

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605371

RAMON ESPINOZA MARTINEZ, EMPLOYEE

CLAIMANT

JIM KING, INDIVIDUALLY, and, d/b/a
TIMBERKING COMPANY,
UNINSURED EMPLOYER

RESPONDENT

OPINION AND ORDER FILED JUNE 28, 2007

Claim submitted on the record before Chief Administrative Law Judge David Greenbaum on June 28, 2007, Little Rock, Pulaski County, Arkansas.

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

Respondent, *pro se*, failed to appear.

STATEMENT OF THE CASE

A prehearing telephone conference was conducted in this claim on June 27, 2007. The employer, Jim King, d/b/a Timberking Company, failed to make himself available at the scheduled conference. Notice of the conference was confirmed by return receipt of certified-mail sent on June 11, 2007, which was received by the employer on June 13, 2007, Item #7115 5950 0330 0074 6136.

A summary of the procedural history in this claim is warranted. A hearing was conducted in this claim on December 14, 2006, to determine the claimant's entitlement to permanent impairment benefits. An Opinion was filed January 18, 2007, awarding the claimant benefits reflected below:

AWARD

"Respondent, Jim King, is hereby directed and ordered to pay, to the claimant, permanent impairment benefits at the rate of \$267.00 per week for a total of 18.5 weeks, in the total amount of \$4,939.50.

Additionally, claimant's attorney, Mr. Gary Davis, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to Ark. Code Ann. §11-9-715, in the amount of \$1,234.88, of which \$617.44 is to be paid by respondent in addition to the benefits owed to the claimant and \$617.44 is to be deducted from the claimant's entitlement.

Accordingly, respondent is directed to issue two (2) checks: \$4,322.08 to the claimant and \$1,234.88 to the claimant's attorney.

All benefits having accrued, respondent is to pay the benefits in lump sum and without discount.

This Award shall bear interest at the legal rate until paid."

No appeal was taken by either party to the January 18, 2007, Opinion and Award. Accordingly, said decision is now final and the law of the case.

Thereafter, by letter dated March 5, 2007, claimant's attorney requested a hearing on the issues of non-payment of Award. The claim was then reassigned to this administrative law judge. A prehearing telephone conference was scheduled for April 18, 2007. An attempt to conference the parties was unsuccessful as reflected by a letter from this Commission filed April 25, 2007, at which time the claim was returned to the Commission's general files giving the parties additional time to either resolve their dispute or reschedule the conference. It must be noted that the respondent consulted with an attorney, one John M. Sherman of Clarksdale, Mississippi; however, Mr. Sherman did not make an entry of appearance for respondent. Mr. Sherman did advise the claimant's attorney that Mr. King either could not or would not pay the prior Award as reflected by a letter from claimant's attorney dated June 1, 2007, a copy of which was sent to both Jim

King and John M. Sherman, Attorney-at-Law, at which point the claim was reassigned to this administrative law judge. Another prehearing conference was scheduled for June 27, 2007, as reflected by the return receipt identified previously which was received by respondent on June 13, 2007.

Again, it is undisputed that the prior Award remains unpaid.

Claimant's attorney requested a penalty on the unpaid benefits previously awarded. The only genuine dispute was whether either a twenty percent (20%) penalty or a thirty-six percent (36%) penalty was appropriate pursuant to Ark. Code Ann. §11-9-802. Claimant's attorney stated that his client was willing to forego a hearing on the issue of whether respondent's refusal was willful and intentional, and requested a twenty percent (20%) penalty in order that the prior Award could be enforced pursuant to Ark. Code Ann. §11-9-712. In view of the foregoing, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The prior Opinion and Award filed in this claim on January 18, 2007, is now a final decision and the law of the case.
3. Respondent has failed and/or refused to pay the benefits previously awarded.
4. A twenty percent (20%) penalty should be added to the unpaid installment

previously awarded pursuant to Ark. Code Ann. §11-9-802(c).

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that there are no material facts in dispute. The claimant has previously been awarded benefits which remain unpaid. All of the previous benefits awarded have accrued and were directed to be paid in lump sum and without discount. Ark. Code Ann. §11-9-802 provides, in part:

- (c) If any installment payable under the terms of an Award is not paid within fifteen (15) days after it becomes due, there shall be added to such unpaid installment an amount equal to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to, the installment unless review of the compensation Order making the Award is had as provided in §§11-9-711 and 11-9-712.

Ark. Code Ann. §11-9-712 provides:

If any employer fails to comply with a final compensation Order or Award, any beneficiary of the Order or Award, or the Workers' Compensation Commission, may file a certified copy of the Order or Award in the Office of the Circuit Clerk of any county in this state where any property of the employer may be found. At that time, the Circuit Clerk shall enter the Order or Award in the judgment record of the county, and the Order or Award so recorded shall be a judgment and lien as are judgments of the Circuit Court, and enforceable as such.

AWARD

Respondent, Jim King, is hereby directed and ordered to pay, to the claimant, \$5,186.50, representing the prior Award plus a twenty percent (20%) penalty for non-payment.

Additionally, Jim King is hereby directed and order to pay, to the claimant's

attorney, Mr. Gary Davis, \$1,481.85, representing the attorney's fee previously awarded, together with a twenty percent (20%) penalty for non-payment.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge