Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 4, 2013

CLAIM NO. 200373825

JUNCTION CITY FIRE DEPARTMENT PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

BRAD MURPHY
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. Junction City Volunteer Fire Department ("Junction City") seeks review of the amended opinion and order on remand rendered April 18, 2013 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") awarding Brad Murphy ("Murphy") increased permanent partial disability ("PPD") benefits based upon a worsening of his condition.

Junction City also seeks review of the June 17, 2013 opinion and order denying its petition for reconsideration. On remand, the ALJ determined Murphy was entitled to PPD benefits for an increased disability at a weekly rate of $503.37. The sole issue on appeal is whether the ALJ erred in calculating the increased PPD benefits. We find the ALJ's calculation of benefits is correct, and therefore affirm.

A brief review of this claim's procedural history is necessary. Murphy filed a Form 101 on August 16, 2007 alleging he sustained multiple injuries on September 7, 2003, when a wall landed on top of him after he fell from a second floor balcony while fighting a fire as a member of the Junction City Volunteer Fire Department.

Thereafter, the parties settled the claim and a Form 110 settlement agreement was approved by Hon. Donna H. Terry, Administrative Law Judge, on February 5, 2008. The agreement lists the impairment ratings assessed by three physicians: a 20% impairment rating assessed by Dr. James Owen, a 19% impairment assessed by Dr. Richard Sheridan and a 5% impairment rating by Dr. Robert Granacher. Murphy agreed to settle his claim for weekly payments of $216.87 per week, arrived at by the following calculation: $428.57 x 22% (compromised rating) x 1.15 (factor pursuant to KRS

342.730(1)(b)) x 2 (presumably a compromised multiplier pursuant to KRS 342.730(1)(c)2) = $216.87.

On January 30, 2012, Murphy filed a motion to reopen alleging a worsening of condition/increased impairment rating. Subsequently, the claim was reopened and assigned to the ALJ. In support of the reopening, Murphy filed 107-I reports of Dr. Owen dated July 17, 2007 and January 11, 2012.

In an opinion rendered October 8, 2012, the ALJ determined Murphy's current condition warranted a 29% impairment rating, and found the three multiplier pursuant to KRS 342.730(1)(c)1 applicable after performing an analysis pursuant to Fawbush v. Gwinn, 103 S.W.3d 5 (Ky. 2003). The ALJ awarded benefits based upon Murphy's increased impairment of 7% and "enhanced [PPD] benefits pursuant to KRS 342.730(1)(c)1, being the difference between the 22% stated in the 2008 Form 110 and the present 29%." He awarded a weekly benefit of $76.50 beginning on January 30, 2012, calculating as follows: 428.57 x .07 = $30.00 x .85 = $25.50 x 3.00 = $76.50.

In an amended opinion and order on reconsideration rendered November 19, 2012, the ALJ changed the increased permanent partial impairment to 9% based upon the 2007 and 2012 opinions rendered by Dr. Owen. He found Murphy

entitled to recover $98.34 per week beginning on January 30, 2012 and continuing thereafter for 90.1429 weeks based upon the following calculation: $428.57 x .09 = 38.57 x .85 = $32.78 x 3.00 = $98.34.

Following an appeal by Murphy, this Board vacated and remanded the October 8, 2012 opinion and the November 19, 2012 order on reconsideration, finding multiple errors in the ALJ's calculation of PPD benefits.

In the June 17, 2013 amended opinion and order on remand, the ALJ determined at the time of the February 2008 settlement, the 20% permanent impairment rating assessed by Dr. Owen in his July 2007 report was the most appropriate, without application of any multipliers set forth in either KRS 342.730(1)(c) 1 or 2. The ALJ further determined Murphy now qualifies for a 29% impairment rating pursuant to the AMA Guides, and the three multiplier pursuant to KRS 342.730(1)(c)1 pursuant to Fawbush, supra, is applicable. The ALJ awarded as follows:

> A. The plaintiff has sustained a worsening of his condition since the settlement of his claim back on February 5, 2008.
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> B. The plaintiff shall recover additional benefits based upon 29% permanent impairment to the body as a whole and enhanced [PPD] benefits pursuant to KRS 342.730(1)(c)1.

> C. Pursuant to the provisions of KRS 342.730(1)(c)1, plaintiff is entitled to recover [PPD] benefits of $503.37 per week (428.57 x .29 = $124.29 x 1.35 = $167.79 x 3.00 = $503.37), beginning on the date he filed his Motion to Reopen, January 30, 2012, and continuing thereafter for a period of 90.1429 weeks from and after said date.
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> D. Plaintiff is entitled to recover 12% interest on any past due and unpaid compensation workers' compensation benefits.
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> E. Defendant is entitled to a credit for any benefits heretofore paid.
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> . . . . .

Both parties filed petitions for reconsideration. Junction City filed a petition arguing the ALJ failed to perform a proper Fawbush analysis regarding the applicability of multipliers at the time of settlement. It also argued, as it does now on appeal, the ALJ erred in calculating Murphy's increased PPD benefits asserting he is only entitled to benefits based on the difference in weekly benefits between his current impairment and his impairment at the time of the February 2008 settlement. In the June 17, 2013 opinion and order on reconsideration, the ALJ made additional findings regarding the applicability of multipliers at the time of settlement and again determined none applied. The ALJ did not adjust his benefits calculation.

On appeal, Junction City argues Murphy is entitled to increased PPD benefits based on the difference between his current impairment and his impairment at the time of the February 5, 2008 settlement. We disagree and affirm.

In the April 18, 2013 opinion on remand and the June 17, 2013 opinion on reconsideration, the ALJ determined Murphy has sustained a worsening of his condition since the 2008 settlement. He correctly determined Murphy's actual impairment at the time of the 2008 settlement was 20% and his condition now warrants a 29% impairment with the application of the three multiplier pursuant to KRS 342.730(1)(c)1.

When a claimant agrees to settle a claim for a *lump sum* amount, his or her benefit is calculated as the value of his current disability award less the amount he would have been entitled to at the time of the settlement. *See* Dunn v. Slater, 2008 SL 2484933. *See also* D&R Acoustics, Inc. v. Reynolds, WCB 2003-82363 (rendered November 16, 2011); Rock Drilling, Inc. v. Howell, WCB 2006-86699 (rendered February 13, 2012). The actual dollar amount contained in the settlement agreement is irrelevant to this calculation.

However, such is not the case in the case *sub judice.* The February 5, 2008 settlement agreement clearly resulted in Murphy receiving *weekly* benefits for 425 weeks. It stated "Plaintiff agrees to accept payments of $216.87/ week, representing a 22% PPD, beginning as of 8/30/05 and continuing for 425 weeks thereafter."

Therefore, the ALJ was correct in his calculation of benefits. Beginning on January 30, 2012, Murphy is entitled to receive $503.37 per week ($228.57 x 29% x 1.35 x 3) and continuing until the period of entitlement to PPD benefits is exhausted. The ALJ also correctly awarded Junction City a credit "for any benefits heretofore paid." Therefore, the weekly benefit of $503.37 must be reduced by $216.87 for as long as Junction City continued to pay this amount pursuant to the settlement agreement following the January 30, 2012 motion to reopen. Once Junction City ceased or ceases paying $216.87 pursuant to the settlement, Murphy is entitled to the full $503.37 per week until the period of entitlement to PPD benefits is exhausted.

Accordingly, the April 18, 2013 amended opinion and order on remand rendered by Hon. Hon. William J. Rudloff, Administrative Law Judge, and the June 17, 2013 opinion and order on reconsideration are **AFFIRMED.**

ALL CONCUR.

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