



STATE BOARD OF WORKERS' COMPENSATION
270 Peachtree Street, NW
Atlanta, GA 30303
www.sbwcc.georgia.gov

STATEMENT OF THE CLAIM

Based upon application of the Employee, a remote Zoom hearing was held on September 13, 2024, to determine whether the Employee is entitled to permanent partial disability (PPD) benefits and medical benefits, in connection with a compensable accident sustained on August 5, 1996.

As detailed below, I find that the Employee is entitled to additional PPD benefits, but there is insufficient evidence of the Employee's current medical condition, and of his current medical needs related to his compensable injuries.

STIPULATIONS

1. I find, and the parties stipulate to the following: (1) that the Employee sustained compensable injuries to his back on August 5, 1996, which arose out of and in the course of his employment; (2) that temporary partial disability (TPD) benefits were paid for the period February 23, 2001 through April 21, 2003; (3) that permanent partial disability (PPD) benefits were paid for the periods April 22, 2003 through July 14, 2003 and July 29, 2023 through August 25, 2003; (4) that PPD checks for July 15, 2003 through July 28, 2003, and checks issued after August 25, 2003 were voided; (5) that the last payment for medical treatments was in 2002; (6) that the average weekly wage is \$374.25, and that income benefits were paid at the weekly rate of \$249.50; (7) that the accident occurred in Fulton County, Georgia; (8) that the authorized treating physician is Dr. Michael Hogan; (9) that Dr. Hogan issued a permanent impairment rating of 10% on October 7, 1997; (10) that a Functional Capacity Evaluation issued on September 15, 1999 noted a permanent impairment rating of 10%; and (11) that the Employee gave timely notice of the accident.

JUDICIAL NOTICE

2. Judicial notice is taken of the following: (1) Board Form WC-14 (Request for Hearing) filed by the Employee on June 21, 2022; and (2) Board Form WC-14 (Request for Hearing) filed by the Employee on February 7, 2024.

OLD CLAIM FILE

3. For the record, it should be noted that the Board no longer have records of the original claim file for the August 5, 1996 date of injury. The current file begins with the filing of the Employee's WC-14 on June 21, 2022. The above insurer is in liquidation, and the handling of the claim was taken over by the G.I.I.P. in February 2001. The payment information and stipulations are largely based on the records maintained by the G.I.I.P. after their involvement in the case.

EVIDENCE

4. The Employee began working for the Employer in 1995 as a Construction Worker specializing in home footings and foundations. The accident occurred when the Employee fell backwards into a hole while pulling up a tree trunk out of the ground. The Employee's back injury was diagnosed as a herniated disc, for which he underwent right L4 laminectomy surgery. Dr. Michael Hogan, as the authorized treating physician, performed the surgery. On November 7, 1997, Dr. Hogan, in response to a questionnaire from the Employee's former attorney, opined that the Employee had reached maximum medical improvement with a permanent impairment rating of 10% to the body as a whole. The Employee was authorized to return to light duty work.

5. In a medical record of September 15, 1999, Dr. Hogan noted the Employee's complaints of continuing back pain, radiating from the neck down into the scapula and into the sacrum, with right buttocks pain, and left foot pain. The doctor opined that the complaints were somewhat inconsistent for a specific nerve root injury, and were more consistent with diabetic neuropathy, or a neuropathic disease process. Dr. Hogan reiterated his opinion that the Employee had reached maximum medical improvement, with a 10% permanent impairment. The Employee was placed on limited duty work status of sedentary work only, with no lifting or carrying over 10 pounds, primarily sitting with occasional standing and/or walking. Dr. Hogan recommended a nerve conduction study of the right lower extremity, and he suggested that the Employee get a health club membership. An MRI scan performed on December 21, 2007 noted degenerative disc disease and concentric annular bulging at L2-3 and L3-4, causing flattening of the thecal sac and narrowing of the neural foramina; impingement of the right L4 nerve root due to the disc bulging; and the L4 laminectomy surgery with severe facet hypertrophy.

6. Consistent with the stipulation, the payment logs from the G.I.I.P. show that TPD benefits were paid to the Employee at the weekly compensation rate of \$385.00 for the period February 23, 2001 through April 21, 2003. Although the reasons are not clear, eight of the TPD payments from 2001 were voided and later reissued in 2002. PPD payments were issued to the Employee at the weekly compensation rate of \$249.50 (\$499.00 was paid covering two weeks) for the periods April 22, 2003 through July 14, 2003, and July 29, 2003 through August 25, 2003. PPD payments made for July 15, 2003 through July 28, 2003, and all PPD payments after August 25, 2003 were voided. There is no record of the voided PPD payments being reissued. Payments for medical benefits were issued for the period

July 19, 2002 through October 1, 2002. There are no records or evidence of income benefit payments prior to February 23, 2001.

7. In 2010, the Employee was detained by law enforcement on a traffic charge, and in July 2011 he was sent back to his home country of Mexico for not having proper papers to remain in the United States. During his period of detention, the Employee received medical care for ongoing complaints of chronic back pain attributed to the 1996 work accident, and he wore a back brace. One medical record entry, on March 9, 2011, notes that the back pain followed a car accident years ago, but there is no evidence of a car accident in the record, and the Employee denies any prior injuries to his back. As a requirement of being sent back to his home country, the Employee was prohibited from returning for 10 years, after which he was authorized to return. In 2012, in Mexico City, the Employee began working as a Public Service Taxi Driver, for which he earns \$200.00 per day.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. Although the Employee's claim for additional benefits is not fully clear, his request for hearing seeks PPD benefits and medical benefits, including psychological care and assistive medical equipment of a wheelchair and walker. Regarding PPD benefits, O.C.G.A. § 34-9-263 requires the payment of benefits for the permanent loss or loss of use, in whole or in part, of a specified part of an employee's body. PPD benefits are not based on an employee's ability to work or the loss of earning capacity, instead PPD benefits relate only to the permanent effect of an injury on a particular part of the body or to the body as a whole. See Reliance Insurance Co. v. Cushing, 132 Ga. App. 179, 207 S.E.2d 664 (1974); Reliance Insurance Co. v. Oliver, 114 Ga. App. 639, 152 S.E.2d 423 (1966), *appeal after remand*, 117 Ga. App. 466, 160 S.E.2d 615 (1968); Employers Liability Assurance Corp. v. Hollifield, 93 Ga. App. 51, 90 S.E.2d 681 (1955). To carry his burden of proof, the Employee must show that he is no longer entitled to temporary total disability (TTD) or TPD benefits and that his condition is "permanent," meaning, that it will not improve during his lifetime. Printpack, Inc. v. Crocker, 260 Ga. App. 67, 579 S.E.2d 225 (2003); State of Georgia v. Birditt, 181 Ga. App. 356, 352 S.E.2d 203 (1986). Although evidence of the Employee reaching maximum medical improvement (MMI) for his injury may serve as evidence that the injury is permanent, reaching MMI is not a legal condition precedent to the payment of PPD benefits. City of Poulan v. Hodge, 275 Ga. 483, 569 S.E.2d 499 (2002); Printpack, Inc. v. Crocker at 69-72.

9. In this case, the evidence confirms that the Employee received a permanent impairment rating of 10% to the body as a whole from his authorized treating physician. Under O.C.G.A. § 34-9-263(c)(14), a 10% permanent impairment to the body as a whole calculates into 30 weeks of PPD benefits (300 weeks x 10%=30 weeks). The payment logs show that the Employee was paid 12 weeks of PPD for the period April 22, 2003 through July 14, 2003, and 4 weeks of PPD for the period July 29, 2003 through August 25, 2003, for a total of 16 weeks. An additional four weeks of PPD benefits were issued but voided. As a result of the PPD payments confirmed by the payment logs, 14 weeks of PPD remain unpaid.

10. In defense against the Employee's claim for payment of the outstanding PPD benefits, the Insolvency Pool, in their post-hearing brief, raises the four-year statute of limitations under O.C.G.A. § 34-9-104(b). I find that because this affirmative defense was not raised prior to or at the hearing, it is waived. Under Board Rule 82, "Any defense as to the time of filing a claim is waived unless it is made no later than the first hearing." See also Dromedary, Inc. v. Restaurant Equipment Mfg. Co., Inc., 153 Ga. App. 103, 264 S.E.2d 571 (1980); Searcy v. Goodwin, 129 Ga. App. 827, 201 S.E.2d 670 (1973).

11. Even if the four-year statute of limitations had been timely raised, I find that there is insufficient evidence to support it. In relevant part, O.C.G.A. § 34-9-104(b) states that, "any party may file for benefits solely under Code Section 34-9-263 [PPD] not more than four years from the date the last payment of income benefits pursuant to Code Section 34-9-261 [TTD] or 34-9-262 [TPD] was actually made." Under O.C.G.A. § 34-9-221(b) weekly payments of income benefits shall be considered to be paid when due when mailed from within the State of Georgia to the address specified by the employee, or no later than three days prior to the due date when mailed from outside the State. Board Rule 221, regarding the method of payment, reiterates the mailing requirements of the statute as satisfying the payment requirements. In construing the meaning of when a payment is "actually made" under O.C.G.A. § 34-9-104(b), the Court of Appeals of Georgia holds that a payment is "actually made" on the date that "it is mailed to the recipient." Sunbelt Plastic Extrusions v. Pagua, 360 Ga. App. 894, 862 S.E.2d 566 (2021). For purposes of determining the sufficiency of the evidence relating to the four-year statute of limitations, the employer/insurer has the burden of proof as an affirmative defense, which must be proven by a preponderance of the evidence. Pagua at 897-898; Bell v. Gilder Timber Co., 337 Ga. App. 47, 785 S.E.2d 682 (2016).

