

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305608

FREDERICK L. MARSHALL, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., SELF-INSURED EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., TPA	RESPONDENT

OPINION FILED JUNE 16, 2004

Hearing before Administrative Law Judge J. Mark White on May 6, 2004, in Hope, Hempstead County, Arkansas.

Claimant represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Ms. Colleen McCullough and Mr. J. Matthew Mauldin, Attorneys at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 6, 2004, the above-captioned claim came on for a hearing in Hope, Arkansas. A pre-hearing conference was conducted on March 29, 2004, and a Prehearing Order was entered that same day. A copy of the March 29, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation

Commission has jurisdiction of this claim; that the employee-employer-carrier relationship existed at all relevant times, including May 23, 2003; that the claimant earned an average weekly wage of \$246, entitling him to a compensation rate of \$164 for total disability; and that the respondents have controverted this claim in its entirety.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury on May 23, 2003; whether the claimant is entitled to associated medical and indemnity benefits; and controversion and attorney's fees.

The claimant contends that he sustained compensable injuries on May 23, 2003; that he is entitled to temporary total disability benefits from May 23, 2003, to a date yet to be determined; that the respondents should be responsible for paying for the medical bills incurred which have been reasonable, necessary and related to his injuries; and that respondents should be ordered to pay for attorney's fees as permitted by law.

Respondents contend that the claimant cannot meet his burden of proving a compensable specific-incident injury; and that under Ark. Code Ann. § 11-9-102(4)(B), specifically § 11-9-102(4)(B)(iv), the claimant is unable to establish compensability; and that the claimant's injury was idiopathic in nature.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, briefs submitted by the parties, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The respondents have proven by a preponderance of the evidence the presence of illegal drugs in the claimant's body, thereby creating a rebuttable presumption that the claimant's injury was substantially occasioned by the use of illegal drugs.
4. The claimant has proven by a preponderance of the evidence that his accident was not substantially occasioned by the use of prescription drugs in contravention of doctor's orders.
5. The claimant has proven by a preponderance of the evidence that his accident was not substantially occasioned by the use of illegal drugs.

6. The claimant has therefore overcome the rebuttable presumption established by Ark. Code Ann. § 11-9-102(4)(B)(iv)(b).
7. The respondents have failed to prove by a preponderance of the evidence that the claimant's fall was idiopathic.
8. The claimant has proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of employment, caused by a specific incident and identifiable by time and place of occurrence.
9. The claimant has proven by a preponderance of the evidence that his injury caused internal or external physical harm to the body which required medical services, and that his injury is established by medical evidence supported by objective findings.
10. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury on May 23, 2003.
11. The claimant has proven by a preponderance of the evidence that he was within his healing period and totally incapacitated from earning wages from May 23, 2003, until October 30, 2003.
12. The claimant has therefore proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from May 23, 2003, until October 30, 2003.

13. The claimant has proven by a preponderance of the evidence that he is entitled to payment of all reasonably necessary medical expenses incurred in connection with the compensable injury.
14. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant sustained an on-the-job injury on May 23, 2003, when he fell backwards onto a concrete floor, hitting his head. He worked for the respondent-employer as a truck unloader. He testified that at the time of his injury he was using a pallet jack to move two stacked pallets of merchandise out of a trailer. He described the trailer as "slanted down" meaning that he was moving the pallet jack downhill so to speak. He testified that the top of the highest pallet failed to clear the door and instead hit the wall, jarring his hands loose from the pallet jack handle and causing him to fall back and hit his head.

He was transported by ambulance to Wadley Regional Medical Center, where he was treated by Dr. Robert Fry. Dr. Fry recorded in his notes:

He presented after working in loading dock stepping out of truck area, begin having seizure activity which lasted for a very short period of time, had a very uneventful ictum [sic] and came around with

complaints of pain in his arms and his shoulders stating he could not move his arms. He has got a longstanding history of hypothyroidism and arthritis and relates that he took a double dose of his Celebrex today and the first dose of his Synthroid that he has taken in over a month and he took a full dose and then went out and worked in the hot closed in space. Upon his arrival he is awake and alert and actually does have a good grip and is able to flex at the wrist but refuses to move his shoulders.

This quote is taken from a typed report, presumably dictated by Dr. Fry. Interestingly, the original handwritten emergency room record attributes part of the history quoted above – that the claimant was in a loading dock and had “seizure activity” – to “EMS,” which is almost certainly a reference to the ambulance personnel. I can find no evidence in the record to show whether the ambulance personnel obtained this history from the claimant himself, or from someone else, perhaps a co-worker at the scene. In any event, Dr. Fry concluded:

The picture as best I can tell is one of someone who had been low on thyroid because he has not been taking his medication, came back on it and came back on a full dose too quickly and went into a hot working environment and with a big left ventricle it is likely that he had dysrhythmic problem.

In his testimony, the claimant denied that he had taken a double dose of Celebrex and denied that he had not been taking his thyroid medication. He denied telling the hospital staff this; he likewise denied telling the hospital staff what had happened in his accident, because he thought that they already knew. He denied

that it was hot in the trailer. He denied fainting or having a seizure, and testified that he has never had an epileptic seizure.

The claimant twice returned to Wadley within the next 24 hours complaining of bilateral upper extremity weakness and pain, and was treated and released each time. He testified that he was having pain in his arms, shoulders, neck and head. On May 28, he sought treatment at Christus St. Michael's, where he was admitted and hospitalized for one week. An MRI study of the brain revealed a "mild edematous change in the frontal lobes bilaterally," assumed to be "a post-traumatic contusion." An MRI of the cervical spine revealed disk protrusions at C3-C4, C4-C5, and C5-C6 producing canal stenosis. CT scans revealed "intracerebral hemorrhage," though it was later determined to be "clinically insignificant." CT scans also revealed "mild cervical spondylosis." X-rays revealed "mild scoliosis and mild multi-level degenerative disease" of the thoracic spine, and "mild to moderate degenerative change" of the cervical spine. Upon discharge on June 4, the claimant was given a final diagnosis of "cervical stenosis exacerbated by the recent fall with mild central cord syndrome." The claimant's treating physician, Dr. Brian Oge', gave the following account of the claimant's injuries:

This is a 49-year-old black male patient of Doctor Mayo seeing Ms. Hickerson in the clinic, presented to the emergency department with worsening numbness of his left upper extremity. He says it has occurred since about

the 23rd of May when he fell at work at Walmart and struck his head. Apparently he had stepped off of a trailer and misstepped onto some pallets or some pallets slipped and fell back and struck the back of his head. He states at that time he did have loss of consciousness for about 5 minutes. A CT done at Wadley at that time was negative for acute changes. Patient did not fill his prescriptions from Wadley at that time but came back with more pain. At that time, he presented to St. Michael instead of at Wadley stating he had worsening numbness. No headache, syncope or vertigo noted.

While in the hospital the claimant was given a drug test. A urine sample taken June 2 tested positive for cannabinoids. The claimant admitted in his testimony that he has smoked marijuana in the past. He denied that he had used it in the years prior to the accident, and he testified that the positive result was due to his exposure to marijuana at a friend's house a few days after the accident.

Since his hospitalization, the claimant has been treated by his personal physician, Dr. Stephanie Hickerson, and by a neurosurgeon, Dr. John Fox of UAMS. Dr. Fox's nurse recorded the claimant's "chief complaint" as, "Pt fell @ work May 23, 2003, and injured his neck - c/o pain neck & back of head. c/o numbness and tingling of bilateral arms & hands. Pt feels he's lost his grip @ times." An EMG/NCS test revealed the possibility of a mild carpal tunnel syndrome, but no evidence of cervical radiculopathy. Though Dr. Fox mentioned the possibility of a cervical laminectomy, the claimant testified he does not wish to undergo surgery.

The claimant has also treated with a chiropractor, Dr. James Spence. The respondents attempted to offer into evidence Dr. Spence's records, but the claimant objected to their admission on the grounds that the records had not been provided to him at least seven days prior to the hearing as required by Ark. Code Ann. § 11-9-705(c). The objection was sustained and the records were excluded from evidence. The respondents moved to proffer the documents, which motion was granted. The proffer is attached to the hearing transcript and denominated as "Respondent's Exhibit No. 2."

The claimant testified at the hearing that he continues to have pain in his neck. Though he has been released to return to work with restrictions, the respondent-employer had not returned him to work as of the date of the hearing.

II. Adjudication

A. Compensability

The definition of a compensable injury under the Workers' Compensation Act excludes any injury "substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders." ARK. CODE ANN. § 11-9-102(4)(B)(iv)(a). The presence of any such intoxicant creates a "rebuttable presumption that the injury or accident was substantially occasioned

by" their use. ARK. CODE ANN. § 11-9-102(4)(B)(iv)(b). The statutory presumption set forth does not quantify the term "presence"; therefore, an intoxicant is present whenever any amount of the intoxicant is revealed, no matter how small. *Flowers v. Norman Oaks Construction Co.*, 341 Ark. 474, 17 S.W.3d 472 (2000). Testing positive for marijuana metabolites – that is, cannabinoids – is sufficient to raise the statutory presumption. *Wood v. West Tree Service*, 70 Ark. App. 29, 14 S.W.3d 883 (2000); *Weaver v. Whitaker Furniture Co.*, 55 Ark. App. 400, 935 S.W.2d 584 (1996).

The respondents contend that the rebuttable presumption is created in this claim by the presence of marijuana and by the presence of prescription drugs used in contravention of physician's orders, specifically Celebrex and Levothroid. The contention regarding prescription drugs is based solely on hearsay statements recorded by the first emergency room physician seen by the claimant, Dr. Robert Fry. In his testimony, the claimant specifically denied Dr. Fry's allegations. As explained below, I find that Dr. Fry's reports are not credible. Therefore, I do not find that the rebuttable presumption has been raised by his allegations regarding the claimant's use of Celebrex and Levothroid.

However, it is undisputed that cannabinoids were detected in the claimant's urine in a test taken ten days after the accident. It does not appear that the courts or the Full Commission have determined whether a drug test administered that long

after an accident is sufficient to raise the rebuttable presumption. Precedent suggests that such a lapse of time will not bar the creation of the rebuttable presumption, but the lapse may be considered in determining whether the rebuttable presumption has been overcome. *See, Cincy v. Townsends, Inc.*, A.W.C.C. E810120 (Jan. 14, 2000); *Morrilton Manor v. Brimmage*, 58 Ark. App. 252, 952 S.W.2d 170 (1997). Act 796 of 1993 requires the Commission and the courts to strictly construe the provisions of the Workers' Compensation Act. ARK. CODE ANN. § 11-9-704(c)(3). The intoxication statute does not require that a drug test be given within a certain period of time, nor does it limit the meaning of "presence" to mean "presence at the time of the injury." It says only that the mere "presence" of an intoxicant is sufficient to create the presumption. ARK. CODE ANN. § 11-9-102(4)(B)(iv)(b). Therefore, because a drug test has found the presence of marijuana metabolites in the claimant's body, I find that the respondents have proven by a preponderance of the evidence the presence of illegal drugs in the claimant's body, thereby creating a rebuttable presumption that the claimant's injury was substantially occasioned by the use of illegal drugs.

A statutory presumption is a rule of law by which the finding of a basic fact gives rise to the existence of a presumed fact, unless sufficient evidence to the contrary is presented to rebut the presumption. *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W.2d 811 (1998). If evidence that is contrary to the presumed fact is

presented, the determination of the existence or nonexistence of the presumed fact is a question for the trier of fact. *Id.* Therefore, if a claimant is found to have alcohol or drugs in his body after an injury, he must prove by a preponderance of the evidence that his injury was not substantially occasioned by the alcohol or drugs. *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998). The plain and ordinary meaning of the statutory phrase “substantially occasioned by the use of” is that there must be a direct causal link between the use of alcohol or illegal drugs and the injury for the injury to be noncompensable. *Id.*

The respondent’s theory of this claim is that the respondent had a seizure or fainting spell and fell to the ground, due to a combination of the heat in the trailer and his misuse of his prescription drugs. The claimant testified rather that he was not hot, that he had been taking his prescription drugs as directed, and that he fell backwards and hit his head when he lost his grip on a pallet jack he was pulling out of a trailer. The respondents’ theory is based almost entirely on the notes and report of the first emergency room physician seen by the claimant, Dr. Robert Fry. After extensively reviewing the record, I cannot reasonably reconcile Dr. Fry’s notes and conclusions with the videotape of the actual accident. The videotape records the accident itself and is an objective, concurrent account. Dr. Fry’s account is speculative and deductive. If the two cannot be reasonably reconciled, I must find

that the videotape is entitled to more weight than Dr. Fry's report.

The videotape first shows the claimant emerging from the trailer; his body is bent at the waist, with both his arms and his legs pointing towards the trailer (to the left of the screen), as if he is pulling something out of the trailer. In the next frame, the claimant has fallen back and is nearly parallel to the ground, with his feet pointing towards the trailer and his head away from the trailer. A piece of metal that appears to be a pallet jack handle can be seen in front of the claimant, falling towards him out of the trailer. He then hits the ground and his body slides a foot or two away from the trailer. In sequence, it almost appears as if a rope had been tied around the claimant's waist and then yanked away from the trailer. Various parts of his body are obstructed by crates and equipment at various times throughout the video, but at no point in the 15 minute video was any movement seen in any part of the claimant's body after his fall. He appeared to lay there motionless the entire time; his body was straight, with his legs together and pointed towards the trailer. His hands were laying on his chests; his appearance was almost that of a corpse in a coffin. A co-worker is visible in the videotape at the time of the claimant's fall, but the co-worker either ignored the fall or did not notice it. The claimant lay there for nearly four minutes before another co-worker approached him; an ambulance arrived eleven minutes after the fall, and the claimant was removed by stretcher

fifteen minutes after the fall.

The videotape corroborates the claimant's account of the accident. It appears as if he were pulling on a pallet jack, lost his grip on the handle and fell backwards. The fall is not one of a person fainting or undergoing a seizure. Dr. Fry's handwritten notes quote the ambulance personnel as saying the claimant "stepped out of truck and began having 'seizure activity.'" The videotape in fact shows no "seizure activity" other than the fall itself. Dr. Fry's report claims that the "seizure activity" lasted "for a very short period of time" and that the claimant "had a very uneventful ictum [sic] and came around with complaints of pain." The videotape shows instead that the claimant was motionless on the floor for some fifteen minutes after his fall. Judging by the videotape, it is reasonable to conclude that the claimant was unconsciousness for most, if not all, of that time. Other medical records corroborate a loss of consciousness for some length of time after the accident, but Dr. Fry oddly makes no mention of whether the claimant lost consciousness. There is no report in the record from the ambulance personnel indicating when the claimant regained consciousness.

Though the record does contain the results of "thyroid testing" performed during the first emergency room visit, there is nothing in the record to explain those results or indicate whether they corroborate Dr. Fry's conclusion that the fall was

caused by misuse of thyroid medicine and/or Celebrex. There is nothing in the record to show where Dr. Fry obtained the information regarding the claimant's alleged misuse of Celebrex and/or thyroid medicine – whether it was from the claimant himself, from ambulance personnel, or from someone else. Even if the information came from the claimant, I am not inclined to give great weight to a hearsay statement from an individual who had just sustained a fall causing a head injury and loss of consciousness.

The only other evidence I can find in the record supporting Dr. Fry's conclusions is a statement in medical records from several years prior noting that the claimant had not been taking his thyroid medication as directed. I do not consider this evidence to have any significant probative value. Evidence of a prior act is ordinarily not admissible "to prove the character of a person in order to show that he acted in conformity therewith." Ark. R. Evid. 404. While the rules of evidence do not bind the Commission, Ark. Code Ann. § 11-9-705(a)(1), they do still possess persuasive authority, and I consider this evidence of a prior act to be of no relevance.

Finally, I note that even though the claimant was treated in St. Michael's Hospital for several days, I can find nothing in the treatment record from St. Michael's to corroborate or support Dr. Fry's conclusion that the claimant had a

seizure related to his prescription medication. No doctor other than Dr. Fry diagnosed the claimant with a seizure or alleged that he had taken prescription drugs in contravention of doctor's orders. Upon the claimant's discharge from St. Michael's, Dr. Oge' specifically noted "no headache, syncope or vertigo." "Syncope" is defined by *Dorland's Illustrated Medical Dictionary*, 26th Edition, as "a temporary suspension of consciousness due to generalized cerebral ischemia; a faint or swoon."

Because the videotape corroborates the claimant's account of the accident, because I find Dr. Fry's reports and conclusions not to be credible, and because there is no other evidence to show the claimant had misused his prescription drugs, I find that the claimant has proven by a preponderance of the evidence that his accident was not substantially occasioned by the use of prescription drugs in contravention of doctor's orders. Likewise, because the videotape corroborates the claimant's account, because the drug test was given ten days after his accident, because the claimant testified that his exposure to marijuana came after the accident, and because there is no other evidence in the record to show that the claimant was impaired by marijuana at the time of his accident, I find that the claimant has proven by a preponderance of the evidence that his accident was not substantially occasioned by the use of illegal drugs. The claimant has therefore overcome the rebuttable presumption established by Ark. Code Ann. § 11-9-102(4)(B)(iv)(b).

Idiopathic injury

The respondents contend in the alternative that the claimant sustained an idiopathic injury. The word “idiopathic” is defined as (1) peculiar to the individual, (2) arising spontaneously or from an obscure or unknown cause. Unexplained-fall cases begin with a completely neutral origin of the mishap, while idiopathic-fall cases begin with an origin which is admittedly personal and which therefore requires some affirmative employment contribution to offset the prima facie showing of personal origin. *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W.2d 496 (1987). Injuries from idiopathic falls do not arise out of the employment unless the employment contributes to the risk or aggravates the injury. *Id.*

Though this contention is in the alternative, it rests on the same basis as the respondents’ contention that the claimant’s fall was substantially occasioned by the use of prescription drugs in contravention of doctor’s orders. For the same reasons outlined above, I find that the respondents have failed to prove by a preponderance of the evidence that the claimant’s fall was idiopathic.

Conclusion

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be

established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

The claimant's testimony and the videotape of the accident are sufficient to prove by a preponderance of the evidence that the claimant sustained an injury arising out of and in the course of employment, caused by a specific incident and identifiable by time and place of occurrence. The medical records submitted by the parties are sufficient to prove by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services, and that the injury is established by medical evidence supported by objective findings. The record contains numerous objective findings, but I

specifically note the presence of muscle spasms, a head contusion as diagnosed by a CT scan, and swelling of the spinal cord as diagnosed by an MRI scan. The claimant has proven each element of a compensable injury and has overcome the rebuttable presumption that his accident was substantially occasioned by the use of drugs; I therefore find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury on May 23, 2003.

B. Temporary Total Disability Benefits

An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The claimant was in the hospital as a result of his injury until June 3, 2003. On June 6, his physician signed a statement that the claimant's return-to-work date was "undetermined." The claimant continued treatment, and on October 30, 2003, he was released to light duty by Dr. Nazer Qureshi. I find that the claimant has proven

by a preponderance of the evidence that he was within his healing period and totally incapacitated from earning wages from May 23, 2003, until October 30, 2003. I therefore find that the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from May 23, 2003, until October 30, 2003.

In making this finding, I note that the claimant contends that he remains entitled to temporary total disability benefits, and that the respondent-employer has not offered him a job within his restrictions. Even so, the record clearly demonstrates that the claimant is capable of doing at least some work for some employer – in addition to the work release by Dr. Qureshi, the claimant acknowledged that he has mowed lawns for pay since his injury. If he is capable of working, then by definition he is not totally incapacitated from earning wages. The claimant's testimony does suggest that he might be entitled to benefits under Ark. Code Ann. § 11-9-505(a)(1) for the respondents' failure to return him to work. But neither party raised this issue prior to the hearing, and I decline to raise it *sua sponte*.

B. Medical Benefits

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). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994). Even if it is demonstrated that a preexisting condition is also a causal factor, the claimant has met his burden of proof so long as he proves that the work injury combined with or aggravated the preexisting condition to bring about the need for the treatment. *General Elec. Railcar Repair Servs. V. Hardin*, 62 Ark. App. 120, 969 S.W.2d 667 (1998).

The parties have not contested the compensability of any particular medical treatment received by the claimant. I note from the record that in this same time period the claimant has been treated for high blood pressure and carpal tunnel syndrome, conditions which do not appear to be related to the compensable injury. I further note that Dr. Oge' has specifically opined that the claimant's cervical stenosis was "exacerbated" by the fall, and there is no contradictory medical opinion in the record. Therefore, I find that the claimant has proven by a preponderance of the evidence that he is entitled to payment of all reasonably necessary medical expenses incurred in connection with the compensable injury.

AWARD

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury on May 23, 2003; that he is entitled to temporary total disability benefits; and that he is entitled to payment of medical expenses. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Gregory R. Giles, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge