

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F405425

ROGER BUNKER, EMPLOYEE	CLAIMANT
GLOVERS TRANSMISSION & REAREND, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE CO., CARRIER	RESPONDENT

**OPINION FILED MARCH 8, 2007**

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on December 13, 2006 at Little Rock, Pulaski County, Arkansas.

Claimant represented by HON. GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by HON. SCOTT MORGAN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On December 13, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing was conducted on October 4, 2006, and a Prehearing Order was entered on October 5, 2006. A copy of the October 5, 2006, Prehearing Order was marked as Commission Exhibit "1" and made a part of the record herein without objection. At the hearing, the parties confirmed their stipulations, issues, and respective contentions were properly set forth in the Prehearing Order.

The parties stipulated to the following at the full hearing:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employer/employee/carrier relationship existed at all

relevant times, including January 8, 2004.

3) The claimant's average weekly wage at the time of his compensable injury was \$971.00 per week.

4) The entire record/transcript of the January 30, 2004, hearing will be incorporated by reference at the full hearing of December 13, 2006.

5) The Administrative Law Judge's Opinion filed 4/21/06 is res judicata to this claim and is also hereby incorporated by reference.

6) Healthcare Recoveries is a party to the claim for the sole purpose of asserting its lien pursuant to A.C.A. §11-9-411 for the collection of medical bills, and attorney Gary Davis is also their counsel of record.

By agreement of the parties, the following are the issues to be presented for determination:

1) Whether claimant is entitled to a 36% penalty to be assessed against respondents for failure to pay medical bills, pursuant to A.C.A. §11-9-802(d) &(e),

2) Whether Healthcare Recoveries, (collection agency for Blue Cross/Blue Shield) is entitled to reimbursement for medical benefits paid through Blue Cross/Blue Shield on

behalf of the claimant pursuant to A.C.A. §11-9-411.

Claimant contended at the full hearing that he sustained compensable injuries on January 8, 2004, and that medical expenses were awarded. That respondents have failed to pay said medical expenses in a timely manner. Further, respondents have failed to recognize and pay a lien pursuant to A.C.A. §11-9-411. Claimant contends respondent should be assessed a 36% penalty for their failure to pay medical expenses pursuant to A.C.A. §11-9-802(d) & (e).

Respondents contended at the full hearing that claimant is not entitled to any penalties. That if the respondents failed to pay any medical benefits, such failure was not intentional or willful. Respondents further contended claimant failed to properly notify respondents of medical bills pursuant to Commission Rule 99.30(II)(E).

### **I. HISTORY**

It is undisputed that the claimant sustained a compensable injury to his right knee on January 8, 2004. Following the compensable injury, Respondents paid for some medical benefits; however, respondents controverted the claimant's request for a total knee replacement. The claimant received a total knee replacement on August 18, 2004, but costs associated with the knee replacement were not paid by the respondent/carrier. Instead, a third party (Blue Cross/Blue Shield) paid the medical providers for the costs associated with the knee replacement.

On January 30, 2004, this Administrative Law Judge conducted a hearing to determine whether claimant's knee replacement in August of 2004 was reasonable,

necessary and related to the January 8, 2004, compensable injury and payment thereof the financial responsibility of the respondents.

In an opinion filed April 21, 2006, this ALJ found the claimant's knee replacement to be reasonably necessary and related to his January 8, 2004, compensable injury; and thus the financial responsibility of the respondents. Neither party appealed the April 21, 2006, order and said order has become the law of the case. Following the April 21, 2006 order, claimant requested a 36% penalty due to respondents failure to pay the medical bills as ordered. Claimant further requested that respondents directly reimburse Blue Cross/Blue Shield (through its collection agency) for the monies Blue Cross/Blue Shield paid for the knee replacement.

Respondents argue that they were not willful or intentional in their failure to pay, and that claimant failed to properly submit the bills for reimbursement pursuant to Commission Rule 99.30(II)(E).

## **II. ADJUDICATION**

First, it must be stated that the respondents have not followed this ALJ's Order of April 21, 2006, in that they have failed to pay all the medical expenses related to the claimant's knee replacement. Respondents allege they couldn't pay because the claimant never went to the medical providers and asked them to re-bill Commerce and Industry Insurance Co. Respondents state they needed the re-bill information from the medical provider (or someone) on proper CMS 1500 or UB92 forms pursuant to Commission Rule 30 (II)(E). Clearly, I do not feel the respondents made much of an

effort to comply with my April 21, 2006, order. When Commission orders are not followed, it would seem appropriate to assess sanctions and penalties against the wrongdoer. However, pursuant to Burlington Industries v. Pickett, 335 Ark. 515, 988 S.W. 2d 3 (1999), the Arkansas Supreme Court gives merit to the respondents' argument regarding a penalty.

In Burlington, the court stated "Rule 30 does not establish a duty on the part of a carrier to pay until claims meeting its requirements are properly submitted." The Court, in Burlington, places some responsibility on the claimant "in making sure that expense claims were properly submitted for payment. In the case at hand, some expenses for the total knee replacement that were submitted on proper forms got paid. Claimant never argued that the bills had been submitted on the proper forms, but rather that the respondents could have easily made reimbursement. Burlington holds "the plain meaning of rule 30 does not establish a duty on the part of a carrier to pay until claims meeting its requirements are properly submitted." As in the case at hand, the Supreme Court, in Burlington, noted the respondents "did not do all they could have done to expedite the case," but still held "we do not read the Commission's rules as requiring carrier to seek out claimant's medical providers."

Based on the Court's holding in Burlington, I cannot penalize the respondents under A.C.A. §11-9-802(d) &(e) until it is shown Commission Rule 30 (II)(E) has been properly followed.

The claimant also requests an order directing the respondents to reimburse

Blue Cross/Blue Shield's agent, Healthcare Recoveries , for medical benefits paid on behalf of the claimant pursuant to A.C.A. §11-9-411. It is evident the claimant would prefer for the respondents to pay Healthcare Recoveries directly for the medical expenses related to the knee replacement, such a request would seem logical; however, I see no authority to direct the respondents to pay Blue Cross/Blue Shield directly until the bills are properly submitted to respondents under Rule 30. In Dooley v. Automated Conveyor Systems, Inc., 84 Ark. App. 412, 143 S.W. 3d 585 (2004), claimant made the argument that the only way claimant can provide a release under §11-9-411 is for the respondents to pay the group-medical-expense provider all sums it may have paid, which precludes an offset. The Court disagreed. In Dooley the Court said "workers' compensation carrier will hold in reserve and ultimately reimburse a group carrier for those medical benefits paid by the group carrier. The workers' compensation carrier will also take a dollar-for-dollar-offset (i.e. not pay the claimant or the medical provider) for benefits described in Section 411(a), and the group carrier will provide a release of any potential subrogation claims once it has been reimbursed by the workers' compensation carrier for the medical benefits already paid for by the group carrier." Respondents seem to argue that they could not pay Healthcare Recoveries directly for the medical bills paid by Blue Cross/Blue Shield, but rather needed to pay the medical provider. Dooley clearly says otherwise when it said "i.e. not pay the claimant or the medical provider", but rather "ultimately reimburse" the group carrier.

Were it not for the Burlington Industries v. Prickett case cited herein, it

would be appropriate for this ALJ to award immediate reimbursement from the respondent/carrier to Healthcare Recoveries. However, claimant should have the bills submitted on the proper forms pursuant to Rule 30, and then respondents reimburse Blue Cross/Blue Shield Healthcare Recoveries directly.

The parties stipulated at the December 13, 2006, hearing that Healthcare Recoveries would be a party in order to enforce its lien on behalf of Blue Cross/Blue Shield, and once respondents get the bills submitted in proper form, reimbursement should be made pursuant to A.C.A. §11-9-411.

#### **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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704.

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations of the parties are hereby accepted as fact.
- 3) Respondents were not intentional in their failure to pay medical bills due to Commission Rule 30; because the medical bills were not properly submitted.

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4) Therefore, claimant has failed to prove by a preponderance of the evidence entitlement to a penalty pursuant to A.C.A. §11-9-802(e).

5) Once the bills have been properly submitted to respondents, respondents are directed to reimburse Blue Cross/Blue Shield/Healthcare Recoveries, a stipulated party herein, for medical bills paid, pursuant to A.C.A. §11-9-411 and Dooley v. Automated Conveyor Systems, Inc.

**ORDER**

The parties are directed to work together in getting the medical bills properly submitted to the respondents and; thereafter, respondents are directed to reimburse the group carrier pursuant to the Findings of Fact and Conclusions of Law recited herein and A.C.A. §11-9-411.

IT IS SO ORDERED.

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S. DALE DOUTHIT  
Administrative Law Judge