

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F101301**

**MIKE MOSLEY, EMPLOYEE**

**CLAIMANT**

**GEORGIA-PACIFIC CORPORATION, EMPLOYER  
SELF-INSURED**

**RESPONDENT**

**SEDGWICK CLAIMS MANAGEMENT SERVICES (TPA),  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED MARCH 3, 2004**

Submitted on the record before Administrative Law Judge Dail Stiles.

Claimant represented by Mr. G. Chadd Mason, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by Mr. Mark Alan Peoples, Attorney at Law, Little Rock, Arkansas.

The issue to be resolved in this case is the claimant's attorney's entitlement to an attorney's fee.

This matter is submitted on a joint stipulation of facts and briefs from the respective parties.

The parties entered into the following stipulations:

1. The claimant sustained a serious work injury to his back on or about August 30, 2000.

2. Respondents accepted the injury as compensable and provided all reasonable and necessary medical treatment relative to claimant's compensable injury. As of February 9, 2004, total medical and related expenses paid to claimant and/or on his behalf totaled approximately \$360,737.14.

3. Respondents have also purchased a home for the claimant and expended substantial sums to pay for modification of the home to make it suitable for claimant's condition.

4. Respondents also purchased a wheelchair accessible vehicle for the claimant.

5. The respondents provided TTD benefits to the claimant at the rate of \$394.00 per week beginning August 30, 2000 through approximately July 11, 2003, when weekly benefits continued at the rate of \$295.00 through February 10, 2004.

6. On February 11, 2004, Respondents issued a check payable to claimant in the amount of \$3,053.50 intended to bring claimant current relative to permanent total disability benefits.

7. In early 2002, it was proposed that respondents pay for a course of vocational rehabilitation for claimant .

8. The proposed course of vocational rehabilitation consisted of training and education in the area of computer repair at Forest Echoes Vo-Tech School in Crossett (now a branch of the University of Arkansas-Monticello, hereinafter "UAM").

9. Respondents agreed to pay the expenses associated with the claimant's proposed course of vocational rehabilitation with the purpose of allowing the claimant to re-enter the workforce at the conclusion of such course of study.

10. As of February 9, 2004, total expenses associated with claimant's course of vocational rehabilitation paid by respondents totaled approximately \$8,675.49.

11. Claimant concluded his course of study at UAM in May, 2003.

12. Upon conclusion of his course of study at UAM, claimant believed that his job prospects were not great. Claimant did not believe he would be able to find suitable work within his physical limitations within his local area in Crossett.

13. Notwithstanding the fact that respondents had paid for a course of rehabilitation for the purpose of returning claimant to the productive workforce, claimant suggested the possibility that he might be permanently and totally disabled.

14. Claimant reached maximum medical improvement relative to his compensable injury on August 7, 2002.

15. As of his MMI date, claimant was assigned anatomical impairment of 94% to the body as a whole.

16. Notwithstanding the fact that claimant had reached his MMI date on August 7, 2002, respondents continued weekly benefits to claimant at the total disability rate of \$394.00 per week through July 11, 2003. Although weekly benefits were lowered to the partial disability rate of \$295.00 on or about July 11, 2003, respondents have since made a lump sum payment to claimant to bring his claim current relative to total disability benefits.

17. On or about July 11, 2003, counsel for the claimant wrote to the Commission and requested assignment of the claim to an Administrative Law Judge for the purpose of scheduling a hearing on the issue of permanent total disability.

18. On or about August 29, 2003, the respondents submitted their response to prehearing questionnaire which included, among other things, the contention that the issue of permanent total disability is "not yet ripe for determination. Respondent is unable to yet state whether the claimant is permanently and totally disabled. Respondent is in the process of conducting a vocational evaluation. Such evaluation is not yet complete. An accurate assessment of the claimant's total disability status cannot be achieved without completion of the vocational evaluation. Once the evaluation is complete, respondent may accept additional wage loss disability and, if appropriate, voluntarily

accept the claimant as permanently and totally disabled. Respondent has not controverted this claim in any respect.”

19. In late 2003, respondents undertook a life care plan study for the purposes of (a) determining whether claimant was permanently and totally disabled; and (b) attempting to achieve a more educated assessment (for purposes of evaluating the claim for possible settlement) of claimant’s future needs.

20. The life care plan report was completed on or about October 3, 2003 (and received by counsel for respondents on December 10, 2003 and by claimant’s counsel on December 11, 2003), after which settlement discussions between the parties ensued and continue to date.

21. Notwithstanding the fact that respondents had paid for a course of vocational rehabilitation with the purpose of allowing the claimant to re-enter the workforce at the conclusion of such course of study, on January 9, 2004, respondents accepted the claimant as permanently and totally disabled.

22. Claimant was informed of this decision on January 11, 2004.

The claimant’s attorney contends that the respondents controverted the claimant’s entitlement to permanent total disability benefits subsequent to the claimant receiving an anatomical impairment rating in August of 2002. The claimant’s attorney asserts that because the respondents reduced the claimant’s weekly indemnity rate to a permanent disability rate, they controverted the claim, and the claimant’s attorney should be entitled to a reasonable fee.

The respondents contend that the claim was accepted as compensable and at no time was controverted. The respondents contend that the claimant was first afforded a program of vocational rehabilitation and later a life care plan in order to determine whether there was any possibility that the claimant might be gainfully employed.

## **FINDINGS OF FACT**

- I. The claimant's attorney is not entitled to an attorney's fee in this matter.
2. This claim has not been controverted by the respondents.

## **DISCUSSION**

Ark. Code Ann. §11-9-715(a)(1)(B)(ii) is controlling and states:

The fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded.

In the instant case, the respondents may rightly be accused of dragging their feet in accepting the claim as permanent and total, but the fact remains that the respondents did not controvert this claim. There was a period after August 2002, where the claimant's weekly benefit was reduced to a permanent disability benefit, but upon acceptance of permanent total disability in February of 2004, the claimant was given a lump sum check to make up the weekly difference for that period.

After a review of the briefs, stipulated facts and reviewing the Commission's file, this examiner does not find that respondents have controverted this claim entitling the claimant's attorney to a fee.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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DAIL STILES  
Administrative Law Judge