

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F402660

**IGNACIO GRACIAN TORRES,
EMPLOYEE**

CLAIMANT

**MIGUEL OSEGUERA
D/B/A TWO PINES FORESTRY,
UNINSURED EMPLOYER**

RESPONDENT

OPINION FILED SEPTEMBER 23, 2005,

Pursuant to a hearing conducted June 29, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. William K. Moritz, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant, and

Mr. Milton A. DeJesus, Attorney at Law, Little Rock, Arkansas, appearing for the respondent.

STATEMENT OF THE CASE

This is a dispute over compensability of an injury suffered to the claimant's left leg.

The claimant contended that he sustained a compensable injury February 13, 2004, and should be awarded benefits, specifically including temporary total disability benefits together with reasonably necessary medical expenses. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondent initially contended that the claimant did not sustain a compensable injury and, further, that he was temporarily total disabled as a result of the alleged injury. He also initially contended that the claimant returned to work and was paid wages for some of the period of the alleged temporary total disability. At the hearing, the respondent stipulated that a compensable injury occurred and the claimant was entitled to eight weeks temporary total disability, an attorney's fee, and reasonably necessary medical expenses.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant's average weekly wage was \$320.00; the claimant sustained a compensable injury; the claimant was temporarily totally disabled and within his healing period for a period of eight weeks, so that he is entitled to temporary total disability for that period; the claimant is entitled to reasonably necessary medical expenses; and the claimant is entitled to an attorney's fee for controversion.

3. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

DISCUSSION

On February 13, 2004, the claimant injured his left ankle during his employment with the respondent employer when a log he was cutting fell over on his ankle.

The claimant sought medical care and on February 14, 2004, Dr. Christopher Young performed surgery, an open reduction and internal fixation of a displaced medial malleolus fracture. A high fibular fracture was noted but did not require surgical repair. The related period of temporary total disability of eight weeks is consistent with the nature of the injury and the medical record.

Ark. Code Ann. §11-9-501 provides for a compensation rate for temporary total disability in the amount of 66 2/3% of the employee's average weekly wage, subject to a \$20.00 per week minimum and a maximum rate based upon the state average weekly wage. Here, the claimant's average weekly wage was \$320.00 and his benefit rate for temporary total disability is \$213.00. Thus, he is entitled to a total of \$1,704.00 for temporary total disability. However, claimant's counsel is entitled to an attorney's fee under Ark. Code Ann. §11-9-715 in the amount of \$426.00, payable one-half by the employer and one-half by the claimant. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of a controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondent directly to the claimant's attorney. Thus, the respondent is ordered to pay indemnity benefits in the net amount of \$1,491.00 directly to the claimant, through his attorney, and an attorney's fee of \$426.00, payable by separate check directly to claimant's counsel. This is in addition to the expense of the claimant's medical care, subject to the limitations of Rule 30. The parties do not dispute the reasonable necessity of the medical care received by the claimant for his ankle injury. At the time of the hearing, no claim was made for permanent disability benefits, which were considered to be among the issues that were reserved.

Pursuant to Rule 20, the expense of taking and transcribing a hearing, including the expenses incurred as the result of providing a non-English language interpreter, where necessary, shall be borne by the respondent.

AWARD

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondent directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge