

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>RYON LAWTON</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>PANERA BREAD</b>	)	
Respondent	)	Docket No. 1,012,213
	)	
AND	)	
	)	
<b>COMMERCE &amp; INDUSTRY INS. CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requested review of the February 28, 2005 Award by Administrative Law Judge (ALJ) Bryce D. Benedict. The Board heard oral argument on June 29, 2005.

**APPEARANCES**

Roger D. Fincher, of Topeka, Kansas, appeared for the claimant. Christopher J. McCurdy, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The ALJ awarded claimant a 3 percent permanent partial disability to the whole body related to his accident at work and based on the opinions expressed by Dr. Dick Geis, the independent medical examiner.

The claimant appeals the issue of the nature and extent of his impairment. He contends that because the impairment opinions offered by each of the physicians in this case address different aspects of his physical and neurological complaints, the ALJ should have combined Dr. Geis' 3 percent permanent partial impairment rating with Dr. Daniel Zimmerman's 5 percent, thus awarding him an 8 percent permanent partial impairment to the body as a whole.

Respondent contends claimant failed to meet his burden of proving he sustained any permanent impairment as a result of his work related accident based on the Fourth Edition of the *AMA Guides*.<sup>1</sup> Respondent argues that neither Dr. Geis, nor Dr. Zimmerman testified to an impairment consistent with the *AMA Guides*, and therefore, the ALJ's Award should be reversed and claimant denied any permanent partial disability benefits. In the alternative respondent requests that the ALJ's decision be affirmed, suggesting that the 3 percent permanent partial impairment awarded by the ALJ was reasonable under the circumstances.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Award should be affirmed.

The claimant suffered accidental injury arising out of and in the course of his employment on February 24, 2003, when a breadboard fell on and fractured his nose. Although claimant testified that he now believes he lost consciousness for 10 seconds, he denied any such loss when he sought treatment at the emergency room the next day. In fact, the first time he mentioned a loss of consciousness was on October 29, 2003, when he was referred to Dr. Charles D. Donohoe, a neurologist, for a second opinion.

Following his emergency room visit, he was diagnosed with a mildly comminuted, but minimally displaced fracture to the nasal bone. He had surgery on March 19, 2003 to repair this fracture, but his complaints relative to the accident continued. He presently complains of headache, dizziness, dysequilibrium, stuttering with his speech, along with a hesitancy of speech and difficulty finding the right word.

At the Court's direction, claimant was examined by Dr. Geis, who found no objective evidence of any functional impairment arising out of the claimant's fracture. Nonetheless, he concluded the claimant's subjective complaints could be evaluated and rated under the *AMA Guides*. After noting that claimant's complaints do not seem to fit clearly into any of the categories contained in Table 5, p. 231 of the *AMA Guides*, he went on to indicate claimant's persistent facial and nasal pain and respiratory symptoms with mild ADL interference and subjective cognitive deficits represent a 3 percent whole person permanent partial impairment. This rating was derived from the Mental and Behavioral Disorders chapter contained within the *AMA Guides*.

At his lawyer's request claimant was also examined and rated by Dr. Daniel Zimmerman. Like Dr. Geis, Dr. Zimmerman concluded nothing about claimant's ongoing subjective complaints fitting specifically in the tables contained within the *AMA Guides*. He

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<sup>1</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*, (4<sup>th</sup> ed.). All references are to the 4<sup>th</sup> ed. of the *Guides* unless otherwise noted.

ultimately assessed a 5 percent permanent partial impairment to the whole body by using his reasonable medical judgment along with Section 15.9 of the *AMA Guides*.<sup>2</sup>

The ALJ adopted the findings of Dr. Geis, the independent medical examiner. The Board has considered the parties' arguments and finds no persuasive reason to disturb the ALJ's Award. The Award is, therefore, affirmed.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bryce D. Benedict dated February 28, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July, 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Roger D. Fincher, Attorney for Claimant
- Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
- Bryce D. Benedict, Administrative Law Judge
- Paula S. Greathouse, Workers Compensation Director

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<sup>2</sup> Zimmerman Depo. at 6.