

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E907878

BARBARA BINGLE, EMPLOYEE

CLAIMANT

QUALITY INN, EMPLOYER

RESPONDENT

**UNION STANDARD INSURANCE
COMPANY, CARRIER**

RESPONDENT

OPINION FILED AUGUST 29, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on April 17, 2003, at El Dorado, Union County, Arkansas.

Claimant represented by the HONORABLE CLAUDELL WOODS, Attorney at Law, Magnolia, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to additional workers' compensation benefits.

On February 11, 2003, a prehearing conference was conducted in this claim, from which a prehearing order of the same date was filed. The prehearing order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as the Commission's Exhibit No. 1.

The testimony of Barbara Joyce Bingle, the claimant, Darneshia Hill, and Oscar Bingle, Jr., coupled with medical reports, and other documents comprise the record in this claim.

DISCUSSION

There have been at least two prior hearings conducted in this claim, the records of which

have been incorporated in the present claim. Barbara Bingle, the claimant, with a date of birth of March 30, 1960, is a resident of Magnolia, Arkansas. The claimant was employed by respondent-employer in its housekeeping department and discharged employment duties which included general housekeeping. On May 30, 1999, the claimant sustained an injury to her right knee within the course and scope of her employment. The claimant has undergone three surgical procedures relative to the right knee, with the last having been performed on July 13, 2001, under the care of Dr. D'Orsay D. Bryant, III, an El Dorado orthopedic surgeon.

Following a dispute regarding the claimant's entitlement to workers' compensation benefits subsequent to April 28, 2001, as a result of her May 30, 1999 compensable injury the same was the subject of a hearing before the Arkansas Workers' Compensation Commission on August 8, 2001. Specifically, the disputed issues relative to the August 8, 2001, hearing centered on the claimant's entitlement to medical benefits and indemnity benefits. On October 30, 2001, an Order was entered by the Administrative Law Judge awarding the claimant medical benefits, to include the cost of an emergency room visit to Magnolia Hospital on April 28, 2001, the cost of the claimant's treatment under the care of Dr. Bryant and temporary total disability benefits beginning April 29, 2001, and continuing until the end of the claimant's healing period or until the claimant had returned to work. Respondents appealed the October 30, 2001 Administrative Law Judge ruling to the Full Arkansas Workers' Compensation Commission. On August 6, 2002, the Full Arkansas Workers' Compensation Commission filed an opinion affirming the October 30, 2001 ruling of the Administrative Law Judge.

The testimony of the claimant reflects that following her August 14, 2001 visit to Dr. D'Orsay Bryant, an El Dorado orthopedic physician, she was unable to return to same for treatment

because the bills relative to her July 13, 2001 surgery had not been paid. The claimant noted that she continued to experience difficulties and complaints relative to her right knee, to include swelling and pain, and that the same prevented her from returning to gainful employment. Although the claimant was unable to schedule an appointment with Dr. Bryant for follow-up treatment relative to her right knee injury subsequent to August 14, 2001, she continued to wear a brace which had been furnished to her by Dr. Bryant during the August 14, 2001 visit, and to adhere to a home exercise program which had been recommended by Dr. Bryant and by hospital personnel relative to the right knee. The claimant added that the status of the knee is such that she does not feel that she could return to work.

The testimony of the claimant reflects that on October 1, 2002, she received a check from respondent in the amount of \$2,050.52 which represented temporary total disability benefits. The claimant noted that with the exception of the afore and a subsequent check in the amount of \$800.00 representing penalties, she had not received any other indemnity benefits from respondent. The claimant acknowledged that she has not attempted to seek employment since she last discharged employment duties for respondent on April 28, 2001. The testimony of the claimant reflects that the condition of her knee prevents her from discharging her pre-employment duties either in the employment of respondent or any other subsequent employers.

The testimony of the claimant reflects that she attempted to schedule an appointment with Dr. Bryant on several occasions following the August 14, 2001 visit, however with bills remaining unpaid an appointment could not be scheduled. The claimant testified that she did see her family physician, Dr. James Farmer, a Magnolia general practitioner, at some point following her surgery with Dr. Bryant for complaints relative to the knee, however, she cannot recall the date of the visit.

There is no medical in the record to reflect that the claimant has been seen by Dr. Farmer subsequent to August 14, 2001.

The claimant's testimony reflects that on April 15, 2003, she was seen by Dr. D'Orsey Bryant. The claimant asserts that the duration of the April 15, 2003 visit, was of approximately five minutes. The claimant maintains that Dr. Bryant did not inform her during the April 15, 2003 visit that she had reached maximum medical improvement relative to the right knee injury. The claimant acknowledged that she is not taking any prescription medication relative to her right knee. Finally, the claimant testified that she feels that she can return to work once she is healed and after she receives therapy relative to the right knee.

Darneshia Renee Hill, a workers' compensation claims adjuster, testified that she had been employed by respondent for a period of one year and four months. Ms. Hill's testimony reflects that she inherited the claimant's file from the previous claims adjuster, Patsy Woodson, after the same became ill and left the employment of respondent in November or December 2002. Ms. Hill noted that she inherited a number of files of Ms. Woodson which she continued to work along with her own assigned files. Prior to inheriting the claimant's file in November or December 2002, Ms. Hill was not familiar with any of the specifics of the claimant's claim.

Ms. Hill's testimony reflects that after Ms. Woodson's departure from respondent-carrier, the supervisor, Karen Browning, distributed the files previously assigned to Ms. Woodson to the other claim adjusters. Ms. Hill noted that she received the bulk of Ms. Woodson's files. In describing the supervisory responsibilities of Ms. Browning, Ms. Hill noted that she, Ms. Browning, supervised the unit and was the person to go to as with any other manager. Ms. Hill's testimony reflects with respect to respondent-carrier's policy regarding the payment of medical bills relative

to workers' compensation claims:

We try to pay them, or we do or try to pay them within 30 days of receipt, but once again, I can't say what, you know, what her thoughts [Woodson] were or why they weren't taken care of prior to me coming onto the file. (T. 16)

Ms. Hill further testified that Ms. Karen Browning, the supervisor, has an assignment sheet such that she would know what cases are assigned at a given time. Further, the testimony of Ms. Hill reflects that it is the responsibility of the supervisor, Ms. Browning, to enforce the respondent-carrier's policy with respect to claims being paid within thirty days of receipt of a bill. Ms. Hill added that it was also the responsibility of the claims adjuster to comply with the thirty day policy.

Ms. Hill testified that Ms. Patsy Woodson was working in the office prior to the time that her files were distributed to the other claim adjusters. In this regard Ms. Hill testified:

She was in and out sometimes. She was sick, she was taking chemo, but she was in and out of the office, but, I mean, she would be there. (T. 19)

With respect to the status of Ms. Woodson's files during the time that she was working and out taking treatment, Ms. Hill testified:

They were being worked, I mean, if it was nothing pressing, because with our file load, if nothing came in or Karen or didn't assign it or whatever, but we didn't know she wasn't coming back, so when you are on vacation, if it is not a pressing issue or if it is not something comes up, you know, you have to pay benefits or something like that, then, you know, it is up to the supervisor or however they handle it. (T. 19)

The testimony of Ms. Hill reflects that one of the reasons she and another claims adjuster, Ann Goodbar, was hired by respondent-carrier, was because Ms. Woodson became ill with cancer

and was out quite a bit taking chemotherapy. Ms. Hill's testimony reflects with respect to the events which occurred in December 2002 which resulted in Ms. Woodson's departure from employment of respondent-carrier:

She became forgetful, she was falling asleep, she was having dizzy spells, she even got to the point where she went for a doctor's appointment and couldn't find her way back to work, and then after she left for her break, she didn't come back. (T22)

Ms. Hill inherited the bulk of Ms. Patsy Woodson's workers' compensation files in November,/December 2002. Ms. Hill testified regarding her actions upon being assigned the files:

When the files were assigned to me, it was not just one file, it was a load of files, and after I received the files, I was reviewing the files, and I can't say exactly what date I got to this file because I had a lot of files that I had to review on top of my files that I had to review, but after reviewing the file and maintained contact with Attorney Frye and we had to go through tons of bills that were duplicate bills and bills that were not authorized, but then we showed that we had paid \$13,000.00 in medical bills, so I had to determine what bills weren't paid, what bills were paid, making calls to physicians' offices to determine what balances we owed, and then after speaking with Attorney Frye again, realized those two bills were not paid and that we owed penalties on them. (T. 25)

Ms. Hill's testimony reflects that her review of the claimant's file reflects receipt on September 4, 2001, of a bill from Medical Center of South Arkansas relative to the claimant. Ms. Hill noted that the bill was paid in the amount of \$3,245.76 on February 12, 2003. Likewise, Ms. Hill testified that the claimant's file reflected a bill from Tri-State Orthopedics, in the amount of \$7,484.00, which was received on July 24, 2001. The bill was paid on February 12, 2003, in the amount of \$2,717.02, pursuant to Rule 30 of the Arkansas Workers' Compensation Commission.

Ms. Hill testified that her file does not reflect a April 2001 bill from Magnolia Hospital relative to services rendered to claimant, in the amount of \$202.00 nor does the file contain a \$56.00 bill from Associate Pathologists of July 13, 2001. Likewise, bills of Radiology Associates of El Dorado in the amount of \$32.00 for services rendered to the claimant on July 10, 2001, and those of Dr. Minna P. Ulmer doing business as Anesthesia Service in the amount of \$315.00 for services rendered to the claimant on July 13, 2001, are not contained in the files of respondent-carrier and as such have not been paid.

Ms. Hill's testimony reflects that after her review of the file and when determining the bills of Dr. Bryant and that of Medical Center of South Arkansas had not been paid, the bills were paid along with a penalty. The afore bills were contained in the files of respondent-carrier, which was inherited by Ms. Hill from Ms. Woodson. Ms. Hill acknowledged the bills incurred relative to the claimant's compensable injury under the care of Dr. Ulmer, Magnolia Hospital and Associate Pathologists, and the radiologist, which have not been paid will be paid, pursuant to Rule 30, and that the penalties owed on same.

Ms. Hill's testimony reflects that no indemnity benefits have been paid to the claimant other than the penalty that was paid on the unpaid bills of Medical Center of South Arkansas and Dr. Bryant, since she has had the file. Ms. Hill testified that the last payment of indemnity was made to the claimant in the amount of \$2,052.00 in check number 368959 and that the payment was made on September 20, 2002. Ms. Hill testified that when she inherited the file her review of the payment screen showed that indemnity had been paid. Ms. Hill testified that she was aware that there were rulings by the Full Commission relative to the claim, however, was uncertain why the specific amount of \$2,052.00 had been paid in indemnity benefits and none thereafter.

The parties obtained the deposition of Dr. D'Orsay D. Bryant, III, on April 9, 2003. Dr. Bryant rendered testimony regarding his initial contact with the claimant on July 10, 2001, the surgery which was performed on July 13, 2001, and his follow-up treatment with the claimant on August 14, 2001. Further, Dr. Bryant testified that his office records reflect a February 4, 2002 contact by the claimant with his office. Further, Dr. Bryant's testimony reflects that he had received some payment on the bill incurred relative to his treatment of the claimant from respondent-carrier. Dr. Bryant noted that he was unaware that the claimant's injury was a workers' compensation claim, and, as such, submitted a bill to the claimant for the balance which remained unpaid by the insurance company. Dr. Bryant's testimony reflects that he is aware with respect to workers' compensation claims that balance billing is not permitted. Finally, Dr. Bryant presented testimony regarding procedures utilized by his office in returning patients with conditions similar to that of the claimant to work. Dr. Bryant had not seen the claimant since August 14, 2001, however, testified that he would schedule an appointment for her since the bill had been paid. (RX3)

Finally, the claimant was seen by Dr. Bryant on April 15, 2003 for an evaluation and determination of permanent impairment. Dr. Bryant issued a report of April 15, 2003, relative to his evaluation of the claimant which noted that the claimant had a permanent physical impairment in the amount of 10% to the lower extremity. (RX1, p. 6)

From all the evidence, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 30, 1999 the relationship of employee-employer-carrier existed among the parties.

3. On May 30, 1999 the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$134.00.

4. On May 30, 1999 the claimant sustained an injury to her right knee arising out of and in the course of her employment.

5. The claimant was temporarily totally disabled for the period beginning April 29, 2001 and continuing through April 15, 2003.

6. Pursuant to the Full Commission Award of August 6, 2002, respondent issued check No. 0000406126, on September 23, 2002, in the amount of \$2,052.00, representing temporary total disability benefits for the period April 29, 2001 through August 14, 2001, to the claimant. Pursuant to Ark. Code Ann. §11-9-802(c) a 20% penalty is assigned on each installment comprising the time period August 15, 2001 through April 15, 2003 in addition to the installment, during which claimant remain within her healing period and unable to work.

7. Respondents' failure to timely pay the medical bills incurred in claimant's treatment subsequent to April 28, 2001, which were the subject of the August 8, 2001, hearing before the Arkansas Workers' Compensation Commission was wilful and intentional, and pursuant to Ark. Code Ann. §11-9-802(e) a 36% penalty is assessed on same, and payable to the claimant.

8. The claimant's healing period ended April 15, 2003.

9. The claimant has a permanent partial disability in the amount of 10% to the right lower extremity.

10. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of May 30, 1999.

11. The respondents have controverted the claim in its entirety.

CONCLUSIONS

It is undisputed that the claimant suffered an injury to her right knee on May 30, 1999 arising out of and in the course of her employment with respondent. The claimant last discharged employment duties for respondent on April 28, 2001. On April 28, 2001, the claimant sought and obtained medical treatment relative to her right knee at the emergency room of Magnolia Hospital. Thereafter, the claimant came under the care and treatment of Dr. D'Orsay Bryant, an El Dorado orthopedic physician. The claimant's entitlement to workers' compensation benefits subsequent to April 28, 2001, to include medical and indemnity benefits, was the subject of a August 8, 2001 hearing before the Arkansas Workers' Compensation Commission.

The claimant was initially seen by Dr. D'Orsay Bryant on July 10, 2001, and later underwent surgery under the care of same on July 13, 2001. As of the date of the August 8, 2001 hearing before the Arkansas Workers' Compensation Commission, the claimant had not been released to return to work by Dr. Bryant. Further, respondents disputed liability for claimant's medical treatment under the care of Dr. Bryant as well as that received by the claimant on April 28, 2001, at the emergency room at Magnolia Hospital. The claimant was seen by Dr. Bryant subsequent to the August 8, 2001 hearing before the Arkansas Workers' Compensation Commission, on August 14, 2001. In an opinion filed August 6, 2002, the Full Arkansas Workers' Compensation Commission affirmed the October 30, 2001 ruling of the Administrative Law Judge.

In the October 30, 2001 Administrative Law Judge opinion, the claimant was found to be temporarily totally disabled for the period commencing April 29, 2001, and continuing through the end of her healing period or until she had returned to work, whichever occurred first. In check number 0000406126 dated September 23, 2002, respondents submitted payment to the claimant in

the amount of \$2,052.00 for temporary total disability benefits covering the period April 29, 2001 through August 14, 2001. (Commission Exhibit No. 2, p. 9) Respondents assert the claimant is not entitled to temporary total disability benefits subsequent to August 14, 2001.

TEMPORARY TOTAL DISABILITY

The compensability of the claimant's May 30, 1999 right knee injury is not disputed. The claimant suffered a scheduled injury under the Arkansas Workers' Compensation statute. Respondents' assertion that the claimant's healing period ended August 14, 2001, is misplaced and not supported by the evidence in the record.

On July 13, 2001, the claimant underwent surgery under the care of Dr. D'Orsay Bryant relative to her right knee. The operative report relative to the procedure performed on July 13, 2001, reflects, in pertinent part:

OPERATION:

1. Right knee arthroscopic partial medial and lateral meniscectomy.
2. Right knee arthroscopic chondroplasty and debridement.
3. Right knee arthroscopic excision of inflamed synovium. (RX 1, p. 3)

The claimant was seen in follow-up by Dr. Bryant on July 17, 2001, and again on August 14, 2001.

The August 14, 2001 clinic notes reflects, in pertinent part:

The patient is doing well, no complaints. The knee is nontender. She has minimal STS in the fat pad region.

Given a knee brace.

FOLLOW-UP: As needed (RX1, p. 5)

While the August 14, 2001 clinic note of Dr. Bryant relative to the claimant reflected that the

claimant was to return as needed, the same does not reflect that the claimant had reached maximum medical improvement. Indeed, claimant was furnished a brace by Dr. Bryant during the August 14, 2001 visit. Further, during the April 9, 2003, deposition Dr. Bryant was questioned specifically whether the claimant had reached maximum medical improvement as of August 14, 2001, relative to the knee:

Not necessarily, for the simple reason that she hadn't really returned to work at that point, and she was doing well, and, you know, she just committed herself to rest and recovering at that time. So usually before I give an MMI I like to see them go back to their former activity. You stress the knee and usually see how well they did. (RX3, p. 10)

At another point Dr. Bryant testified that in terms of releasing the claimant to return to work the same would have been with restrictions of no strenuous walking or standing. Dr. Bryant testified that after a period of four to six weeks of restricted duty he would probably have released the claimant to light duty:

Well, that's when I would have probably put her at that light duty job. Then I would have put her on that for maybe four to six weeks, and then returned her to her regular job. But then, again, that would be dependent on what her clinical exam was at that time. (RX3, p. 11)

During the July 17, 2001 procedure, Dr. Bryant performed a partial meniscectomy, leaving the remainder meniscus intact. Dr. Bryant testified regarding further abnormalities found during the claimant's surgery:

Not that I wasn't expecting, but I noticed that the patient's cartilage damage was severe in the patella, and that she did not have any cartilage at all in the kneecap region in certain areas, and that it was down

to the bone in fact.

* * *

A combination of both, you know, degenerative and it could have been traumatic as well, but – in other words, it told me that this was a severely painful knee. (RX3, p. 6-7)

At another juncture Dr. Bryant was questioned regarding the results of the July 17, 2001 surgical procedure:

Q. Did you feel like you had corrected everything that might be related to this '99 incident when you did your surgery?

A. Surgically, yes, but in my instructions to patients, the surgery is maybe 50 percent of the treatment result, but the rehabilitation and postoperative range of motion, strengthening exercises, is the other 50 percent.

* * *

A. That is correct, but I do also hold the option of sending them to physical therapy if it is not satisfactory. (RX3, p. 14)

The claimant was not seen by Dr. Bryant following the August 14, 2001 visit until April 15, 2003. There is evidence in the record to reflect that the claimant did in fact contact Dr. Bryant's office on February 4, 2002, in an effort to schedule an appointment for treatment relative to her knee. At the time of the February 4, 2002 contact, the claimant relayed that her knee was swollen and painful and that she desired medical treatment. The claimant was unable to see Dr. Bryant because there remained an unpaid bill relative to the previous treatment rendered to the claimant relative to her compensable injury. While the Commission entered a ruling on August 6, 2002, finding that

respondents were liable for the cost of claimant's treatment under the care of Dr. Bryant, the bill was not paid by respondent until after February 12, 2003. The claimant was not seen again by Dr. Bryant until April 15, 2003.

The April 15, 2003 report of Dr. Bryant, reflects, relative to his evaluation of the claimant on said date:

PHYSICAL EXAMINATION: The patient is 5'7" in height and weighs 170 lbs. General - She was well developed and well nourished. She was alert and oriented. The right knee reveals range of motion of 0-120°, no joint line tenderness, mild patellofemoral crepitus and soft tissue swelling of the knee, no compression pain at the patellofemoral joint. The Lachman and AP drawer examination is negative.

The patient was evaluated according to the Guides to the Evaluation of Permanent Impairment, published by the American Medical Association. According to the Guides to the Evaluation of Permanent Impairment, the patient would have 10 percent lower extremity impairment which is equivalent to 4 percent whole person impairment as a result of her work related injury. She has reached maximum medical improvement. (RX1, p. 6)

An employee who has suffered a scheduled injury is entitled to receive temporary total or temporary partial disability benefits during the healing period or until the employee returns to work, regardless of whether the employee demonstrates actual incapacitation from earning wages. Wheeler Construction Company v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). In the instant claim, the claimant had sustained a scheduled injury to her right knee. The claimant has not worked since April 28, 2001. The claimant continued to experience residuals of her compensable injury subsequent to her July 17, 2001 surgery under the care of Dr. D'Orsay Bryant. When seen by Dr.

Bryant on August 14, 2001, the claimant was furnished a knee brace, and directed to follow-up. The claimant's efforts at follow-up treatment with Dr. Bryant subsequent to August 14, 2001, was unsuccessful because of the unpaid medical bill received for previous treatment by Dr. Bryant. Nevertheless, the evidence preponderates that the claimant continued to experience residuals relative to her compensable injury.

On February 4, 2002, the claimant called Dr. Bryant's office in an effort to schedule an appointment for treatment and at that time disclosed swelling and severe pain in the knee. While the claimant utilized the new brace furnished by Dr. Bryant following the August 14, 2001 follow-up visit and continued to perform home exercise program per the direction of Dr. Bryant and the Magnolia Hospital, her injury did not stabilize. Dr. Bryant testified that in instances relative to the claimant doing home health measures or exercise measures have failed, he retained the option of prescribing physical therapy for the injury. In the instant claim, the option was not available to the claimant because of the contested or controverted nature of the claim prior to August 6, 2002. Thereafter, the option was not available to the claimant, in terms of medical treatment under the care of Dr. Bryant, because the bill had not been paid by respondent. Respondent did not pay the incurred bill relative to the claimant's treatment under the care of Dr. Bryant until after February 12, 2003. Indeed, Dr. Bryant's testimony reflects that his office received payment of the claimant's bill from respondent on February 20, 2003. (RX3, p. 25)

The claimant has sustained her burden of proof by a preponderance of the evidence that she remained within her healing period as a result of the May 30, 1999 compensable injury until April 15, 2003. Further, the claimant has sustained her burden of proof by a preponderance of the credible evidence that she was within her healing period from April 29, 2001 through April 15, 2003, and had

not returned to work during the afore period. The claimant is entitled to the payment of temporary total disability benefits during the afore period.

PENALTY PURSUANT TO ARKANSAS CODE ANNOTATED §11-9-802(c):

Pursuant to the August 6, 2002 ruling of the Full Workers' Compensation Commission, which affirmed the October 30, 2001 ruling of the Administrative Law Judge, the claimant was found to be temporarily totally disabled for the period beginning April 29, 2001 and continuing through the end of her healing period or until she was released to return to work. Respondent, in a check dated September 23, 2002, tendered indemnity benefits to the claimant totaling \$2,052.00 for the time period April 29, 2001 through August 14, 2001. As noted above, the claimant remained within her healing period subsequent to August 14, 2001 and had not returned to work. Indeed, the claimant reached maximum medical improvement or the end of her healing period on April 15, 2003.

Arkansas Code Annotated §11-9-802(c) provides, in pertinent part:

If any installment, payable under the terms of an award, is not paid within fifteen (15) days after it become due, there shall be added to such unpaid installment an amount equal to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to, the installment unless review of the Commission order making the award is had as provided in §§11-9-711 and 11-9-712.

In the instant claim, there was an appeal or review of the award of temporary total disability benefits. Nonetheless, a final opinion or award was filed on August 6, 2002. There was not an appeal taken from the award. Respondent paid indemnity benefits for the period of April 29, 2001 through August 14, 2001. The claimant was within a healing period subsequent to August 15, 2001, and had not been returned to work. The claimant is entitled to a 20% penalty on each installment

comprising the time period of August 15, 2001 through April 15, 2003 to be paid by respondent in addition to the installments which were not paid within fifteen days of the point in time they became due per the August 6, 2003, final Order.

PENALTIES PURSUANT TO ARKANSAS CODE ANNOTATED §11-9-802(e):

The medical treatment received by the claimant subsequent to April 28, 2001, was controverted by respondent in its entirety. As previously noted, the claimant's entitlement to workers' compensation benefits, to include medical and indemnity benefits, subsequent to April 28, 2001, was the subject of an August 8, 2001 hearing before the Arkansas Workers' Compensation Commission.

The October 30, 2001 opinion of the Administrative Law Judge recited on page 21 the course of the claimant's medical treatment subsequent to April 28, 2001. Specifically, treatment rendered to the claimant at the emergency room of Magnolia Hospital, as well as that under the care of Dr. Bryant on July 10, 2001 was noted. The parties were aware as of the August 8, 2001 hearing that the claimant had undergone surgery under the care of Dr. Bryant on July 13, 2001. The ALJ opinion specifically found that medical treatment rendered to the claimant by Dr. Samuel Peebles at Magnolia Hospital on April 28, 2001 constituted emergency medical treatment and that respondents were liable for the payment of same. Likewise, the respondents were directed to pay for claimant's treatment under the care of Dr. Bryant. As previously noted, in an opinion filed August 6, 2002, the Commission affirmed the ruling of the Administrative Law Judge with respect to medical and indemnity benefits.

The evidence in the record reflects that respondent did not pay the medical bill of Dr. Bryant or that of Medical Center of South Arkansas, where the claimant's July 13, 2001 surgery was performed under the care of Dr. Bryant, until February 12, 2003. On or about January 10, 2003, the claimant filed a Motion for Contempt with the Commission asserting noncompliance by respondent with the October 30, 2001 ruling of the Administrative Law Judge which was affirmed by the Full Commission on August 6, 2002. (Commission Exhibit #2, p. 4-8) There is no evidence in the record to reflect that the respondents took action to identify and pay the medical providers who had rendered medical treatment to the claimant subsequent to April 28, 2001, and to pay the bills incurred pursuant to Commission.

The testimony in the record reflects that the claim adjuster assigned the claim during the time it was in litigation, Ms. Patsy Woodson, became ill and left the employment of respondent in November or December 2002. Following Ms. Woodson's departure from the employment of respondent-carrier, the claimant's file was reassigned, along with other files of Ms. Woodson to a different claim adjuster, Ms. Darneshia Hill. Ms. Hill presents credible testimony regarding her activity relative to the claim once it was assigned to her. The testimony in the record reflects that the bill of Dr. Bryant and that of Medical Center of South Arkansas were both contained in respondent's file. Ms. Hill contacted various medical providers to determine which bills had or had not been paid. Nevertheless, the simple truth of the matter is that the only medical bills paid by respondent subsequent to the August 6, 2002 ruling of the Full Commission for treatment rendered to the claimant on and after April 28, 2001, were the two bills contained in the respondent's file, Medical Center of South Arkansas and Dr. D'Orsay Bryant. Further, those bills were not paid until

on or after February 12, 2003. Dr. Bryant's testimony reflects that his office did not receive payment until February 20, 2003.

While sympathetic to the declining health of the claim adjuster assigned the claim, Ms. Patsy Woodson, the handling of the claim did not rest solely with Ms. Woodson. Specifically, Ms. Hill testified regarding the policy of respondent-carrier wherein bills are paid within thirty days of receipt. Further, the testimony in the record reflects that respondent-carrier had a unit supervisor in place, Ms. Karen Browning, who was the supervisor of Ms. Woodson as well as other claim adjusters. The unit supervisor did not provide testimony or an explanation for the failure of respondent to pay the medical bills incurred by the claimant subsequent to April 28, 2001, as directed by the Full Commission in its August 6, 2002 ruling.

The evidence in the record reflects that as of the date of the hearing respondent had not paid the emergency room bill incurred relative to the claimant's treatment at Magnolia Hospital on April 28, 2001. Likewise, respondent had not paid the anesthesia bill of Dr. Minna P. Ulmer doing business as Anesthesia Service for services rendered to the claimant on July 13, 2001, at Medical Center of South Arkansas, the bill of Radiology Associates of El Dorado for chest, AP, and lateral x-rays of the claimant on July 10, 2001, or the bill for Associated Pathology Lab of July 13, 2001. The bills for Medical Center of South Arkansas and that of Dr. D'Orsay Bryant, who is with Tri-State Orthopedic, were not paid until after February 12, 2003.

Arkansas Code Annotated §11-9-802(e) provides, in pertinent part:

In the event the Commission finds that the failure to pay any benefit is willful and intentional, the penalty shall be up to thirty-six percent (36%) payable to the claimant.

In the instant claim, respondent had not only a responsibility but a directive to pay the above-cited bills pursuant to the August 6, 2002 opinion of the Full Commission. Since the respondent did not appeal the August 6, 2002 ruling of the Full Commission to the Arkansas Court of Appeals, the ruling became final on or about September 6, 2002. The evidence in the record reflects that the respondent issued a check for indemnity benefits to the claimant dated September 23, 2002. There is no evidence in the record to reflect that the respondent paid any of the claimant's medical bills incurred subsequent to April 28, 2001, prior to the filing of a Motion for Contempt by claimant on or about January 10, 2003.

The specific bills for medical treatment received by the claimant subsequent to April 28, 2001, were readily available to respondent as a result of the August 8, 2001 hearing before the Arkansas Workers' Compensation. While the claimant's claim was assigned to a specific claim adjuster, Ms. Patsy Woodson, the evidence in the record reflects that Ms. Woodson had a supervisor in place, Ms. Karen Browning. The supervisor had an assignment sheet relative to claims assigned each claims adjuster. Further, the respondent had in place a policy whereby medical bills were to be paid within thirty days of receipt of same. The sole responsibility for compliance with the Order of the Commission with respect to payment of medical bills did not rest solely with the single claim adjuster assigned the claim, but with respondent-carrier and respondent-employer. The respondent did not pay the medical bills relative to the claimant's compensable injury for treatment received subsequent to April 28, 2001, pursuant to the August 6, 2002 ruling of the Full Workers' Compensation Commission. The respondent does not offer testimony from supervisory personnel to explain the failure to pay the bills pursuant to the ruling or to provide an explanation for its failure to adhere to its thirty day payment policy as recited by the current claim adjuster assigned the claim.

Accordingly, I find that respondents' failure to pay the medical bills incurred by the claimant for treatment relative to her compensable injury subsequent to April 28, 2001 as being willful and intentional, and a penalty in the amount of thirty-six percent is assessed on the above enumerate medical bills payable to the claimant pursuant to Arkansas Code Annotated §11-9-802(e).

CONTEMPT

Claimant asserts that respondents are in contempt of the prior ruling of the Commission, and appropriate sanctions should be imposed. Arkansas Code Annotated §11-9-706(b) provides in pertinent part:

If any person or party in proceedings before the commission disobeys or . . . refuses to comply with any final order of an administrative law judge or the commission. . . then said person or party, at the discretion of the administrative law judge or the commission, may be found to be in contempt of the commission and may be subject to a fine not to exceed ten thousand dollars (\$10, 000.00).

In the instant claim, the Full Commission filed an Opinion and Order on August 6, 2002, affirming the October 30, 2001, ruling of the Administrative Law Judge. The Full Commission ruling became final as of September 6, 2002, after neither appealed same. On or about September 23, 2002, respondents issued a check to the claimant representing temporary total disability benefits for the period April 29, 2001 through August 14, 2001. Respondents submitted no further indemnity benefits in the form of temporary total disability benefits to the claimant.

Respondents were fully aware that claimant suffered a compensable scheduled injury on May 30, 1999, and that the period of temporary total disability awarded in the August 6, 2002, Full Commission Opinion and Order related to same. The August 14, 2001, report of Dr. D'Orsay

Bryant relative to his evaluation of the claimant during said visit did not recite that the claimant had reached the end of her healing period. As of August 14, 2001, claimant had not returned to work.

The August 6, 2002, Opinion and Order of the Full Commission affirmed the October 30, 2001 Opinion and Award of the Administrative Law Judge which ordered respondents to pay to the claimant temporary total disability benefits for period beginning April 29, 2001, and continuing through the end of her healing period or until she returned to work. There is no evidence in the record to reflect that claimant had reached the end of her healing period as of August 14, 2001. Nevertheless respondents paid no further temporary total disability benefits to the claimant after the issuance of September 23, 2002, check for ttd benefits covering the period April 29, 2001 through August 14, 2001.

The record does not reflect a medical report of the claimant being seen by a physician relative to her compensable injury following her August 14, 2001, visit to Dr. Bryant until she was again seen by him on April 15, 2003. The current claim adjuster to whom the claimant's file was assigned took on the responsibility in December 2002. Further, her review of the payment screen, once the file was re-assigned to her, reflected that indemnity benefits had been paid. While the claim adjuster who was assigned the file at the time of litigation and various rulings as a result of same, to include the August 6, 2002, Full Commission Opinion and Order, left the employment of respondent-carrier in December 2002, due to poor health, the evidence discloses that she, along with other claim adjuster of respondent-carrier, was supervised by a unit supervisor. Further the supervisor had an assignment sheet reflecting the claims assigned to each adjuster. Respondents also had access to counsel as well as an avenue to seek clarification of any provision of August 6, 2002, Opinion and

Order of the Full Commission.

Responsibility for complying with the August 6, 2002, Opinion and Order of the Full Commission did not rest with a single adjuster, but with respondents (employer and carrier). In the instant claim supervisory personnel of respondents have not offered an explanation of their failure to comply with the August 6, 2001, Opinion and Order of the Full Commission with respect to the payment of temporary total disability benefits or medical bills, which they were specifically directed to pay.

There is no evidence in the record that respondents undertook an action to identify and pay the medical providers who rendered medical treatment to the claimant subsequent to April 28, 2001, and to pay the bills incurred pursuant to the August 6, 2002, Opinion and Order of the Full Commission, prior to the filing of the January 10, 2003, contempt motion of the claimant. While the identity of medical providers were readily to respondents as a result of the August 8, 2001, hearing record, only two bills had been paid as of the April 17, 2003, hearing in this claim. Further those bills were not paid until after February 12, 2003. The evidence in the record reflects that respondent-carrier had in place a policy that mandated the payment of medical bills within thirty (30) days of receipt of same.

Respondents may not abdicate their responsibility to comply with the August 6, 2002, Opinion and Order of the Commission, nor should compliance with same rest solely a single claim adjuster. Respondents do not deny receiving the August 6, 2002, Opinion and Order of the Full Commission. While respondents do not offer an explanation for the non-payment of medical bills pursuant to the August 6, 2002, Opinion and Order of the Full Commission, their non-compliance effectively denied claimant access to sanction medical for her compensable injury, as well as

indemnity benefits. In short, the respondents failure to comply with the August 6, 2002, Opinion and Order of the Full Commission has made the same of “non-effect”.

Pursuant to Ark. Code. Ann. §11-9-706 (b), I find that respondents are in contempt of the August 6, 2002, Opinion and Order of the Full Commission. Accordingly, respondents are direct to pay a fine in the amount of five thousand dollars (\$5,000.00).

AWARD

Respondents are hereby ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$134.00, for the period covering April 29, 2001, through April 15, 2003, as a result of the claimant’s compensable injury of May 30, 1999, in addition to previous periods of temporary total disability. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sums heretofore paid toward the aforementioned obligation.

Respondents are further ordered and directed to pay a 20% penalty on each installment of temporary total disability comprising the period August 15, 2001, through April 15, 2003, which shall be added to and paid in addition to the installment to the claimant, pursuant to Ark. Code Ann. §11-9-802 (c).

Respondents are further ordered and directed to pay all reasonably related medical, hospital, nursing and other apparatus expenses, relative to the claimant’s compensable injury of May 30, 1999.

Respondents are further ordered and directed to pay a 36% penalty on the medical bills relative to the claimant’s compensable injury for treatment received on and after April 28, 2001, to include the emergency room of Magnolia hospital, treatment under the care of Dr. D’Orsay Bryant and pursuant to the direction of same, to include the Medical Center of South Arkansas. The penalty

is payable to the claimant pursuant to Ark. Code Ann. §11-9-802 (e).

Respondents are further ordered and directed to pay to the claimant permanent partial disability benefits to correspond with the claimant's 10% permanent physical impairment to the right lower extremity relative to the May 30, 1999, compensable injury.

Respondents are in contempt of the August 6, 2002, Opinion and Order of the Full Commission, and pursuant to Ark. Code Ann. §11-9-706 (b), are herein ordered and directed to pay a fine in the amount of five thousand dollars (\$5,000.00), into the general educational fund of the Commission.

Maximum attorney fees are herein awarded to the claimant's attorney, the Honorable Claudell Woods, on the controverted portions of this award, pursuant to Ark. Code Ann. §11-9-715, and in accordance with *Holiday Inn-West v. Coleman*, 31 Ark. App. 224, 792 S.W. 2d 345 (1999).

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

This award shall bear interest at the legal rate pursuant to Arkansas Code Annotated §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

ANDREW L. BLOOD
Administrative Law Judge