



After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Administrative Law Judge should be modified.

The Appeals Board finds the testimony of Ernest R. Schlachter, M.D., to be more persuasive than that of Drs. Zimmerman and Artz. Based upon Dr. Schlachter's testimony, the Appeals Board finds that claimant had a 12 percent whole body functional impairment when he returned to work for the respondent in May 1992 after recuperating from bilateral carpal release surgery which then increased to a 23 percent whole body functional impairment as a result of the work he performed for the respondent after May 1992.

In December 1993, claimant and respondent entered into a settlement agreement to settle all claims arising from injuries that occurred during the period of October 1991 through May 1993. The settlement was based upon a 14 percent general body disability less a present value discount. At the settlement hearing, the parties reserved the respondent's right to proceed against the Workers Compensation Fund.

The Appeals Board finds the respondent retained claimant in its employment after May 1992 with knowledge that claimant had an impairment which constituted a handicap. When claimant returned to work that month, the respondent had knowledge that claimant had undergone bilateral carpal tunnel release surgery and had permanent work restrictions that limited claimant's ability to work.

Because claimant's settlement encompassed all injuries that claimant sustained while working for the respondent between October 1991 and May 1993 and because claimant's ultimate functional impairment of 23 percent includes and incorporates the 12 percent functional impairment that existed when the respondent accepted claimant back to work in May 1992, the Appeals Board finds the initial injury and functional impairment contributes 50 percent to the ultimate injury and functional impairment for which claimant received compensation. Therefore, based upon the facts presented and the manner in which the parties litigated this claim, under the provisions of K.S.A. 1992 Supp. 44-567, the Workers Compensation Fund should bear 50 percent of the liability in this proceeding.

### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated November 13, 1995 should be, and hereby is, modified; that the Workers Compensation Fund is responsible for 50% of the costs and benefits associated with this proceeding.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1996.

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BOARD MEMBER

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c: Eric K. Kuhn, Wichita, KS  
Orvel Mason, Arkansas City, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director