12. I find that in this case, the G.I.I.P. failed to present any evidence of showing when the last payment of TPD benefits was mailed, and, therefore, their statute of limitations defense fails. Although the evidence shows that the last period covered by TPD benefits was April 8, 2003 through April 21, 2003, there is no evidence of when this payment was mailed. At the hearing, the G.I.I.P.'s Adjuster testified that the last payment of "temporary partial disability" benefits was in "2003." The payment log from the G.I.I.P. shows a "Txn Date" of April 7, 2003 for the payment covering the last TPD period, but there is no evidence to show what this date refers to, or what "Txn" means. As was found in Pagua, I find that the G.I.I.P.'s evidence on mailing, to show actual payment, is insufficient to carry their burden.

13. I also find that under the facts of this case, there is a question of first impression regarding the application of the four-year statute of limitations under O.C.G.A. § 34-9-104(b). After the last date covered by TPD benefits, of April 21, 2003, the G.I.I.P. voluntarily commenced PPD benefits effective April 22, 2003, and there was no need for the Employee to file a claim seeking commencement of PPD benefits. PPD benefits were initially paid through September 8, 2003, but subsequently two payments were voided. As noted above in paragraph nine, 14 weeks of PPD benefits remain unpaid based on the 10% impairment rating from the authorized treating physician. Under O.C.G.A. § 34-9-104(b), there is no statute of limitations period for seeking PPD benefits after an alleged

improper suspension of PPD benefits. O.C.G.A. § 34-9-104(b) only relates to the commencement of PPD benefits after the cessation of TTD or TPD benefits. To the extent that there is no limitation period for seeking additional PPD benefits after the improper suspension of PPD benefits, I find that the statutory requirement of paying PPD benefits under O.C.G.A. § 34-9-263(b) controls. For this additional reason, I find that the Employee is entitled to payment of the remaining 14 weeks of PPD benefits.

14. Since PPD benefits were not paid when due, the Employee is entitled to 15% late payment penalties on all past due and accrued benefits. There is no evidence that PPD benefits were timely controverted, or that the nonpayment of such benefits was due to conditions beyond the control of the Employer/G.I.I.P. See O.C.G.A. §§ 34-9-221(d) and (e).

15. The Employee bears the burden of proving that the continued medical care for which he seeks compensation is such as to give relief directly to the work-related injury. Jarallah v. Pickett Suite Hotel, 204 Ga. App. 684 (1992). Although there is no limitation period on the Employee's entitlement to ongoing medical treatment for his compensable injuries, there is insufficient evidence in the record of the Employee's current medical condition, and no medical records to support any ongoing need for care. At the hearing, the Employee testified that his last medical treatment was in 2022 in Mexico, at which time he was referred to a health department for an MRI scan. There was no evidence presented of the 2022 medical visit, and no evidence from the health department or of the MRI scan. The last record of medical treatment in evidence is from July 1, 2011, when the Employee reported anxiety during his detention because of separation from his children. The last record of chronic back pain was on May 25, 2011 also during his detention. The Employee also testified that he has been suffering for 28 years and that his health is greatly diminished, but he fails to relate his complaints to the compensable back injury. The Employee listed psychological care, a wheelchair, and walker on his claim for benefits, but no evidence was presented on any of these items. I find, therefore, that the Employee has failed to present sufficient evidence of the current condition of his compensable back injury, and insufficient evidence of his current medical needs relating to the compensable work accident. The Employee's claim for medical benefits at this time is, therefore, denied.

AWARD

WHEREFORE, based upon the above findings and conclusions:

1. The Employer/G.I.I.P. shall pay the Employee 14 weeks of PPD benefits, in lump sum, at the compensation rate of \$249.50 per week, along with 15% late payment penalties on all past due and accrued benefits. The appropriate board form shall be filed confirming payment of this award.
2. The Employer/G.I.I.P.'s affirmative defense of the four-year statute of limitations, as raised in their post-hearing brief, is hereby DENIED.

3. The Employee's claim for medical benefits, including psychological care, a wheelchair, and walker, is DENIED.

IT IS SO ORDERED, this the 10th day of November, 2024.

STATE BOARD OF WORKERS' COMPENSATION

This order has been electronically signed and approved

JOHNNY MASON

ADMINISTRATIVE LAW JUDGE