

BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

GUSTAVO BARRAGAN,)	
)	
Employee,)	
)	
v.)	Hearing No. 1400007
)	
CIERA STAFFING, LLC.)	
)	
Employer.)	

DECISION ON PETITION TO DETERMINE ADDITIONAL COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before the Industrial Accident Board on July 21, 2015, in the Hearing Room of the Board, New Castle County, Delaware. Pursuant to Del. Code Ann. tit. 19, § 2348(k), the Board required an extension of time to complete the written decision.

PRESENT:

LOWELL L. GROUNDLAND

ROBERT J. MITCHELL

Joan Schneikart, Workers' Compensation Hearing Officer

APPEARANCES:

Susan D. Ament, Attorney for the Employee

Andrew Carmine, Attorney for the Employer

NATURE AND STAGE OF THE PROCEEDINGS

On June 30, 2013, Gustavo Barragan (“Claimant”) sustained compensable injuries, including a skull fracture with left temporal epidural hematoma, vestibular disequilibrium, and a fracture of the left arm and ring finger, from a fall while working as a packer for Ciera Staffing, LLC (“Ciera”). By prior agreements between the parties, Claimant received total disability benefits at the compensation rate of \$485.88 per week based on his weekly salary of \$728.82 at the time of the work injury. Claimant returned to work on November 5, 2013.

On June 29, August 15, 2014, Claimant filed two Petitions to Determine Additional Compensation Due: one seeking permanency benefits for a 21% loss of use to the central nervous system, an 8% loss of use to the vestibular system, and a 14% loss of use to the left upper extremity, and another seeking disfigurement benefits to the head, left ear, left arm and ring finger. Ciera disputes the permanency values and disfigurement benefits that Claimant alleges although the employer provided no medical testimony to support its position.

The parties submitted a joint Stipulation of Facts, according to *Rules of the Industrial Accident Board of the State of Delaware* (“I.A.B. Rules”) Rule 14(A).

SUMMARY OF THE EVIDENCE

Claimant, age twenty-five, who is from Mexico, testified¹ he has been living in the United States for seven years. He is employed by Ciera and had been working for them for five years. On June 30, 2013, he was assigned to a manufacturing facility, where his job involved cleaning and monitoring machines. He worked there 84 hours a week. On that date, he fell while climbing down a ladder after checking a production machine, hitting his head, hand and

¹ Claimant testified using an interpreter (Carlos, employee # 663338), who was duly sworn, by phone from LTC Language Solutions and provided by the Department of Labor.

finger. Before that event he had no prior head injury or treatment, no prior left upper extremity for finger problem, and no hearing loss.

Following recovery from his work injuries, he continues to experience frequent dizziness along with pain and pounding in his head up to the level of an 8 on a 10 point scale. He also has problems hearing and continues with pain in his left ear. He cannot use his left upper extremity or move his left ring finger. He has difficulty with memory and often forgets how to perform work procedures and ordinary household activities. He lives with his girlfriend, Maria Benigno, who helps him with his problems resulting from the work accident. She helped him recuperate and must remind him to take his medications and keep his doctor' appointments. He cannot remember the names of his treating doctors. He currently has restrictions to avoid any heavy lifting and climbing ladders. His job at Ciera has changed and is located at a different site. He can drive a motor vehicle but limits his driving to back and forth to work.

Following the work accident, Claimant developed various scars from his surgeries, which embarrass him when others in public ask about them. Claimant exhibited a rounded scar to the left temporal side of his head extending to above his left ear, which is approximately 7 ¼ inches in length by 1/8 inch in width and light in color compared to the surrounding skin. Claimant also displayed two scars on his left arm. Scar #1 is on the outside of his left upper extremity between his hand to his elbow that is approximately 4 ¼ inch in length by 1/16 to 1/8 inch in width with suture marks, which is lighter than the surrounding skin. Scar #2 is on the inside of his left upper extremity from the wrist to the elbow that is approximately 5 ½ inches in length by 1/8 inch in width with irregular suture marks, which is lighter in color and raised from the surrounding skin. He also showed a v-shaped scar on the ring finger of his left hand that was less than 1/8 inch in length and slightly lighter in color than the surrounding skin.

Claimant submitted into evidence photographs of the scarring he exhibited (Claimant's Exhibit No. 1).

Maria Benigno-Garcia, Claimant's girlfriend, testified on his behalf. She has been his caretaker since his release from the hospital following the work accident. She accompanies him to all his doctor's appointments. He has changed since the work accident. He now has constant pain and headaches, difficulty concentrating and depression. He no longer likes to do activities such as going to the movies and sleeps more often. Loud noises bother him and he prefers a quiet environment. He cannot even remember the name of the street he lives on.

Ms. Benigno administers his medications, all prescribed by Dr. Necastro, which include ibuprofen, Tramadol for pain and sleep, Gabapentin, Noryriptiline and Ranitidine for stomach complaints. He only has to drive about 15 to 20 minutes to get to work. Dr. Necastro suggested Claimant limit himself to short distances due to dizziness and headaches. Before the work accident, Claimant worked seven days a week for 12 hours a day, or 84 hours a week. Now he is restricted to working no more than 8 hours a day, seven days a week.

When she accompanied Claimant to see Dr. Bruce Grossinger, the visit lasted between 3 to 3/12 hours. She did not accompany Claimant to all his visits with Dr. Yallamanchili.

On cross examination, Ms. Benigno agreed that Dr. Yallamanchili told Claimant in early 2015 that he was neurologically intact and there was nothing more he could do for him. He was fully recovered but will likely have headaches for the rest of his life. Claimant wanted to return to work and so told Dr. Necastro he was 85% improved.

Bruce H. Grossinger, D.O., a neurologist and pain management specialist, testified by deposition on behalf of Claimant. The doctor examined Claimant on December 23, 2014, when a Spanish interpreter was present, and reviewed his medical records. Dr. Grossinger opined that

Claimant has a 21% permanent impairment for loss of use to the central nervous system, an 8% permanent impairment for loss of use to the vestibular system, and a 14% permanent impairment for loss of use to the left upper extremity, all related to the work accident.

Claimant told the doctor that he was injured in June 2013 at work when he lost his balance after climbing to the top of a ladder and fell six feet to the ground. He struck his head on a pole running across the floor and suffered a skull fracture with head injury, left arm and left wrist injury and a fourth finger injury. He was taken to the hospital where he was admitted with a fractured skull and underwent a craniotomy for an epidural hematoma, or an evacuation of blood within the epidural space. Dr. Grossinger opined Claimant's head injury was at the severe end of the brain-injury spectrum. Claimant also received treatment for fractures of the left arm.

Although Claimant underwent three months of physical therapy, he continues to experience dizziness and vertigo and headaches, bifrontal and bioccipital, which are moderately severe. He has pain at the level of 9 out of 10 in the left forearm and difficulty with weakness of the left hand, but continues to work.

Upon physical examination, Dr. Grossinger found Claimant's cognitive functions, such as speech, memory, insight and attention span, were intact. Cranial nerve analysis revealed pupils equally reactive to light accommodation. He had full extraocular movement, but had objective signs of vestibular nerve injury; nystagmus, or fluttering of the eyes; a positive Nylen-Barany maneuver; and positional vertigo. His left arm had scarring, objective weakness and mild atrophy by a one-half inch diameter asymmetry. The left fourth digit, or ring finger, had a deformity with weakness of extension of the distal interphalangeal joint ("DIP") and dense sensory loss.

In arriving at his permanency ratings, the doctor relied on the *AMA Guides to the Evaluation of Permanent Impairment, 5th Edition* (“AMA Guides”), Chapter 13 dealing with the central and peripheral nervous system. Claimant suffered a skull fracture and left cerebral hematoma. Using Table 13-5 of the AMA Guides, titled “Clinical Dementia Rating (CDR),” the doctor placed Claimant into a “Questionable” category for an 0.5 Impairment Level and CDR Score since he demonstrates slight forgetfulness, amnesia from the events of the work accident, has slight impairment with community activities, and lost his appreciation of music and instrumentation of vocal performances. He also has hyperacusis, which means a normal intensity sound will be perceived as very annoying or painful. The doctor believes these issues are all related to the brain injury. The doctor was “very conservative” in his assessment and may even have overly diminished Claimant's numbers for the central nervous system. The doctor also concluded that Claimant did not demonstrate any evidence of symptom magnification.

In addition, Dr. Grossinger opined that vestibular apparatus is closely involved with *hearing and certain* reflexes, including the stapedius reflex. Claimant's difficulty in tolerating sounds is permanent. Neurons do not grow back so it is conservative to delineate the brain injuries as permanent.

Using Table 13-6, AMA Guides, at page 320, the doctor extrapolated the 0.5 CDR assessment for Claimant into a 14% impairment of the whole person. In converting that figure to a regional body part impairment, he applied a generic .75 factor to reach a 21% loss of use to the central nervous system. Given the severity of Claimant's injury for an epidural hematoma and skull fracture, the doctor believes it would not be a stretch to provide an even higher rating in this case in the Mild 1.0 category. But he prefers to provide a more conservative rating, particularly since Claimant is stoic and has tried to get back to work.

Dr. Grossinger has reviewed Dr. Varipapa's report of March 2015, in which he is unable to confirm the 21% permanency to the central nervous system. The defense doctor believes he could not evaluate Claimant's cognitive and psychological function. Instead, it would be reasonable to have a neuropsychologist with Spanish-language capabilities evaluate Claimant more fully in this regard. Dr. Grossinger disagrees with this impression based on his reliance on the AMA Guides.

As to the loss of use to the vestibular system, Dr. Grossinger relied on Chapter 11 of the AMA Guides. He noted that Claimant had episodic and positional dizziness and hyperacusis, which is the eighth cranial nerve that sub serves hearing and balance, along with nystagmus and a positive Nylen-Barany test. In addition, the doctor found the objective ancillary test for vestibulopathy performed by Dr. William Medford on January 2, 2014, to be abnormally positive. Given the test results and symptoms, the doctor is confident that Claimant should be placed into a Class 2 category for vestibular disorders, relying on Table 11-4, AMA Guides, at page 253. The doctor further assessed Claimant had a 5% impairment of the whole person, which he converted to an 8% loss of use to the vestibular system using the generic .75 factor.

Dr. Grossinger believes that Claimant's vestibular disorder with intermittent dizziness and vertigo requires that he use extreme caution with performing any activities at non-stabilized heights. If he were on a scaffold and turned his head the wrong way, those problems could cause him to fall.

For the left upper extremity rating, the doctor relied on Chapter 16 of the AMA Guides. Claimant has diminished strength in the left elbow flexors, extensors, pronators and supinators; muscle atrophy relating to an elbow fracture; and two scars evincing surgical procedures from the fractures to the left radius and left ulna. Dr. Eskander performed an open reduction and

internal fixation on both the left radius and left ulna. As to the left finger, Claimant demonstrated muscle weakness and atrophy. As a result, Claimant has diminished motion of the left arm with atrophy and weakness for which the doctor assigned a 12% impairment to the upper extremity which he combined with a 2% impairment to the left fourth finger to arrive at a 14% loss of use to the left upper extremity.

On cross examination, Dr. Grossinger agreed that his use of Table 13-6 for the central nervous system rating and placement of Claimant into the highest range in Class I was based on Claimant's own reporting of his troubles with activities of daily living. The doctor did not perform any mini mental status exam or formal neuropsychological testing of Claimant, who was able to provide a detailed and cogent history of his injury and care thereafter. The doctor also concluded his memory was normal and he did not exhibit any speech or memory disturbance although he was intelligible only in his native language. He did not have any difficulty with attention span and was working full-time.

As to the vestibular impairment, the doctor determined Claimant's cerebellum was fine. The doctor may have performed balance or ambulation testing, and opined the nature of vestibulopathy is intermittent. Thus, the fact that Dr. Varipapa did not find positive nystagmus on his examination was not significant in Dr. Grossinger's opinion.

Ciera presented no witness testimony.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Permanency

Pursuant to Del. Code Ann. tit. 19, § 2326, the Board is authorized to award compensation for certain permanent injuries to various areas of the body without regard to the earning power of the Claimant. On a petition for such a benefit, Claimant bears the burden of

proof. The Board is free to accept the testimony of one or the other conflicting medical expert as long as the substantial evidence requirement is satisfied. *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992); *Scarberry v. Chrysler Corp.*, Del. Super, C.A. 96A-07-003, Herlihy, J. (Dec. 12, 1996). While it is important to have medical testimony, it is the function of the Board, and not the physician, to determine the degree of a claimant's impairment. See *Turbitt v. Blue Hen Lines, Inc.*, 711 A. 2d 1214, 1215 (Del. 1998); *Poor Richard Inn v. Lister*, 420 A.2d 178, 180 (Del. 1980). With regard to this, the Board may use its experience and expertise as a tool for evaluating the evidence presented. *Turbitt*, at 1215.

The Board concludes that Claimant sustained a 21% loss of use to the central nervous system, an 8% loss of use to the vestibular system, and a 14% loss of use to the left upper extremity, all related to the 2013 work accident. The central nervous system and the vestibular system are unscheduled losses under Del. Code Ann. tit.19 § 2326(d). However, the Board has previously provided awards for the brain, the central nervous system and the vestibular system. Therefore, consistent with *Slack v. Raytheon*, Del. I.A.B. #962763 (October 14, 1994), the Board will use the maximum scale of 300 weeks for such permanent injuries. As such, Claimant is entitled to compensation for sixty-three (63) weeks (21% of 300 weeks) for the loss of use to the central nervous system and for twenty four (24) weeks (8% of 300 weeks) for the loss of use to the vestibular system. Permanencies of the upper extremities are scheduled losses under Del. Code Ann. tit. 19, § 2326(a) in the amount of 250 weeks for a total loss. Therefore, Claimant is entitled to receive thirty-five (35) weeks of compensation (14% of 250 weeks) for the left upper extremity permanent impairment.

The Board accepts the expert medical opinion of Dr. Grossinger in this case which is uncontroverted by any expert medical testimony offered by the employer. Dr. Grossinger is a

neurologist, who examined Claimant on December 23, 2014. His permanency opinions are based on the medical history following the work accident, the defense medical examination, and Claimant's continuing problems and symptoms. Following the work accident, Claimant underwent a craniotomy for a fractured skull, which the doctor concluded was a severe head injury on the brain injury spectrum. More than a year and one-half later, at the time of the physical examination by Dr. Grossinger, Claimant continued with dizziness, vertigo and moderately severe headaches.

In relying on Chapters 13 and 11 of the AMA Guides, the Board found Dr. Grossinger provided a reliable and reasonable basis for his estimates of a 21% loss of use to the central nervous system and an 8% loss of use to the vestibular system. His assessments were conservative in ranges provided by the AMA Guides and were consistent with the physical examination findings and Claimant's continuing symptoms and complaints. Dr. Grossinger believes Claimant's problems, including dizziness and hyperacusis, are related to the eighth *cranial nerve*, and are permanent. An objective ancillary vestibulopathy test performed in January 2014 by Dr. Medford was abnormally positive. The Board finds Dr. Grossinger's basis for conversion of the central nervous system and vestibular system permanencies from whole person to regional ratings to be reasonable given the doctor's knowledge and experience in applying the AMA Guides.

The board found Claimant credible that he continues with dizziness, headaches, hearing problems, and memory loss related to his work injuries. He relies on his girlfriend to help him with these daily deficiencies. He now has restrictions to avoid heavy lifting and climbing ladders, and cannot work as many hours as he did previously. Ms. Benigno corroborated his various difficulties and testified he can no longer perform recreational activities like he did in the

past, like going to the movies or listening to music. She must monitor all his medication. She testified that Dr. Yallamanchili, Claimant's neurosurgeon, told him while he was fully recovered and neurologically intact, he will likely have headaches for the rest of his life and there was nothing more that could be done for him.

Although Dr. Grossinger's explanation for the left upper extremity permanency, which he based on the AMA Guides, lacked detail and specificity, as he provided for the brain related impairments, the Board accepts his estimate for the 14% loss of use given the nature and extent of Claimant's injuries to the upper extremity resulting from the work accident. Again, the doctor's left upper extremity opinion as to permanency is unrebutted by any contrary medical testimony. The medical history supports Claimant sustained fractures to the left radius, and ulna for which he underwent an open reduction fixation to both bones, along with a fracture to the left fourth or ring finger. He continues with weakness, muscle atrophy and loss of range of motion to the left upper extremity and finger. The Board found Claimant credible that he cannot use his left upper extremity for work like he did before the work accident and that he cannot move his left ring finger.

As set forth in the standard provided by the Delaware Supreme Court in *Turbitt v. Blue Hen Lines*, cited above, the Board may use its experience and expertise as a tool for evaluating the evidence presented. In this case, the injury to the left upper extremity was more ordinary and familiar to the Board in contrast to the brain related problems resulting from the compensable fall at work. Moreover, there is no authority for the argument that the AMA Guides must be strictly followed. The Board and the testifying physicians, frequently use the AMA Guides for what it is: a "guide" to help determine the degree to which a person has lost the use of one or more body parts. See *Re: Smith v. Peninsula Oil & Propane*, Del. Super., C.A. No. S11A-11-

004, Graves, J., 2012 WL 5462856 at **4 (Sept. 4, 2012)(Letter Opinion) citing *Hildebrandt v. DaimlerChrysler*, 2006 WL 3393588 at *4 (Del. Super.); *Bolden v. Kraft Foods*, 2205 WL 3526324, at *3 (Del.).

It is the duty of the Board, not a physician, to fix a percentage to a claimant's disability based on the evidence before it. *Turbitt v. Blue Hen Lines, Inc.*, Del. Supr., 711 A.2d 1214, 1215 (1998). The Board may set a permanency rating different from that established by a physician, provided that the Board articulates a factual basis for so doing. *Id.* However, the Board is not free to select a different figure based simply on its general institutional experience. *Id.*

For the above reasons, the Board concludes that Claimant has carried his burden to support the permanency benefits claimed.

Disfigurement

The Board, or hearing officer, may award disfigurement benefits "provided that such disfigurement is visible and offensive when the body is clothed normally." Del. Code Ann. tit. 19, § 2326 (f). "Clothed normally" means such clothing as is normally worn by the claimant when involved in regular activities, including recreational, vocational and avocational activities. *Beam v. Chrysler Corp.*, 332 A.2d 143,145 (Del. 1975). Factors that the Board should consider in determining the number of weeks of benefits awarded are the size, location, shape and comparative severity of the disfigurement, as well as Claimant's testimony concerning the impact of the scar to determine the psychological and sociological impact, along with other relevant matters. *Colonial Chevrolet v. Conway*, Del. Super., C.A. No. 79A-FE-13, Longobardi, J. (Apr. 28, 1980); see *Murtha v. Continental Opticians, Inc.*, Del. Supr., No. 395, 1997, Walsh, J. (January 16, 1998)(Order)("We adopt the *Colonial Chevrolet* formulation as an accurate and appropriate interpretation of the statutory mandate."). In evaluating the subjective components

of a disfigurement, which are not amenable to measured calculation, the Board may rely upon its accumulated experience. *Roberts v. Capano Homes, Inc.*, Del. Super., C.A. No. 99A-03-013, Del Pesco, J., slip. op. at 6-7 (November 8, 1999).

Claimant seeks a disfigurement award on the basis of surgical scarring to the head and the left upper extremity and left ring finger. The scars are described as to size, shape and location in the “Summary of the Evidence” portion of this decision, which is incorporated into this analysis.

The Board finds the finds the disfigurement from the surgical scar to Claimant's left temporal head to be plainly visible and offensive in appearance, and Claimant testified that it causes him social embarrassment. However, the Board noted that Claimant's emotional discomfort with others noticing the head scar could be diminished if he allowed his hair to grow out over the scar. He currently sports a Mohawk haircut with very little coverage on the side of his head.

The Board finds the finds the disfigurements from the surgical scars to Claimant's left upper extremity to be plainly visible and offensive in appearance and to cause him further embarrassment. However, the Board found the separate scarring to the left ring finger to be less than minimal and hardly noticeable.

The Board may award “proper and equitable compensation for serious and permanent disfigurement to any part of the body up to 150 weeks.” Del. Code Ann. tit. 19, § 2326(f). On a scale of 0 to 150 weeks, the Board finds that Claimant is entitled to a total of ten (10) weeks of disfigurement benefits for the surgical scar to his head; eight (8) weeks of disfigurement benefits for the surgical scar #1 to his left upper extremity; twelve (12) weeks of disfigurement benefits

for the surgical scar #2 to his left upper extremity; but no award for the scarring to his left ring finger.

By this decision, Claimant has received an award for a 14% permanent impairment for loss of use to the left upper extremity. In cases such as this, where a body part has suffered a permanent impairment as well as a disfigurement, the Board must (1) rate the number of weeks on the standard 0 to 150 scale; then (2) calculate the number of weeks on a scale between zero and the number of weeks awarded for permanent impairment plus 20%; and then (3) give a disfigurement award of the higher of the two calculations in weeks. 19 *Del. C.* § 2326(f); see *Bagley v. Phoenix Steel Corp.*, Del. Supr., 369 A.2d 1081, 1083-84. Under the adjusted scale of 42 weeks² for the upper extremity, Claimant would receive approximately 5.6 weeks of benefits for the two surgical scars to the left arm. Since that result is less than the 20 week total awarded on the standard scale, Claimant is awarded the higher calculation for the number of weeks.

Attorney's Fees and Medical Witness Fees

A claimant who receives an award is entitled to a reasonable attorney's fee in an amount not to exceed thirty percent of the award or ten times the average weekly wage in Delaware as announced by the Secretary of Labor at the time of the award, whichever is less. Del. Code Ann. tit. 19, § 2320. Such fees are not awarded, however, if thirty days prior to the hearing date the employer gives a written settlement offer to claimant or claimant's attorney which is "equal to or greater than the amount ultimately awarded by the Board." 19 *Del. C.* § 2320 (j)(2). Ciera submitted to the Board, in a sealed envelope, a settlement offer it extended to Claimant on June 18, 2015. The Board did not open this envelope until after reaching a decision on the merits.

² Calculation: [250 weeks (maximum for the upper extremity) x 14% (impairment)] + 20% = 42 weeks for the upper extremity.

The settlement offer for a 7% permanent impairment to the left upper extremity was not "equal to or greater" than the 14% amount awarded by the Board. There was no offer of permanencies for loss of use to the central nervous system or the vestibular system, which were also awarded by the Board. Therefore, attorney's fees shall be awarded on the issue of permanency.

The settlement offer for a total of thirty weeks for disfigurement to the head and left arm was in fact identical to the total disfigurement benefits of 30 weeks awarded by the Board for those body parts. Therefore, no attorney's fees shall be awarded on the issue of disfigurement in this case.

In determining an award of attorney's fees, the Board, or hearing officer, must consider ten factors.³ See *General Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973)(applied to I.A.B. hearings by *Jennings v. Hitchens*, 493 A. 2d 307, 310 (Del. Super. 1984)); *Thomason v. Temp Control*, Del. Super., C.A. No. 01A-07-009, Witham, J., *slip op.* at 5 - 6 (May 30, 2002). It is an abuse of the Board's discretion to fail to give consideration to these factors. *Thomason* at 7. When claimants seek an award of attorney's fees, they bear the burden of establishing entitlement to such an award. *Downes v. Phoenix Steel Corp.*, Del. Super., C.A. No. 99A-03-006, 1999 WL 458797 at **4, Goldstein, J. (June 21, 1999)(the burden of proof in a workers' compensation case is on the moving party). Since the Board must consider the *Cox* factors when reviewing a request for fees, it follows that claimants must address these factors in their

³ The factors to be considered are: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill needed to perform the services properly; (2) the likelihood (if apparent to the client) that acceptance of the employment would preclude other employment by the attorney; (3) the fees customarily charged in the locality for such services; (4) the amount involved and the results obtained; (5) time limitations imposed by the client or the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation and ability of the attorney; (8) whether the fee is fixed or contingent; (9) the employer's ability to pay; and (10) whether fees and expenses have been or will be received from any other source.

applications. The failure to do so deprives the Board of the facts it needs to properly assess a claimant's entitlement to fees.

Counsel for Claimant seeks a fee up to the statutory maximum. Counsel submitted an affidavit attesting that she spent 20 hours preparing for the evidentiary hearing held on July 21, 2015, which lasted two and on-quarter hours. Her firm's association with Claimant began in July 2013. Counsel has a 35% contingency fee arrangement of gross recovery with Claimant. Counsel has been admitted to the practice of law in Delaware since 1983 and has experience handling workers' compensation matters. Counsel attested that while working on this case, she was precluded from working on other cases. She affirmed that the case was not novel or difficult to prosecute and did not require exceptional legal skills. Ciera made no comment to the attorney fee affidavit.

Taking into consideration the *Cox* factors set forth above, the Board concludes that an attorney's fee award of \$6,050.00 (based on the attorney fee affidavit) or 30% of the combined permanent impairment award, whichever is less, is statutorily appropriate.

Having received an award, the Claimant is entitled to have his medical witness fees taxed as costs against the employer, pursuant to Del. Code Ann., tit.19, §2322(e).

STATEMENT OF THE DETERMINATION

Based on the foregoing, the Board hereby GRANTS Claimant's Petition to Determine Additional Compensation Due and awards: 63 weeks of compensation for the loss of use to the central nervous system; 24 weeks of compensation for the loss of use to the vestibular system; 35 weeks of compensation for the loss of use to the left upper extremity; and 30 weeks of disfigurement benefits, as a combined value, for scarring to the head and left upper extremity. Claimant is further awarded one attorney's fee and his medical witness fees.

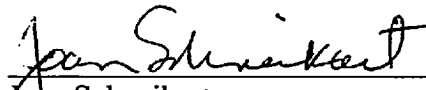
IT IS SO ORDERED this 3rd day of September, 2015.

INDUSTRIAL ACCIDENT BOARD

/s/Lowell L. Groundland

/s/ Robert J. Mitchell

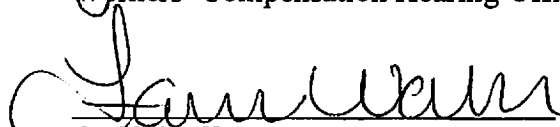
I hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.



Joan Schneikart
Workers' Compensation Hearing Officer

Mailed Date:

9-4-15


OWC Staff