

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

<b>JAIME OROZCO</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 210,826 & 217,024
<b>EXCEL CORPORATION</b>	)	
Respondent,	)	
Self-Insured	)	

**ORDER**

Claimant appealed the August 10, 2001 Decision entered by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on February 19, 2002.

**APPEARANCES**

Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Decision. The Decision makes a general reference to certain documents and medical reports that are part of the record. Those documents are: Dr. Sergio Delgado's November 19, 1996 report; Dr. Pedro Murati's reports dated January 24, 1996, and May 15, 1996; Dr. Paul Rodriguez's report dated January 18, 1999; Dr. Kris Lewonowski's reports dated April 5, 1999, July 19, 1999, February 18, 2000, June 14, 2000, October 6, 2000, and April 1, 2001; and Dr. Alok Shah's medical notes dated June 12, 1996, May 23, 1997, and September 22, 1997.

More importantly, at oral argument before the Board, the parties stipulated that the appropriate date of accident for both the back and right upper extremity injuries is October 25, 1995. Further, the parties agreed that the Judge appropriately entered two awards, one for the back injury and one for the right upper extremity injury, although they had earlier stipulated that the injuries should be considered as resulting from one accident.

ISSUES

The parties stipulated that claimant sustained work-related injuries to his back and right upper extremity on October 25, 1995.<sup>1</sup>

The primary issue before Judge Fuller was the nature and extent of claimant's injuries and disability. In the August 10, 2001 Decision, the Judge determined that claimant had a five percent whole body functional impairment for a back injury and a one percent functional impairment to the right upper extremity for a shoulder injury. Accordingly, the Judge granted claimant permanent partial disability benefits based upon those functional impairment ratings.

Claimant contends Judge Fuller erred. Claimant argues the Board should adopt the functional impairment ratings provided by Dr. Rodriguez as he was the only doctor who allegedly rated claimant under the third edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment (AMA Guides)*. Accordingly, claimant requests permanent disability benefits for a 24 percent whole body functional impairment due to the back injury and permanent disability benefits for a 23 percent functional impairment to the right upper extremity.

Conversely, respondent requests the Board to affirm the Judge's findings.

The only issue presented to the Board on this appeal is the extent of claimant's functional impairment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The Board affirms the Judge's conclusion that claimant should receive permanent disability benefits for a five percent whole body functional impairment for his work-related back injury along with permanent disability benefits for a one percent functional impairment

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<sup>1</sup> The Application for Hearing in Docket #210,826, which was filed with the Division of Workers Compensation in March 1996, alleged a back injury occurring on or about October 25, 1995. The initial Application for Hearing in Docket #217,024, which was filed on October 9, 1996, alleged right upper extremity, bilateral shoulder, neck and back injuries occurring on or about March 4, 1996. That application was later amended by an application filed on October 29, 1996, which changed the date of accident to on or about April 5, 1996. But despite the statements reportedly made at the December 23, 1999 regular hearing regarding accident dates on July 16, 1997, and September 15, 1997, the parties have since stipulated that the appropriate date of accident for both the back and right upper extremity injuries is October 25, 1995.

to the right upper extremity and shoulder. Nonetheless, the Decision should be modified to reflect the October 25, 1995 accident date to which the parties have now stipulated.

Claimant alleges that he injured his low back, right shoulder, right wrist and right hand while working for respondent. As a result of those injuries, claimant contends that he is entitled to receive workers compensation benefits based upon his permanent partial functional impairment ratings. At the December 1999 regular hearing, claimant testified that on a scale of one-to-ten (with ten requiring emergency room care) he was then experiencing low back pain that he rated almost at ten along with pain in the back side of his right shoulder that he rated at seven or eight. Claimant also testified that he had constant pain in his right wrist. Claimant attributes all of those pain complaints to the work he performed for respondent.

At the May 1996 preliminary hearing, claimant testified he injured his back when he fell at work on October 25, 1995. As a result of that accident, claimant received medical treatment from respondent's plant physician, Dr. Pedro Murati, who prescribed steroid injections and physical therapy. According to claimant, none of that treatment improved his symptoms. Claimant also had a myelogram in approximately January 1996, which was normal.

In January 1996, Dr. Murati rated claimant as having a five percent whole body functional impairment, according to the revised third edition of the *AMA Guides*, for lumbosacral strain. In May 1996, the doctor rated claimant as having a one percent right upper extremity impairment.

In November 1996, orthopedic surgeon Dr. Sergio Delgado evaluated claimant at his former attorney's request. Dr. Delgado diagnosed "ligamentous herniation" between the third and fourth lumbar vertebrae (L3-L4), which constituted a nine percent whole body functional impairment under the revised third edition of the *AMA Guides*. The doctor did not rate claimant's right upper extremity because it had not been treated. The results from a psychological evaluation that were attached to the doctor's November 19, 1996 report indicated there was a high "probability of a significant emotional component."

In January 1999, Dr. Paul Rodriguez evaluated claimant at his present attorney's request. Dr. Rodriguez diagnosed claimant as having chronic lumbar spine strain/sprain and bilateral rotator cuff syndrome, which he rated as constituting a 55 percent whole body functional impairment under the third edition of the *AMA Guides*. According to the doctor's impairment rating report, claimant had a 24 percent functional impairment for his low back, a 20 percent functional impairment for his neck, a 25 percent functional impairment to the left upper extremity at the shoulder, and a 23 percent functional impairment to the right upper extremity at the shoulder, all of which comprised the 55 percent whole body functional impairment rating.

Judge Fuller appointed orthopedic surgeon Dr. Kris Lewonowski to evaluate and rate claimant for purposes of these claims. Dr. Lewonowski first saw claimant on April 5, 1999, and diagnosed chronic strain of the lumbosacral spine, which the doctor later rated as a five percent whole body functional impairment according to the third edition of the *AMA Guides*. The doctor did not initially evaluate the right upper extremity as claimant did not mention any upper extremity problems when the doctor saw him at the April 1999 appointment. But the doctor saw claimant a second time on October 6, 2000, to evaluate the right upper extremity. The doctor found claimant displayed exaggerated responses but no objective signs of injury. According to Dr. Lewonowski, claimant has no permanent functional impairment to his right upper extremity.

Considering the various medical opinions presented, the Board affirms the Judge's finding that claimant has a five percent whole body functional impairment as a result of the low back injury that he sustained while working for respondent. The Board also affirms the Judge's finding that claimant has sustained a one percent functional impairment to the right upper extremity, including the shoulder.

2. In his brief to the Board, claimant requested the opportunity to seek additional medical treatment and review and modification of the award, should the need arise. Respondent does not contest that claimant has the right to seek such relief to the extent provided by the Workers Compensation Act.

The Board acknowledges that claimant has the right to seek additional medical treatment as provided by K.S.A. 44-510k, the statute which addresses post-award medical benefits. Likewise, the Board also acknowledges claimant has the right to seek review and modification as provided by K.S.A. 44-528.

3. The Board adopts the findings and conclusions set forth in the Decision that are not inconsistent with the above.

### **AWARD**

**WHEREFORE**, the Board modifies the August 10, 2001 Decision entered by Judge Fuller to change the date of accident for both of these claims to October 25, 1995.

In Docket #210,826, Jaime Orozco is granted compensation from Excel Corporation for an October 25, 1995 accident and resulting back injury. Based upon an average weekly wage of \$412.98, for the back injury Mr. Orozco is entitled to receive 20.75 weeks of permanent partial disability benefits at \$275.33 per week, or \$5,713.10, for a five percent permanent partial general disability. In Docket #217,024, Mr. Orozco is granted compensation for a right upper extremity injury, which is comprised of 2.25 weeks of permanent partial disability benefits at \$275.33 per week, or \$619.49, for a one percent

permanent partial disability to the right upper extremity and shoulder. Combining both awards, claimant is entitled to receive \$6,332.59, which is all due and owing less any amounts previously paid.

Claimant may apply for review and modification of the award and seek additional medical benefits, as provided by the Workers Compensation Act.

The Board adopts the remaining orders set forth in the Decision that are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Stanley R. Ausemus, Attorney for Claimant
- Diane F. Barger, Attorney for Claimant
- D. Shane Bangerter, Attorney for Respondent
- Pamela J. Fuller, Administrative Law Judge
- Philip S. Harness, Workers Compensation Director