

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

RUDY RIEDEL)	
Claimant)	
VS.)	
)	Docket No. 234,779
DUB JOHNSON & SONS, INC.)	
Respondent)	
AND)	
)	
UNITED STATES FIRE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the December 16, 1999 Award entered by Administrative Law Judge Bruce E. Moore. Oral argument to the Board was waived.

APPEARANCES

Randy S. Stalcup of Wichita, Kansas, appeared for claimant. Douglas C. Hobbs of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for an October 3, 1997 accident. Judge Moore determined claimant sustained a 14.5 percent loss of use to the right foot. Additionally, the Judge found claimant did not suffer a permanent loss of use to his left foot. Accordingly, claimant's award was for a scheduled injury under K.S.A. 44-510d. Claimant argues he suffered permanent impairment to both feet and therefore is entitled to an award based upon a general body disability under K.S.A. 44-510e, including work disability. Respondent submits that the ALJ's Award should be affirmed. Nature and extent of disability is the only issue raised for Appeals Board review.

Additionally, in their Brief to the Appeals Board, respondent and its insurance carrier note:

"Claimant did not appeal the decision of Judge Moore regarding his average weekly wage. Judge Moore agreed with respondent's calculations, however, in what is an obvious typographical error, his Order states claimant's average weekly wage is \$542.25, instead of the mathematically correct \$544.25. Respondent requests the correction of this error by the Board."

On appeal, claimant did not submit a brief to the Board but instead relied upon its submission letter to the ALJ. Based upon a review of the wage statement and the ALJ's average weekly wage computation in the Award, the Board agrees that a mathematical error was made. The Board will assume claimant does not object to this correction which increases his average weekly wage and will therefore modify this finding as suggested by respondent. This will not change the award, however, because whichever figure is used, claimant is still limited to the maximum weekly compensation rate of \$351.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in his Award. The parties agree that claimant suffered accidental injury arising out of and in the course of his employment with respondent. The primary issue concerns the permanency of the left foot injury and whether any resulting disability is ratable as a functional impairment under the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment as required by K.S.A. 1999 Supp. 44-510e(a). Claimant contends that Dr. David A. Peterson's 0 percent rating is not credible, in light of the claimant's pain complaints, and that his failure to assign a permanent functional impairment rating is inconsistent with the injury claimant suffered. Claimant presents in contravention, the opinion given by Dr. Daniel D. Zimmerman that claimant is entitled to a 6 percent rating to the left foot for his pain. Using Dr. Zimmerman's bilateral ratings would result in a general body disability and claimant contends that work disability is, therefore, an issue.

The Board, for the reasons stated in the Award, agrees with the finding of no permanent disability to the left foot and affirms the scheduled injury award based upon the 14.5 percent permanent impairment of function to the right foot.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated December 16, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director