

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F408269

JAMES GIBSON, Employee

CLAIMANT

NWA STEEL

RESPONDENT #1

CORPORATE SOLUTIONS, INC.

RESPONDENT #2

OPINION FILED DECEMBER 1, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondent #1 not participating in hearing.

Respondent #2 represented by J. DAVID WALL, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On November 2, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 28, 2005, and a pre-hearing order was filed on September 29, 2005. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulation:

1. The opinion filed July 14, 2005 is final.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to the payment of 20 days of temporary total disability and a penalty for failure to pay.
2. Claimant's entitlement to payment of medical awarded in the opinion of July 14, 2005.
3. Attorney fee.

The claimant contends that the opinion of July 14, 2005 awarded a period of temporary total disability as well as medical treatment. He has yet to receive the temporary

total disability award and his attorney has not received a fee. He further contends he is entitled to a penalty for failure to pay the awarded benefits.

Respondent #2 contends that it is in the process of paying temporary total disability and related medical.

From a review of 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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulation agreed to by the parties at the pre-hearing conference conducted on September 28, 2005, and contained in a pre-hearing order filed September 29, 2005, is hereby accepted as fact.

2. Pursuant to A.C.A. §11-9-802(c) respondent is liable for a penalty in the amount of 20% on the 20 days of temporary total disability benefits previously awarded to the claimant.

3. Respondent is liable for payment of medical benefits associated with the compensable injury to claimant's teeth numbers 7 and 8. Respondent is not liable for payment of any medical treatment provided in connection with any other teeth. Respondent is not liable for a penalty on payment of medical benefits.

#### FACTUAL BACKGROUND

This claim was the subject of a prior hearing conducted on June 29, 2005. Prior to that hearing the parties had agreed that claimant had been injured when he was struck in the face while working on August 19, 2003. The issues to be litigated at the time of the July 29 hearing involved liability for payment of compensation benefits between Northwest

Arkansas Steel and Corporate Solutions. Also at issue were the claimant's entitlement to temporary total disability benefits and medical benefits. At the time of the hearing Corporate Solutions admitted that it was the liable party for compensation benefits. Corporate Solutions also agreed to pay claimant temporary total disability benefits for a period of 20 days and all reasonable and necessary medical expenses associated with claimant's compensable injury.

Following that hearing I entered an opinion on July 14, 2005 noting that Corporate Solutions was liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury and that claimant was entitled to temporary total disability benefits for a period of 20 days following his accident. That opinion was not appealed by either party and the parties have stipulated that it is final.

No payments have been made since the opinion of July 14 and as a result claimant requested another hearing seeking payment of a penalty on the 20 days of temporary total disability benefits and payment of the medical awarded.

### ADJUDICATION

A.C.A. §11-9-802(c) provides as follows:

If any installment payable under the terms of an award is not paid within fifteen (15) days after it becomes due, there shall be added to such unpaid installment an amount equal to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to, the installment unless review of the compensation order making the award is had as provided in §§11-9-711 and 11-9-712.

After reviewing the evidence in this case, I find that Corporate Solutions is liable for a penalty of 20% on the 20 days of temporary total disability benefits previously awarded to the claimant. In the prior opinion filed July 14, 2005, claimant was awarded temporary total disability benefits for a period of 20 days. That award was not appealed by either

party; therefore, payment of that award became due 15 days after the time period for filing an appeal expired. This would have been sometime around the latter part of August 2005. Despite that fact respondent still had not paid claimant temporary total disability benefits as of November 2, 2005. Clearly, these benefits have been due for more than 15 days; therefore, respondent, Corporation Solutions, is liable for a 20% penalty on payment of the previously awarded temporary total disability benefits.

A.C.A. §11-9-802 provides for a penalty of 36% in the event the Commission finds that failure to pay a benefit is willful and intentional. Claimant contends that the respondent's failure to pay benefits is willful and intentional. Based upon the evidence presented, I do not find sufficient evidence to prove that respondent's failure to pay the temporary total disability benefits has been willful and intentional. Therefore, the penalty is limited to 20%.

The next issue for consideration involves payment of medical benefits. As previously noted, the respondent agreed to pay all reasonable and necessary medical benefits at the time of the first hearing on June 29, 2005. However, no determination was made as to which medical benefits were specifically related to claimant's compensable injury. A review of the testimony and medical evidence indicates that there has been some confusion regarding the medical treatment which is causally related to claimant's compensable injury. According to claimant's testimony he was struck in the face by a piece of tin at the time of his accident on August 19, 2003. Following that accident claimant has been seen by both Dr. Duckworth and Dr. Bolding. A review of Dr. Bolding's progress notes from September 25, 2003 indicates that claimant suffered a fracture of teeth numbers 7 and 8 which according to the medical records are in the front of claimant's mouth. Also, in an undated letter signed by Dr. Duckworth he indicates that claimant suffered injuries to teeth numbers 7 and 8 which were fractured and eventually had to be extracted and corrected with implants.

In addition to medical treatment relating to teeth numbers 7 and 8, it was claimant's testimony that he also had his wisdom teeth removed during a separate procedure. There is insufficient evidence indicating that the extraction of these additional four teeth were causally related to claimant's compensable injury. With respect to this issue, it should be noted that claimant's testimony and the medical evidence regarding which additional four teeth were extracted does not match. However, regardless of which other four teeth were extracted, there is insufficient evidence indicating that these teeth were extracted as a result of the August 19, 2003 compensable injury.

In summary, I find that the preponderance of the evidence establishes that claimant suffered an injury to teeth numbers 7 and 8 as a result of his compensable injury on August 19, 2003. The respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with treatment of these two teeth. That includes the extractions, implants, and any other medical treatment provided to the claimant. Respondent is not liable for any medical treatment provided for teeth other than numbers 7 and 8.

Finally, I note that respondent is not liable for payment of a 20% penalty on the medical benefits. The 20% penalty provided for in A.C.A. §11-9-802(c) does not apply to payment of medical expenses. *Smith Store v. Kirker*, 6 Ark. App. 222, 639 S.W. 2d 751 (1982). Furthermore, it should be noted that the Court and the Commission have determined that the 36% penalty set out in A.C.A. §11-9-802(e) may apply to the payment of medical benefits provided that the Commission finds that failure to pay those benefits is willful and intentional. Given the confusion regarding the specific teeth affected as a result of claimant's compensable injury, I do not find that respondent's failure to pay medical benefits up to this point in time constitutes a willful and intentional failure to pay; therefore, respondent is not liable for payment of a penalty on the medical benefits.

I also note that the Court in *Smith's Store, supra*, found that the 20% penalty does

not apply to attorney's fees. However, I find that claimant's attorney is entitled to the maximum fee on the 20% penalty awarded to claimant on unpaid temporary total disability. This fee is to be paid one-half by claimant and one-half by respondent.

#### AWARD

Respondent has failed to pay claimant 20 days of temporary total disability benefits within 15 days after it was due pursuant to an award. Therefore, respondent is liable for a 20% penalty on the 20 days of temporary total disability benefits. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with teeth numbers 7 and 8. Respondent is not liable for payment of medical treatment for any additional teeth. Respondent is not liable for payment of a penalty on medical benefits.

Claimant's attorney is entitled to the maximum fee on the 20% penalty awarded to claimant on unpaid temporary total disability, one-half to be paid by claimant and one-half to be paid by respondent with respondent withholding claimant's portion of the attorney's fee from the claimant's award and to pay the fee directly to claimant's attorney.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE