

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
TAMPA DISTRICT OFFICE

Austin Soddors,
Employee/Claimant,

OJCC Case No. 22-020495 RAA

vs.

Accident date: 05/25/2018

Detroit Tigers/Sedgwick CMS,
Employer/Carrier/Servicing Agent.

Judge: Robert A. Arthur

FINAL COMPENSATION ORDER

This matter was heard at a Final Hearing before the undersigned at Tampa, Hillsborough County, Florida, on March 6, 2023. Present at the hearing were the claimant, Austin Soddors,¹ and his attorney, Michael J. Winer. Also present was Attorney Robert W. Bleakley on behalf of the employer/carrier.

Issues:

1. Correction on AWW based on his contract of hire of \$1,500 per month plus signing bonus and other bonus pay and fringe benefits.
2. Temporary total disability benefits from 9/3/2020 to 10/21/21 at correct AWW and compensation rate.
3. Temporary partial disability benefits from 6/25/2020 to 10/21/21 at correct AWW and compensation rate.
4. Penalties and Interest.
5. Attorney fees pursuant to F.S. 440.34 (1)(2)(3)(5) and Costs.

Defenses:

1. E/C denies Claimant's request for an adjustment to the AWW as claimed. The contract Claimant references in the petition paid the claimant \$7,500.00 per year, not \$1,500.00 per month.
2. The methodology suggested by Claimant in his petition for benefits results in annual temporary partial disability benefits that far exceed his total annual earnings.
3. Claimant did not earn, and the Tigers did not pay any portion of the Claimant's signing bonus, nor any other bonus in 2018.

¹ The claimant testified via video application.

4. The E/C calculated Claimant's AWW using the methodology suggested by the Judge of Compensation Claims in *Tolar v. Chicago White Sox Ltd*, OJCC No. 94-004241EGB (FL Off. Judge Comp Cl. Mar. 11, 1996) and *Reyes v. Houston Astros Baseball Club*, OJCC No. 11-0006991IF (FL Off. Judge Comp Cl Nov. 1, 2012).
5. E/C paid Claimant 70 weeks of temporary benefits from 6/25/2020 through 11/11/2021, when Claimant returned to employment earning more than 80% of his average weekly wage.
6. E/C denies penalties, interest, costs and attorney fees.

At the hearing the following items were marked as exhibits:

Judge's Exhibits:

1. Petition for Benefits filed August 22, 2022 at DN 1
2. Response to Petition for Benefits filed September 14, 2022 at DN 6
3. Mediation Conference report filed December 22 , 2022 at DN 9
4. Uniform Pretrial Stipulation filed January 6, 2023 at DN 10
5. Employer/Service Agent's Trial Memorandum filed March 2, 2023 at DN 33 (For argument only)
6. Employee's Pretrial Memo of Law filed March 2, 2023 at DN 35 (For argument only)

Joint Exhibits:

1. Uniform Player Contract dated 6/14/2016, Addendums C to Minor League Uniform Player Contract dated 3/20/2018, 2/08/2019, & 3/27/2019 filed January 13, 2023 at DN 11, 13-15
2. Detroit Tigers 2018 Payroll Summary filed January 13, 2023 at DN 17
3. Detroit Tigers 2019 Payroll Summary filed January 13, 2023 at DN 18
4. Sedgwick Indemnity Payout Sheet filed January 13, 2023 at DN 20

Claimant's Exhibits:

1. Notice of Employee/Claimant's Change of Address filed March 1, 2023 at DN 29
2. Motion to Conduct Final Hearing via Zoom filed March 1, 2023 at DN 30
3. Order Denying Motion to Appear by Zoom entered March 2, 2023 at DN 31
4. Deposition of adjuster Michelle Langlois filed March 2, 2023 at DN 34

Employer/Carrier's Exhibits:

1. Deposition of claimant filed March 2, 2023 at DN 32
2. Screen shots of the claimant's LinkedIn Profile dated 0/04/2022 & 1/12/2022 filed

January 13, 2023 at DN 21, 22

3. DWC-4 Notice of Action Change filed January 13, 2023 at DN 19

Live Testimony:

1. Austin Sodder, claimant

Preliminary Matters:

The claimant objects to the admissibility of the screen shots of his LinkedIn page filed by the employer/carrier. “While section 90.901 requires the authentication or identification of a document prior to its admission into evidence, the requirements of this section are satisfied by evidence sufficient to support a finding that the document in question is what its proponent claims.” Coday v. State, 946 So. 2d 988, 1000 (Fla. 2006). The screen shots contain the claimant’s picture and contain details about the claimant’s background to confirm they are screen shots of the claimant’s LinkedIn page.

The screen shots are being offered for the limited purpose to show the claimant’s return to work. As they are consistent with the claimant’s testimony on the issue, there is no prejudice to the claimant with their admission into evidence, despite the failure to list them on the pretrial stipulation. The claimant’s objection is overruled and the screen shots will be accepted into evidence for the limited purpose offered.

Findings of Fact and Conclusions of Law:

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all the testimony and evidence presented. I have resolved all of the conflicts in the testimony and documentary evidence. I have not attempted to painstakingly summarize the substance of the parties’ arguments nor meticulously detail the support given to my conclusions by the documents and testimony accepted into evidence; nor have I tried to state nonessential facts. Because I have not done so, does not mean that I have failed to consider all the evidence. In making my findings of fact and conclusions of law in this claim, I have considered arguments of counsel for the parties and analyzed statutory and decisional law of Florida. Based on the evidence and the applicable law, I make the following determinations:

- I have jurisdiction over the parties and the subject matter of this claim.
- Venue is in Polk County, Florida.
- The stipulations of the parties are accepted and adopted by me as findings of fact.

The claimant injured his left shoulder on May 25, 2018, in the course and scope of employment as a professional baseball pitcher for the employer. The injury was accepted as

compensable and medical treatment has continued to be authorized and provided since the accident. The claimant continued to play baseball for the employer until August 7, 2019, when he was released from his contract. After his release, the employer/carrier paid the claimant temporary disability benefits from June 25, 2020 until November 11, 2021, when the claimant advised the employer/carrier he had obtained alternate employment at a wage rate above his temporary disability rate.

There is no dispute in the facts of the case. The issue presented is the correct determination of the claimant's average weekly wage (AWW). The claimant filed a petition for benefits seeking payment of temporary disability benefits for the period paid, at the correct compensation rate. The parties stipulate the value of fringe benefits provided to the claimant was valued at \$21.52 a week and this amount should be included in the AWW.

Section 440.14(1)(d), Florida Statutes should be used to determine the claimant's AWW. The parties agree the claimant did not work substantially the whole of 13 weeks prior to his injury, thus section 440.14(1)(a) does not apply. They similarly agree that there is no similar employee, so section 440.14(1)(b) does not apply. I accept the claimant's interpretation of section 440.14(1)(c), the seasonal employee method, that this method to determine the AWW is to be used at his request. The claimant does not wish to apply this subsection of the statute.

The JCC has broad discretion in determining a fair and reasonable calculation of the AWW under section 440.14(1)(d). Mauranssi v. Centerline Utilities Contract Co., 685 So. 2d 66, 68 (Fla. 1st DCA 1996). A JCC is purposefully vested with broad discretion to use section 440.14(1)(d), the "catch-all" provision, to ensure a fair and just AWW by utilizing a formula other than the one provided in section 440.14(1)(a). The reason for allowing the JCC's broad discretion is to avoid a mechanical application of formulas in calculating the AWW and instead ensure a computation which actually and fairly reflects the claimant's wages. Wal-Mart Stores v. Campbell, 714 So. 2d 436, 439 (Fla. 1998). For purposes of section 440.14(1)(d), the claimant's AWW should be determined prospectively by using either the contract of employment or the actual earnings on the job where the claimant was working at the time of the injury. Able Body Temp. Services v. Lindley, 867 So. 2d 499 (Fla. 1st DCA 2004).

The claimant's contract of hire is for the monthly salary rate of \$1,500.00 during the 2018 championship playing season, which is from April 1 of each season through August 31 of each season.² The contract is not for \$7,500.00 per year as argued by the employer/carrier; the

² The length of the championship season may be extended by a week or two if the team on which the claimant was

plain language of the contract establishes otherwise.

The fairest and most reasonable way to determine the AWW is to use the contracted wages of \$1,500.00 per month divided by 4.3 weeks per month for a base AWW of \$348. 84.³ The total AWW, including the value of fringe benefits, is \$370.36. This AWW results in a temporary partial disability rate of \$237.03 and a temporary total disability rate of \$246.91.

The employer/carrier argue that calculation of the AWW, using the contract for hire, results in a windfall to the claimant, as it will result in the payment of indemnity benefits more than the amount the claimant would have earned if he had continued in his employment as a baseball player. The claimant was paid temporary total disability from September 3, 2020, through November 11, 2021, at which time he obtained employment. The wages which the claimant was prevented from earning during that period were not his wages as a baseball player, as his contract had been terminated on August 7, 2019, but were wages that could have been earned on the open labor market. During this time, the claimant was in a total disability status, per the payments made.⁴ The claimant had no contact with an agent and no contact with any other persons associated with professional baseball, in a professional capacity, after his release from his contract.

Using the contract of hire method, per section 440.14(1)(d), results in no greater payment to the claimant than the application of section 440.14(1)(a) would, had the claimant been injured in the end of the season versus the beginning. I find the use of the AWW of \$165.75 used by the employer/carrier results in a windfall to them, as it is an AWW that is 45% of the claimant's contracted monthly wage and does not reasonably and fairly compensate the claimant for his wages or his loss of wage-earning capacity during his period of disability.

The claimant should not be restricted by the stringent terms of the minor league baseball contract under which he played, which limited the payments of salary to the championship season, despite its control over the claimant's activities for the entire year. This is especially true for the time after the employer terminated the contract. After the termination, the claimant's wage-earning capacity was that as a member of the general labor market and not limited to the contract terms.

playing at the end of the season qualified for the championship playoffs.

³ The Addendum C signed by the claimant on March 27, 2019, establishes his contracted weekly salary for that season was \$420.00 per week. This is consistent with the findings in this order and is contrary to the AWW used by the employer/carrier.

⁴ When the claimant began working, his starting salary was \$55,000.00 per year or \$4,583.33 per month, substantially higher than his earnings during his playing career.

The Petition for Benefits seeks inclusion of the claimant's signing bonus as part of the AWW. The signing bonus was paid in two parts, in June 2015 and on April 15, 2017. The signing bonus is just that, a bonus for signing that is not earned through the claimant's play or performance. No part of the bonus was earned or paid during the 13 weeks prior to his injury. Under the contract, it is not part of the claimant's wages.

Wherefore, I find as follows:

1. The claimant's average weekly wage is \$370.36.
2. The employer/carrier shall adjust the payments of temporary total and temporary partial benefits previously paid to reflect the correct average weekly wage.
3. The employer/carrier shall pay penalties and interest on late-paid benefits.
4. Claimant's counsel has provided a good and valuable service in obtaining the above benefits and is entitled to attorney fees and taxable costs at the expense of the employer/carrier. The undersigned will retain jurisdiction to determine the amount of fees and costs should the parties be unable to reach an agreement.

DONE AND ORDERED this 22nd day of March, 2023, in Tampa, Hillsborough County, Florida.



Robert A. Arthur
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Tampa District Office
6302 E. Dr. Martin Luther King Jr. Blvd., Suite 460
Tampa, Florida 33619
(813) 664-4000
www.jcc.state.fl.us

COPIES FURNISHED:

Michael J. Winer
Winer Law Group
marta@winerlawgroup.com, dalila@winerlawgroup.com

Robert W. Bleakley, Esquire
Bleakley, Bovol Denman & Grace
rbleakley@bbdglaw.com, eservice@bbdglaw.com