

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106802

LONNETTE OVERBEY PRESLEY	CLAIMANT
RHEEM MANUFACTURING CO.	RESPONDENT
EMPLOYERS INSURANCE OF WAUSAU INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 13, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by JASON BROWNING, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

The parties agreed at the pre-hearing conference that no hearing was necessary and that the issues to be decided would be submitted by stipulation and briefs. The stipulations entered into by the parties are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. All prior opinions are res judicata and the law of the case.

3. By letter of February 14, 2005, the Full Commission notified the attorney's in this case that the appeal that had been filed regarding an August 20, 2004, opinion of the Full Commission had not been perfected and that, therefore, the record was being returned to the Commission's general files. See Claimant's Exhibit No. 1.

4. Benefits awarded in the Full Commission's August 20, 2004, opinion were mailed to the claimant's attorney by letter dated March 14, 2005.

5. No interest has been paid on the Full Commission's award.

By agreement of the parties the issues to be litigated are limited to the following:

1. Whether a 20 percent late payment penalty should be imposed upon the respondents.

2. Whether the respondents owe interest regarding the 15 percent wage loss disability that was awarded.

3. Attorney's fees.

The claimant contends that she is entitled to a 20 percent penalty on her awarded benefits as well as interest from the time the award should have been paid. The claimant further contends that her attorney is entitled to the statutory attorney's fee on the benefits requested.

The respondents contend that they are not liable for interest or a penalty on the benefits paid subsequent to the Full Commission's letter dated February 14, 2005, notifying all parties that the claimant's appeal had not been perfected and was being returned to general files.

The documentary evidence submitted in this matter consists of the Commission's opinion dated December 12, 2003, marked Commission's Exhibit No. 1 and the Full Commission's opinion dated August 20, 2004, marked Full Commission's Exhibit NO. 1. The claimant submitted a packet of information marked Claimant's Exhibit

No. 1. The respondents submitted a packet of documentary evidence marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection. This documentary evidence as well as the briefs of the parties are blue booked to this record.

#### DISCUSSION

There was a full hearing held in this matter on September 24, 2003. An opinion was issued by the Administrative Law Judge on December 12, 2003, awarding the claimant wage loss in the amount of 15 percent over and above her 15 percent whole body impairment rating. This opinion was appealed by the claimant and on August 20, 2004, the Full Commission affirmed and adopted the Administrative Law Judge's December 12, 2003, opinion. The claimant appealed the Full Commission's opinion to the Court of Appeals but said appeal was not perfected. On February 14, 2005, the Full Commission notified the parties that the appeal had not been perfected and was being returned to the Commission's general file.

The parties have stipulated that benefits awarded in the Full Commission's August 20, 2004, opinion were mailed to the claimant's attorney by letter dated March 14, 2005.

It has long been the law in Arkansas that interest due on an award is to be computed from the date when benefits should have been paid. Clemons v. Beardon Lumber Company, 240 Ark. 571, 401 S.W. 2d 16 (1966) sets forth that;

we therefore hold that interest upon accrued and unpaid instalments of compensation is to be computed from the dates when they should have been paid, beginning, however not earlier than the date on which a referee or a Full

Commission first enters an award allowing or denying the claim.

Interest, therefore, shall be paid by the respondents to the claimant from the date of the Administrative Law Judge's opinion dated December 12, 2003, which is the date benefits should have begun.

Ark. Code Ann. §11-9-802(c) sets forth that;

If any instalment payment under the terms of an award is not paid within fifteen (15) days after it becomes due, there shall be added to such unpaid instalment an amount equal to 20 percent thereof....

It has been stipulated by the parties that, by letter dated February 14, 2005, the parties were notified that the claimant's appeal was not perfected and was being returned to general files. It has also been stipulated that benefits were not paid by the respondent until March 14, 2005. This is nearly thirty days past the date that the award became due and clearly more than fifteen days from the date the parties were notified that the Commission's opinion of August 20, 2004, was final. The respondents, therefore, should pay a 20 percent penalty on the 15 percent wage loss awarded to this claimant.

The respondents have controverted the claimant's entitlement to interest on her award as well as a 20 percent penalty. Therefore, the claimant's attorney is entitled to the maximum statutory attorney's fee based on the 20 percent penalty paid on the claimant's 15 percent wage loss award as well as the interest

awarded to the claimant on her award of benefits in the Administrative Law Judge's opinion dated December 12, 2003.

#### FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. All prior opinions are res judicata and the law of the case.

3. By letter of February 14, 2005, the Full Commission notified the attorney's in this case that the appeal that had been filed regarding an August 20, 2004, opinion of the Full Commission had not been perfected and that, therefore, the record was being returned to the Commission's general files. See Claimant's Exhibit No. 1.

4. Benefits awarded in the Full Commission's August 20, 2004, opinion were mailed to the claimant's attorney by letter dated March 14, 2005.

5. No interest has been paid on the Full Commission's award.

6. The claimant is entitled to interest on her award of benefits from the Administrative Law Judge's opinion dated December 12, 2003. See Clemons v. Beardon Lumber Company, 240 Ark. 571, 401 S.W. 2d 16 (1966). Also see discussion above.

7. The respondents should pay to this claimant a 20 percent penalty on the award of her 15 percent wage loss disability. See Ark. Code Ann. §11-9-902(c). Also see discussion above.

8. The respondents have controverted this claimant's entitlement to a 20 percent penalty on her wage loss disability benefits as well as interest on these benefits.

9. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the penalty and interest awarded to this claimant.

ORDER

The claimant has proven, in light of Arkansas law, that she is entitled to interest on her 15 percent wage loss disability award from the date of the Administrative Law Judge's opinion of December 12, 2003. Therefore, the respondents should pay interest to this claimant on her award of disability benefits.

The respondents should pay a 20 percent penalty on this claimant's award of wage loss disability.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE