

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F108516

JESSIE WATTS, EMPLOYEE

CLAIMANT

CONAGRA POULTRY CO., EMPLOYER

RESPONDENT NO. 1

GALLAGHER BASSETT SERVICES, INC., TPA

RESPONDENT NO. 1

**DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND**

RESPONDENT NO. 2

OPINION FILED DECEMBER 1, 2005

This matter comes before Administrative Law Judge J. Mark White on the record.

Claimant was excused from participation herein and did not appear.

Respondent No. 1 represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

Death & Permanent Total Disability Trust Fund represented by Ms. Judy Rudd, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

Pursuant to the Prehearing Order filed September 26, 2005, the parties agreed to submit consideration of this claim on a stipulated record. The record is comprised of the Prehearing Order filed September 26, 2005; the exhibits submitted by Respondent No. 1 on October 28, 2005; and the exhibits submitted by the Death & Permanent Total Disability Trust Fund on October 17, 2005. The parties elected not to file briefs.

The parties stipulated that the Arkansas Workers' Compensation

Commission has jurisdiction of this claim; that the employee/self-insured employer relationship existed at all relevant times, including November 9, 2000; that on November 9, 2000, the claimant sustained a compensable injury; that respondents accepted the November 9, 2000 injury as compensable and paid benefits; that the claimant reached the end of his healing period no later than November 20, 2001; that respondents accepted the claimant as permanently totally disabled; that the claimant was assigned a permanent impairment rating of 20 percent to the body as a whole, which rating the respondents accepted and paid; that respondents paid the claimant \$75,000 in permanent disability benefits, including the 20 percent rating; and that the Death & Permanent Total Disability Trust Fund took over payments on July 15, 2005.

The parties agreed that the issues to be presented were whether Respondent No. 1 is entitled to credit for payment of permanent partial disability benefits against its \$75,000 maximum liability per Ark. Code Ann. § 11-9-502(b)(1); and whether the Death & Permanent Total Disability Trust Fund is entitled to reimbursement.

Respondent No. 1 contends that it is entitled to credit for payment of the claimant's permanent anatomical impairment rating of 20 percent to the body as a whole, or \$26,640, against its \$75,000 maximum permanent partial disability benefit

liability; that it does not owe reimbursement to the Death & Permanent Total Disability Trust Fund for the value of the anatomical impairment rating paid by the Trust Fund, and is not responsible for resuming payment of permanent total disability benefits until the 20 percent rating has been paid in full; that it is not responsible for paying the 20 percent impairment rating over and above the \$75,000 it has already paid in permanent total disability benefits; that its liability for permanent and total disability benefits is \$75,000 which has already been paid to the claimant; and that the Death & Permanent Total Disability Trust Fund is responsible for all permanent and total disability payments to the claimant over and above the \$75,000 already paid by Respondent No. 1.

The Death & Permanent Total Disability Trust Fund contends that Respondent No. 1 is not entitled to credit for payment of the claimant's permanent anatomical ratings for the compensable injury against its \$75,000 maximum permanent total disability benefit liability; and that Respondent No. 1 should reimburse the Trust Fund for the value of the anatomical impairment rating paid by the Trust Fund and resume payment of permanent and total disability benefits until such time as the anatomical rating is paid in full.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. Respondent No. 1 is entitled to a credit for the amount of all permanent disability benefits paid to the claimant after the end of his healing period, against its statutory maximum liability of \$75,000.
4. The Death & Permanent Total Disability Trust Fund is entitled to no reimbursement from Respondent No. 1.

DISCUSSION

The claimant sustained a compensable injury to his back on November 9, 2000, which injury the respondents accepted as compensable. As stipulated by the parties, he reached the end of his healing period no later than November 20, 2001, and was assigned a permanent anatomical impairment rating of 20% to the body as a whole by Dr. Wilbur Giles. Dr. Giles also opined that the claimant was permanently totally disabled, and Respondent No. 1 initiated permanent total disability benefits effective November 20, 2001, the end of the healing period. The Death & Permanent Total Disability Trust Fund argues that before beginning payment of permanent total disability benefits, Respondent No. 1 must first pay out permanent partial disability benefits in the amount of 20%, and that such payments may not count towards the employer's statutory maximum of \$75,000 for permanent total disability benefits. The Trust Fund seeks reimbursement for payment of these benefits.

The facts and issues herein appear to be identical to those set forth in the Commission's recent decision in *Thomas v. Legacy Insurance Services, A.W.C.C.* F100487 (May 4, 2005). The Commission therein found as follows:

Thus, when a determination of permanent total disability has been made, the benefits paid by a respondent after the end of the healing period are classified as permanent and total disability benefits

under Ark. Code Ann. § 11-9-502(b). The statute then provides, “all benefits in excess of seventy-five thousand dollars (\$75,000) shall be payable from the Death and Permanent Total Disability Trust Fund.”

I conclude that *Thomas* is controlling herein. Therefore, I conclude that Respondent No. 1 is entitled to a credit for the amount of permanent disability benefits paid to claimant after the end of his healing period, against its statutory maximum liability of \$75,000. The Trust Fund is entitled to no reimbursement.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge