U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 25 July 2012

Case Nos.: 2011-LHC-01403
2011-LHC-01404

OWCP Nos.: 05-050722
05-131364

In the Matter of:

WILLIAM A. FIELDS,

Claimant,

v.

HUNTINGTON INGALLS INDUSTRIES, INC.
(Self-Insured),

Employer/Carrier,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,

Party-In-Interest.

APPEARANCES: Charlene A. Morring
Attorney for the Claimant

Benjamin M. Mason
Attorney for the Employer

BEFORE: ALAN L. BERGSTROM
Administrative Law Judge

DECISION AND ORDER -- GRANTING BENEFITS

This proceeding arises from a claim filed under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended (ACT), U.S. Code, Title 33, § 901 et seq., and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 18, and Title 20, Chapter VI, Subchapter A. The Claim was forwarded to the Office of Administrative Law Judges on May 3, 2011 with a notation of injury dates of January 22, 1982 and June 11, 2010.

A formal hearing was scheduled for February 7, 2010 in Newport News, Virginia. On February 6, 2010 counsel filed a joint request that the hearing be cancelled and agreed that the medical causation issue could be addressed on the record. Administrative Law Judge Exhibits 1 through 5, Claimant's Exhibits 1 through 16, Employer's Exhibits 1 through 3, and Joint Exhibit 1 have been admitted and will be considered. Additional written briefs filed by the respective counsel were also received and considered.

The findings of fact and conclusions which follow are based upon a complete review of the entire record, in light of argument of the parties, as well as applicable statutory provisions, regulations and pertinent precedent.

STIPULATIONS

The parties have stipulated, and this Administrative Law Judge finds, the following as fact (JX 1):

1. This claim is subject to the Act.

2. An Employer/Employee relationship existed at all relevant times.

3. The Claimant sustained an injury to his right knee on January 22, 1982 that arose out of and in the course of his employment.

4. The Claimant gave the Employer timely notice of the January 22, 1982 right knee injury and filed a timely claim for compensation on the January 22, 1982 injury.

5. The Employer filed a timely First Report of Accident with the Department of Labor on the January 22, 1982 injury and a timely Notice of Controversion on the January 22, 1982 injury.

6. The average weekly wage at the time of the January 22, 1982 right knee injury was $347.88, which yields a compensation rate of $231.92.

7. The Claimant has been paid compensation on the January 22, 1982 right knee injury in accordance with the LS-208 dated February 18, 2011.

8. The Claimant sustained an injury to his right knee on June 11, 2010 that arose out of and in the course of his employment.

9. The Claimant gave the Employer timely notice of the June 11, 2010 right knee injury and filed a timely claim for compensation of the June 11, 2010 injury.

10. The Employer filed a timely First Report of Accident with the Department of Labor on the June 11, 2010 injury and a timely Notice of Controversion on the June 11, 2010 injury.

11. The average weekly wage at the time of the June 11, 2010 right knee injury was $815.70, which yields a compensation rate of $543.80.

12. The Claimant has been paid compensation on the June 11, 2010 right knee injury in accordance with the LS-208 dated July 12, 2010.

ISSUES

The issues remaining to be resolved are (JX 1):

1. Is the Claimant's period of temporary total disability from June 28, 2010 to January 17, 2011 inclusive a result of the January 22, 1982 right knee injury or the June 11, 2010 right knee injury?

2. What is the appropriate permanent partial impairment rating due as a result of either the January 22, 1982 or June 11, 2010 right knee injuries?

PARTY CONTENTIONS

Claimant's Contentions:

Counsel for the Claimant argues that the June 11, 2010 work injury aggravated the Claimant's pre-existing right knee injury. Counsel argues the definition at § 902(2) of the Act includes an aggravation as an injury, and therefore the Claimant is entitled to the presumption at § 920(a). Therefore, the period of temporary total disability in question and the Claimant's resulting 31% permanent partial disability rating in the right lower extremity are due to his June 11, 2010 work injury.

Employer's Contentions:

Counsel for the Employer argues that the right knee replacement surgery and resulting period of disability were due to the Claimant's 1982 injury, and not caused or aggravated by the June 11, 2010 injury. In support of their argument Counsel notes that the total right knee replacement surgery was scheduled before the Claimant's June 11, 2010 injury. Additionally, Counsel argues the Claimant has a 31% permanent partial impairment to his right lower extremity.

SUMMARY OF RELEVANT EVIDENCE

Medical Report of Dr. Jon H. Swenson[1] *(CX 2, 5,6, 13)*

4/9/03 Dr. Swenson wrote a letter to Employer's worker's compensation claims worker. Dr. Swenson noted the Claimant has "posttraumatic arthritis of the right knee" from an injury in 1982. As a result of this injury Dr. Tornberg removed part of Claimant's torn medial meniscus which affects the "ability of the knee to transmit force from the upper leg to the lower leg." The doctor opined this injury lead to the "end stage degenerative changes" currently in the Claimant's knee.

In assigning the Claimant a disability rating Dr. Swenson equated the Claimant to total knee replacement with good result. This resulted in 15% whole person impairment or 37% lower extremity rating using the AMA Guidelines 5th Edition. (CX 2)

6/29/10 Dr. Swenson performed a right total knee arthroplasty to treat the Claimant's degenerative joint disease in his right knee with no complications. (CX 5)

4/5/11 Dr. Swenson wrote a note to Claimant's workers compensation case manager finding that at this time Claimant is not able to return to work as a pipefitter. The doctor also found he had a fair result from his total knee arthroplasty. This is a Class III diagnostic criteria under the AMA Guidelines 6th edition. This results in a 31% right lower extremity rating or 12% whole person rating. (CX 6)

12/6/11 Dr. Swenson gave deposition testimony on this date. He reports that he was treating the Claimant for his right knee. Prior to treatment with Dr. Swenson the Claimant was treated by Dr. Dave Tornberg. On February 3, 2000 x-rays were done which revealed bone on bone in medial aspect. The doctor explains, "Basically, what that means is that the cartilage that attaches, that makes up the knee joint and attaches to the tibia, top of the tibia and bottom of the femur, was worn such that when he was standing, those bones were touching bone to bone." The doctor clarified that this is commonly referred to as arthritis. The doctor then testified that the Claimant wore an unloader knee brace for years. He explains the brace worked by "try and open up the side that has bone-on-bone arthritis and in so doing shifts the pressure to the other side, the lateral side of the knee joint, the nonarthritic side, and that will give him less discomfort."

Beginning in May of 2005 the doctor began discussing the possibility of knee replacement surgery with the Claimant. The Claimant elected to try injections in his knee first which injected a medical lubricant into his joint. By May 4, 2010 the Claimant had scheduled knee replacement surgery for the end of June. The doctor then saw Claimant on June 15, 2010 following his injury at work. The Claimant reported increased swelling and increase in pain following his injury. On that day the Claimant had moderate

[1] Dr. Swenson received his M.D. from University of Texas then completed a Residency in General Surgery, as well as a Residency in Orthopedic Surgery in which he was the Chief Resident. He is currently affiliated with Riverside, Mary Immaculate, and Sentara Hospitals in Virginia. He is board certified in Orthopedic Surgery.

swelling in his knee, but retained good range of motion. The x-rays from that day showed no change from previous condition.

The doctor opined the Claimant's knee replacement surgery was due to his earlier injury and not in any way due to or aggravated by the June 2010 injury of falling off a bike. The doctor did note, however, the recent injury may have slowed the Claimant's rehabilitation following surgery. Following the surgery the Claimant has a 31% right lower extremity impairment, or 12% whole person rating. (CX 13)

Treatment Records from Hampton Roads Orthopaedic Associates (CX 3)

5/21/97 Dr. Tornbery noted "overall comfort and function is stable" "discomfort at the end of the day but he is managing well."

2/3/00 Dr. Swenson notes "overall knee is doing fairly well." Claimant having success wearing unloader brace. X-rays taken reveal "bone on bone in medial aspect."

1/29/01 Dr. Swenson notes "overall, knee is not doing too badly for him." X-ray reveals loss of bone height on medial aspect, approximately 1-2mm compared to previous films. Claimant given new brace.

12/7/01 Dr. Swenson knee has marked degenerative changes but doing well overall. Doctor noted "At some point we will need to replace the knee."

2/5/03 Knee is bothering Claimant more. X-ray shows no significant change from December of 2001.

1/20/04 X-ray shows no increase in bone loss since December of 2001. Claimant to continue work restrictions

5/5/05 Claimant has growing discomfort in right knee. X-ray does not show any wearing away of medial tibial plateau since Dec 2001. Dr. Swenson recommends knee replacement at this point. Discussed risks with Claimant, Claimant to think about it.

6/21/05 Claimant returns for first Hyalgan injection in right knee.

6/28/05 Claimant reports some relief from first shot. Dr. Swenson again injected Hyalgan in Claimant's knee.

7/5/05 Claimant reports not much improvement after last injection. Injection repeated again.

7/12/05 Injection repeated.

7/19/05 Final injection in series.

8/16/05 Claimant reports overall progress with knee.

10/18/05 Claimant reports sudden onset of discomfort after being on his feet most of the day and over the weekend. Claimant wants to avoid surgery. Dr. Swenson notes "I think it is okay to wait as long as he is not hurting too much." Claimant also wants to avoid corticosteroid injection.

1/11/06 Claimant has lost weight and his unloader brace no longer fits. He reports ongoing discomfort in both knees, worse in right. No atrophy noted.

1/31/06 Euflexxa injected in Claimant's knee. Restricted to sedentary work.

2/7/06 Claimant received 2nd Euflexxa injection in right knee.

2/14/06 Claimant reports good progress with knee. 3rd injection of Euflexxa. Claimant to return to work Monday.

4/12/06 No significant increased bone on bone wear since May 2005 x-rays. Claimant to continue unloader brace.

11/1/06 Claimant reports moderate with occasionally sever pain in his knee. Claimant continues to want to avoid surgery, Dr. Swenson notes this is reasonable. Claimant wants to try Visco supplementation again.

12/7/06 Claimant received first Orthovisc injection.

12/14/06 Claimant received second Orthovisc injection. Claimant out of work until Monday.

12/21/06 Last Orthovisc injection.

2/8/07 Orthovisc and physical therapy seems to have made significant improvement. Claimant continues to lose weight, down to 215. Full muscle tone in both legs.

5/8/07 Claimant has more stiffness in left knee than right, but both have full range of motion. Claimant to continue to think about knee replacement surgery.

7/31/07 Claimant is considering knee replacement in January.

4/22/08 Claimant's knee is doing reasonably well so surgery not scheduled. No notable swelling, good flexion/extension.

2/10/09 Brace has cause area of skin to breakdown. Claimant to use cane and/or walker to give skin a break from the brace. Claimant to stay out of work until healed.

3/3/09 Sore on skin is doing better. Claimant to return to work Monday 3/9/09

5/6/09 Claimant experienced painful swelling in the knee on Sunday. Dr. Swenson removed fluid off knee. Claimant now using brace pad to prevent skin breakdown.

3/2/10 Claimant wishes to proceed with join replacement surgery. Brace has caused area of skin to breakdown.

3/23/10 Swelling and discomfort have increased since last visit. Skin breakdown is improved

5/4/10 Claimant is scheduled for total knee replacement ("TKR") on June 28, 2010

11/23/10 Post-operative visit after 6/28/10 surgery. Claimant states pain is 1 of 10 and knee feels better than before surgery. Claimant is able to bear full weight on knee, but taking pain medication and unable to return to work yet.

Radiology Report from Mary Immaculate Hospital 6/28/10 (CX 4)

X-ray post total knee replacement surgery shows prosthetic is well positioned.

Medical Records from Employer (CX 15)

2/12/82 Claimant was first treated for right knee strain on January 22, 1982.

6/11/10 Claimant reported injury which occurred at 2:00 the same day when the bike chain came off. The report is signed by the Claimant.

Physical Therapy Report Wayne A. MacMasters (CX 7)

2/7/11 Left shoulder pain

Functional Capacity Evaluation (CX 3, 7 9)

1/4/06 Wayne A. MacMasters, MS, PT, evaluated the Claimant for a functional capacity evaluation. Found Claimant is able to "perform restricted work in the light to physical demanding classification." MacMasters recaps the Claimant's medical history, including injury to shoulder in 1990 which resulted in 11% upper extremity impairment. (CX 3 at 12-13)

2/7/11 Mr. MacMasters performed another Functional Capacity Evaluation of the Claimant. He demonstrated the ability to work light physical demand, peaking at lifting 70 pounds. He can walk for 20 minutes, climb stairs, and partially squat. He cannot kneel on his right knee. MacMasters opined Claimant cannot safely climb ladders. Claimant gave good effort throughout the evaluation.

Claimant cannot return to work as a Pipe Fitter. (CX 7)

Record of Occupational Injury 1/25/82 (CX 10)

Report dated January 25, 1982 indicates that on January 22nd the Claimant fell in a hole after a board broke. The Claimant was diagnosed with strain to his right knee.

Report of Occupational Injury 7/8/10 (CX 11, 16)

Report dated July 8, 2010 indicates that on June 11th the Claimant was injured. He describes, "I was delivering mail. The chain came off the bike and I jammed my right knee." The report reflects the Claimant received treatment on the same day. Report is not signed.

July 12, 2010 LS-208 (EX 3)

This exhibit reflects that the Employer paid the Claimant $310.74 temporary total disability compensation from June 17, 2010 through June 20, 2010, inclusive, for the June 11, 2010 work-related injury based on the average weekly wage of $815.70.

DISCUSSION

The original claim was denied by the District Director for the U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Claims, Division of Longshore and Harbor Workers' Compensation in Norfolk, Virginia (ALJX 3). Appeals from Department of Labor final decisions of the Benefits Review Board must be filed in the U.S. District Court for the Eastern District of Virginia. 42 USC §1653(b); *ITT Base Services v. Hickson*, 155 F.3d 1272 (11th Cir. 1998). Accordingly, the precedent of the U.S. Court of Appeals for the Fourth Circuit applies.

I. The Claimant's period of temporary total disability from June 28, 2010 to January 17, 2011, inclusive, is the result of natural progression of the January 22, 1982 right knee injury.

The Parties have stipulated as fact that the Claimant sustained an injury to his right knee on January 22, 1982 that arose out of and in the course of his employment and that the Claimant sustained an injury to his right knee on June 11, 2010 that arose out of and in the course of his employment.

The evidence of record establishes that on May 4, 2010, the Claimant was seen by treating physician Dr. J.H. Swenson in follow-up for ongoing right knee pain. The Claimant reported a pain level at 5/10 as well as right knee stiffness. Dr. Swenson reported observing increased swelling since the prior March 2, 2010 examination and that the right knee swelling was now at the moderate level. X-rays showed no soft tissue abnormalities, normal alignment and end stage degenerative changes. Assessment remained osteoarthritis of the right knee. The plan listed a "Richards knee implant w/wedges." This was performed by Dr. Swenson on June 28, 2010.

On June 11, 2010 the Claimant "jammed" his right knee trying to stop a bicycle he was using to deliver mail at work. He reported to the Employer's clinic. The clinic notes the Claimant was seen shortly after the 2:00 PM event and positive effusion was noted. The degree of effusion was not described. The Claimant was referred to Dr. Swenson who examined the Claimant on June 15, 2010. Dr. Swenson testified that on examination the right knee had moderate swelling, was not significantly tender on palpation, and had good range of motion. There was a contusion on the right lower leg. The varus deformity previously reported was still present. The right knee x-rays taken on June 15, 2010 were reported to be similar to previous right knee x-rays. Dr. Swenson testified that the Claimant's June 11, 2010 bicycle event did not aggravate, combine or accelerate the need for the Claimant's right knee replacement and that the June 11, 2010 events played no part in the need for a right knee replacement. He speculated that there was a possibility of post-right knee replacement rehabilitation being slowed down by the June 11, 2010 injury but that the traumatic effect of surgery alone would play a bigger part in rehabilitation. This is not an internal inconsistency on the part of Dr. Swenson; but merely the acknowledgement of a possibility which Dr. Swenson has discarded in his testimony that the June 11, 2010 work-related injury did not aggravate, contribute or accelerate the Claimant's right knee medical condition existing immediately prior to the June 11, 2010 event. Dr. Swenson subsequently performed the total right knee replacement surgery on June 28, 2010. He released the Claimant to return to work with medical-vocational restriction on January 18, 2011.

The same Employer is involved with the underlying January 22, 1982 right knee work-related injury and the June 11, 2010 right knee work-related injury. The issue in this case revolves around whether the June 11, 2010 bicycle event aggravated, accelerated or combined with the prior right knee medical condition such that disability compensation from the June 28, 2010 right knee replacement surgery is based on the June 11, 2010 injury date or whether it is based on the January 22, 1982 injury date due to the natural progression of the right knee to require replacement surgery and its associated recovery period.

In such non-occupational disease cases application of the "aggravation rule" requires a detailed examination of the case-specific medical evidence. The "aggravation rule" provides that if an

employment injury aggravates, accelerates, or combines with a previous infirmity, the entire disability is compensable by the Claimant's employer based on the subsequent injury. Where there is no aggravation, acceleration, or combination from the subsequent injury and only the resulting "natural progression" from the previous infirmity the disability is compensable by the Claimant's employer based on the prior injury. In other words, if the worker's ultimate disability is the result of the natural progression of the initial injury and would have occurred notwithstanding a subsequent injury, the employer of the worker on the date of the initial injury is the responsible employer and disability is based on that average weekly wage at the time of the previous work-related injury. However, if the disability is at least partially the result of the subsequent injury aggravating, accelerating or combining with a prior injury to create the ultimate disability, then the employer is responsible for disability compensation based on the average weekly wage at the time of the most recent injury. See *Metropolitan Stevedore Co. v. Crescent Wharf and Warehouse Co.*, 339 F.3d 1102, 1105 (9th Cir, 2003) cert denied 543 US 940 (2004); *Admiralty Coatings Corp. v. Emery*, 228 F.3d 513 (4th Cir. 2000)

Generally, for the purposes of §920(a) of the Act, each incident of increase in pain symptoms, that is pain flare-ups, brought on by the performance of work represent an aggravation of the underlying injury and therefore itself is a compensable "injury". *Kelaita v. Director, OWCP*, 799 F.2d 1308 (9th Cir. 1986); *Delaware River Stevedores, Inc. v. Director, OWCP*, 279 F.3d 233 (3rd Cir. 2002); *Operators & Consulting Services, Inc. v. Director, OWCP* 170 Fed. Appx 931 (5th Cir. 2006) But being a compensable injury does not mean it has aggravated, accelerated or combined with a prior injury. However, "the aggravation rule does not require that a later injury fundamentally alter a prior condition. It is enough that it produces or contributes to a worsening of symptoms." *Marinette Marine Corp. v. Director, OWCP*, 431 F.3d 1032, 1035 (7th Cir. 2005)

Where there is an existing weakened body part from a work-related injury followed by another triggering activity with subsequent medical complications to the same or related body part, not only is there an evaluation of "natural progression" but there is also an evaluation of whether the subsequent triggering activity was reasonable under the circumstances. A previously injured employee must take reasonable precautions to guard against re-injury. If a claimant is aware of the weaken state of the body part and intentionally, negligently or rashly undertakes activities likely to produce harmful results, the chain of causation from the underlying work-related injury is broken by such intervening acts result in the re-injury not being compensable. *Grumbley v. Eastern Associated Terminals Co.*, 9 BRBS 650 (1979); *Wright v. Connolly-Pacific Co.*, 25 BRBS 161 (1991) See also: *J.V. Vozzolo, Inc. v. Britton*, 377 F.2d 144 (D.C. Cir. 1967); *Sullivan v. B&A Construction*, 120 N.E.2d 694 (NY 1954); *Hayward v. Parsons Hospital*, 32 A.D. 2d 983, (NY 1969); *Johnnie's Produce Co. v. Benedict & Jordan*, 120 So. 2d 12 (Fla. 1960) "Where the claimant makes out a prima facie case alleging the aggravation of a previous injury, the employer may rebut with substantial evidence demonstrating that the claimant's symptoms are a natural outgrowth of, or a complication from, an existing predicate condition." *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 225 (4th Cir. 2009) citing *Admiralty Coatings Corp. v. Emery*, 228 F.3d 513 (4th Cir. 2000) The Claimant bears the burden of establishing of establishing his aggravation by a preponderance of the evidence. If the

evidence is in equipoise then the Claimant must lose. *See Director, OWCP v Greenwich Colliers*, 512 U.S. 267 (1994).

After deliberation on the evidence of record, this Administrative Law Judge finds that the Claimant has failed to establish that the June 11, 2010 right lower extremity injury aggravated, accelerated or combined with the right knee degenerative medical condition existing immediately prior to the June 11, 2010 work-related injury and that the Richards right knee replacement surgery of June 28, 2010, and resulting treatment during recovery, was the result of the natural progression of the right knee medical condition arising out of the January 22, 1982 work-related injury. Accordingly, any award of disability benefits must be based on the average weekly wage at the time of the January22, 1982 work-related injury, which was stipulated by the Parties to be $347.88 per week.

II. <u>The Claimant has established entitlement to permanent partial disability award pursuant to §908(c)(2) of 31% permanent partial impairment rating to the right lower extremity resulting from his January 22, 1982 right knee injury</u>.

CX 3 demonstrates that the Claimant was in post-operative physical therapy for his right knee replacement on November 23, 2010 and that he was still recovering at home. CX 12 indicates that the Claimant looked for alternate work from November 17, 2010 through January 11, 2011. Dr. Swenson released the Claimant to work with work restrictions on January 18, 2011 (CX 13). CX 7, 8 and 9 show that the Claimant completed a functional capacity evaluation on February 7, 2011.

Dr. Swenson is the only physician to establish a permanent partial impairment rating for the Claimant subsequent to the June 28, 2010 right knee replacement. CX 6 and Dr. Swenson's deposition testimony (CX 13) set the Claimant at a 31% right lower extremity permanent partial impairment by applying the 6th edition of the AMA Guidelines as of April 5, 2011. Consequently, April 5, 2011 is the date the Claimant's right knee was at maximum medical improvement.

As discussed above, this Administrative Law Judge had found that the total knee replacement surgery was due to the natural progression of the Claimant's January 22, 1982 work-related injury. Consequently, the resulting 31% right lower extremity permanent partial impairment rating is based on the Claimant's January 22, 1982 right knee injury.

CONCLUSIONS AND FINDINGS OF FACT

After deliberation of all the evidence of the record, including post-hearing briefs of counsel, this Administrative Law Judge finds:

1. This claim is subject to the Act.

2. An Employer/Employee relationship existed at all relevant times.

3. The Claimant sustained an injury to his right knee on January 22, 1982 that arose out of and in the course of his employment.

4. The Claimant gave the Employer timely notice of the January 22, 1982 right knee injury and filed a timely claim for compensation on the January 22, 1982 injury.

5. The Employer filed a timely First Report of Accident with the Department of Labor on the January 22, 1982 injury and a timely Notice of Controversion on the January 22, 1982 injury.

6. The average weekly wage at the time of the January 22, 1982 right knee injury was $347.88, which yields a compensation rate of $231.92.

7. The Claimant has been paid compensation on the January 22, 1982 right knee injury in accordance with the LS-208 dated February 18, 2011.

8. The Claimant sustained an injury to his right knee on June 11, 2010 that arose out of and in the course of his employment.

9. The Claimant gave the Employer timely notice of the June 11, 2010 right knee injury and filed a timely claim for compensation of the June 11, 2010 injury.

10. The Employer filed a timely First Report of Accident with the Department of Labor on the June 11, 2010 injury and a timely Notice of Controversion on the June 11, 2010 injury.

11. The average weekly wage at the time of the June 11, 2010 right knee injury was $815.70, which yields a compensation rate of $543.80.

12. The Employer paid the Claimant temporary total disability compensation for the June 11, 2010 right lower extremity work-related injury for the period June 17, 2010 through June 20, 2010, inclusive, at the disability compensation rate of $543.80 per week.

13. The Claimant was released to return to work with medical-vocational restriction on January 18, 2011.

14. The Claimant's period of temporary total disability from June 28, 2010 to January 17, 2011, inclusive, is the result of natural progression of the January 22, 1982, right knee injury.

15. The Claimant reached maximum medical improvement for the right knee work-related injury on April 5, 2011.

16. The Claimant has established entitlement to 31% permanent partial impairment to the right lower extremity pursuant to §908(c)(2) as a result of his January 22, 1982 right knee work-related injury.

ORDER

It is hereby **ORDERED** that -

1. In accordance with the Act, Respondent is directed to pay the Claimant:

   (a) temporary total disability compensation at a rate of $231.92 per week for the period from June 28, 2010 to January 17, 2011; and,

   (b) permanent partial disability pursuant to §908(c)(2) at the rate of $231.92 per week for a period of 89.28 weeks from April 5, 2011.

2. The Respondent shall receive full credit for any and all disability compensation previously paid to Claimant as a result of the January 22, 1989 work-related right knee injury.

3. Interest at the rate specified in 28 USC § 1961 in effect when this Decision and Order is filed with the District Director shall be paid on all accrued benefits computed from the date on which each payment was originally due to be paid.

4. All monetary computations made pursuant to this Order are subject to verification by the District Director.

5. The Respondent shall provide such reasonable, appropriate, and necessary medical treatment as the nature of the Claimant's work-related right lower extremity injuries require pursuant to § 907 of the Act.

6. Within thirty (30) days of the receipt of this Decision and Order, Claimant's attorney shall file a fully itemized and supported fee petition with the Court, and send a copy of same to opposing counsel who shall then have twenty (20) days to respond with objections thereto.

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ALAN L. BERGSTROM
Administrative Law Judge

ALB/AMJ/jcb
Newport News, Virginia