

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F011344

DEBBRA J. DICK, EMPLOYEE	CLAIMANT
CONLEY TRANSPORT II, INC., EMPLOYER	RESPONDENT
VIRGINIA SURETY COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED MAY 12, 2008

Hearing before Administrative Law Judge O. Milton Fine II on February 12, 2008 in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Evelyn Brooks, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by Mr. Bill H. Walmsley, Attorney at Law, Batesville, Arkansas.

STATEMENT OF THE CASE

On February 12, 2008, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on December 3, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. After the reaching of an additional stipulation at the hearing regarding benefits paid, they are the following three, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The opinions of ALJ C. Michael White filed February 11, 2003 and ALJ Mark Churchwell filed June 23, 2006, as well as the opinion of the Full Commission filed October 16, 2006, are final and constitute the law of the case.
3. Respondents have paid the two percent (2%) permanent partial impairment rating given by Dr. Martin Greenberg, along with an attorney's fee on that amount; Respondents have also paid the mileage reimbursement requested by Claimant, along with an attorney's fee on that amount.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. Many of these were culled, and others were amended. Claimant reserved the issue of whether she is entitled to an attorney's fee on medical benefits after August 20, 2005. The following issue were litigated:

1. Whether Claimant is entitled to temporary total disability benefits from May 8, 2007 to a date yet to be determined.
2. Whether, in the event temporary total disability benefits are awarded, Claimant is entitled to a controverted attorney's fee on that award.
3. Whether the appropriate amount of temporary total disability benefits were paid until May 7, 2007 pursuant to the earlier opinion in this case.
4. Whether an MRI ordered by Dr. Martin Greenberg in September 2007 constitutes reasonable and necessary medical treatment.
5. Whether and to what extent is Claimant entitled to interest in an earlier award made in this case.

6. Whether and to what extent have Respondents paid the interest described above.
7. Whether Claimant is entitled to a controverted attorney's fee in the event that such interest is found to be due and owing.

Contentions

The parties amended their contentions to conform to the amended issues. The contentions now read:

Claimant:

1. Interest is due on the amount of the award.
2. Additional temporary total disability benefits are due from January 23, 2007 to April 24, 2007 because the proper amount for that period was not paid.
3. Temporary total disability benefits are due from May 8, 2007 to September 17, 2007.
3. Additional medical treatment is reasonable and necessary in the form of an MRI ordered by Dr. Greenberg in September 2007.
4. Claimant is entitled to an attorney's fee on interest payments.

Respondents:

1. Respondents contend they have paid all benefits to which the Claimant is currently entitled to receive pursuant to any award of this Commission.
2. Respondents have not controverted any portion of this claim beyond the findings of the opinions previously entered herein.

3. The MRI that was recommended by Dr. Greenberg on September 12, 2007 for C3-4 and C6-7 is not reasonable, necessary, or related to Claimant's compensable injury of September 3, 2000.
4. Respondents have paid all interest to which the Claimant is entitled to receive as a result of the award of June 23, 2006, but it was erroneously paid as additional attorney's fees, entitling Respondents to a credit.
5. Claimant reached maximum medical improvement in May 2007, and no temporary total disability payments are due subsequent to that date; in the alternative, in the event that Claimant did not reach MMI then, then she reached it on August 29, 2007. Any difficulties she has had subsequent to reaching MMI are due to conditions unrelated to her compensable injury.
6. The additional two percent (2%) permanent impairment rating has previously been paid.
7. Any additional medical treatment is not reasonable, necessary and causally related to Claimant's injury.
8. No additional attorney's fees are due.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that she is entitled to additional temporary total disability benefits from May 8, 2007 to a date yet to be determined because her healing period ended on May 7, 2007.
4. Respondents owe an additional \$738.55 in temporary total disability benefits to Claimant for the period of January 23, 2007 through May 7, 2007.
5. Claimant has not proven by a preponderance of the evidence that she is entitled to an additional MRI.
6. Respondents have paid the interest on Claimant's earlier award, albeit erroneously as attorney's fees, which were overpaid, entitling them to a credit in the amount of \$160.63.
7. Claimant has proven by a preponderance of the evidence that she is entitled to a controverted attorney's fee on the underpayment of temporary total disability benefits for the period of January 23, 2007 through May 7, 2007.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness at the hearing.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Claimant's Exhibit 1, medical records, consisting of a two-page index and 53 individually numbered pages thereafter; Claimant's Exhibit 2 (the record was held open to receive this), a letter from Claimant's counsel to the

undersigned dated February 26, 2008, plus attachments, consisting of 20 individually numbered pages; Respondents' Exhibit 1, medical records, consisting of a two-page index and 26 individually numbered pages thereafter; Respondents' Exhibit 2, a computer printout and a handwritten page by Respondents' counsel, consisting of six unnumbered pages; and Respondents' Exhibit 3, a computer printout, consisting of seven unnumbered pages. A letter and attachment from Respondents' counsel (the record was held open to receive this) dated February 22, 2008 has been blue-backed to the record.

Testimony

Debra Jeannette (Dick) Eastridge. Claimant testified that she is currently 41 years old. Her compensable injury was to her neck. She has undergone two surgeries—in December 2004 and January 2007—to the neck as a result. Dr. Martin Greenberg performed both surgeries, and has been treating her since October 2003. Claimant stated that in the three months following the second surgery she felt better, although the pain never left completely. “[A]nd then it just started hurting like the dickens again.” She has pain that shoots down her shoulders, and her hands become numb. She testified that she has not reinjured her neck. Dr. Greenberg has not released her; he sees her every three to four months. Claimant undergoes physical therapy that he has prescribed. Claimant stated that Dr. Greenberg wishes to perform a post-op MRI on her. Her last MRI was in August 2005, before the second surgery. She takes Mobic and Soma. Her pain medication was Darvocet, but was recently changed. When asked why she is not currently working, Claimant stated: “I can’t. I just can’t. I can’t lift. I can’t—I can’t sit for eight hours. I can’t stand for eight hours. I can’t work overhead. I can’t work down this way. I just can’t do it.”

When questioned by Respondents, Claimant testified that her 2004 surgery was for a ruptured disc at the C5-6 level. Dr. Greenberg repaired the rupture and performed a fusion at that level. The 2007 surgery was for a rupture at the C4-5 level. Again, the disk was repaired and a fusion was performed. Claimant stated that as far as she knows, the fusions are still intact and stable. Currently, Dr. Greenberg is discussing the possibility that she is experiencing problems at the C3-4 or C6-7 level. He also wishes to make certain that the earlier repairs are holding. She has had one CT scan and one myelogram. She has also undergone three MRIs.

Claimant did not recall her earlier MRI reports mentioning degenerative disc disease. She also did not recall Dr. Greenberg telling her that she would remain in her healing period for about six months after her January 2007 surgery. Claimant has not reviewed the results of her functional capacity evaluation.

In follow-up questioning from her attorney, Claimant testified that Dr. Greenberg wrote a note keeping her off work through January 2, 2008. She stated that Greenberg issues such a note each time he sees her, keeping her off work.

When questioned by me, Claimant testified that she has been on pain medication continuously since her injury. After she stopped taking Darvocet, she started taking Hydrocodone.

Under further questioning from Respondents, Claimant stated that Dr. Greenberg told her that an MRI was needed because he wished to see if she had a ruptured disc at the C3-4 and C6-7 levels.

Respondents called no witnesses.

Records-Medical

Claimant's Exhibit 1 and Respondents' Exhibit 1. The medical records of Claimant that were introduced at the February 12, 2008 hearing and are part of Claimant's Exhibit 1 and Respondents' Exhibit 1 reflect the following:

On October 15, 2004, Claimant presented with a history of an on-the-job injury on December 3, 2000. A cervical MRI showed a left C4-5 and C5-6 herniated nucleus pulposus and stenosis. X-rays showed instability, a 2-3 mm subluxation of C4-5 with posterior widening at C5-6, reduced under extension. In light of "profound left C5-6 radicular pain with weakness," Dr. Greenberg elected to proceed with a two-level micro anterior cervical discectomy and fusion ("ACDF") at C5-6. The surgery took place on December 9, 2004. X-rays taken on December 18, 2006 showed a reversal of the cervical lordotic curve associated with muscle spasm, but was otherwise normal, with the hardware shown to be well-placed.

Claimant returned to Dr. Greenberg on December 18, 2006. A post-op MRI showed a new central disc herniation and spinal stenosis at C4-5. The x-rays showed instability at C4-5. Claimant presented with "[r]ecurrent left greater than right C5 radiculopathy with weakness." Dr. Greenberg recommended an ACDF on C4-5, which Claimant underwent on January 23, 2007. She had pre and post-op diagnoses of a herniated nucleus pulposus/stenosis at the C4-5 level. X-rays taken the day of the procedure showed proper alignment. On February 7, 2007, Dr. Greenberg found that Claimant's neck pain and left C-5 radiculopathy were improving slowly and steadily. He directed that she be kept off work until he saw her again in three months. An x-ray taken that day reflected slight, stable anterolisthesis of C3 on C4.

Claimant's counsel on April 10, 2007 wrote a letter to Dr. Greenberg that reads in pertinent part:

I have received a copy of your clinic note dated February 7, 2007 regarding Debra. The note states at the bottom simply "work release," with a follow-up in three months. The workers' compensation insurance carrier is taking that to mean she's been released to go back to work. I understand from your office that it means she is released from work until at least her next visit with you, not that she is released to go back to work. Any help you can offer in clarifying this would be most appreciated.

[Handwritten with a line drawn to the words "work release" are the words "release from work until May 27, 07"]

X-rays taken on May 7, 2007 showed Claimant's condition to be unchanged since her February 7, 2007 x-ray. The fusions were noted to be stable as well. When Dr. Greenberg saw her that day, he recommended that she remain off work for an additional three months. He wrote: "The anticipated MMI in 6 months will be 10% impairment of the whole person, 12% impairment of the cervical spine, according to the categories."

Her next appointment, scheduled for August 9, 2007, was cancelled until she completed a functional capacity evaluation. Claimant underwent the FCE on August 29, 2007. The report reflects that Claimant gave a full physical effort, and that her subjective reports of pain and disability were reasonable and reliable. She was found to be capable of returning to work in a sedentary position. However, the evaluator noted that she could not yet work an eight-hour day, and recommended that she begin working a two to four-hour day and increase that gradually as her tolerance increased.

Claimant saw Dr. Greenberg on September 12, 2007. He noted that she has slow recovery post-op, and that her neck pain and bilateral right C4-5 radicular pain has improved slowly and steadily. He wrote: "Again, she has now reached an anticipated MMI

of 12%, which is impairment of the whole spine, cervical, which involves a second operation on the cervical spine. Work release. Continue physical therapy regarding a neck strengthening program.” He issued a note advising that she remain off work until January 2, 2008.

Respondents’ counsel on September 17, 2007 wrote a letter to Dr. Greenberg that stated in pertinent part:

Pursuant to the telephone conversation of September 12, 2007, I would request that you give me a statement in writing of the claimants [sic] permanent impairment rating which increased by 2% as a result of her latest surgery. You had previously given her a 10% impairment rating as a result of her first surgery and I understand you intend her total impairment rating now to be 12% to the body as a whole.

[Handwritten at the end of this paragraph is the notation “Yes, 12% *impairment of cervical spine MG”]

Claimant’s counsel on December 10, 2007 wrote Dr. Greenberg a note that reads in pertinent part:

I understand you have determined that Debbra has reached MMI as of September 12, 2007. At one point you had requested an MRI that had been denied by the workers’ compensation carrier. I have two questions. Do you believe that Debbra is in need of an MRI at this time, and if so, why?

[Handwritten at the end of this paragraph is the notation “Yes-need anr [sic] MRI!!”]

It would also be very helpful if you would confirm that you believe Debbra was still in her healing period until September 12, 2007, when you wrote that, “at this point she has reached a tentative MMI rating of 12% impairment of the whole person, cervical spine, as this now entails two surgeries.” I know it seems that you were perfectly clear in that report, but the respondent is trying to claim that Debbra was released at MMI as of May 7th when you stated that she had an anticipated rating in six months.

[Handwritten in the margin next to the first sentence of the latter paragraph is the notation “Yes tentative” (with the latter word circled and accompanied

by an unreadable mark). Handwritten at the end of the letter is the notation, "pt has appt to see us 12/17/07 at 1:30 pm"]

Dr. Greenberg saw Claimant on December 17 as scheduled. He noted that her neck pain and bilateral C4-5 radiculopathy was still improving slowly and steadily. However, he also noted that she had neck and bilateral shoulder pain, and recommended a "Cervical MRI ASAP to rule out C3-4 HNP/stenosis." Dr. Greenberg added: "She has not reached anticipated MMI rating . . . Follow-up after postop cervical MRI to rule out C3-4 HNP/stenosis." He issued a note advising Claimant to remain off work an additional six months, until July 4, 2008.

Records-Non-medical

Claimant's Exhibit 2. This exhibit consists of a letter to the undersigned from Claimant's counsel dated February 26, 2008 (the record was left open to receive the exhibit), along with two pages of counsel's "delineation of payments" made to Claimant and 19 pages of printouts.

Respondents' Exhibit 2 and 3. These exhibits consist of printouts of payments to Claimant, along with a one-page listing by Respondents' counsel of the payments made.

Blue-backed documents. By letter to the undersigned on February 22, 2008 (the record was left open to receive this), Respondents' counsel sent a copy of an email from the adjustor outlining the temporary total disability benefits that have been paid.

ADJUDICATION**A. Previous Opinions in This Claim**

Following a hearing, Administrative Law Judge C. Michael White on February 11, 2003, issued an opinion in this claim containing the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above [below for reference] are hereby accepted as fact.
 - a. The employee-employer-carrier relationship existed on September 3, 2000.
 - b. The claimant sustained a compensable injury on September 3, 2000.
 - c. The claimant was earning an average wage sufficient to entitle her to the maximum compensation rates.
 - d. The respondents have controverted the claimant's entitlement to any benefits not previously paid.
 - e. The respondents have paid outstanding medical benefits in an amount approximately equal to \$11,888.15 and the respondents paid temporary total disability compensation for the period extending from September 13, 2000 through July 31, 2001.
3. The claimant continues to suffer from problems that are causally related to her compensable injury and for which medical treatment remains reasonably necessary.
4. The claimant is authorized to receive any medical treatment that is reasonably necessary for treatment of her compensable injury from Dr. D. Luke Knox, with the Northwest Arkansas Neurosurgery Clinic, P.A.
5. The claimant failed to prove by a preponderance of the evidence that the most recent MRI recommended by Dr. Blankenship was reasonably necessary for treatment of her compensable injuries.

6. The claimant's healing period ended at least by August 1, 2001.
7. The claimant failed to prove by a preponderance of the evidence that she is entitled to any additional temporary total disability compensation.
8. The respondents controverted the claimant's entitlement to any additional medical treatment and any additional temporary disability compensation.

Administrative Law Judge Mark Churchwell held the second hearing in this claim and on June 23, 2006 issued the following findings of fact and conclusions of law:

1. The findings in the opinion filed by ALJ Michael White on February 11, 2003 are binding on the parties and constitute the law of the case.
2. The claimant has established by a preponderance of the evidence that the surgery proposed for the C4-5 level of her spine is reasonably necessary and causally related to her September 3, 2000 surgery.
3. The claimant has established by a preponderance of the evidence that she is entitled to additional temporary total disability compensation from August 20, 2005 through the date of the March 28, 2006 hearing and continuing to a date yet to be determined.

In an unpublished opinion issued on October 16, 2006, the Full Commission affirmed and adopted Judge Churchwell's findings and conclusions. All of the above findings and conclusions are *res judicata* and the law of the case. See *Thurman v. Clarke Industries, Inc.*, 45 Ark. App. 87, 872 S.W.2d 418 (1994).

B. Additional Temporary Total Disability Benefits

Respondents paid temporary total disability benefits to Claimant through May 7, 2007. Claimant argues that she is entitled to further benefits from May 8, 2007 to a date yet to be determined. Respondents contend that Claimant reached the end of her healing

period in May 2007, and is not entitled to benefits beyond that point; in the alternative, they assert that her healing period ended on August 29, 2007.

Claimant's compensable injury to her cervical spine is unscheduled. See Ark. Code Ann. § 11-9-521 (Repl. 2002). An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which she has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Also, a claimant must demonstrate that the disability lasted more than seven days. Ark. Code Ann. § 11-9-501(a)(1) (Repl. 2002). A claimant who has been released to light duty work but has not returned to work may be entitled to temporary total disability benefits where insufficient evidence exists that the claimant has the capacity to earn the same or any part of the wages he was receiving at the time of the injury. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *Sanyo Mfg. Corp. v. Leisure*, 12 Ark. App. 274, 675 S.W.2d 841 (1984).

The Commission is authorized to accept or reject medical opinions. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any

other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

The evidence shows that Claimant's healing period ended on May 7, 2007. The x-rays taken on that day reflected that her condition was unchanged since her February 7, 2007 x-ray. Her cervical fusions were found to be stable as well. While Dr. Greenberg recommended that she remain off work for an additional three months, he gave no reason for this decision. Her condition as documented in her medical records shows that it was stable as of May 7, and that nothing further in the way of treatment improved her condition thereafter. While Dr. Greenberg thereafter noted that Claimant's recovery was still occurring "slowly but steadily," and he has continued to keep her off work, it was in May that she reached the end of her healing period under the law. Hence, I find that Claimant has not proven by a preponderance of the evidence that she is entitled to temporary total disability benefits after May 7, 2008.

Claimant also contends that additional temporary total disability benefits are due for the period January 23, 2007 to April 24, 2007 because the proper amount for that time was not paid. As recounted above, the parties in the first hearing on this claim stipulated that Claimant was entitled to the maximum compensation rate. At the time of her compensable injury, the maximum temporary total disability rate was \$394.00. See AWCC Advisory 2000-1. Based upon my review of Claimant's Exhibit 2 and the document that was part of Respondents' February 22, 2008 letter to the Commission, blue-backed to the record, only \$5,171.45 was paid for the period of January 23-May 7, 2007, when the amount should have been \$5,910.00 under the correct rate. Hence, Respondents owe an additional \$738.55 in temporary total disability benefits to Claimant.

C. Reasonable and Necessary Medical Treatment

Claimant has argued that she is entitled to another MRI from Dr. Greenberg. Respondents assert that such an MRI is not reasonable, necessary, or related to Claimant's September 3, 2000 compensable injury.

Arkansas Code Annotated Section 11-9-508(a) provides that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). There must be a causal connection between the maladies for which Claimant is seeking treatment and the compensable injury. See *Williams v. L&W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004); *Murphy v. Wal-Mart Stores, Inc.*, 2003 AWCC 41 (Full Commission Opinion filed March 4, 2003). "Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer." *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

After a review of all the evidence, I find that Claimant has not proven by a preponderance of the credible evidence that she is entitled to another MRI. As I have already found, Claimant has reached the end of her healing period. Her condition has stabilized. As noted above, Dr. Greenberg apparently wrote by hand on Claimant's counsel's December 10, 2007 letter the words "Yes-need anr [sic] MRI!!" At that point, he did not cite why it was needed. Again, the Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). On December 17, 2007, however, Greenberg wrote that Claimant had neck and bilateral shoulder pain, and recommended a "Cervical MRI ASAP to rule out C3-4 HNP/stenosis." But Claimant has not been treated for a problem at this level; and no evidence in the record, in the form of an opinion by Dr. Greenberg or otherwise, ties such a problem, if it exists, to Claimant's compensable injury. To reach such a conclusion would require that I engage in speculation and conjecture, which I am not permitted to do. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). A causal connection is lacking here. Hence, Claimant has not met her burden of establishing the additional MRI to be reasonable and necessary to treat her compensable injury.

D. Interest on Earlier Award

Claimant asserts that she is entitled to interest on a previous award. Respondent has contended that the interest was paid, but was erroneously characterized as attorney's fees, entitling them to a credit. Claimant in her Exhibit 2 has calculated the amount of the

interest to be \$301.14, and Respondents have not disputed this. After considering the submissions of the parties, I credit that of Claimant. The net overpayment of attorney's fees was \$461.77. Thus, I find that the interest has been paid, and that Respondents' are entitled to a credit in the amount of \$160.63. See *Boone v. Ark. Ore. Pneumatics*, 2007 AWCC 130, Claim No. F109011 (Full Commission Opinion filed November 2, 2007).

E. Attorney's Fee

In her February 26, 2008 letter to the Commission that comprises part of Claimant's Exhibit 2, Claimant's counsel wrote: "I ask that the decision address whether the proper attorney fee has been paid on this medical that has been submitted." However, while the prehearing order (Commission Exhibit 1) reflects that this was one of the issues to be tried at the hearing, counsel at the hearing stated three times that this was being reserved. For example, one colloquy was as follows:

JUDGE FINE: And my understanding is that the one that you listed as your sixth issue, attorney's fee on medical benefits after August 20 of '05 [is] being reserved.

MS. BROOKS: Yes, sir.

Hence, it will be treated as reserved, and will not be addressed in this opinion.

As for Claimant's prevailing on the issue regarding additional temporary total disability benefits from January to April of 2007, I find that because Claimant's injury occurred before July 1, 2001, her attorney is entitled to the maximum statutory attorney's fee on all benefits awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by the Respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 1996); and *Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

CONCLUSION AND AWARD

Respondents are directed to pay benefits in accordance with the findings of fact and conclusions of law set forth above. 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. See *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge