BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F309388

JAMES BALDWIN, EMPLOYEE	**CLAIMANT**
ECONOMY HEAT & AIR OF ARKANSAS, INC., EMPLOYER	**RESPONDENT**
FIRSTCOMP INSURANCE COMPANY, CARRIER	**RESPONDENT**

OPINION FILED NOVEMBER 3, 2004

The hearing in this case was conducted on August 11, 2004, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Little Rock, Pulaski County, Arkansas.

Claimant was represented by Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondent was represented by William C. Frye, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held on this claim on June 1, 2004; a Prehearing Order was filed on June 2, 2004. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to three stipulations, all of which are set forth in the Prehearing Order. These stipulations were confirmed by the parties at the hearing. The stipulations that follow are hereby accepted:

1. The relationship of employee-employer-carrier existed on June 20, 2003, the date upon which Claimant sustained a compensable injury.

2. Claimant's compensation rate for temporary total disability is $404.00 per week; his compensation rate for permanent partial disability is $303.00 per week.

3. Respondents have accepted a 7% impairment rating.

At the August 11, 2004 hearing, the parties discussed the issues set forth in the Prehearing Order. After adding one issue and amending another, the parties agreed that the issues to be litigated and resolved are limited to the following:

1. Whether there is a causal connection between Claimant's June 20, 2003 compensable injury and his January 2004 episode; or, whether there was a nonwork-related intervening cause or an aggravation of Claimant's compensable injury.

2. Whether Claimant is entitled to additional medical treatment.

3. Whether Claimant is entitled to temporary total disability benefits from January 29, 2004 through June 21, 2004.

4. Whether an attorney's fee should be awarded to Claimant.

Claimant contends that his late-January 2004 episode is a natural consequence of his earlier compensable injury, so that he is entitled to additional medical benefits and additional temporary total disability benefits. As to temporary total disability benefits, Claimant seeks such benefits from January 29, 2004 through June 21, 2004, reserving the right to seek additional benefits. Finally, Claimant seeks an attorney's fee.

Respondent contends that Claimant injured himself in late-January 2004 while working at home on an automobile; Respondent contends that this is either an independent intervening cause, or an aggravation of Claimant's earlier compensable injury. Either way, Respondent contests Claimant's right to additional medical benefits and temporary total disability benefits.

DISCUSSION

A. Existence of a Causal Connection

Claimant sustained a compensable injury on June 20, 2003. He explained: "We were hanging up some square ductwork for a Starbucks, and it slid, and I just twisted, and it strained my back." Claimant initially kept working, but ultimately sought medical treatment. On August 23, 2003, Claimant underwent an MRI of his lumbar spine. The report concerning this study recorded the following impression, among others: "Large extrusion of the L4-5 disc. The extruded disc significantly compresses the thecal sac at the L4-5 disc space level." At this time Claimant was experiencing pain in his low back and right leg.

Dr. John Wilson performed a laminotomy and partial diskectomy upon Claimant on August 28, 2003. Because he was operating upon a central disc, Dr. Wilson removed disc material from both sides; a greater amount of material was removed from the right side. Claimant recovered well from this operation. On October 13, 2003, Dr. Wilson assigned Claimant a permanent impairment rating of 7% to the body, and released Claimant "from our care, to return to his normal activities." Claimant testified that he was released without restrictions, and that he returned to his normal activities at the new job he had taken immediately prior to his surgery. These activities included crawling under houses or climbing up into attics to supervise and monitor the work of other employees.

Claimant returned to Dr. Wilson on January 29, 2004. On the Monday before this visit, Claimant's back felt "a little sore, maybe." When he awoke the next day, his back was "real sore" and he "was feeling pains down my leg." Dr. Wilson's clinic note dated January

29, 2004 records the following:

> Mr. Baldwin underwent laminotomy last fall and has done beautifully but woke up the other morning stiff, got out of bed, and had severe pain in his leg.
> .....
> My concern is that this gentleman may have extruded an end plate.

Dr. Wilson took Claimant off work and began to treat him conservatively.

At the hearing, Claimant testified that he was performing the same job immediately prior to his January incident that he had been performing immediately before and after his August 2003 surgery. He recalled that his activities in the days immediately before his January 29, 2004 appointment were normal; he did not recall any particularly strenuous or extreme activities. He further testified that nothing drastic happened to him between his October 13, 2003 release and January 29, 2004 appointment.

Upon cross-examination, Claimant recalled that he experienced stiffness from healing between October and January. Otherwise, after his October, 2003 release without restrictions, Claimant was able to perform his job without pain. Claimant was able to go boating, do yard work, perform household chores, and work on cars. During a routine Veteran's Administration checkup on January 15, 2004, Claimant reported that he was not experiencing any pain.

Claimant was specifically asked about the weekend prior to his visit to Dr. Wilson on January 29, 2004. At an earlier deposition, Claimant was asked whether he worked on a car that prior weekend; he read his response to the deposition question at the hearing:

> I think I might have twisted wrong. I think what happened was I might have been laying down working on something or under the car or something, and might have twisted wrong. And it just might have twisted something. That's the only thing I can figure, because I knew I wasn't lifting anything.

Claimant further confirmed that he was a little stiff that Sunday evening; that it was difficult for him to bend over and put on his socks the next morning; that it was difficult to work that Monday; that he developed back and left leg pain; and he then decided to call Dr. Wilson's office. Claimant responded to a question concerning his reoccurring symptoms:

> A. No, I was feeling fine up to that point. I don't know if it happened Sunday or Saturday, but I was feeling fine Friday when I went home for the weekend.
>
> Q. And you had felt that way since Dr. Wilson released you back in October?
>
> A. Yeah, I was feeling all right.
>
> Q. And then after that, you couldn't crawl or do your job, you couldn't crawl underneath a house, you couldn't climb the ladders, you couldn't get up in the attics, could you?
>
> A. No, I couldn't.

On re-direct examination, Claimant further explained his activities prior to January 29, 2004.

> Q. When you were working under the car, that was a different circumstance from the twisting incident that brought about this injury in the first place, was it not?
>
> A. Well, yeah, I mean, I was just laying flat on my back looking up at some wires.
>
> Q. You didn't have any weight on you at that time, did you?
>
> A. Oh, no, I wasn't lifting anything. I was just looking at some starter wires and stuff.

Claimant contrasted this with his June 20, 2003 compensable injury, that occurred when he was working over his head putting up a piece of square duct; when it slipped, Claimant twisted with it.

Dr. Wilson continued to treat Claimant after the January 29, 2004 visit. An MR scan

of Claimant's lumbar spine, performed February 6, 2004, resulted in the following impression:

> As compared to prior study there is interval left-sided laminotomy. On the current study there is evidence for a small recurrent or residual free disk fragment which extends above the disk space level in the left paracentral position. This does appear to cause inpingement on the left L5 root.

On February 11, 2004, upon examination of Claimant, Dr. Wilson wrote:

> MRI reveals a small extruded fragment at L4-5 on the left. This is much less involved than it was preoperatively. Mr. Baldwin has had no injury since his initial injury of June 20, 2004 [sic]. His current symptoms are the same that he had preoperatively and reflect his original injury.

Dr. Wilson scheduled epidural steroid injections for Claimant; Claimant underwent a series of these injections at three week intervals, and undertook physical therapy. On April 21, 2004, Dr. Wilson released Claimant "to return to his activities. He cannot climb and cannot crawl under buildings, and has a 50 pound weight restriction." Claimant returned to Dr. Wilson on June 21, 2004, reporting persistent pain in his back and legs. Dr. Wilson again related Claimant's current problems to his job related injury of June 20, 2003; he refilled Claimant's medications and directed Claimant to return in six weeks.

Claimant presented to Dr. Scott Schlesinger for an independent medical evaluation on February 17, 2004. Claimant reported the following history to Dr. Schlesinger: "Apparently three weeks ago he began experiencing back pain and pain in his left posterior thigh. He apparently just woke up hurting. He did not have a new injury at his job, but just woke up this way." Dr. Schlesinger examined Claimant, but declined completing the IME because Claimant did not have any films from his prior studies. After Dr. Schlesinger reviewed these films, he completed his IME by way of a letter dated March 23, 2004. Dr. Schlesinger noted that Claimant may need to undergo another diskectomy at L4-5 if the

small recurrent disc herniation at that level continued to cause Claimant sciatic pain in his left leg. Concerning causation, Dr. Schlesinger opined:

> [I]t would certainly seem to be that this was a spontaneous recurrence of his L4-5 disc herniation. ... The recurrence rate for disc herniation after a person has had discectomy surgery is approximately 10-12%. This is higher than the risk of a spontaneous disc herniation in the normal population. There does not appear to be a new injury in the new job based upon the patient's history. If this history is accurate, I would state that this is a recurrence of his previous herniation related to his new job.

Dr. Schlesinger was deposed on July 12, 2004. He noted that "it's certainly possible that at some point along the way, [Claimant] slipped out some more disk material and didn't have any symptoms until he woke up that day." Dr. Schlesinger confirmed that Claimant did not provide a history of perhaps twisting while working on his car the weekend prior to his January 29, 2004 doctor's visit.

> Q. If he had given you that history and said that's when his problems started, would you have related it to that incident working on the car?
>
> A. Certainly a high likelihood.
>
> Q. Indeed, would that be a reasonable explanation for this disk material coming out?
>
> A. It certainly could.

Upon cross-examination, Dr. Schlesinger agreed that Claimant is at a higher risk for this type of small disc material herniation due to his initial surgery.

> Q. But even in the course of those normal daily activities, because of having had this surgery, the person is more susceptible to having the kind of problem [Claimant] now has that you saw on the most recent MRI scan; true?
>
> A. Yes.
>
> ...
>
> Q. And that material is susceptible by virtue of even the simplest activity of

coming right back out in the same area from which it was removed?

A. That's correct.

Dr. Wilson was also deposed on July 12, 2004. He noted "that about one in five people that have a herniated disk that is operated on will have reoccurrence," meaning another disc herniation at the same level. Dr. Wilson recalled that Claimant did well after his August 28, 2003 surgery, such that he was released on October 13, 2003 without restrictions; Dr. Wilson believed that Claimant was well enough to return to his normal activities. Dr. Wilson testified that he did not have Claimant's history of perhaps twisting wrong while working on his car the weekend prior to January 29, 2004. Dr. Wilson explained why Claimant's left leg hurt after his January 2004 episode, as opposed to the pain previously experienced in his right leg.

Q. So now with this January incident it's the left leg, correct?

A. Yes. This was, of course, a central disk. It was in the middle.

Q. So this time with whatever occurred, if there's a twisting incident, it extruded to the left side?

A. Yes.

Q. And that would be different from the extrusion to the right side with the twisting incident he had at work?

A. Not necessarily. He had a large disk, and it was central, and he had an operation on both sides.

Dr. Wilson noted that Claimant's current herniation "occurred at a level of prior surgery within a few months of the surgery." Dr. Wilson agreed that Claimant's work on his car was the kind of innocuous activity that could cause a recurrent disc herniation in the same disc level as his prior surgery.

Dr. Wilson responded to a question about his previous use of the term "aggravation" during his deposition, as opposed to the term "recurrence."

> A. And I know that they have different legal connotations, but it's my thought on this that had this gentleman not had the weakness in his back as a result of his ruptured disk and his subsequent surgery, that he would not have hurt his back by twisting or coughing or sneezing or what have you. Chances would have been remote of this happening.
>
> Q. This gentleman, on the other hand, is going to be one of those one out of five persons that has a recurrent disk?
>
> A. Yes, sir.

Dr. Wilson agreed that, within an eighteen to twenty-four month recovery time, "[Claimant is] more vulnerable to problems, yes." Dr. Wilson also distinguished the July 20, 2003 twisting incident from the January 2004 twisting incident; during the former, Claimant was twisting while he was lifting, which apparently did not occur the weekend prior to January 29, 2004.

Claimant contends that his January 2004 episode and subsequent disability are a natural consequence of his earlier compensable injury. Respondent argues that Claimant's twisting while working on his car the weekend prior to January 29, 2004 constitutes an independent intervening cause, or perhaps an aggravation.

A recurrence is not a new injury but merely another period of incapacitation resulting from a previous injury; an aggravation is a new injury resulting from an independent incident. Crudup v. Regal Ware, Inc., 341 Ark. 804, 809-10, 20 S.W.3d 900, __ (2000).

> The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. If there is a causal connection between the primary and the

> subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances.

Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 167-68, 969 S.W.2d 677, ___ (1998) (citations omitted). An employer is responsible for any natural consequence that flows from a compensable injury, and the basic test is whether there is a causal connection between the injury and the consequences of such. See K II Constr. Co. v. Crabtree, 78 Ark. App. 222, 225, 79 S.W.3d 414, ___ (2002).

A claimant must sustain his burden of proving the required causal connection by a preponderance of the evidence. See Ark. Code Ann. § 11-9-704(c)(2). "Preponderance of the evidence" means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

I find that Claimant has sustained his burden of proving by a preponderance of the evidence that there is a causal connection between his June 20, 2003 compensable injury and the episode he began to experience shortly before his January 29, 2004 visit with Dr. Wilson. The February 6, 2004 MR scan of Claimant's lumbar spine found a residual or recurrent free disc fragment at the L4-5 level; this finding is at the same level as Claimant's August 28, 2003 surgery. Dr. Schlesinger agreed that, because of his initial surgery, Claimant was more susceptible to this type of herniation being caused by normal daily activities. Even after being given the history of Claimant working on his car, Dr. Wilson did not agree that this activity would constitute an incident or injury because "[t]his occurred at a level of prior surgery within a few months of the surgery." Dr. Wilson further opined that "had [Claimant] not had the weakness in his back as a result of his ruptured disk and

his subsequent surgery, that he would not have hurt his back by twisting or coughing or sneezing or what have you. Chances would have been remote of this happening." Simply put, there is a causal connection between Claimant's June 20, 2003 compensable injury and his January 2004 disability. Claimant experienced a herniation at the same level as his prior surgery; he experienced the same or similar symptoms; and this second herniation occurred within a time frame of heightened susceptibility after Claimant's first surgery.

I further find that Claimant's activity of working on his car the weekend prior to his January 29, 2004 appointment does not constitute an independent intervening cause. A nonwork-related independent intervening cause does not require negligence or recklessness, but if the Claimant is engaged in unreasonable conduct, the result may be an independent intervening cause. K II Constr. Co., 78 Ark. App. at 225, 79 S.W.3d at ___; see Georgia-Pacific Corp., 62 Ark. App. at 167-68, 969 S.W.2d at ___. Dr. Wilson released Claimant in October 2003 to return to work without restrictions; he was expected to resume activities such as crawling under houses and climbing into attics. In contrast, Claimant testified that he "was just laying flat on my back looking up at some wires" while working on his car. Under the circumstances, this does not constitute "unreasonable conduct," and therefore is not the basis for finding an independent intervening cause.

Since Claimant's January 2004 episode was not precipitated by an independent intervening cause, that episode was not an aggravation. See Georgia-Pacific Corp., 62 Ark. App. at 167-68, 969 S.W.2d at ____. Again, Dr. Wilson testified that without the compensable injury and resulting surgery, Claimant's chance of hurting himself by twisting was "remote." The record reflects, and I specifically find, that Claimant's January 2004 episode does not result from an independent incident and therefore is not an aggravation.

To summarize, I find that there is a causal connection between Claimant's June 20, 2003 compensable injury and his January 2004 episode. The subsequent episode occurred at the same level as Claimant's prior surgery; it occurred within a time of heightened susceptibility following the original surgery. This subsequent episode was not precipitated by an independent intervening cause: Claimant's activity of working on his car the weekend prior to January 29, 2004 was not unreasonable under the circumstances. Nor was the episode an aggravation, in light of the testimony presented.

B. Entitlement to Medical Benefits

As noted above, Dr. Wilson continued to treat Claimant after his January 29, 2004 examination. A series of epidural steroid injections provided Claimant some relief, but Claimant's back and leg pain persisted. His prescribed medications include pain medicine and muscle relaxers. Claimant has undergone a myelogram, and as of the hearing, he had returned to physical therapy. Claimant seeks additional medical treatment for his continuing problems.

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary in connection with his compensable injury. Patchell v. Wal-Mart Stores, Inc., ___ Ark. App. ___, ___ S.W.3d ___ (May 19, 2004).

I find that Claimant has sustained his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment. As found above, Respondent is responsible for the natural consequences of Claimant's June 20, 2003 compensable

injury; such a natural consequence would include Claimant's reasonably necessary medical treatment following his January 2004 episode. Dr. Schlesinger observed that Claimant may need to undergo another diskectomy at L4-5 to treat Claimant's small recurrent disc herniation. Dr. Wilson prescribed epidural steroid injections (which provided some temporary relief) and medication; he is continuing to see Claimant, and arranged for Claimant to undergo a myelogram. The record reflects a continuing need for medical treatment on Claimant's part, in connection with his June 20, 2003 compensable injury.

C. Entitlement to Temporary Total Disability Benefits

Claimant seeks temporary total disability benefits from January 29, 2004 through June 21, 2004; Claimant reserved the right to claim additional benefits subsequent to that period. On January 29, 2004, Dr. Wilson took Claimant off work. On April 21, 2004, Dr. Wilson released Claimant to return to his activities with restrictions.

> He cannot climb and cannot crawl under buildings, and has a 50 pound weight restriction. It is difficult to say at this time if this is going to be permanent, but certainly will be present for the foreseeable future.

Claimant testified that he has not returned to work since Dr. Wilson originally took him off work on January 29, 2004.

Claimant completed high school and has the equivalent of two years of college (primarily studying electronics). Claimant acknowledged that Dr. Wilson again released him to return to work on June 21, 2004, but that Claimant had not actively sought work since that release.

> Q. But you were actively seeking work between June 21st and when you returned to Dr. Wilson?
>
> A. Actively seeking is not the word, because I was not out looking for the job. I was trying to figure out what it was I could do. I couldn't - I was having

> trouble standing up and doing dishes, so I knew I wasn't going to work in a fast food place. And I was - I'm used to - heat and air is all I know, so I couldn't exactly go back to work for a heat and air firm right now.

Claimant testified that he had sought assistance from a state rehabilitation office, "and we're working on maybe getting into something light, like maybe working medical equipment or something."

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 172, 72 S.W.3d 889, __ (2002). "Disability" means incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury. Ark. Code Ann. § 11-9-102(8). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. K II Constr. Co., 78 Ark. App. at 228, 79 S.W.3d at ___. A claimant bears the burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits. See Ark. Code Ann. § 11-9-704(c)(2).

I find that Claimant has sustained his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits from January 29, 2004 through April 21, 2004; however, Claimant has not sustained his burden for the time period from April 22, 2004 through June 21, 2004. Dr. Wilson took Claimant completely off work from January 29, 2004 until April 21, 2004, when he released Claimant to return to work with restrictions. Dr. Wilson confirmed during his deposition that Claimant was still released to return to work with restrictions as of June 2004. While Claimant testified to

pain throughout this period, he did not explain how he was totally incapacitated from earning wages after April 21, 2004. He may not have been able to pursue work in the heating and air conditioning field, but his testimony that he had consulted with a state rehabilitation office and was looking into light work such as working on medical equipment indicates that he had some capacity to earn wages after April 21, 2004. Certainly, Claimant has the education to pursue such work, and Dr. Wilson's April 21, 2004 release with restrictions would have permitted such work.

To summarize, I find that Claimant remains in his healing period; Claimant continues to receive treatment from Dr. Wilson, and Dr. Schlesinger has suggested the possibility of another diskectomy. Claimant was totally incapacitated from earning wages from January 29, 2004 through April 21, 2004, the period during which Dr. Wilson took Claimant completely off work. However, the proof fails to demonstrate that Claimant was totally incapacitated from earning wages after April 21, 2004, the date of Dr. Wilson's release with restrictions.

D. Entitlement to an Attorney's Fee

Since Claimant's compensable injury occurred after July 1, 2001, his request for an attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. See Ballance v. K. C. Contracting, Full Workers' Compensation Commission Opinion filed August 30, 2004 (F204392). Under the statute, attorney's fees shall only be allowed on the amount of compensation for indemnity benefits controverted and awarded. Ark. Code Ann. § 11-9-715(a)(2)(B)(ii). The real object of this statute is to place the burden of litigation expenses upon the party which made it necessary. Cleek v. Great Southern Metals, 335 Ark. 342, 345, 981 S.W.2d 529, ___ (1998).

I find that Respondent has controverted the payment of temporary total disability benefits to Claimant from January 29, 2004 through April 21, 2004. Respondent made it necessary for Claimant to hire counsel to protect his rights. See Cleek, 335 Ark. App. 345, 981 S.W.2d at ___. Claimant was forced to engage the services of counsel in order to secure these benefits. Therefore, Claimant is entitled to an award of an attorney's fee pursuant to the statute.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.

2. The relationship of employee-employer-carrier existed on June 20, 2003, the date upon which Claimant sustained a compensable injury.

3. Claimant's compensation rate for temporary total disability is $404.00 per week; his compensation rate for permanent partial disability is $303.00 per week.

4. Respondents have accepted a 7% impairment rating.

5. There is a causal connection between Claimant's June 20, 2003 compensable injury and his subsequent January 2004 episode. Claimant's small recurrent disc herniation occurred at the same level as his prior surgery, within a time frame of heightened susceptibility following that prior surgery. Dr. Wilson testified that, without Claimant's prior compensable injury and resulting surgery, the chance of Claimant hurting his back by twisting "would have been remote."

6. Claimant's activity of working under his car the weekend prior to his January 29, 2004 appointment does not constitute an independent intervening cause. Since Claimant had been released to return to work without restrictions, this activity is not unreasonable under the circumstances.

7. Claimant's January 2004 episode does not result from an independent intervening cause, and therefore is not an aggravation. As Dr. Wilson testified, had Claimant simply twisted his back, without his preexisting compensable injury and surgery, the chance of Claimant being hurt would have been "remote."

8. Claimant is entitled to reasonably necessary medical treatment in connection with his compensable injury and subsequent episode. Claimant's January 2004 episode is causally connected to his compensable injury; the medical records and testimony reflect that Claimant is in continuing need of medical treatment.

9. Claimant is entitled to temporary total disability benefits from January 29, 2004 through April 21, 2004, when Claimant was released to return to work with restrictions. Claimant was (and still is) within his healing period; he had not been released to return to work. Claimant did not sustain his burden of proving by a preponderance of the evidence that he was totally incapacitated from earning wages subsequent to April 21, 2004.

10. Claimant's entitlement to temporary total disability benefits has been controverted.

11. Claimant's attorney is entitled to the statutorily prescribed attorney's fee found in Ark. Code Ann. § 11-9-715 on any indemnity benefits due or to become due to Claimant.

AWARD

Respondent is directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth herein.

The Claimant's attorney is entitled to a twenty-five percent (25%) attorney's fee on any indemnity benefits due or to become due since Claimant's January 2004 episode, one-half of which is to be paid by Claimant and one-half to be paid by Respondent in

accordance with Ark. Code Ann. § 11-9-715 and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

D. FRANKLIN AREY, III
Administrative Law Judge

DFA/ml