

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F701097

LUZ MARIA CARDENAS, EMPLOYEE

CLAIMANT

**BETTY FURR, INDIVIDUALLY, AND
d/b/a WEST MEMPHIS CLEANERS,
UNINSURED EMPLOYER**

RESPONDENT

OPINION AND ORDER FILED MAY 19, 2008

Submitted to Chief Administrative Law Judge David Greenbaum on May 15, 2008 on a stipulated record.

The claimant appeared pro se and through her interpreter, Aaron Salas.

Respondent represented by Keith L. Dobbs, Attorney at Law, Memphis, Tennessee.

STATEMENT OF THE CASE

_____This claim is submitted based upon a stipulated record. A prehearing telephone conference was conducted in this claim on May 15, 2008. At the hearing both parties agreed that the issues presented for determination could be decided based upon the prior record developed in this claim. A hearing was conducted on October 5, 2007 and an Opinion was filed in this claim on October 29, 2007. Neither party appealed the decision. Accordingly, it is undisputed that the October 29, 2007 decision is now final and the law of the case.

It is further undisputed that the uninsured employer has failed and/or refused to pay any of the benefits awarded by the prior decision.

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The claimant requested that the prior decision be reduced to a specific dollar amount and that the respondent be ordered to pay benefits previously awarded together with appropriate penalties and interest so that the prior award could be enforced as a judgment against the uninsured employer. The claimant further pointed out that none of her medical expenses previously ordered to be paid by the employer had been satisfied and that she continued to receive statements from a number of medical providers.

The employer, by and through a family friend who was an attorney licensed to practice in the State of Tennessee made several disclosures. First, he pointed out that he was not charging any legal fees for his association with the claim. He further stated that Ms. Furr had attempted to resolve the claim by making the claimant a monetary offer while acknowledging that the proposal was not submitted in the form of a joint petition for final settlement of the claim. The attorney prayed that penalty and interest not be assessed while at the same time waiving respondent's right to a hearing on the issues presented.

By agreement of the parties the sole issues concern claimant's entitlement to a statutory penalty and interest as well as reducing the prior award to a fixed dollar amount.

The record is composed solely of the transcript of the October 5, 2007

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hearing together with the Opinion and Order filed October 29, 2007 which are incorporated by reference and made a part of the record herein. 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 Opinion filed October 29, 2007 is a final decision and the law of the case.
3. The claimant is entitled to a statutory penalty equivalent to twenty percent (20%) on the unpaid award.
4. The claimant is entitled to interest on the unpaid award.
5. The claimant is to provide the respondent with copies of all unpaid medical expenses as well as execute any release submitted by respondent in order for respondent to obtain proper CPT codes necessary to establish the amounts due and owing pursuant to the medical fee schedule established by Commission Rule 099.30.

DISCUSSION

Again, it is undisputed that the prior decision filed in this claim is a final decision and the law of the case. The employer has, to date, failed and/or

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refused to pay the prior award. Ark. Code Ann. § 11-9-802 (2002 Repl.)

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.

(d) Medical bills payable within thirty (30) days after receipt by the respondent unless disputed as to compensability or amount.

(e) In the event that the commission finds the failure to pay any benefit is willful and intentional, the penalty shall be up to thirty-six percent (36%), payable to the claimant.

Without a hearing there is no evidence that the employer's failure to pay the benefit previously awarded is willful and intentional. In fact, the claimant candidly acknowledged that the employer attempted to settle the claim outside the Commission and that she refused the offer made by the employer. However, negotiations do not excuse the employer's failure to pay the disability benefits previously awarded. Furthermore, it appears that the claimant has not forwarded the various medical bills to the employer for payment. Rather, the claimant has merely submitted a total amount for alleged outstanding medicals. Medical bills must be paid to the medical providers and not to the claimant.

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Any future dispute with regard to the proper amounts of any outstanding medicals can be submitted to the Commission's Medical Cost Containment Division for resolution.

I feel compelled to point out that the employer's continued failure and/or refusal to pay benefits previously awarded may result in a show cause hearing in accordance with Ark. Code Ann. § 11-9-706.

AWARD

Respondent, Betty Furr, d/b/a West Memphis Cleaners, is hereby directed and ordered to pay the following:

\$100.00 per week from 10/27/05 through 04/17/06 (173 days) =	\$2,471.43
20% penalty	494.29
Interest from 10/29/07 through 05/15/08	138.02
TOTAL	\$3,103.74

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge

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DG/pjb