

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211602

TRAVIS BURNETTE, EMPLOYEE	CLAIMANT
MEHAFFY CONSTRUCTION CO., INC., EMPLOYER	RESPONDENT NO. 1
BITUMINOUS INSURANCE COMPANIES, CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

ORDER FILED JANUARY 28, 2005

This case was reassigned to my office on January 6, 2005 by the Clerk of the Commission, to address the claimant's December 22, 2004 Motion for Reconsideration/Clarification.

An opinion had been entered on December 16, 2004 addressing impairment, medical care, wage loss and Fund liability. The claimant's motion requests a ruling on the claimant's entitlement to vocational rehabilitation. The claimant had indeed requested rehabilitation and it was my error to neglect this issue, however, I find that I no longer have jurisdiction over this claim.

Even if a Motion for Reconsideration is timely filed within the thirty-day appeal period, the decision will become final unless the Administrative Law Judge acts upon the motion within the thirty day period or unless a timely notice of appeal is filed with the Full Commission. Cooper Industrial Products v. Meadows, 5 Ark. App. 205, 634 S.W.2d 400 (1982), Lloyd v. Potlatch Corp., 19 Ark. App. 335, 721 S.W.2d 670 (1986), Walker v. J & J Pest Control, 270 Ark. 941, 606 S.W.2d 597 (Ark. App. 1980), Hill v. Travenol Laboratories, 24 Ark. App. 116, 748 S.W.2d 356 (1988).

Assuming arguendo, there are no jurisdictional challenges, I find the claimant would be entitled to a vocational rehabilitation evaluation. Whether or not he would be entitled to a program of rehabilitation is a factual question depending on the reasonableness of the plan selected by the claimant.

REHABILITATION

To be entitled to a program of vocational rehabilitation, the claimant must show he has a permanent injury, that the program is reasonable in relation to the disability sustained, and he must show that the employer was unwilling to make a job available within his work restrictions. Tackett v. Hickory springs Manufacturing Company, Full Commission opinion August 14, 1979 (C715817), Jones v. Tyson Foods, Inc., Full Commission opinion October 4, 1985 (D100551), Coosenberry v. McCroskey Sheet Metal, 6 Ark. App. 177, 639 S.W.2d 518 (1982), Ark. Code Ann. §11-9-505 (1987).

Rehabilitation has been defined by the Full Commission as anything necessary to return the claimant to the work force as soon as possible and as close as possible to his pre-injury wages. Tackett v. Hickory Springs Manufacturing Company, (1979)(C715817). This program may include any of the following options:

- a) reemployment by the same employer either
 - 1) modifying the claimant's previous job, or
 - 2) moving the claimant to a different job
- b) exploration of the claimant's transferrable skills to another type of employment
- c) placement assistance or on-the-job training
- d) retraining programs suitable to the claimant's intellectual and aptitudinal abilities which would result in gainful employment

Act 796 of 1993 changed the provisions of Ark. Code Ann. §11-9-505 prohibiting a claimant from receiving wage loss disability benefits if rehabilitation is effectively waived without good cause shown:

...The employee shall not be required to enter any program of vocational rehabilitation against his consent; however, no employee who waives rehabilitation or refuses to participate in or cooperate for

reasonable cause with either an offered program of rehabilitation or job placement assistance shall be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment established by objective physical findings. A request for the program, if elected by the claimant, must be filed with the Commission prior to a determination of the amount of permanent disability benefits payable to the employee.

In summary, the claimant has a permanent impairment and his employer has not offered him a job. Therefore, I find the claimant would be entitled to a vocational rehabilitation evaluation at the respondents' expense.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge
