

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505773

JOE TUCKER, EMPLOYEE	CLAIMANT
CROCKETT ADJUSTMENT, EMPLOYER	RESPONDENT NO. 1
AMERICAN HOME ASSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED JUNE 17, 2011

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

Claimant represented by the HONORABLE KENNETH OLSEN, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID PAKE, 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 27, 2011. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. There was a compensable injury on May 20, 2005.
2. The compensation rates are \$466/350.

3. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary.
4. The claimant has failed to prove by a preponderance of the evidence that he sustained a permanent impairment resulting from his May 20, 2005 incident.

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 27, 2011 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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I would award the claimant a 20% anatomical impairment rating. Contrary to the Administrative Law Judge, affirmed and adopted by the majority, I place greater weight on the medical opinion of the treating physician, Dr. Kevin Collins. Dr. Collins has opined that the claimant has permanent impairment from his compensable piriformis injury. Unfortunately, the AMA Guides to the Evaluation of Permanent Impairment (4th ed. 1993) does not provide an express method of calculating permanent impairment for a piriformis injury. Dr. Collins used Table 83, to assign a 20% impairment. However, Dr. Collins referenced pain in his note explaining the rating, which the Administrative Law Judge noted was improper. Here, in addition to pain, the claimant has continued muscle spasms.

I find the Administrative Law Judge has erred by ignoring the dictates of Singleton v. City of Pine Bluff, 97 Ark. App. 59, 244 S.W.3d 709 (2006). In

Singleton, the Court of Appeals stated that the Guide is only a Guide, and that if it does not provide a means for assigning impairment where one is obviously merited, then the Commission has the duty to provide a means for assigning a rating. I find that Table 83 of the Guides is the best method of assigning a rating for a piriformis condition. The Merck Manual (17th ed. 1999) says of piriformis syndrome:

Sciatic pain can be caused by compression of the sciatic nerve by the piriformis muscle. The piriformis muscle extends from the pelvic surface of the sacrum to the upper border of the greater trochanter of the femur and during running or sitting can squeeze the sciatic nerve at the site where the nerve emerges from under the piriformis to over the gemellus and obturator internus muscles.

I find that pain does not have to be considered when using Table 83. The table reads "Maximum % loss of function due to sensory deficit **or** pain." [Emphasis added.] Considering solely claimant's continued muscle spasms as a sensory deficit, I find that the use of Table 83 results in a 20% impairment rating, the same rating given by the claimant's treating physician.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner