

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202832

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| PAMELA I. MURPHY, EMPLOYEE | CLAIMANT |
| ALAN WHITE CO., INC., EMPLOYER | RESPONDENT |
| CRAWFORD & CO., TPA | RESPONDENT |

OPINION FILED SEPTEMBER 10, 2004

Hearing before Administrative Law Judge J. Mark White on September 9, 2004, in Texarkana, Miller County, Arkansas.

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

Respondents represented by Mr. Gill A. Rogers, Attorney at Law, Little Rock, Arkansas, who waived his appearance at the hearing.

STATEMENT OF THE CASE

On September 9, 2004, the above-captioned claim came on for a show-cause hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on August 23, 2004, and a Prehearing Order was entered that same day. A copy of the August 23, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection.

This claim was the subject of an Opinion issued by this Administrative Law Judge on December 9, 2003. That Opinion was affirmed and adopted by the Full Commission on May 19, 2004. No appeal was filed, and to date the respondents have failed to pay the award granted therein. The respondents were ordered to

appear and show cause as to why they have not complied with the Full Commission's award of benefits.

The parties agreed that the issues to be presented were whether the respondents should be held in contempt for failure to obey an order of the Commission; and whether the respondents should be assessed penalties in accordance with Ark. Code Ann. § 11-9-802.

The claimant contends that the respondents should be assessed penalties in accordance with Ark. Code Ann. § 11-9-802 for failure to pay the benefits awarded by the Commission; and that she should be granted an attorney's fee on the penalties.

The record herein is designated to consist of the Prehearing Order issued August 23, 2004; the Opinion issued herein on December 9, 2003; and the Opinion and Order issued by the Full Commission on May 19, 2004. In addition, the Commission's file herein was incorporated into the record by reference, specifically including the forms and receipts documenting the respondents' receipt of the Commission's orders.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor the following findings of fact and conclusions of law were issued from the bench in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The respondents received a copy of the May 19, 2004, opinion and order by mail on May 20, 2004, as required by statute.
3. The award made in the opinion issued December 9, 2003, and affirmed and adopted by the Full Commission on May 19, 2004, is now a final order.
4. The respondents failed to pay the award within 15 days after it became due.
5. The respondents to date have failed to pay the award.
6. The respondents' failure to pay the award of May 19, 2004, is willful and intentional.
7. For the respondents' willful and intentional failure to pay, a 36% penalty is hereby assessed in accordance with Ark. Code Ann. § 11-9-802.
8. The respondents have refused to comply with a final order of the

Commission.

9. The respondents are in contempt of the Commission.
10. The respondents are hereby directed and ordered to pay a fine of \$10,000.

DISCUSSION

This claim was the subject of an Opinion issued by this Administrative Law Judge on December 9, 2003. That Opinion was affirmed and adopted by the Full Commission on May 19, 2004. The opinion awarded benefits to the claimant in accordance with the following findings of fact and conclusions of law:

1. The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits from June 14, 2002, through January 31, 2003.
2. The claimant has proven by a preponderance of the evidence that she is entitled to permanent partial disability benefits of 20% to each upper extremity.
3. The respondents have controverted all the indemnity benefits considered herein.

The claimant was also awarded the maximum statutory attorney's fee on all indemnity benefits controverted. No appeal was filed from the Full Commission's Opinion and Order of May 19, 2004. After a prehearing conference held on August 23, 2004, the respondents were ordered to appear and show cause as to why they

have not complied with the Full Commission's award of benefits.

A show-cause hearing was held on September 9, 2004, in Texarkana, Arkansas. Approximately thirty minutes before the hearing was scheduled to begin, the respondents' counsel called this judge to inform him that the respondents were waiving their appearance at the hearing, and that they would rely on the existing record. The claimant appeared at the hearing and testified. She testified that the respondents have failed to pay the award made by the Commission on her claim.

Penalties under § 11-9-802

If an installment payable under the terms of an award is not paid within fifteen days after it becomes due, there is to be added to the unpaid amount a penalty of 20% thereof. ARK. CODE ANN. § 11-9-802(c). If the failure to pay is found to be willful and intentional, the penalty may be increased to as much as 36%. ARK. CODE ANN. § 11-9-802(e). The term "installment" in this statute encompasses both compensation and interest awarded on compensation. *Couch v. First State Bank*, 49 Ark. App. 102, 898 S.W.2d 57(1995). The award becomes due when the time for filing an appeal has expired. *Johnson v. American Pulpwood Co.*, 38 Ark. App. 6, 826 S.W.2d 827 (1992). The time for filing an appeal of a Full Commission order expires thirty days after receipt of the order. ARK. CODE ANN. § 11-9-711(b).

The Commission's file reflects that the respondents received their copy of the May 19, 2004, Order on May 20, 2004. I therefore find that the respondents received a copy of the May 19, 2004, Opinion and Order by mail on May 20, 2004, as required by statute. I conclude that the award made in the opinion issued December 9, 2003, and affirmed and adopted by the Full Commission on May 19, 2004, is now a final order.

The claimant testified that the respondents have not yet paid any portion of the award. The respondents have presented no evidence to the contrary. I find that the respondents failed to pay the award within 15 days after it became due, and that the respondents to date have failed to pay the award.

The respondents have offered no excuse, explanation or defense of their failure to pay. The record reflects that they have been aware of this award for four months, but they have so far refused to pay. They have not pled ignorance, nor have they pled confusion. I find that the respondents' failure to pay the award of May 19, 2004, is willful and intentional. Therefore, I hereby assess a penalty of thirty-six percent (36%) on the full amount due, including both compensation and interest, in accordance with Ark. Code Ann. § 11-9-802.

Contempt of the Commission

If any party before the Commission refuses to comply with any final order of an administrative law judge or of the Full Commission, the party may at the Commission's discretion be found to be in contempt of the Commission and subject to a fine not to exceed ten thousand dollars (\$10,000). ARK. CODE ANN. § 11-9-706(b). Contempt can be generally divided into two categories: civil and criminal. Criminal contempt "preserves the power of the court, vindicates its dignity, and punishes those who disobey its orders." *Ivy v. Keith*, 351 Ark. 269, 92 S.W.3d 671 (2002). It carries an unconditional penalty and cannot be purged. *Id.* Civil contempt, on the other hand, protects the rights of private parties by compelling compliance with orders of the court made for the benefit of those parties. *Id.* Civil contemnors "carry the keys of their prison in their own pockets" in that they may avoid the punishment by complying with the original order. *Id.* Before a person may be held in contempt for violating a court order, that order must be in definite terms as to the duties imposed, and the command must be express rather than implied. *Warren v. Robinson*, 288 Ark. 249, 704 S.W.2d 614 (1986).

As detailed above, the respondents were ordered by the Commission to pay benefits to the claimant. The time for appealing that award has passed, and the award is now a final order. To date the respondents have failed to pay the award.

Therefore, I find that the respondents have refused to comply with a final order of the Commission. I further find that the respondents are in contempt of the Commission. I hereby direct and order the respondents to pay a fine of ten thousand dollars (\$10,000).

I note that the Commission frequently holds contempt fines in abeyance pending payment of the award in question. Yet, in such cases there are typically exigent circumstances partially excusing the respondents' failure to comply. *See, e.g., Bingle v. Quality Inn*, A.W.C.C. E907878 (July 20, 2004) (unpaid medical bills incurred during appeal of claim); *Angell v. Cooper Tire & Rubber Co.*, A.W.C.C. E209797 (Nov. 25, 2003) (confusion as to which bills were to be paid under the award). Such is not the case here.

The respondents have presented no defense whatsoever to their failure to pay. They introduced no evidence to establish an excuse or explanation for their failure to pay. They had ample notice of a show-cause hearing, and they knew that they were on the verge of being held in contempt. Yet as of the hearing they had not paid even a dime towards the award. There is no question as to what amount the respondents owe the claimant. The award is in clear and express terms, requiring payment of a definite sum easily calculated by reference to Ark. Code Ann. § 11-9-521 and the claimant's compensation rate, to which the parties stipulated. The

respondents had ample notice, both of the original order and of this contempt proceeding. Yet they still refuse to comply with the Commission's Order.

The respondents' behavior herein is an affront to the authority and dignity of this Commission. The respondents have flouted the Commission's authority by their willful and continued refusal to pay the award. I find that a substantial punishment is required to preserve the power of the Commission and vindicate its dignity. *See Ivy v. Keith, supra*. Therefore, the fine imposed herein will be neither suspended nor held in abeyance.

AWARD

The respondents are hereby directed and ordered to pay the award made by the Full Commission in its Opinion and Order of May 19, 2004. The respondents are further directed and ordered to pay a thirty-six percent (36%) penalty on the compensation and interest awarded therein, as well as attorney's fees to the claimant on the penalty amount. Finally, the respondents are directed and ordered to pay to the Commission a fine of ten thousand dollars (\$10,000).

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge