

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F209888**

<b>JESSIE LATIMER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>ASAP PERSONNEL SERVICE, EMPLOYER</b>	<b>RESPONDENT #1</b>
<b>TRAVELERS INSURANCE, CARRIER</b>	<b>RESPONDENT #1</b>
<b>DEATH &amp; PERMANENT TOTAL DISABILITY TRUST FUND</b>	<b>RESPONDENT #2</b>

**OPINION FILED OCTOBER 27, 2005**

A hearing in this case was conducted on September 15, 2005, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Little Rock, Pulaski County, Arkansas.

Claimant was represented by Donald S. Ryan, Attorney at Law, Little Rock, Arkansas.

Respondent #1 was represented by Phillip Cuffman, Attorney at Law, Little Rock, Arkansas.

Respondent #2 did not appear at the hearing.

**STATEMENT OF THE CASE**

A prehearing telephone conference was held on this claim on July 26, 2005; a Prehearing Order was filed on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to six stipulations. All of these stipulations are found in the Prehearing Order and were confirmed by the parties at the hearing. The following stipulations are hereby accepted.

1. The employee-employer-carrier relationship existed on August 20, 2002 and at all other relevant times.

2. Claimant sustained a compensable cervical spine injury on August 20, 2002.
3. Claimant's healing period ended on April 12, 2004.
4. Claimant's average weekly wage is \$162.16; his compensation rate is \$108.00.
5. Respondents controvert additional benefits for permanent disability.
6. Respondent #1 accepted and is paying a 15% permanent impairment rating.

At the September 15, 2005 hearing, the parties discussed the issues set forth in the Prehearing Order. The parties agreed that the issues to be litigated and resolved are limited to the following:

1. Whether Claimant is entitled to an additional 1.5% permanent impairment rating.
2. Whether Claimant is permanently totally disabled.
3. If so, whether Respondent #1 must first pay Claimant's permanent anatomical impairment rating benefits in full, and then begin paying the first \$75,000.00 of benefits for permanent total disability; or whether the permanent anatomical impairment rating benefits paid to Claimant can be credited against the first \$75,000.00 of permanent total disability benefits, thereby reducing the balance of \$75,000.00 due from Respondent #1.
4. In the alternative, whether Claimant is entitled to wage-loss disability benefits.
5. Whether Claimant is entitled to an attorney's fee.

As stipulated, Respondent #1 accepted and is paying a 15% permanent impairment rating. Claimant notes that Dr. Harold Chakales assessed Claimant's permanent impairment in a range, from 15% to 18%; Claimant argues that he is entitled to the midpoint of that range, 16.5%. Claimant thus seeks an additional 1.5% permanent impairment rating. Claimant argues that he is permanently totally disabled, or in the alternative, that he is entitled to wage-loss disability benefits. Claimant also seeks an

attorney's fee.

Respondent #1 argues that, under the law, Claimant is only entitled to an impairment rating of 15%. Regarding Claimant's disability arguments, Respondent #1 notes that the medical evidence does not support his arguments and that he has not attempted to return to work.

### **DISCUSSION**

At the time of the hearing, Claimant was 54 years of age. He completed the eleventh grade and has specialized training related to his past employment as a telephone cable technician. While in high school he worked in a factory and attended classes at night. From 1971 until 1989 he worked as a cable splicer for Southwestern Bell; at another period, he worked for a cable company out of Hershey, Pennsylvania.

At the time of his compensable injury, Claimant was assigned by the Respondent employer to work in a warehouse unloading air conditioners and aluminum siding from large trailers. He described his accident as follows:

Q. And what happened to you?

A. My friend there decided to take a cigarette break. The garage wasn't high enough to take the truck inside to unload it. So he'd taken a long rail and pushed the garage up over the top of our heads.

Q. This was an overhead door?

A. Yes, sir. Then while we was standing there and he was smoking a cigarette, the garage door come down and hit me on top of the head. I thought he had hit me, but it didn't happen like that. I looked up, and it was the garage door.

Q. So if I can summarize, you were standing in a doorway and the overhead door came down and hit you in the head?

A. Yes, sir.

...

Q. Were you knocked unconscious?

A. No, sir. I just dropped to my knees and caught my breath, and I told him I couldn't finish the job with him. So he taken me back to the office. Then they talked to me at the office there, and I left and went to the house.

Q. All right. Where were you hurting at that time early on?

A. A serious pain in my head, for real. I didn't know anything about nothing else except for my head.

The parties stipulated that Claimant sustained a compensable cervical spine injury on August 20, 2002.

After initial treatment from his family doctor, Claimant presented to Dr. William Blankenship, who recorded the following history:

This man was seen in the clinic on September 5, 2002, for problems with his cervical spine and also parietal and frontal headaches, and pain that radiates in both upper extremities with the right being worse. He attributes this to occurring on August 20, 2002, when an overhead garage door struck him on top of the head. He was not reared unconscious. He was able to finish work. He started to have headaches, and the next he went to ... his family physician....

...

Presently, he is doing a little better. When asked if he had previous difficulty with his areas of complaint, he states "Not that I can remember."

Upon examination and review of Claimant's x-rays, Dr. Blankenship recorded an impression of skull contusion and cervical spine strain. He recommended MRI and EEG studies, and that Claimant not return to work until the studies were completed.

Claimant underwent an MRI of his cervical spine on September 11, 2002. The study reported the following impressions:

1. Mild generalized canal stenosis C3 through C6.

2. Focal segmental canal stenosis at C3-4 interspace caused by disc bulging and spondylotic ridging with resultant ventral sac compression and mild to moderate ventral cord impingement.
3. Relatively lesser degrees of segmental stenosis are produced at C4-5, C5-6 and C6-7 disc space levels due to relatively mild disc bulging and spondylotic ridging.
4. Mild multilevel foraminal stenosis as described.
5. No well defined focal soft disc extrusion is identified.

Claimant also underwent an MR of his brain on that same date; it produced an impression of “[n]ormal MR of the brain.” On September 12, 2002, Claimant underwent an electroencephalogram, which resulted in this impression: “This is a minimally abnormal study due to some nonspecific, sharply contoured theta waves in the mid temporal regions. No epileptiform activity is identified, however. Correlation with the patient’s clinical picture is required.”

Dr. Blankenship reviewed these studies when Claimant returned on October 2, 2002; he recommended that Claimant be evaluated by a neurologist, and that he undergo further studies. Claimant underwent a nerve conduction and EMG study on October 30, 2002; on November 8, 2002, Dr. Blankenship interpreted this study as revealing “some findings that are compatible possibly with chronic ulnar nerve neuropathy. There is also chronic denervation of the dorsal roots at C5 and C6.”

Claimant continued his treatment by Dr. Blankenship and one of his partners, Dr. John Wilson. On November 20, 2002, Dr. Wilson reported normal range of motion in Claimant’s cervical spine and that his MRI “appear[ed] to be normal.” He opined:

This gentleman has resolving contusion to his head and cervical strain. I have suggested that he undergo functional capacity assessment and return to work, but he is quite concerned about this approach and wants to see Dr.

Blankenship again, for which I have made arrangements. This gentleman has evidence of resolving cervical strain. I do not find evidence of significant cervical pathology.

Dr. Blankenship examined Claimant on December 2, 2002; Claimant reported neck pain but not radicular symptoms. Upon examination, Dr. Blankenship did not find any change in Claimant's physical or neurologic condition. He agreed with Dr. Wilson's recommendation concerning an FCE, but only after Claimant was examined by a neurologist first. He recommended that Claimant remain off duty in the interim.

At the hearing, Claimant testified that Dr. Wilson advised that he "should go on back to work, and I told him I felt my injury wasn't taken care of." He obtained a change of physician and began receiving treatment from Dr. Chakales. He presented to Dr. Chakales on February 19, 2003, reporting that he last saw Dr. Blankenship on December 2, 2002, and that his condition had not improved. Dr. Chakales recorded:

He presents today with complaints of neck pain, pain across his shoulders, pain radiating down his arms, and numbness and tingling of the arms bilaterally. Coughing or sneezing does increase the pain in his neck. He also has a little weakness in both arms and shoulders. [Claimant] states he has requested a change of physicians because he is still symptomatic in his neck, shoulders and hands. He reports no previous problems with neck or low back pain.

Dr. Chakales recommended physical therapy, cervical epidural injections, and medication. He opined that, given "the physical findings noted on examination today, this gentleman is temporarily totally disabled and unable to work."

Apparently, Dr. Chakales continued to treat Claimant throughout 2003; the next record from Dr. Chakales in evidence is dated February 16, 2004. His letter of that date states that he recommended Claimant undergo a functional capacity evaluation, which Claimant attempted but was "unable to complete ... because his blood pressure elevated."

Dr. Chakales was deposed by Respondent #1 on April 12, 2004. When Claimant first presented in February of 2003, “[h]is complaints were neck pain and low back pain. I thought that he had cervical spinal stenosis, aggravated by a traumatic episode, and that he had a cubital tunnel syndrome on the right, which is ulnar nerve entrapment, and a left ulnar neuropathy.” Dr. Chakales treated Claimant conservatively, and believed that in the fall of 2003 Claimant’s “course had stabilized even though he still had some chronic neck pain....” Upon Claimant’s most recent visit, Dr. Chakales determined that “what we need to do on him is to do a new EMG and MRI and have him reach maximum healing because basically all he’s getting now is some pain medicine.” Dr. Chakales expected Claimant to be at, or reaching, maximum medical improvement. He wanted Claimant to attempt another functional capacity evaluation: “You know, if he’d legitimate, he should be able to complete it one way or another.”

Claimant underwent an MRI of his cervical spine on April 28, 2004. The radiologist offered the following opinion: “Multi-level degenerative disk disease most severe at C3-4 where there is moderate spinal canal stenosis due to posterior disk osteophyte complex. Mild-to-moderate stenosis is seen at C4-5 and C5-6.” In a note dated May 3, 2004, Dr. Chakales opined that this study reflected “rather severe spinal stenosis at C3 on C4, as well as some at C4 and C5.” He further opined that Claimant “has a rather severe problem and needs some form of surgery.”

Claimant again presented to Dr. Chakales on May 17, 2004. The doctor recorded that April 12, 2004 x-rays “showed a tendency towards straightening of the cervical lordosis, with evidence of cervical spondylosis.” He also found involuntary muscle spasm upon examination of Claimant’s cervical spine. Dr. Chakales recommended continued

conservative management and the use of a TENS unit. If Claimant's symptoms did not improve, Dr. Chakales believed "he could be considered a potential surgical candidate for surgery to his cervical spine, and possibly to the lumbar spine."

Dr. Chakales addressed the extent of Claimant's permanent impairment in a letter dated June 25, 2004. Using the Fifth Edition of the Guides to the Evaluation of Permanent Impairment, Dr. Chakales opined that Claimant "has a cervical Category 3, which rates as a physical impairment of 15-18% to the body as a whole."

Claimant sustained a stroke in March of 2005. Claimant underwent an MRI of his brain on March 23, 2005. He presented to Dr. Lon Burba on April 4, 2005, claiming to have had an acute stroke. Upon examination, Dr. Burba recorded the following impressions: "1. Acute CVA. 2. Closed head injury. 3. Chronic low-back pain."

At the hearing, Claimant testified to his injury and subsequent course of treatment. As to his symptoms prior to his stroke, Claimant identified "the numbness through the left side of my body, and my head would always hurt real seriously." He experiences painful headaches and cannot make full use of his left arm and hand: "If I hold something in my hand right now for a long time, I'll lose my grip and it will fall." Certain movements are difficult: "It was very hard for me to move my arms or to make a fist. Even when I tried to walk, I felt like the ground would be uneven; and I would like stumble a lot." He could not complete his functional capacity evaluation because his blood pressure "ran up so high." He continues to complain of pain down his left side, all the way into his legs.

Although he "stayed employed" prior to his compensable injury, now Claimant does not believe he can work due to his headaches and other complaints. He is receiving social security disability benefits; he filed for these "almost a year or maybe two years" after his

injury. He apparently has made no attempt to find work since the date of his injury:

Q. Okay. Now, you have not worked since this happened to you in August of 2002; is that right?

A. Yes, sir.

Q. And you have not worked because you have not felt yourself able to work?

A. I have not worked because I know it wouldn't be safe for me to be on a job anywhere.

Q. You have not applied anywhere for work; is that right?

A. No, sir, I haven't.

Q. Have you considered trying anything at all in the three years since this happened to you?

A. No, sir. I haven't filled out an application for a job anywhere.

Q. Have you considered at all the prospect of some kind of retraining or a vocational evaluation to see if there's anything that you can do?

A. With the skills I have as a technician, that would be the field I'd work in because it's all I know. That's my main way of making a living, and I wouldn't feel safe pulling a manhole top off or climbing poles like I done before.

...

Q. But you've not attempted a temporary job since you were injured; is that right?

A. I was a candidate for surgery on my neck, and the insurance company never even wrote my doctor back a decision if he could do an operation to help me. So I'm not going to force myself to do some work that I know I can't do.

Claimant continues to have problems with his neck and legs. He believes that his condition has remained the same in the last three years. His current prescriptions include Hydrocodone and Flexeril. Between his prescriptions and his stroke, he believes it is unsafe for him to drive.

**A. Additional 1.5% Permanent Impairment Rating**

Dr. Chakales assessed Claimant's permanent impairment rating in a range, from 15% to 18%. Respondent #1 accepted and is paying a 15% permanent impairment rating. Claimant seeks an additional 1.5% permanent impairment rating, arguing that he is entitled to the midpoint of the range assessed by Dr. Chakales, 16.5%.

There are three statutory requirements to establish an entitlement to benefits for a permanent impairment. See Excelsior Hotel v. Squires, 83 Ark. App. 26, 33-34, 115 S.W.3d 823, \_\_\_ (2003); Schalski v. Family Cleaners & Laundry, Full Workers' Compensation Commission Opinion filed March 3, 2004 (E711809). First, it must be determined that the compensable injury was the major cause of the impairment at issue. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a). "Major cause" means more than fifty percent of the cause. Ark. Code Ann. § 11-9-102(14)(A). Second, any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. § 11-9-704(c)(1)(B). Third, benefits for permanent impairment must be based on an impairment rating using the American Medical Association's Guides to the Evaluation of Permanent Impairment (4th ed. 1993) (hereinafter "Guides"). Ark. Code Ann. § 11-9-522(g); Workers' Compensation Commission Rule 34.

A claimant must prove by a preponderance of the evidence that he is entitled to an award of permanent physical impairment. Schalski, supra; see Ark. Code Ann. § 11-9-704(c)(2). "Preponderance of the evidence" means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, \_\_\_ (1947).

I find that Claimant did not sustain his burden of proving by a preponderance of the

evidence that he is entitled to an additional 1.5% permanent impairment rating. The parties did not specifically place the major cause or objective findings requirements at issue. The question is whether Claimant's permanent impairment has been properly rated utilizing the Guides. It is clear from Dr. Chakales' June 25, 2004 letter that he utilized the Fifth Edition of the Guides; this is impermissible under Rule 34. Claimant does not identify any provision of the Fourth Edition of the Guides that would entitle him to an impairment rating greater than 15%; nor do I find a provision of the Fourth Edition of the Guides that would allow Claimant an additional 1.5% permanent impairment rating. Therefore, Claimant failed to sustain his burden of proof on this issue.

#### **B. Permanent Total Disability Benefits**

Claimant argues that he is permanently and totally disabled. As noted above, Respondent #1 has accepted and is paying a 15% anatomical impairment rating to the body as a whole.

"Permanent total disability" means inability, because of compensable injury, to earn any meaningful wages in the same or other employment. Ark. Code Ann. § 11-9-519(e)(1). Claimant has the burden of proving his inability to earn any meaningful wage in the same or other employment; he must sustain this burden by a preponderance of the evidence. Ark. Code Ann. §§ 11-9-519(e)(2) and 11-9-704(c)(2).

Claimant's injury is not scheduled under the Act; therefore, his entitlement to permanent disability benefits is controlled by Ark. Code Ann. § 11-9-522. Pursuant to this statute, when a claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission has the authority to increase the anatomical rating, and it can find a claimant permanently and totally disabled based upon wage-loss factors. Whitlatch v.

Southland Land and Dev., 84 Ark. App. 399, 405, 141 S.W.3d 916, \_\_\_ (2004).

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. In considering factors that may affect an employee's future earning capacity, the court considers the claimant's motivation to return to work, since a lack of interest or a negative attitude impedes our assessment of the claimant's loss of earning capacity.

Lee v. Alcoa Extrusion, Inc., \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (January 26, 2005) (citations omitted). In addition, Ark. Code Ann. § 11-9-102(4)(F)(ii)(a) provides that permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. "Major cause" is defined as more than 50% of the cause. Ark. Code Ann. § 11-9-102(14)(A).

I find that Claimant did not sustain his burden of proving by a preponderance of the evidence that he is permanently totally disabled. The evidence indicates that Claimant is not motivated to return to work. He has not applied for any job since his injury, nor has he considered retraining or a vocational evaluation. Claimant is receiving social security disability benefits. Further, the medical proof will not support a finding that Claimant is permanently totally disabled. Dr. Wilson opined shortly after Claimant's compensable injury that Claimant should undergo an FCE and return to work. Dr. Chakales would like for Claimant to complete an FCE, which suggests at the very least that Dr. Chakales is not convinced that Claimant is permanently totally disabled. I acknowledge Claimant's continuing complaints of pain and continuing medical treatment. However, this proof does not sustain a finding that Claimant is permanently totally disabled. After considering the appropriate wage-loss factors, I find that Claimant failed to sustain his burden of proving

that he is permanently totally disabled.

**C. Credit for Impairment Rating Benefits Paid**

This Opinion finds that Claimant did not sustain his burden of proving that he is permanently totally disabled. Therefore, it is not necessary to discuss the third issue, which relates to the liability of the Death and Permanent Total Disability Trust Fund, Respondent #2. Compare Ark. Code Ann. § 11-9-502(b) (providing for payments by the Fund if benefits for death or permanent total disability have been paid to the claimant).

**D. Wage-loss Disability Benefits**

In the alternative, Claimant seeks wage-loss disability benefits. In light of the 15% permanent impairment rating accepted by Respondent #1, the Commission may consider his claim for wage-loss disability in excess of permanent physical impairment. See Ark. Code Ann. § 11-9-522(b)(1).

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. Logan County v. McDonald, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (April 6, 2005).

In determining wage-loss disability, the Commission may take into consideration the worker's age, education, work experience, medical evidence and any other matters which may reasonably be expected to affect the worker's future earning power. Such other matters are motivation, post-injury income, credibility, demeanor, and a multitude of other factors. A claimant's lack of interest in pursuing employment with her employer and negative attitude in looking for work are impediments to our full assessment of wage loss.

McKinney v. Plastics Research & Dev., Full Workers' Compensation Commission Opinion filed November 10, 2004 (E901881)(citations omitted); see Ark. Code Ann. § 11-9-522(b)(1); Logan County, \_\_\_ Ark. App. at \_\_\_, \_\_\_ S.W.3d at \_\_\_. In addition, permanent

benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a); see McKinney, supra. “Major cause” is defined as more than fifty percent of the cause. Ark. Code Ann. § 11-9-102(14)(A).

At the time of the hearing Claimant was 54 years of age, had an eleventh grade education, and had specialized training related to his past employment as a telephone cable technician. While he did not testify in detail about his employment history, it includes manual labor and employment as a cable technician. Although his healing period ended on April 12, 2004, Dr. Chakales subsequently opined that Claimant “could be considered a potential surgical candidate for surgery to his cervical spine....” Claimant’s physical condition has not resolved, and he testified that his need for medication is at least partially responsible for his inability to drive. He believes his physical condition (including his headaches, poor left hand grip, and need for surgery) renders him unable to work.

There is medical evidence suggesting that Claimant can work at some level. Shortly after his compensable injury, Dr. Wilson recommended that Claimant undergo an FCE and return to work. Dr. Chakales would also like for Claimant to complete an FCE. Claimant is not motivated to return to work; he has not applied for work since his compensable injury three years ago, and has not considered retraining or vocational evaluation to see if there is some work that he can do. Claimant’s lack of interest in pursuing employment and negative attitude in looking for work both impede an assessment of his wage-loss.

After considering all wage-loss factors, I find that Claimant has established a decrease in his wage earning capacity equal to 15% to the body as a whole. He is entitled to benefits for this decrease in his wage earning capacity. Further, I find that Claimant did

prove by a preponderance of the evidence that his compensable injury is the major cause of his decrease in earning capacity. He “stayed employed” prior to his compensable injury; notes in the medical records document that his doctors directed Claimant to remain off work for some period after this compensable injury. There is no alternative explanation for Claimant’s decrease in earning capacity in the record. The record demonstrates that Claimant’s compensable injury is the sole, and thus the major, cause for this decrease.

**E. Attorney’s Fee**

Attorney’s fees shall only be allowed on the amount of compensation for indemnity benefits controverted and awarded. Ark. Code Ann. § 11-9-715(a)(2)(B)(ii). This Opinion awards Claimant wage-loss disability benefits, for which Respondent #1 is liable; the parties stipulated that Respondents controvert Claimant’s entitlement to additional benefits for permanent disability. Thus, Claimant is entitled to an award of an attorney’s fee pursuant to the statute to be paid by Respondent #1.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on August 20, 2002 and at all other relevant times.
3. Claimant sustained a compensable cervical spine injury on August 20, 2002.
4. Claimant’s healing period ended on April 12, 2004.
5. Claimant’s average weekly wage is \$162.16; his compensation rate is \$108.00.
6. Respondents controvert additional benefits for permanent disability.
7. Respondent #1 accepted and is paying a 15% permanent impairment rating.

\_\_\_\_\_8. Claimant did not sustain his burden of proving by a preponderance of the evidence that he is entitled to an additional 1.5% permanent impairment rating. Claimant did not identify any provision of the Fourth Edition of the Guides that would entitle him to an impairment rating greater than 15%; I did not find a provision that would entitle Claimant to an additional 1.5% permanent impairment rating.

9. Claimant did not sustain his burden of proving by a preponderance of the evidence that he is permanently and totally disabled. He is not motivated to return to work. Further, the medical evidence will not sustain a finding that Claimant is permanently and totally disabled; at least two doctors recommend that Claimant undergo an FCE, suggesting that he does have some capacity to work.

10. Because Claimant did not sustain his burden of proving that he is permanently and totally disabled, it is not necessary to discuss the third issue listed in the Prehearing Order, relating to the liability of the Death and Permanent Total Disability Trust Fund.

11. Upon consideration of all relevant wage-loss factors, I find that Claimant did establish a decrease in his wage earning capacity equal to 15% to the body as a whole, and that he is therefore entitled to wage-loss disability benefits. Again, Claimant's August 20, 2002 compensable injury is the only, and therefore the major, cause of this decrease in his earning capacity.

12. Claimant's attorney is entitled to the maximum prescribed attorney's fee under Ark. Code Ann. § 11-9-715, to be paid by Respondent #1.

### **AWARD**

Respondent #1 is directed to pay benefits in accordance with the Findings of Fact

and Conclusions of Law set forth herein.

Claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by Respondent #1 in accordance with Ark. Code Ann. § 11-9-715 and Death and Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

**IT IS SO ORDERED.**

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D. FRANKLIN AREY, III,  
Administrative Law Judge

DFA/ml