

FILED

In re claim of:

WORKERS' COMPENSATION COURT
STATE OF OKLAHOMA
July 20, 2012
Robert L. Tharp
COURT CLERK

MIKE CHRISTIAN)	
Claimant)	
OKLAHOMA HOUSE OF REPRESENTATIVES)	Court Number: 2010-12589R
Respondent)	
COMPSOURCE OKLAHOMA)	Claimant's Social Security
Ins. Carrier)	Number: xxx-xx-9316

**ORDER DETERMINING COMPENSABILITY AND AWARDED
PERMANENT PARTIAL DISABILITY BENEFITS**

Now on this 19th day of JULY, 2012, this cause came on for consideration pursuant to regular assignment and hearing on JULY 18, 2012, before JUDGE BOB LAKE GROVE, at Oklahoma City, Oklahoma, at which time claimant appeared in person and by counsel, RICHARD A BELL and respondent and insurance carrier appeared by counsel, KRISTI BYNUM RUSSELL.

The Court having considered the evidence and records on file, and being well and fully advised in the premises FINDS AND ORDERS AS FOLLOWS:

- 1 -

THAT on FEBRUARY 26, 2009, claimant was employed by the above named respondent and such employment was subject to and covered by the provisions of the Workers' Compensation Act of the State of Oklahoma; and on said date claimant sustained accidental personal injury to the CERVICAL SPINE and THORACIC SPINE arising out of and in the course of claimant's employment.

- 2 -

THAT at time of injury, claimant's wages were sufficient to establish the rate of compensation at \$342.00 per week for permanent partial disability.

FINDINGS OF FACT

- 3 -

THAT claimant was at all times alleged herein a duly elected member of the Oklahoma House of Representatives.

- 4 -

THAT on or about FEBRUARY 26, 2009, claimant left his elected district by personal motor vehicle to perform his legislative duties which included a committee meeting where he would introduce a bill before the legislative session or upon conclusion of the session at the location of respondent, the Oklahoma State Capitol.

- 5 -

THAT during the course of his travel, claimant was involved in a motor vehicle accident along with his wife.

- 6 -

THAT claimant was entitled to receive one round trip mileage per week which claimant waived the right to accept.

- 7 -

THAT at the time departing his legislative district and at time of accident, claimant was accompanied by his wife who was to deposit claimant at respondent, OKLAHOMA HOUSE OF REPRESENTATIVES, where claimant was employed.

- 8 -

THAT claimant was, at the time of accident, believed to be in possession of a state owned computer which claimant testified was used in performance of his legislative duties and other written legislative bills or drafts that were to be submitted at the above legislative committee meeting.

CONCLUSIONS OF LAW

- 9 -

THAT the computer used by claimant was for the purpose of continuing legislative business on date of accident. Whether it was "imperative" (as characterized by respondent) that claimant transport computer to the legislature is not a proper criteria. The fact remains that claimant did bring his state owned computer; and it was for the continuation of his elected duties (testimony of claimant based upon his present belief and understanding that computer was with him at accident). That state "government" may have continued regardless of claimant appearing at work with his computer is not the controlling issue.

- 10 -

THAT notwithstanding claimant's waiver for mileage, claimant was none the less (and it is uncontradicted) entitled to mileage for travel to capitol, one round trip per week. Both parties admit that an exception to the "coming and going" rule is if employer pays travel expenses. See Bronco Drilling v. Kerr, March 7, 2008; Fudge v. University of Oklahoma, 673 P.2d 149; Helmerich & Payne v. Gabbard, 333 P.2d 964; and Stroud Municipal Hospital, 933 P.2d 874.

- 11 -

THAT members shall receive mileage reimbursement for use of privately owned vehicle per 74 O.S. §500.4

- 12 -

THAT it was a benefit to have claimant participate in committee duties and submit the bill before committee with copies of legislation to be advance during committee meeting. Here a legislator is charged with a duty to transport bill, legal paper and computer as in Stroud (supra) noting "awards have been sustained where employee, on the way to or from work, is still charged with some duty in connection with employment.

- 13 -

THAT respondent's notice defense is DENIED. Respondent, OKLAHOMA HOUSE OF REPRESENTATIVES, were aware immediately after claimant's accident on the same day of accident. Claimant testified that after progression of pain and disability he became worse, causing him to timely file Form 3 within statutory period therefore providing actual notice which precludes application of rebuttable presumption. It is undisputed that no party was prejudiced with claimant not filing a claim prior to filing of claimant's Form 3.

- 14 -

THAT claimant had prior injuries consisting of 1996 adjudicated BACK and 1999 adjudicated NECK, from which claimant testified that he had recovered (undisputed testimony of claimant). Notwithstanding pre-existing injuries, claimant testified that prior injury to NECK with fusion and BACK surgery, each had resolved but since this accident the conditions had become much worse.

- 15 -

THAT while no surgical or invasive treatment have occurred, claimant has taken medication for pain which the Court finds to be a treatment and further that claimant was offered surgery (Claimant's Exhibit #1 dated JULY 5, 2012 - DR. HADI's report suggesting surgery).

- 16 -

THAT as a result of said injury, claimant sustained 18 percent permanent partial disability to the WHOLE MAN CERVICAL SPINE (objective medical evidence resulting in permanent anatomical abnormality)(over and above any pre-existing disability) and 18 percent permanent partial disability to the WHOLE MAN LUMBAR SPINE (objective medical evidence resulting in permanent anatomical abnormality)(over and above any pre-existing disability), for which claimant is entitled to compensation for 180 weeks at \$342.00 per week, or the total amount of \$61,560.00 of which 177 weeks have accrued and shall be paid in a lump sum of \$60,534.00.

- 17 -

THAT respondent and/or insurance carrier shall pay all reasonable and necessary medical expenses incurred by claimant as a result of said injury through the date of this order.

- 18 -

THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in lump sum of \$60,534.00 and pay the balance of said award at the rate of \$342.00 per week until the total award of \$61,560.00 (less attorney fee) has been paid to claimant.

- 19 -

THAT respondent or insurance carrier shall pay court costs; Special Occupational Health and Safety Fund Tax shall be paid in the sum of \$461.70 representing three-fourths of one percent (0.75%).

- 20 -

THAT pursuant to Title 85 O.S. Section 368, a final award fee of one hundred forty dollars (\$140.00) is taxed as a cost in this matter, and shall be paid by respondent to the Court Administrator.

- 21 -

THAT the sum of \$12,312.00 shall be deducted from the award herein and paid in lump sum to claimant's attorney as a fair and reasonable attorney fee; within twenty (20) days from the date of filing of this order, respondent or insurance carrier shall comply herewith.

BY ORDER OF:

/s/ *Bob Lake Grove*

BOB LAKE GROVE, JUDGE

cj/KAnderson

A copy of the above and foregoing Court Order was mailed, by regular or Certified United States Mail, on this filed stamped date to:

Claimant's Attorney: RICHARD A BELL
PO BOX 1529
NORMAN, OK 73070-1529

Respondent's Attorney: M DAN CALDWELL
201 ROBERT S KERR STE 800
OKLAHOMA CITY, OK 73102-4203

I do hereby certify that the above and foregoing is a true and correct copy of the original order signed by the Judge herein. Witness by my hand and the official seal of this court on this date.

Robert L. Tharp

Court Clerk
July 20, 2012