

# **EVIDENCE NECESSARY TO PROVE A PERMANENT DISABILITY**

The evidence necessary to prove a permanent disability is controlled by Arizona statutes, the Rules of Procedure before the Industrial Commission and decisions of the Arizona Supreme Court and Court of Appeals.

The evidence necessary to prove a permanent disability depends upon whether the injury is claimed to have resulted in a "scheduled" or "unscheduled" disability. The rules for determining whether an injured worker's injury has resulted in a scheduled or unscheduled permanent impairment are complex and are subject to change as new cases are decided. However, the basic rules and the evidence necessary to prove each type of permanent disability are discussed below.

## **SCHEDULED INJURIES**

Injuries to the specific body parts set forth in A.R.S. §23-1044B, such as an injury to a finger, hand, foot, leg, hearing or eye will usually result in a scheduled injury. However, the injury might be classified as an unscheduled disability if there was a previous permanent impairment.

There are several factors which must be considered to decide whether this conversion occurs. A brief discussion of the factors is set forth below.

When an injured worker sustains a scheduled injury, payments are made for a pre-determined period of time based upon the percentage of permanent impairment. The amount payable depends upon factors including whether or not the worker can return to his/her job. For injuries since October 21, 1987, if the worker is able to perform the date of injury job, permanent benefits are paid at the rate of 50% of the worker's average monthly wage; if the worker can not perform the date of injury job, benefits are paid at the rate of 75% of the worker's average monthly wage.

The number of months for which compensation is paid depends upon the rating of the percentage of permanent impairment. A doctor must set forth the percentage of permanent impairment by relying upon the American Medical Association Guides to the Evaluation of Permanent Impairment or, if it can be shown that the Guides do not apply, the doctor may rely upon his/her best clinical judgment or another, more appropriate, set of guidelines.

To determine the amount of permanent disability benefits paid for a scheduled injury it is necessary to multiply the percentage of permanent impairment by the number of months set forth in the Arizona laws for the involved limb or other impairment. By way of example, the total loss of function of a dominant arm is compensated for 60 months, therefore, if the worker has a 10% permanent impairment of the dominant arm, compensation would be paid for 6 months ( $10\% \times 60 \text{ months} = 6 \text{ months}$ ). If the worker had an average monthly wage of \$1000, and could perform the date of injury job, benefits would be paid at the rate of 50% of the average monthly wage (\$500), so compensation of \$3000 (6 months x \$500) would be paid. If the worker could no longer perform the date of injury job, compensation would be paid at the rate of 75% of the average monthly wage (\$750), so compensation of \$4500 (6 months x \$750) would be paid.

## FACTORS THAT CAN CONVERT A SCHEDULED INJURY TO AN UNSCHEDULED INJURY

An injury that is to a scheduled part of the body can be converted to unscheduled under the following circumstances:

- 1) The worker had a prior scheduled injury;
- 2) The worker had a prior unscheduled injury that resulted in a loss of earning capacity;
- 3) The worker had a preexisting physical or mental disability, including a learning capacity disability, as a result of a condition which is not job related, which has impaired the worker's ability to earn.

## UNSCHEDULED INJURIES

All injuries that are not scheduled injuries are unscheduled injuries. These include back, neck and head injuries. Also included are injuries that would otherwise be characterized as scheduled except for the special rules explained above which convert them to unscheduled.

Unscheduled injuries are compensated based upon how the injury affects the injured worker's ability to earn, rolled back to the date of injury, as compared to the worker's average monthly wage. Benefits are paid at the rate of:

- 55% of the injured worker's loss of earning capacity, OR
- 66 2/3% of the worker's average monthly wage if the worker is totally disabled.

If your injury has been converted from a scheduled injury to an unscheduled injury by one of the factors discussed above, but is found to result in no loss of earning capacity, it is compensated by the payment of what is referred to as a **vocational bonus** payment. This payment is in an amount equal to the scheduled award payment that would have been payable had the claim not been converted to unscheduled.

In order to prove that an injured worker has suffered a permanent unscheduled disability, the worker must prove by medical evidence that:

- 1) The injury has resulted in a permanent impairment ratable by the American Medical Association Guides to the Evaluation of Permanent Impairments;
- 2) If the impairment is not ratable by the "Guides", that the doctor would rate a permanent impairment based upon the doctor's best clinical judgment; and/or
- 3) The injury affects a portion or portions of the body that would not be treated as a scheduled disability and that the injury is a factor in permanently preventing the injured worker from returning to the worker's date of injury job.

Of course, the fact that medical evidence is presented on any of these issues does not guarantee what decision an Administrative Law Judge ("ALJ") will make. The ALJ will consider all evidence presented and then, if there is conflicting medical evidence, make whatever decision the ALJ believes is correct. Additionally, be aware that the law frequently changes, whether by new laws being enacted by the Legislature or by new interpretations of the law by the Courts. Lastly, it is impossible to provide an exhaustive discussion of the law. The information provided is only meant as an overview of the issues and is not intended to serve as a complete discussion of the topic.