

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310698

LINDA E. HUNT, EMPLOYEE	CLAIMANT
DEPARTMENT OF HEALTH, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED MAY 10, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on May 5, 2006, at Luxora, Mississippi County, Arkansas.

Claimant represented by Ms. Michaelene Connealy, Attorney-at-Law, Blytheville, Arkansas.

Respondents represented by Mr. Richard S. Smith, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted May 5, 2006, to determine whether to approve the distribution of the proceeds of a third-party settlement.

The immediate claim concerns an admitted, compensable injury on September 26, 2003. Respondents have accepted and paid all medical and related expenses, as well as various indemnity benefits as the result of the compensable injury. The claimant's injury was caused by a motor vehicle accident which occurred while the claimant was performing employment services for the Arkansas Department of Health. The claimant was employed as a home health aide which required her to drive to the homes of various clients. The claimant's accident and injury was caused by a third-party. Again, respondents have paid all appropriate

benefits, to date, in the total amount of \$10,535.73 while asserting a subrogation claim, pending resolution of the third-party action.

On or about February 24, 2006, the parties filed a Petition requesting that the Commission enter an Order of Distribution relative to the proceeds of the third-party claim. The claim was assigned to this administrative law judge to consider the requested distribution. Rather than conduct an exhaustive analysis of the procedural history involving the parties' Petition, suffice it to say that a review of the claim file reflected a possibility that the claimant may have received disability benefits at an erroneous compensation rate. This, together with the made whole doctrine prevented me from signing the proposed Order without further information and/or a short hearing. Accordingly, following various delays, a hearing was ultimately conducted on May 5, 2006. The sole subject of the hearing concerned whether or not to approve distribution of the proceeds from the third-party settlement.

At the hearing, respondents contended that the made whole doctrine did not apply to the State Public Employee Claims Division and that it had an absolute right to reimbursement pursuant to Ark. Code Ann. §11-9-410 and Ark. Code Ann. §21-5-605. The claimant, by and through her attorney, Michaelene Connealy, agreed that respondents had an absolute right to its subrogation interests. Accordingly, the only issue requiring clarification was whether or not the claimant was paid temporary total disability benefits at the appropriate compensation rate.

The claimant testified in her own behalf. Tammy Parchment and Muriel Hicks were called as witnesses for the respondents. The record is composed solely of the transcript of the May 5, 2006, hearing containing several exhibits.

From a review of the record as a whole, I hereby make the:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On September 26, 2003, the claimant sustained a compensable injury arising out of and during the course of her employment with the Arkansas Department of Health.
3. As of January 10, 2006, respondents have paid benefits to, or on behalf of, the claimant in the amount of \$10,535.73.
4. The claimant's injury resulted from an accident in which a third-party was involved which has now been settled by all parties, with respondents' subrogation rights being agreed to between the claimant and respondents.
5. The claimant has been paid at the appropriate compensation rate.
6. Respondents are entitled to reimbursement in the full amount of all benefits previously paid.
7. Claimant's entitlement to additional workers' compensation benefits, if any, is specifically reserved.

DISCUSSION

The record reflects that the claimant did not have a contract of hire to work a full forty (40) hour work week. Although the documentary evidence initially presented was confusing, respondents adequately explained how the compensation rate was computed. Since it appears that respondents have paid the claimant appropriate benefits, to date, I find that a distribution of the proceeds of the third-party settlement is appropriate, and, accordingly, it is approved as set forth below:

GROSS SETTLEMENT SUM	\$ 25,000.00
COSTS	\$ 0.00
ATTORNEY'S FEES	\$ 8,333.33
NET SETTLEMENT	\$ 16,666.67
1/3 TO CLAIMANT	\$ 5,555.56
BALANCE AVAILABLE FOR SUBROGATION	\$ 11,111.11
SUBROGATION TO PECD	\$ 10,535.73
BALANCE PAYABLE TO CLAIMANT	\$ 575.38
RESERVED AS FUTURE CREDIT TO PECD	\$ 575.38

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge