

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

<b>ROBERTO CANO</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 214,372
<b>IBP, INC.</b>	)	
Respondent	)	
Self Insured	)	

**ORDER**

Claimant seeks review of an Award entered on September 6, 2000 by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on March 7, 2001. Jeff K. Cooper was appointed Appeals Board Member Pro Tem to serve in place of Board Member Gary M. Korte who recused himself from this proceeding.

**APPEARANCES**

Stanley R. Ausemus of Emporia, Kansas, appeared on behalf of claimant. Wendel W. Wurst of Garden City, Kansas, appeared on behalf of respondent.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award. In addition, the Board considered the August 25, 1997 deposition of Gary Kramer, M.D.

**ISSUES**

The Award grants claimant permanent partial disability benefits based upon a 10 percent functional impairment to the body as a whole. The disability is based on the functional impairment rating by Dr. C. Reiff Brown whom the ALJ "found to be the most reliable as he was the treating physician. Further, the 10% impairment is a split of the three physicians." On appeal, claimant argues the disability should be based on the 15 percent impairment opinion given by Dr. Pedro A. Murati. Conversely, respondent contends the 5 percent impairment rating of the court appointed independent medical examiner, Dr. Terrance C. Tisdale, should be adopted or else the ALJ should be affirmed.

The nature and extent of claimant's disability is the only issue raised for the Board's review.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Board concludes the Award should be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in her Award. Dr. Murati's 15 percent rating is not adopted in part because he was the only physician out of the four that examined claimant to find sensory deficit and reflex loss. The 10 percent rating by Dr. Brown is more consistent with the physical findings of Drs. Kramer, Brown and Tisdale and furthermore takes into consideration the range of motion loss under the Third Edition, Revised of the AMA Guides to the Evaluation of Permanent Impairment. The Board affirms the finding of a 10 percent permanent partial general disability.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller dated September 6, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Stanley R. Ausemus, Emporia, KS
- Wendel W. Wurst, Garden City, KS
- Pamela J. Fuller, Administrative Law Judge
- Philip S. Harness, Director