claimant sustained an admittedly compensable injury to her ankle when she fell from a ladder while performing her employment duties. The respondent paid a substantial amount of medical and disability benefits to the claimant as a result of her injury. Even though there was some initial delay, the respondent eventually accepted an impairment rating of 19% to the claimant's foot based upon her ankle injury. That impairment was assessed by

one of the claimant's treating physicians, Dr. Steven Kulik in Little Rock, Arkansas.

However, Dr. Kulik also assesses the claimant a 25% impairment to her whole person because of a gait impairment resulting from her need for a short leg brace and her use of a cane. The Administrative Law Judge accepted the respondent's argument that since the claimant had an injury to her ankle, an impairment to her whole person was incorrect and that the doctor's impairment rating, based upon the claimant's use of a cane and leg brace was invalid.

I agree that the claimant's impairment should not be to the whole person, since she had suffered an ankle injury. Where I disagree with the Majority is in their finding that Dr. Kulik's impairment rating should be disregarded entirely. This impairment rating was derived from the AMA Guides, the official rating guide adopted by this Commission. The impairment rating can readily be converted to an impairment to the claimant's foot or lower leg and is based upon the claimant's objective medical needs.

In denying the claimant additional disability benefits, the respondent and Administrative Law Judge

relied upon the Commission decision of **Nerns v. Quincy Soybean Company of Arkansas**, Full Commission Opinion, August 12, 1996 (E210135). In that case, a claimant suffered multiple injuries, including acid burns. The respondent accepted and paid permanent impairment ratings based upon traumatic injuries to the claimant's lower legs and feet. However, they declined to pay an impairment rating to the claimant's body as a whole based upon injuries to the claimant's skin as a result of the acid burns. The Commission denied the claim, holding that in scheduled injury cases, a claimant cannot receive benefits based upon a body as a whole rating.

In the first place, I believe the **Nerns** decision is clearly distinguishable from the present case. In **Nerns**, the claimant's injury was to his skin and not to his feet and legs. In the present case, Dr. Kulik's impairment rating is as a result of the physical injuries to the claimant's ankle. Also, I believe that the **Nerns** decision has been reversed or at least superceded by the more recent Commission decision of **Dierzen v. Aert**, Full Commission Opinion, October 6, 1997 (E602630). In **Dierzen**, the claimant was employed by a waste disposal company and suffered a cut to her hand while working on an

extruder machine. As a result of this injury, she developed topical dermatitis. As a result of this condition, an Administrative Law Judge awarded the claimant permanent disability benefits in an amount equal to 30% to the body as a whole. The Commission affirmed that award noting that the injury was caused by the cut to the claimant's hand, was supported by objective findings, and was rateable under the Guides. In the present case, the same is true. The claimant suffered a scheduled injury which required the use of a leg brace and cane, items which undeniably affect the claimant's ambulation. This Commission has adopted the American Medical Association's Guide to the Evaluation of Permanent Impairment, Fourth Edition, as the official rating guide in compensable injuries. Quite simply, that rating guide provides that this claimant is entitled to an impairment rating because of her need to use a brace and cane. While it can be argued that this impairment rating should not be to the body as a whole since the claimant suffered a schedule injury, converting whole body injuries is easily accomplished using several different tables in the rating guide. As noted by the claimant in her brief, Dr. Kulik's

impairment rating to the claimant's whole body would equal 53% to her foot.

In my opinion, the claimant is entitled to additional permanent disability benefits based upon the additional impairment assessed by Dr. Kulik for the gait derangement resulting from the claimant's use of a cane and leg brace. For that reason, I respectfully dissent from the Majority's denial of those benefits.

SHELBY W. TURNER, COMMISSIONER