

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. E309628**

**SANDRA PEACOCK, EMPLOYEE** **CLAIMANT**

**LOMAS FINANCIAL CORPORATION,  
EMPLOYER** **RESPONDENT**

**AETNA CASUALTY AND SURETY COMPANY,  
INSURANCE CARRIER** **RESPONDENT**

**OPINION FILED SEPTEMBER 28, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on June 30, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

A hearing was held on June 30, 2005, to determine the propriety of the calculation and payment of interest that has been paid to claimant thus far, as well as claimant's entitlement to additional periods of temporary total disability benefits.

The parties stipulated that an opinion was issued by Administrative Law Judge Dail Stiles on August 6, 2003, which therein laid out the parties' stipulations and contentions at that time and that said opinion was affirmed and adopted by the Full Commission on March 3, 2004. The parties have likewise stipulated that the Arkansas Court of Appeals affirmed the Full Commission's affirmation of Judge

Stiles's opinion, and a mandate was issued by the Court of Appeals on February 2, 2005.

Claimant contends that she is entitled to additional temporary total disability dating back to 1995. Further, claimant contends that the interest was paid at 7 percent across the board, in a lump sum, and should not have been paid at that calculation, according to Ark. Code Ann. § 11-9-809.

Respondents contend that claimant is not entitled to any additional period of temporary total disability and that interest has been paid correctly.

#### **STATEMENT OF THE CASE**

The stipulations, contentions, statement of the case, findings of facts, discussion, and award contained in Judge Stiles's opinion of August 6, 2003, are incorporated by reference into this opinion as if set forth word for word.

Claimant herein seeks additional temporary total disability benefits for periods of time dating back to 1995, which was either addressed before Judge Stiles in the hearing held before him on June 5, 2003, or should have been addressed at that time. Claimant contends that in her letter at that time, asking Judge Stiles for a hearing, she requested "any benefits that were due to [her] . . . anything else [she's] not aware of." She testified that she did not specifically use the words "temporary total disability benefits" or specify the specific periods for which she was seeking benefits. Judge Stiles found in an August 6, 2003, opinion that claimant had not met her burden of

proving by a preponderance of the evidence that she was entitled to the temporary total disability benefits she was seeking in that hearing. Claimant acknowledges that she was not awarded those benefits by Judge Stiles in his August 6, 2003, opinion, that said opinion was affirmed and adopted by the Full Commission on March 3, 2004, and that the Full Commission opinion was affirmed by the Arkansas Court of Appeals, and a mandate was issued by the Court of Appeals on February 2, 2005.

Claimant herein additionally contends that the rate of calculation of interest of her award has been paid incorrectly. She contends that the interest was paid at 7 percent across the board, in a lump sum, and should not have been paid at that calculation. Claimant contends that it should have been paid at 7 percent for everything due in 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and so on and so forth, at 7 percent for each individual year, with the understanding that interest stops at the mandate, and then resumes, depending on the outcome.

Respondents maintain that interest was calculated properly and has been properly paid. Respondents introduced a financial data exhibit verifying the amounts of temporary total disability, interest, and costs, calculated and paid to claimant. Claimant, also introduced, as an attachment to her post-hearing brief, copies of payments of the interest. There was some discussion at the hearing regarding the fact that Ms. Judy Jolley, Division Head of Special Funds for the Arkansas Workers' Compensation Commission, had actually calculated the rate of interest for the

respondents in the case. Claimant expressed concern that this was prejudicial to her, and that Ms. Jolley's computation was incorrect.

### **FINDINGS OF FACT**

1. The stipulations agreed to herein are accepted as fact;
2. The August 6, 2003, opinion of Administrative Law Judge Dail Stiles is incorporated by reference into this opinion as if set forth word for word;
3. The issue of claimant's entitlement to additional temporary total disability is barred under the doctrine of *res judicata*;
4. The rate of interest was calculated correctly and paid appropriately in this case.

### **DISCUSSION**

Arkansas Code Annotated § 11-9-809 states as follows:

Compensation shall bear interest at the legal rate from the day an award is made by either an administrative law judge or the full Workers' Compensation Commission on all accrued and unpaid compensation.

The Court of Appeals has stated that interest on an award of compensation begins to run upon accrued and unpaid installments of compensation to be computed from the dates when they should have been paid, beginning, however, no earlier than the date on which an administrative law judge or the Full Commission first enters an award allowing or denying a claim. *See Burlington. v. Pickett*, 64 Ark. App. 67, 983

S.W.2d 126 (1998); *Eureka Log Homes v. Mantonya*, 28 Ark. App. 180, 772 S.W.2d 365 (1989).

Claimant has failed in this case to introduce any evidence whatsoever that the interest herein was calculated and/or paid in any manner other than how it is to properly be calculated and paid according to Ark. Code Ann. § 11-9-809. Claimant's concern with the fact that Ms. Judy Jolley computed her interest improperly is without merit, as this examiner bears knowledge of the fact that Ms. Jolley's office possesses special expertise with regard to the calculation of interest of awards. Further, according to the figures provided by both respondent and claimant, it appears that claimant was paid interest on her award at the legal rate from the date of the award, compounded and paid, as it is to be properly paid. As such, claimant's contention in this regard is without merit.

With regard to claimant's contention of entitlement to additional temporary total disability benefits dating back to 1995, it was stipulated by the parties that ALJ Stiles's opinion of August 6, 2003, wherein he found that claimant had not met her burden of proving by a preponderance of the evidence that she was entitled to the period of temporary total disability she was seeking, was appealed to the Full Commission and was affirmed. It was further stipulated that said opinion was then appealed to the Arkansas Court of Appeals and affirmed. Because this issue was previously litigated, as was stipulated, respondents contend that the issue on

claimant's entitlement to additional temporary total disability benefits is barred by *res judicata*. I agree.

The concept of the doctrine of *res judicata* has two facets: claim preclusion and issue preclusion. See *Craven v. Fulton Sanitation Service, Inc.*, 04-791 (Ark. 4-14-2005); *Barclay v. Waters*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (May 20, 2004); *Searcy v. Davenport*, 352 Ark. 307, 100 S.W.3d 711 (2003); *John Cheeseman Trucking, Inc. v. Pinson*, 313 Ark. 632, 855 S.W.2d 941 (1993). Claim preclusion forecloses further litigation on a cause of action, while issue preclusion forecloses further litigation in connection with a certain issue. *Id.* Issue preclusion is the type of *res judicata* involved in this case.

Issue preclusion, better known in this state as collateral estoppel, bars relitigation of issues of law or fact previously litigated, provided that the party against whom the earlier decision is being asserted had a full and fair opportunity to litigate the issue in question and that the issue was essential to the judgment. *Beaver v. John Q. Hammons Hotels*, 355 Ark. 359, 138 S.W.3d 664 (2003); *Zinger v. Terrell*, 336 Ark. 423, 985 S.W.2d 737 (1999). To apply collateral estoppel, the following elements must be present: (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) the issue must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment. *Id.*

In this examiner's opinion, claimant had a full and fair opportunity to litigate the issue of her entitlement to additional temporary total disability benefits dating back to 1995 before ALJ Stiles in the hearing before him on June 5, 2003. Claimant herself testified before this examiner that she thought that "all benefits that were due [her]" were to be decided by Judge Stiles in that hearing. If she thought that she was due temporary total disability benefits dating back to 1995, surely she thought at the time of her 2003 hearing before Judge Stiles that she was due those benefits and did not only recently become aware of those benefits. Claimant now wishes to relitigate the same issue involved in the prior litigation; that issue was actually litigated and was determined by a valid and final judgment, which was appealed both to the Full Commission and to the Arkansas Court of Appeals. As such, it is my opinion that the doctrine of *res judicata*, or collateral estoppel, does apply, and claimant's claim herein is, therefore, barred.

For all of the above-stated reasons, claimant's claim herein is respectfully denied and dismissed.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge

