

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F712536

ROY L. RAY, Employee	CLAIMANT
KENNAMETAL, INC. Employer	RESPONDENT #1
AMERICAN ZURICH INSURANCE CO.	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED FEBRUARY 7, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Springdale, Arkansas.

Respondent #1 represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

Respondent #2 represented by DAVID L. PAKE, Attorney, Little Rock, Arkansas; although not present at hearing and deferring to the outcome of litigation.

STATEMENT OF THE CASE

On January 12, 2022, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 17, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. All prior opinions are final.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Payment of an additional 33% impairment rating to claimant's right knee.
2. Attorney's fee.

The claimant contends he is entitled to payment of a 33% permanent impairment rating to his right knee. A rating of 50% was used by Dr. Arnold, claimant's authorized treating physician, on June 15, 2017. Thirty-three percent of the rating remains unpaid. Claimant also contends his counsel is entitled to an attorney fee on the 33% permanent impairment rating. The claimant reserves all other issues.

Respondent #1 contends that all appropriate benefits have been paid.

Respondent #2 defers to the outcome of litigation.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on November 17, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to payment of additional permanent partial disability benefits in an amount equal to 33% to the lower extremity.

3. Respondent has controverted claimant's entitlement to payment of the

additional permanent partial disability benefits.

### FACTUAL BACKGROUND

The claimant began working for respondent in 1985 and he suffered an admittedly compensable injury to his right knee on June 1, 2005. After some preliminary treatment, claimant came under the care of Dr. Dougherty who performed an arthroscopic procedure on claimant's right knee in 2007.

Thereafter, claimant continued to have problems with his right knee and he continued to see Dr. Dougherty until March 11, 2008, when he began receiving medical treatment from Dr. Chris Arnold. Dr. Arnold performed a repeat arthroscopic procedure on May 23, 2008. Medical records from Dr. Arnold indicate that claimant's condition improved after the second procedure and claimant returned to Dr. Arnold for yearly evaluations of his right knee. In a report dated March 3, 2009, Dr. Arnold assigned claimant a permanent physical impairment rating in an amount equal to 17% to the lower extremity pursuant to the *AMA Guides, 4<sup>th</sup> Edition*. Respondent accepted that rating and paid appropriate compensation benefits.

As early as March 3, 2009, Dr. Arnold indicated that claimant might need to have his knee scoped again or might need a knee replacement in the future. Medical records from Dr. Arnold indicate that claimant's knee condition worsened and his yearly evaluations turned into six-month evaluations. Dr. Arnold primarily treated claimant with injections.

When claimant's knee condition continued to deteriorate, Dr. Arnold recommended a total knee replacement surgery which he performed on December 28, 2015.

Following that surgical procedure the claimant eventually underwent a functional capacities evaluation and an impairment rating evaluation. In an impairment rating report dated June 1, 2017, it was determined that claimant had a 50% impairment rating to the lower extremity based upon the *4<sup>th</sup> Edition of the AMA Guides*. Following that evaluation claimant returned to Dr. Arnold who in a report dated June 15, 2017, indicated that he agreed with the impairment rating.

Claimant has filed this claim contending that he is entitled to payment of an additional 33% impairment rating to his lower extremity.

#### ADJUDICATION

Claimant contends that he is entitled to payment of an additional 33% impairment rating to his lower extremity for his compensable injury. The respondent previously accepted and paid claimant permanent partial disability benefits based upon a 17% impairment rating assigned by Dr. Arnold in a report dated March 3, 2009.

Subsequent to the assignment of that impairment rating, claimant continued to receive medical treatment from Dr. Arnold for his right knee. Claimant's treatment eventually resulted in a total knee replacement surgery performed by Dr. Arnold on December 28, 2015. On June 1, 2017, claimant underwent an impairment rating evaluation and claimant was assigned a 50% impairment rating to his lower extremity. Following that report, claimant returned to Dr. Arnold who in a report dated June 15, 2017 agreed with the impairment rating. Thus, according to the impairment rating evaluation and the opinion of Dr. Arnold, claimant has a total impairment of 50% to the lower extremity as a result of his compensable right knee injury. I find that the impairment rating

report and the opinion of Dr. Arnold are credible and entitled to great weight. I also find that the ratings are in accordance with the *4<sup>th</sup> Edition of the AMA Guides*.

As noted, respondent has previously accepted and paid permanent partial disability benefits based upon a 17% impairment rating to the lower extremity. Accordingly, I find that respondent is liable for payment of an additional 33% to the lower extremity.

#### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to payment of additional permanent partial disability benefits in an amount equal to 33% to the lower extremity. Respondent has controverted claimant's entitlement to payment of the additional permanent partial disability benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$244.00.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE