

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E913717

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| MARK HEPTINSTALL, EMPLOYEE | CLAIMANT |
| ASPLUNDH TREE EXPERT COMPANY, EMPLOYER | RESPONDENT |
| RELIANCE NATIONAL INDEMNITY COMPANY, CARRIER | RESPONDENT |

OPINION FILED AUGUST 15, 2005

Hearing held May 19, 2005 before the HONORABLE DALE DOUTHIT, Administrative Law Judge, at Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE TIMOTHY S. PARKER, Attorney at Law, Eureka Springs, Arkansas.

Respondents represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above-captioned matter came on for hearing in Little Rock, Arkansas, on May 19, 2005, as a result of a reversal and remand from the Arkansas Court of Appeals pursuant to their ruling in Heptinstall v. Asplundh Tree Expert Services, Inc., 84 Ark. App. 215, 135 S.W. 3d 421 (2003). On April 2, 2004, the Full Commission of the Arkansas Workers' Compensation Commission thereby remanded this claim to an Administrative Law Judge for additional findings consistent with the Court of Appeals

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decision.

A prehearing conference was conducted on March 30, 2005, and a prehearing order was filed on March 31, 2005. The prehearing order was admitted into the record, subject to modification made at the full hearing, without objection as Commission Exhibit No. 1.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim and that the employee/employer/carrier relationship existed at all relevant times, including November 8, 1999. The parties stipulated the claimant's applicable compensate rates at the time of the injury were \$250.00 and \$193.00 per week for temporary total disability and permanent partial disability, respectively. The parties further stipulated the December 10, 2003 Arkansas Court of Appeals decision regarding this matter and the subsequent Administrative Law Judge opinion filed June 28, 2004, were not appealed and are res judicata as to their content. Additionally, respondents agreed to withdraw a previous request for dismissal under Commission Rule 13. At the hearing the parties stipulated that the claimant was entitled to temporary total disability for the period November 8, 1999 through January 21, 2000.

The Administrative Law Judge's opinion dated June 28, 2004 found

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compensability consistent with the Court of Appeals decision. Therefore, compensability was not an issue at the May 19, 2005 hearing. As stated, the parties agreed on the temporary total disability period at the beginning of the Full Hearing, thereby removing issue number three outlined in the prehearing order. The only issues which remained were as follows:

- 1) Applicable permanent partial disability benefits.
- 2) The Rule 30 amount to be paid to medical providers.
- 3) Attorney fees.

The claimant contended at the prehearing conference he suffered a ten percent (10%) permanent impairment as a result of the compensable injury.

The respondents contended there were certain medical and indemnity benefits which were due, but that counsel for the claimant lost contact with his client for a certain period of time, which resulted in the respondents requesting dismissal under Rule 13.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and applying the December 10, 2003 Court of Appeals decision in this matter, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this matter.
2. The stipulations contained herein are reasonable and are hereby accepted as fact.
- 3) The claimant is entitled to a sixteen percent (16%) permanent impairment to his upper extremity, which equals \$7,534.72, plus a full attorney's fee associated therewith.
- 4) The claimant is entitled to temporary total disability from November 8, 1999 through January 2, 2000, at the rate of \$250.00 per week, plus a full attorney's fee.
- 5) Respondents are responsible for all medical bills associated with the compensable injury. Respondents are directed to pay all associated medical bills pursuant to Commission Rule 30, and all checks sent to the claimant's medical providers shall contain the language "paid in full on all medical services provided to Mark Heptinstall." Further, the respondents are directed to provide a copy of their check payable to North Arkansas Regional Medical Center to Attorney Donald Bishop with a letter explaining his

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judgment entered February 27, 2004, against the claimant is in violation of A.C.A. §11-9-118. Claimant is entitled to a full attorney's fee for the medical expenses pursuant to A.C.A. §11-9-715 as it appeared at the time of the compensable injury.

DISCUSSION

The issue of permanent impairment elicited two arguments. The claimant argued a ten percent (10%) whole body rating was the appropriate rating and the respondent argued the upper extremity rating contained in Dr. Vowell's May 8, 2001 report was appropriate (16%). The parties agreed the only two pieces of evidence to be relied upon for any permanent partial disability determination would be Dr. Vowell's June 27, 2001 deposition and Dr. Vowell's May 8, 2001 report. Dr. Vowell's deposition testimony was clear wherein he testified any permanent impairment rating at that time would be a guess because he hadn't given the claimant a full evaluation at that time. Dr. Vowell did give the claimant his final evaluation of permanent partial disability determination on May 8, 2001, and found that the claimant had full range of motion of his shoulder. The report recited no problem that extended to the claimant's shoulder or beyond that would justify a whole body impairment rating for workers' compensation purposes. Dr. Vowell did find a sixteen percent (16%) permanent impairment to

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claimant's upper extremity. I find this impairment is a scheduled injury pursuant to A.C.A. §11-9-521. As such, I find the claimant is entitled to sixteen percent (16%) of 244 weeks times his permanent partial disability rate of \$193.00, for a total of \$7,534.72, plus a full statutory attorney's fee as in effect at the time of injury.

Both parties were required to brief the issue of medical expenses and Rule 30 application. Respondents submitted their letter brief on June 21, 2005, (RX-2), and the claimant submitted his letter brief on June 29, 2005, (CX-1). Based on the claimant's June 29, 2005 letter brief, it now appears the claimant agrees with the respondents application and analysis of Rule 30. As such, the respondents are directed to pay the medical expenses outlined in Respondents' Exhibit No. 1, pursuant to Rule 30. The respondents are directed to place the phrase "paid in full on all medical services provided to Mark Heptinstall" in the memo section of all checks made payable to the claimant's medical providers. Should the parties disagree about any dollar amount discounted by Rule 30, they are directed to submit the medical bill in question and their respective arguments to the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission for a determination of proper Rule 30 application. The respondents are also to pay attorney's fees as provided in A.C.A. §11-9-715 at the time of injury in the maximum amount allowed.

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It is obvious the judgment against the claimant on February 27, 2004, was entered in violation of A.C. A. §11-9-118, (JX-2), especially in light of the fact claimant's attorney sent the medical provider a notice that the charges were incurred by a work related injury as early as June 26, 2001, as evidenced by Joint Exhibit 3. As officers of the Court, both counselors have an obligation to notify the medical providers attorney, Mr. Donald Bishop, of the §11-9-118 violation and request he set aside the judgment. Both counselors herein are to report the violation to the Arkansas Workers' Compensation Medical Cost Containment Division, and this Administrative Law Judge will forward a copy of this decision to Medical Cost Containment as well.

ORDER

The respondents are ordered to pay all benefits in accordance with the findings of fact set forth herein, along with their share of the full statutory attorney's fee. All accrued sums shall be paid in lump sum, without discount, and this award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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