

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

EVERARDO CARRIZALES)	
Claimant)	
)	
VS.)	Docket No. 251,072
)	
WINSTEADS AND WAIDS COMPANY)	
Respondent)	
Self-Insured)	

ORDER

Respondent appeals from an Award entered by Administrative Law Judge (ALJ) Robert A. Foerschler on June 29, 2001. The Appeals Board (Board) heard oral argument on January 23, 2002.

APPEARANCES

C. Alberto Herdoiza of Kansas City, Kansas, appeared on behalf of claimant. Mark E. Kolich of Kansas City, Kansas, appeared on behalf of respondent.

RECORD AND STIPULATIONS

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

ISSUES

The Award grants permanent partial disability for an eight percent whole body disability. The disability is based on the functional impairment ratings by Dr. Fernando M. Egea and Dr. Edward J. Prostic. On appeal, respondent contends the award should be for a five percent disability based on the opinion by Dr. Edward J. Prostic. In addition to the nature and extent of disability, respondent contends claimant should not be permitted to pay for any part of Dr. Egea's examination from the unauthorized medical allowance

because Dr. Egea provided an opinion as to claimant's impairment of function.¹

Conversely, claimant contends the ALJ's Award should be affirmed or increased to the ten percent rating by Dr. Egea.

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 the Award. The parties acknowledge that claimant suffered accidental injury arising out of and in the course of his employment with respondent on November 30, 1999. Work disability is not an issue. Therefore, claimant's permanent partial general disability is the percentage of functional impairment ". . . as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein."²

Claimant testified to having ongoing symptoms in his low back, right hip and right leg from the accident. Claimant explained that he initially had complaints in both hips and legs, but by the time of the October 24, 2000 regular hearing, his left-sided radicular symptoms had resolved.

Based on the 4th ed. of the AMA Guides, Dr. Egea placed claimant in DRE lumbosacral category III for a ten percent impairment whereas Dr. Prostig placed claimant in a DRE lumbosacral category II, which is a five percent impairment. The difference in their respective ratings was primarily due to their clinical impressions concerning claimant's radiculopathy. The Board finds both opinions credible and affirms the ALJ's finding of an eight percent permanent partial disability.

The Board also affirms the ALJ's award of unauthorized medical expenses for the purpose of examination, diagnosis or treatment up to the maximum of \$500. But no portion of that amount may be used to pay for a functional impairment rating. In this case, Dr. Egea examined claimant on only one occasion but issued two reports. His June 5, 2000, Neurological Evaluation³ concerned diagnosis and treatment recommendations. Claimant may use his unauthorized medical allowance to pay for this examination. Dr. Egea was subsequently asked to provide a rating. Dr. Egea's fee for his July 24, 2000 letter to

¹ See K.S.A. 44-510h(b)(2).

² K.S.A. 44-510e(a).

³ Egea Depo., Ex. 2.

claimant's counsel ⁴ was billed separately. Respondent is not required to pay for or reimburse claimant for the cost of this rating report and no portion of the unauthorized medical allowance is to be used for this purpose. ⁵

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated June 29, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: C. Alberto Herdoiza, Attorney for Claimant
- Mark E. Kolich, Attorney for Respondent
- Robert H. Foerschler, Administrative Law Judge
- Director, Division of Workers Compensation

⁴ Egea Depo., Ex. 3.

⁵ See *Castro v. IBP, Inc.*, 29 Kan. App. 2d 475, 30 P.3d 1033 (2001).