

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508002

**FRANCISCA GUEVARA RODRIGUEZ,
WIDOW AND GUARDIAN OF
EBER SUSTAITA GUEVARA,
MARLEN SUSTAITA GUEVARA, AND
ERENDRIA MAGALY SUSTAITA GUEVARA,
MINOR CHILDREN AND DEPENDENTS OF
MODESTO HERRERA (DEC'D), EMPLOYEE** **CLAIMANT**

BUSTER ROBERTS LOGGING, LLC, EMPLOYER **RESPONDENT NO. 1**

AMERICAN INTERSTATE INS. CO., CARRIER **RESPONDENT NO. 1**

DEATH & PERM. TOT. DISABILITY TRUST FUND **RESPONDENT NO. 2**

OPINION FILED FEBRUARY 27, 2006

Hearing before Administrative Law Judge J. Mark White on January 10, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Mr. Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. Terry Pence, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 10, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on October 12, 2005, by a different administrative law judge, and a Prehearing Order was entered that same day. A copy of the October 12, 2005, Prehearing Order has been marked as

Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employment relationship existed between a deceased employee and the employer on December 9, 2004; that the employee sustained a compensable death on December 9, 2004; and that respondents have not paid any dependency death benefits to date. At the hearing, the parties clarified the stipulations to the effect that the respondents did initiate fatality death benefits and paid for a period of five weeks until a dispute arose as to the identify of the deceased employee and his dependents. They further stipulated that the decedent earned an average weekly wage of \$500.

The parties agreed that the issues to be presented were proper identification of the decedent; and whether the claimants herein are the proper dependents entitled to dependency death benefits under the Act. At the hearing, the parties further agreed that attorney's fees were at issue.

The claimant contends in summary that she is the legal widow and guardian of three dependent children of Modesto Herrera, who the claimant maintains sustained a compensable death arising out of and during the course of his

employment with respondents; that she and the three children are entitled to dependency death benefits; and that a controverted attorney's fee should attach to any benefits awarded.

Respondents No. 1 contend that the identity of the decedent is unknown; that it hired one Cresentiano Tina, whose Social Security Number matches the name of the alleged decedent for which no dependents have been identified; and further, that the death certificate of the decedent identifies one Francisco Javier Sustaita Herrera, whose body was shipped back to Mexico; and that claimants cannot meet their burden of proving entitlement to benefits under the Act.

Respondent No. 2 contends that it stands ready to pay appropriate benefits if and when the carrier's maximum liability 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, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, 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. The decedent was Modesto Sustaita Herrera. At the time of his death Herrera was living and working in this country in violation of U.S. immigration laws. In an effort to avoid arrest or imprisonment, Herrera alternately assumed the names and identities of Cresentiano Lerma Pina and Francisco Javier Sustaita Herrera.
4. At one time, the decedent, Modesto Herrera, was married to the claimant, Francisca Guevara Rodriguez, and Herrera subsequently entered a marriage in legal form to Lavona Haury.
5. It is presumed as a matter of law that the claimant, Francisca Guevara Rodriguez, and the decedent, Modesto Herrera, were divorced prior to Herrera's marriage to Lavona Haury.
6. The claimant, Francisca Guevara Rodriguez, has failed to overcome this presumption by a preponderance of the evidence; therefore, she has failed to prove by a preponderance of the evidence that she is the lawful widow of the decedent, Modesto Herrera.
7. The lawful widow of the decedent Modesto Herrera is Lavona Haury.

8. The claimant has proven by a preponderance of the evidence that the decedent, Modesto Herrera, was the father of Eber Sustaita Guevara, Marlen Sustaita Guevara, Erendria Magaly Sustaita Guevara, and Eugenia Jhimnarely Sustaita Guevara.
9. The claimant has proven by a preponderance of the evidence that Eber Sustaita Guevara, Marlen Sustaita Guevara, and Erendria Magaly Sustaita Guevara were wholly and actually dependent upon the decedent, Modesto Herrera, at the time of his death.
10. The claimant has proven by a preponderance of the evidence that Eber Sustaita Guevara and Marlen Sustaita Guevara are under the age of eighteen, and that Erendria Magaly Sustaita Guevara is a full-time student and is under the age of twenty-five.
11. The claimant has proven by a preponderance of the evidence that Eber Sustaita Guevara, Marlen Sustaita Guevara, and Erendria Magaly Sustaita Guevara are entitled to death benefits in the amount of thirty-one and two-thirds percent (31 2/3%) of the decedent's average weekly wage, to be shared among them equally and to be paid in trust to their mother, the claimant herein, Francisca Guevara Rodriguez.
12. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

On December 9, 2004, an employee of the respondent-employer died as a result of injuries sustained in the course and scope of his employment. The decedent was known to his employer as Cresentiono Lerma Pina, with the nickname "Pineapple," and he used a Social Security number consistent with the same. His supervisor, Anthony Pharr, expressed surprise when the authorities arrived at the scene of the accident and began to call the decedent "Francisco." At the time of his death, the decedent lived with a woman by the name of Lavona Haury, and Pharr understood Lavona to be the decedent's wife, living with and dependent on the decedent.

A death certificate completed December 13 identifies the decedent not as Cresentiono Lerma Pina, but instead as Francisco Javier Sustaita Herrera, with a date of birth of July 22, 1966. The death certificate identifies the decedent's marital status as "married" and his surviving spouse as "Lavona Jessie," the same Lavona who testified at the hearing. Lavona testified she likewise knew the decedent as Francisco Herrera. The decedent was buried in Mexico at the request of his family, with Lavona's permission.

The respondent-carrier initiated survivor benefits pursuant to Ark. Code

Ann. § 11-9-527 in favor of Lavona. Several weeks later, the carrier was made aware of a second woman who claimed to be the legal widow of the decedent – the claimant herein, Francisca Guevara Rodriguez. Francisca contended that the decedent was not Francisco, but was actually her husband, Modesto Sustaita Herrera. The respondents subsequently terminated payment of benefits to Lavona and sought a hearing to determine the proper beneficiaries of the decedent's benefits.

Francisca was assisted in making her claim by law student Alvino Guajardo, who handled her case apparently on behalf of the Consulate General of Mexico in Dallas. Guajardo testified as a witness at the hearing in this matter.

Guajardo testified that the Consulate General was first contacted by a Jose Angel Sustaita Nieto, purportedly the cousin of the decedent, seeking permission to carry the decedent's body across the border for burial in Mexico. Permission was granted, and the form issued by the Consulate General identifies the decedent as Francisco Javier-Sustaita Herrera, with a date of birth of July 22, 1966 – the same name and date of birth identified on the death certificate.

Guajardo testified that he was then asked by a government office in Mexico to assist Francisca in obtaining death benefits for her husband, Modesto Sustaita Herrera, who had died in a logging accident in the United States. Guajardo noticed

the similarity between the name on the earlier death certificate and the name submitted by Francisca, and eventually came to the conclusion that Modesto and Francisco were one and the same – that the body shipped to Mexico under the name Francisco was actually Modesto. Guajardo obtained a copy of Modesto’s birth certificate, showing a date of birth of June 15, 1959; a copy of Modesto and Francisca’s marriage certificate; and birth certificates of the four children of Modesto and Francisca. Guajardo learned that Francisco and Modesto were in fact brothers, and he spoke by telephone with a man in Mexico purporting to be Francisco, as well as a woman purporting to be Francisco’s wife. Guajardo spoke by telephone with the parents of Francisco and Modesto, and he quoted them as saying it was Modesto who died, not Francisco. Guajardo obtained a copy of Francisco’s birth certificate, and it reflects a date of birth of July 22, 1966 – the same date of birth reflected on the death certificate.

Guajardo was asked why a Mexican citizen would come to the United States under a different identity. He answered that in his experience, Mexican nationals who have been deported from the U.S. use different names in subsequent re-entry attempts, because if they are found a second time in the U.S. after an initial deportation, they are subject to up to twenty years of imprisonment in a U.S. federal prison. Guajardo testified that Francisca told him that Modesto had indeed been

deported from the U.S. and then re-entered the country. Guajardo concluded that when Modesto sought an identity card from the Consulate General in Dallas upon his re-entry, he submitted paperwork showing his identity to be that of his brother, Francisco.

A notarized affidavit signed by Jose, the cousin of Francisco and Modesto, was submitted into the record by the claimant. It appears from the testimony that the affidavit was procured by Guajardo. Jose states as follows:

On or about December 9, 2004, my cousin Modesto Sustaita Herrera was killed as a result of an accident while he was working as a logger in New Hope Arkansas. Modesto worked for a logging company that was working on a jobsite in Arkansas, but Modesto lived in Oklahoma. I believe the logging company was Tony Parr Loggin / Buster Roberts Loggin. [sic] I took charge of making all the funeral arrangements and specifically in transporting Modesto's body to Mexico. I transported Modesto's body in my personal vehicle.

I understand that Modesto used his brother's name and date of birth while he was working in the United States. I do not know the reason why he did this. The death certificate issued by the State of Arkansas lists Francisco Javier Sustaita Herrera as the person who died. That is not correct. It was Modesto Sustaita Herrera who died, not Francisco Javier Sustaita Herrera.

Jose adds in the affidavit that the body he transported back to Mexico was that of Modesto, and that Francisco lives in Mexico. He further states Modesto was married in Mexico to Francisca Guevara Rodriguez and that "to the best of my

knowledge" they never divorced. A handwritten addition to the affidavit, notated with the initials "J.A.S.," states, "Modesto also has three adult children with his first wife Jolanda." The phrase "first wife" is crossed out and replaced with a handwritten word "girlfriend," again notated with the initials J.A.S. This "Jolanda" is not mentioned anywhere else in the testimony or written record.

Francisca, the claimant herein, testified at the hearing through an interpreter. She is a grade school teacher in Mexico. She testified she married Modesto in 1985, that to her knowledge they were never divorced, and that she and Modesto had four children, aged twenty-three, eighteen, sixteen and fourteen. Francisca testified that the man pictured on the identity card and identified as Francisco is in fact Modesto. She testified that she had an opportunity to view the decedent's body, and that it was Modesto. She further testified that she regularly saw Francisco in Mexico, and that Francisco had never been to the United States.

Francisca testified that Modesto sent money back to Mexico to her and the children from his earnings in the United States, and that she relied on that money to provide for herself and her children. She last saw Modesto alive on June 2, 1996, and all contact between the two of them for the next eight years was solely by telephone. She knew that her husband was somewhere in Arkansas, but she knew little else of his location or activities. Her only means of contacting him was by

calling his cousin, Jose. Her last telephone contact with Modesto was five months before his death.

Francisca estimated her monthly income to be 7,000 pesos, or \$650. At one point she testified that Modesto sent her \$100 every month, but she later admitted this money did not come every month, and that the last time Modesto had sent her any money was in July 2003, a year and a half before his death.

Lavona testified that she and the decedent were married in De Queen in 2000 by a justice of the peace, that they had a marriage license, that they lived together at the time of his death, and that they had no children together. She knew the decedent as Francisco Javier Sustaita Herrera. She said the decedent did call home to Mexico at times, though she thought he was calling his mother and father. She likewise knew of money transfers to Mexico, but she said he told her he was sending the money to his parents. Lavona does not speak Spanish and could not understand anything the relatives on the phone said. She said the decedent told her he was not married.

Lavona and the decedent had lived in Broken Bow, Oklahoma, but moved to De Queen temporarily for the decedent to work for the respondent-employer. She said the decedent admitted to her that he falsely used the name of Cresentiono Pina to obtain work. She knew that the decedent had a brother named Julio, but she

knew nothing of a Modesto.

It must be noted that although Lavona testified at the hearing, she was not represented by counsel and has not been joined as a party to this claim, even though her entitlement to benefits is potentially at stake.

II. Adjudication

A. Widow's Benefits

When a compensable injury results in death, the decedent's widow and surviving children are entitled to payment of weekly benefits if they were "wholly and actually dependent on the deceased employee" at the time of his death. ARK. CODE ANN. § 11-9-527 (c). The term "widow" is statutorily defined to "include only the decedent's legal wife, living with or dependent for support upon him at the time of his death." ARK. CODE ANN. § 11-9-102 (20)(A).

Given the multitude of possible explanations for the evidentiary muddle in this matter, I am inclined to resort to the ancient principle of Occam's Razor – the simplest answer is usually the correct answer. With that principle in mind, I am persuaded that a preponderance of the evidence holds that the decedent was Modesto Sustaita Herrera; that at the time of his death Herrera was living and working in this country in violation of U.S. immigration laws; and that in an effort

to avoid arrest and imprisonment, Herrera alternately assumed the names and identities of Cresentiano Lerma Pina and Francisco Javier Sustaita Herrera. I further find that a preponderance of the evidence holds that at one time Herrera was married to the claimant, Francisca Guevara Rodriguez, and that Herrera subsequently entered a marriage in legal form to Lavona Haury.

A subsequent marriage undertaken by an individual not yet divorced from his prior spouse is void, even where the subsequent spouse entered the relationship in good faith. *Standridge v. Standridge*, 298 Ark. 494, 769 S.W.2d 12 (1989). Nonetheless, there is a longstanding presumption against deliberate bigamy – that is to say, a presumption that a marriage conducted in legal form is valid as against a prior marriage. *Lathan v. Lathan*, 175 Ark. 1037, 1 S.W.2d 67 (1928). The burden of proving the second marriage void for bigamy is upon the party challenging its legality. *Id.* Specifically, when a man and woman are married, though one had a living spouse, it is presumed that the former spouse had been divorced at the time of the marriage. *Jessie v. Jessie*, 53 Ark. App. 188, 920 S.W.2d 874 (1996). The rationale for the presumption lies partly in the fact that “every intendment of the law is in favor of matrimony,” *Estes v. Merrill*, 121 Ark. 361, 181 S.W. 136 (1915), and partly in the presumption of innocence, in that bigamy is a felony. The Supreme Court in *Estes* emphasized the strength of this presumption as follows:

So strong is the presumption and the law is so positive in requiring the party who asserts the illegality of a marriage to take the burden of proving it, that such requirement obtains, even though it involves the proving of a negative, and although it is shown that one of the parties had contracted a previous marriage, and the existence of the wife or husband of the former marriage at the time of the second marriage is established by proof, it is not sufficient to overcome the presumption of the validity of the second marriage, the law presuming rather that the first marriage has been dissolved by divorce, in order to sustain the second marriage.

The only evidence of record to rebut the presumption herein is the testimony of Francisca that she was never served divorce papers, and the affidavit testimony of Jose that “to the best of [his] knowledge, Modesto and Francisca never divorced.” Beyond this testimony, there is no evidence that the decedent did not obtain a divorce decree, whether from Arkansas, Oklahoma, Mexico, or elsewhere. Mere lack of service on Francisca does not show *a priori* that no divorce decree has issued, and Jose’s testimony proves only his knowledge, and nothing more. None of the parties have endeavored to check the records of the counties where the decedent lived, and one can only guess whether a divorce action might be contained therein. Even where a party has shown the absence of such records, the Court has still found the presumption to hold. *See, e.g., Spears v. Spears*, 178 Ark. 720, 12 S.W.2d 875 (1928).

As noted above, it is the burden of the party challenging the legality of the

marriage – effectively the claimant herein – to prove the marriage bigamous. In light of the relevant case law, I am not convinced this burden has been met. I must presume that Francisca and Modesto were divorced prior to Modesto’s marriage to Lavona. *Jessie v. Jessie, supra*. Therefore, I find that the claimant, Francisca Guevara Rodriguez, has failed to prove by a preponderance of the evidence that she is the lawful widow of the decedent, Modesto Herrera. I find rather that the lawful widow of the decedent Modesto Herrera is Lavona Haury.

B. Children’s Benefits

Though I find Francisca not to be the decedent’s lawful widow, the evidence strongly supports the proposition that Francisca’s children are indeed the children of the decedent, Modesto Herrera. The record contains birth certificates identifying Modesto as the father of these four children, and as discussed above I have found that the decedent was in fact Modesto. Therefore, I find that the claimant has proven by a preponderance of the evidence that the decedent was the father of Eber Sustaita Guevara, Marlen Sustaita Guevara, Erendria Magaly Sustaita Guevara, and Eugenia Jhimmnarely Sustaita Guevara. I note that Eugenia has not been identified as a party herein, and in her contentions the claimant seeks benefits for only three children. The record reflects that Eugenia is over the age of eighteen and is not a full-time

student, thus she would not be eligible for benefits in any event. *See*, ARK. CODE ANN. § 11-9-527 (d)(2). Therefore, no finding will be made as to whether Eugenia was dependent on the decedent, Modesto Herrera.

As noted above, surviving children under the age of eighteen years are entitled to payment of weekly benefits if they were “wholly and actually dependent on the deceased employee” at the time of his death. ARK. CODE ANN. § 11-9-527 (c). Surviving children over the age of eighteen years may continue to be entitled to payment of benefit until they reach the age of twenty-five, so long as they are full-time students. ARK. CODE ANN. § 11-9-527 (d)(2).

The facts herein are remarkably similar to that of *Roach Mfg. Co. v. Cole*, 265 Ark. 908, 582 S.W.2d 268 (1979). The decedent therein married the appellee, Willadean Cole, and fathered a child with her. He left Willadean and married another woman without seeking a divorce. He died eleven months later; in that eleven month period, the decedent provided no support to Willadean or her child, and Willadean made no effort to obtain anything from the decedent. The Commission found the child to be a dependent but not Willadean, and the Supreme Court affirmed. The Court favorably quoted Professor Larson as follows:

Proof of bare legal obligation to support, unaccompanied by either actual support or reasonable expectation of support, is ordinarily not enough to satisfy the requirement of actual dependency.

Larson, *Workmen's Compensation Law*, 63 (1976), cited by *Roach Mfg. Co.*, *supra*.

The Court went on to explain why this rule excluded the widow's benefits but not the child's:

With respect to the wife, she elected to attempt to support herself and made no effort during her husband's 11 month absence preceding his death to enforce whatever legal right to support she may have had. Thus the Commission could find that she failed, in the language of the amended statute, to "establish in fact some dependency" upon her husband at the time of his death. On the other hand, the Commission could also find, with respect to a 10-year-old child who was being supported by her mother, that the same lapse of 11 months without legal action on the mother's part did not demonstrate, in Larson's language, that there was no longer any "reasonable expectation of support" on the part of the father. The child was not able to act for herself. Her necessary expenses would naturally increase as she grew older, with the concurrent possibility that her mother would not be able to maintain the child in "her accustomed mode of living," as we expressed it in *Smith v. Farm Service Cooperative*, *supra*. Thus a reasonable expectation of future support could be found.

Roach Mfg. Co., *supra* (citations omitted); see also, *Fordyce Concrete v. Garth*, 84 Ark. App. 256, 139 S.W.3d 154 (2003).

Some eighteen months passed in which the decedent in the instant claim provided no actual support to his four children. Yet, given his past support, and given the sporadic nature of his past support, I find that the children had a reasonable expectation of support in the future. Therefore, I find that the claimant has proven by a preponderance of the evidence that Eber Sustaita Guevara, Marlen

Sustaita Guevara, and Erendria Magaly Sustaita Guevara were wholly and actually dependent upon the decedent, Modesto Herrera, at the time of his death. Given the testimony of Francisca and the documents submitted herein, I find that the claimant has proven by a preponderance of the evidence that Eber Sustaita Guevara and Marlen Sustaita Guevara are under the age of 18, and that Erendria Magaly Sustaita Guevara is a full-time student and is under the age of 25.

Though Lavona is not a party herein, a finding as to the amount of her entitlement is essential to compute the benefit amounts owed to the children of the decedent. The statute as written does not explicitly envision a situation such as this, where the decedent's children are neither living with nor directly related to the decedent's widow. The statute provides that a widow is entitled to 35% of the deceased employee's average weekly wage. The statute further provides that "if there is a child" the widow is entitled to an additional 15% per child. I conclude that in the present matter, Lavona Haury as widow is entitled to 35% of the decedent's average weekly wage, and that the claimant, Francisca Guevara Rodriguez, is entitled to 45%, or 15% on account of each of the three dependent children.

However, death benefits payable under § 11-9-527 are subject to the limitations of § 11-9-501 (b), meaning the total benefits payable to all beneficiaries cannot exceed 66 2/3% of the decedent's average weekly wage. *Mecco Seed Co. v.*

London, 47 Ark. App. 121, 886 S.W.2d 882 (1994). The percentages granted above total 80%. The statute lists the various beneficiaries in “order of preference,” and the class of widow is listed before the class of children. ARK. CODE ANN. § 11-9-527 (c). Therefore, I conclude that Lavona Haury as widow is entitled to preference as against the three surviving children, and that the children are therefore entitled to a total of 31 2/3% of the decedent’s average weekly wage (66 2/3% maximum - 35% widow’s benefit = 31 2/3% remainder).

Given the above discussion, I find that the claimants Eber Sustaita Guevara, Marlen Sustaita Guevara, and Erendria Magaly Sustaita Guevara have proven by a preponderance of the evidence that they are entitled to death benefits in the amount of thirty-one and two-thirds percent (31 2/3%) of the decedent’s average weekly wage, to be shared among them equally and to be paid in trust to their mother, Francisca Guevara Rodriguez. At such point that one child ceases to be eligible, by virtue of reaching age 25 or by virtue of reaching age 18 and not being a full-time student, the total benefit payable to the claimants shall be reduced to 30%, and reduced thereafter as required by statute as the children reach independence.

C. Controversion and Attorney’s Fees

Attorney's fees may be awarded "on the amount of compensation for indemnity benefits controverted and awarded." ARK. CODE ANN. § 11-9-715(a)(2)(B). The object of the attorney's fee statute is to place the burden and expense of litigation upon the party which made it necessary. *Cleek v. Great S. Metals*, 335 Ark. 342, 981 S.W.2d 529 (1998). Whether a claim has been controverted is a question of fact. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

The respondents characterized the hearing as an "evidentiary proceeding," not an "adversary proceeding." Nonetheless, the Prehearing Order (prepared by a different administrative law judge) records the respondents' contention "that claimants cannot meet their burden of proving entitlement to benefits under the Act." Given the record before me, I find that the respondents controverted the claimants' entitlement to benefits – specifically, those benefits awarded herein to the decedent's children, Eber Sustaita Guevara, Marlen Sustaita Guevara, and Erendria Magaly Sustaita Guevara.

AWARD

The claimant has proven by a preponderance of the evidence that Eber Sustaita Guevara, Marlen Sustaita Guevara, and Erendria Magaly Sustaita Guevara are entitled as dependent children of the decedent, Modesto Herrera, to death

benefits in the amount of thirty-one and two-thirds percent (31 2/3%) of the decedent's average weekly wage, to be shared among them equally and to be paid in trust to their mother, Francisca Guevara Rodriguez. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein. The respondents are further directed and ordered to provide a copy of this Opinion to Lavona Haury.

The claimant's attorney, Mr. Gary Davis, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted and awarded to the claimants herein – Eber Sustaita Guevara, Marlen Sustaita Guevara, and Erendria Magaly Sustaita Guevara – pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge