

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F110943**

**JOHN E. PARIS,  
EMPLOYEE**

**CLAIMANT**

**CON-WAY SOUTHERN EXPRESS,  
EMPLOYER**

**RESPONDENT**

**AMERICAN PROTECTION INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED AUGUST 29, 2003**

Hearing conducted June 3, 2003, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas, representing the claimant,

Mr. Phillip Cuffman, Attorney at Law, Little Rock, Arkansas, representing the respondents, and

Mr. Harry A. Light and Ms. Betty J. Demory representing Baptist Health & Service Finance Corporation.

**STATEMENT OF THE CASE**

This is a dispute over compensability of pulmonary emboli and cardiac problems and accompanying treatment, which developed following the claimant's compensable ankle injury.

The claimant contended that, as a result of his compensable injury, he incurred reasonably necessary medical expenses related to pulmonary emboli and cardiac problems, and that respondents should pay those expenses and, further, that claimant's counsel should be awarded reasonable attorney's fees. He requested that when paying such medical expenses, the respondents withhold the amount of the attorney's fee pursuant to a contract with Pathology Laboratories of Arkansas, P.A., and, further, he requested that they withhold reasonable attorney's fees on amounts collected

in favor of several other medical providers, including Baptist Memorial Medical Center - North Little Rock, operated by Baptist Health. Other possible issues were reserved.

The respondents contended that the claimant's emboli and cardiac problems, as well as related treatment, were not causally related to his compensable injury. Baptist Health & Service Finance Corporation took the position that the claimant's counsel is not entitled to an attorney's fee under Ark. Code Ann. §11-9-715.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; on September 13, 2001, the claimant suffered a compensable injury to his ankle; and the respondents have accepted the ankle injury as compensable and have paid various benefits.

3. The preponderance of the evidence shows that the medical care provided to the claimant for his pulmonary and cardiac problems was controverted by the respondents but was reasonably necessary in connection with his compensable injury and is the responsibility of the respondents.

4. Claimant's counsel is entitled to an attorney's fee pursuant to his contract with Pathology Laboratories of Arkansas, P.A., in the amount of one-third the total amount recovered and

this fee should be withheld by respondents from the amounts paid to Pathology Laboratories of Arkansas, P.A., and remitted directly to the claimant's attorney by separate check.

5. Claimant's counsel is not entitled to an attorney's fee for additional amounts he has recovered on behalf of other medical providers, since there are no additional contracts with those providers for collection of disputed medical bills, as required by the Act.

### **DISCUSSION**

On September 13, 2001, during his employment with Con-Way Southern Express, the claimant broke his right ankle while attempting to load freight in the back of a trailer, when he fell out onto the ground as the driver unexpectedly pulled the trailer away from the dock.

He received his initial medical care at Baptist Memorial Medical Center - North Little Rock where his diagnosis was right distal tibia and fibular fractures. His surgeon would later described them as highly comminuted metaphyseal fractures requiring plating of the fibula and posterior approach with plate on the tibia with bone graft. Jt. Exh.1 at 21. Surgical repair of the fractures was scheduled but then cancelled when, early on the morning of September 14, the claimant began to feel pressure on his chest and a CT scan showed a pulmonary embolus. Pulmonologist Dr. Jimmy Gilbert was then called to examine him. This necessary surgery was postponed, pending treatment of the claimant's pulmonary embolus.

Dr. Gilbert's deposition testimony shows that he reviewed the CT scan and confirmed that the claimant had a pulmonary embolus. Dr. Gilbert testified that an embolus is a blood clot that has broken off and traveled to another location, usually stopping in the lung. He placed the claimant on Heparin, a blood thinner which, he explained, does not dissolve the clot but prevents more clots from forming. He stated that the difference between Coumadin and Heparin is that Coumadin, a

molecular anticoagulant, is given orally while Heparin is given intravenously and works faster. When asked about the risk of a clot in one's lungs, Dr. Gilbert stated that people die from blood clots. Thus, treating the embolus problem was more than merely a prerequisite for the claimant's necessary surgical repair of his ankle.

In his deposition, Dr. Gilbert steadfastly attributed to the claimant's injury his need for medical care for his pulmonary and subsequent cardiac problems. For example, as to the pulmonary problems, when asked if in his experience it is uncommon for an embolus to follow the occurrence of a broken bone such as the claimant's, Dr. Gilbert testified that he thought the other would be true; it would be more common. He also testified that if you have a fracture, because it interrupts the flow and everything like that, it's not unusual to get blood clots. When asked if it was pretty common, he testified that he would say yes. Dep. at 10. His testimony continued to support that position without wavering and, on the last page of the deposition, he testified that it's very reasonable to think that the claimant had a fracture, the clot developed and went up, and he had a pulmonary embolus. When asked if he had seen that happen many times, he responded, "Over and over and over again." Dep. at 34.

He also testified that the claimant's cardiac problems were related to the Coumadin he was required to take as a result of the pulmonary embolus. He stated that the cardiac problems started with a spontaneous bleed that was not caused by the claimant's compensable injury, but if the claimant had not been taking the blood thinner, he did not think he would have presented at the hospital. Dep. at 21. He stated that the claimant developed a pericardial tamponade which could lead to death and that there was no doubt that he had to have that drained. Dep. at 19. He related this condition to the fact that the claimant "obviously bled a lot more because he was on the blood

thinner.” Dep. at 20. Thus, the claimant’s cardiac problems required medical care because of the medication necessary to treat his compensable embolus problems.

The provisions of Ark. Code Ann. §11-9-508 have long required the employer to promptly provide the injured employee such medical services as may be reasonably necessary “for” a compensable injury. This language was broadened by Section 19 of Act 796 of 1993 to require payment of such medical services as may be reasonably necessary “in connection with” a compensable injury.

Here, there is no allegation that the medical care has been inappropriate for the claimant’s conditions, but merely that the conditions are not sufficiently related to the claimant’s broken ankle. However, because the preponderance of the evidence, especially the testimony of Dr. Gilbert, relates the claimant’s compensable injury and his need for pulmonary and cardiac medical care, such care is within the statutorily imposed responsibility of the employer to provide care as may be reasonably necessary in connection with a compensable injury.

As noted above, claimant’s counsel has requested attorney’s fees pursuant to his contract and to the extent that his efforts will result in payment of other medical expenses, a direct benefit to the medical providers, as well as an indirect benefit for the claimant who is obviously interested in receiving appropriate medical care. Attorney’s fees for medical expenses is governed by Ark. Code Ann. §11-9-715 (a)(4) which states:

“(4) Medical providers may voluntarily contract with the attorney for the claimant to recover disputed bills, and the attorney may charge a reasonable fee to the medical provider as a cost of collection.”

Here, claimant’s counsel has requested an attorney’s fee from several medical providers, one of which, Pathology Laboratories of Arkansas, P.A., has entered into a contract with him and one

of which, Baptist Health, has objected to payment of an attorney's fee. The other medical providers were given notice of the hearing and have not responded.

Claimant's Exhibit 3 is sufficient evidence of a contract with claimant's counsel for an attorney's fee of one-third the total amount recovered on behalf of Pathology Laboratories of Arkansas, P.A. It shows that a written offer was made by claimant's counsel's letter of April 3, 2002, and accepted April 8, 2002, by Pathology Laboratories of Arkansas, P.A., through its administrator, Mr. Keith E. Miller. Pursuant to this contract, claimant's counsel is entitled to a one-third attorney's fee and, as requested by claimant's counsel and consistent with the Commission's general practice and Rule 10 of the Arkansas Workers' Compensation Commission, the respondents should withhold the attorney's fee from the payment to Pathology Laboratories of Arkansas, P.A., and remit the fee by separate check directly to the claimant's attorney.

Although claimant's counsel earnestly argues that he should also be compensated for recovering payments due the remaining medical providers, the plain language of Ark. Code Ann. §11-9-715 cannot be read to permit the imposition of such a fee absent a contract. He's contends that "...and the attorney may charge a reasonable fee to the medical provider as a cost of collection," permits the imposition of an attorney's fee where there is no contract between the parties. However, when the entire provision is read, it is fair to understand the clause merely to authorize the imposition of a "fee" in addition to the contractual attorney's fee where costs of collection have been incurred, costs such as filing fees. Similarly, since it only addresses attorney's fees to recover "disputed bills," obviously for services previously rendered, this section does not authorize any attorney's fee where the claimant is requesting future medical expenses, such as surgery recommended by the treating physician but declined by the respondents. Thus, although insuring

the ability of necessitous claimants to obtain adequate and competent legal representation has been recognized as a legitimate social purpose, Aluminum Co. of American v. Henning, 260 Ark. App. 706 (1976), Cleek v. Great Southern Metals, 335 Ark. App. 345 (1998), here the Act speaks clearly and, elsewhere, it requires strict construction of its language. For the foregoing reasons, the claimant's request for additional attorney's fees must be respectfully declined.

**AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay medical benefits on behalf of the claimant.

This award has been controverted by the respondents, and claimant's counsel is entitled to an attorney's fee of one-third the total amount recovered on behalf of Pathology Laboratories of Arkansas, P.A. Respondents are further ordered and directed to withhold the attorney's fee from the amounts paid to Pathology Laboratories of Arkansas, P.A., and to remit the attorney's fee by separate check directly to the claimant's attorney.

This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge