

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F308090**

**DAVID THRIFT, EMPLOYEE**

**CLAIMANT**

**C & C MOBILE HOME TRANSPORTING,  
UNINSURED EMPLOYER**

**RESPONDENT**

**OPINION FILED DECEMBER 7, 2004**

Hearing before Administrative Law Judge J. Mark White on December 2, 2004, in Hope, Hempstead County, Arkansas.

Claimant represented by Mr. Nelson Shaw, Attorney at Law, Texarkana, Texas.

Respondent represented by Mr. James Pilkinton, Attorney at Law, Hope, Arkansas.

**STATEMENT OF THE CASE**

On December 2, 2004, the above-captioned claim came on for a show-cause hearing in Hope, Arkansas. A pre-hearing conference was conducted on November 8, 2004, and a Prehearing Order was entered that same day. A copy of the November 8, 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.

This claim was the subject of an Opinion issued by this Administrative Law Judge on March 30, 2004. No appeal was filed, and to date the respondent has failed to pay the award granted therein. The respondent was ordered to appear and show

cause as to why it has not complied with the award of benefits.

The parties agreed that the issues to be presented were whether the medical bills incurred by the claimant were reasonably necessary in connection with the compensable injury; whether the respondent should be held in contempt for failure to obey an order of the Commission; and whether the respondent should be assessed penalties in accordance with ARK. CODE ANN. § 11-9-802.

The record herein is designated to consist of the Prehearing Order issued November 8, 2004, and the Opinion issued March 30, 2004. In addition, the Commission's file herein was incorporated into the record by reference, specifically including the forms and receipts documenting the respondent's receipt of the Commission's orders.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their 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 respondent has failed to pay the award made in the Opinion of March 30, 2004.
3. The issue of contempt is to be held in abeyance pending the claimant's production of all medical bills for which the respondent is liable.
4. No penalties are owed per Ark. Code Ann. § 11-9-802.

### **DISCUSSION**

This claim was the subject of an Opinion issued by this Administrative Law Judge on March 30, 2004. The opinion awarded benefits to the claimant in accordance with the following findings of fact and conclusions of law:

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 claimant has proven by a preponderance of the evidence that the respondent retained the right to control the means and method by which the claimant's work was done.
4. The claimant has proven by a preponderance of the evidence that he was an employee of the respondent and not an independent contractor.

5. The claimant has proven by a preponderance of the evidence that he sustained an injury caused by a specific incident and identifiable by time and place of occurrence.
6. The claimant has proven by a preponderance of the evidence that his injury caused internal and external physical harm to the body requiring medical services, and that the existence and extent of his injury is established by medical evidence supported by objective findings.
7. The claimant has proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, and that he was performing employment services at the time of his injury.
8. The claimant has therefore proven by a preponderance of the evidence that he sustained a compensable injury.
9. The claimant has proven by a preponderance of the evidence that the medical treatment he has received has been reasonably necessary in connection with the compensable injury, and that he remains entitled to continued reasonably necessary treatment.
10. The claimant has failed to prove by a preponderance of the evidence that he was total incapacitated from earning wages for more than seven days.
11. The claimant has therefore failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.

12. The respondent has controverted this claim in its entirety.

No appeal was filed from the Opinion. After a prehearing conference held on November 8, 2004, the respondent was ordered to appear and show cause as to why it has not complied with the Commission's award of benefits.

A show-cause hearing was held on December 2, 2004, in Hope, Arkansas. Victor Young, the owner of the respondent, testified that he has not yet paid any amount towards the award – specifically, that he has not paid any of the claimant's medical bills. Young testified that he has sold his business and is now working for two hospitals. Young testified that he has been unable to afford financially to pay the claimant's medical bills. He also testified that the claimant's medical providers have refused to provide him with copies of the claimant's medical bills for which the respondent is liable.

An 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 expires thirty days after receipt of the opinion. ARK. CODE ANN. § 11-9-711(b). The prior Opinion was filed on March 30, 2004. I conclude that the award therein is now a final order. The respondent admits that it has not yet paid the award. I find that the respondent failed to pay the award within 15 days after it became due, and that the respondent to date has failed to pay the award.

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). Though the respondent has failed to pay the award, I am reluctant to hold it in contempt, because the respondent did have a valid reason for not paying the award – it had not been provided the claimant's medical bills. The respondent cannot reasonably be expected to pay a bill it does not have, particularly where the medical providers in question refuse to provide a copy of the bill to the respondent.

Therefore, I choose to hold in abeyance the issue of contempt. The claimant is directed to provide the respondent copies of all medical bills for which payment is owed under the award made in the March 30, 2004 Opinion. Once those bills have been provided to the respondent, the respondent has sixty (60) days to show progress towards paying the award. If no progress is made within 60 days of receipt of the bills, the respondent will be held in contempt.

The claimant has also asked that penalties be assessed under Ark. Code Ann. § 11-9-802. However, the penalties provided for therein apply only to indemnity benefits, not medical benefits. *Johnson v. American Pulpwood Co.*, 38 Ark. App. 6, 826 S.W.2d 827 (1992). Therefore, I decline to assess penalties per § 11-9-802.

## **AWARD**

The claimant is directed to provide the respondent copies of all medical bills for which payment is owed under the award made in the March 30, 2004 Opinion. Once those bills have been provided to the respondent, the respondent has sixty (60) days to show progress towards paying the award. If no progress is made within 60 days of receipt of the bills, the respondent will be held in contempt.

The parties are directed to provide a status report to the Commission within ninety (90) days.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge