

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507964

PAMELA JAMES, EMPLOYEE

CLAIMANT

MAYTAG MANUFACTURING LLC, EMPLOYER
FIDELITY & GUARANTY INSURANCE
COMPANY, CARRIER

RESPONDENT #1

SECOND INJURY FUND

RESPONDENT #2

OPINION FILED FEBRUARY 8, 2008

This contested matter was submitted on the record for an Opinion on February 5, 2008, before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS.

Claimant represented by The Honorable James A. McLarty III, Attorney at Law, New Port, Arkansas.

Respondent #1 represented by The Honorable William C. Frye, Attorney at Law, North Little Rock, Arkansas.

Respondent #2 represented by The Honorable Judy W. Rudd, Attorney at Law, Little Rock, Arkansas. Ms. Rudd waived participation in the litigation of the present issue before the Commission.

STATEMENT OF THE CASE

A prehearing telephone conference was held in this claim on November 5, 2007, and February 5, 2008. During the November 5, 2007, telephone conference, the parties offered to waive a hearing and submit this case on the record. Therefore, the parties were given deadlines for filing letter briefs on the issue at bar. After said filings and review of the briefs filed in this matter, a second telephone conference was held, on February 5, 2008. At that time, a determination was made that

the matter could be adjudicated on the record.

Therefore, pursuant to the February 5, 2008, telephone conference, a Prehearing Order was entered in this matter on that same date. This Order set forth the stipulations, the issue to be litigated, the parties' respective contentions, and the evidence of record.

The parties agreed to the following stipulations. These stipulations are hereby accepted.

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed on July 26, 2005, and at all relevant times.

3. The claimant sustained a compensable hip fracture on July 26, 2005.

4. The claimant was awarded temporary total disability compensation from July 26, 2005, through December 12, 2005.

5. The claimant received group insurance for short-term and long-term disability within the meaning of Ark. Code Ann. § 11-9-411.

6. The provisions of Ark. Code Ann. § 11-9-411 apply to the temporary disability benefits awarded herein and to payments of any medical treatment for which the respondent is liable as a result of the afore findings.

7. The claimant's appropriate weekly compensation rate for

temporary total disability is \$332.00, and she collected weekly short-term disability at the rate of \$299.52 per week.

8. Administrative Law Judge Opinion of August 10, 2006, and the Full Commission Opinion of May 8, 2007, is the law of the case.

9. The parties have agreed to submit this case on the existing record.

By agreement of the parties, the sole issue to be litigated and resolved, is as follows:

The amount of attorney's fees that are due on the temporary total disability compensation awarded to the claimant for the period of July 26, 2005 through December 12, 2005.

The claimant essentially contends that her attorney is entitled to the maximum attorney's fee based on the claimant's weekly temporary total disability rate of \$332.00, for the period of temporary total disability compensation awarded therein.

Respondent #1 contends that the amount of the attorney's fee should be based on the difference between the claimant's weekly temporary total disability rate of \$332.00, and the amount she collected from short-term disability, which was at a weekly rate of \$299.52. This difference amounts to \$32.48 per week.

The documentary evidence in this case consists of the following: the transcript of the hearing held May 23, 2006; the Administrative Law Judge's Opinion of August 10, 2006; the

Full Commission's Opinion of May 8, 2007; the Commission's letter of November 5, 2007; the Claimant's brief of November 8, 2007; Respondent's #1 brief of January 8, 2008; the Commission's letter of January 18, 2008; and the Commission's letter and Prehearing Order of February 5, 2008. The aforementioned documents are marked as Commission's Exhibit, as these all have been blue-backed and are incorporated herein by reference.

DISCUSSION

In an Opinion dated August 10, 2006, an Administrative Law Judge (this Opinion was affirmed by the Full Commission on May 8, 2007, and no further appeals were filed) found that the claimant sustained a compensable hip fracture on July 26, 2005. In this Opinion, the Administrative Law Judge further found that the claim had been controverted in its entirety, as no benefits had been previously paid.

Also in this Opinion, the Administrative Law Judge found that the claimant had proven her entitlement to temporary total disability compensation from July 26, 2005, through December 12, 2005, with an applicable set-off/credit pursuant to Ark. Code Ann. §11-9-411, as a result of the claimant having collected short-term and long-term disability.

The claimant's average weekly wage on the date of her injury was found to be \$499.20. The parties agree that the claimant's weekly total temporary disability rate was \$332.00, and that she

collected short-term disability from July 26, 2005, through January 24, 2006, at a weekly rate of \$299.52.

In the Administrative Law Judge's award, he specifically stated:

The claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondents in accordance with Ark Code Ann. § 11-9-715 and Death and Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S. W. 3d 463 (2002).

ADJUDICATION

For her sole issue on appeal, the claimant argues that her attorney is entitled to the maximum attorney's fee calculated on the claimant's weekly temporary total disability rate of \$332.00, for the period of temporary total disability compensation awarded therein, which was from July 26, 2005, through December 12, 2005.

Respondent #1 argues that the amount of the attorney's fee should be calculated on the difference between the claimant's weekly temporary total disability rate of \$332.00, and the amount she collected from short-term disability, which was at a weekly rate of \$299.52. This difference amounts to \$32.48 per week.

Ark. Code Ann. § 11-9-715 provides that the fees shall be allowed only on the amount of compensation for indemnity benefits controverted and awarded.

In this matter, the parties stipulated and the Administrative Law Judge found that respondent #1 had

controverted the claim in its entirety. He also found that the claimant proved her entitlement to temporary total disability from July 26, 2005 through December 26, 2005, and gave respondent #1 a credit, it requested pursuant to the provisions of Ark. Code Ann. §11-9-411. By having done so, the Administrative Law Judge effectively awarded the claimant all of her temporary total disability compensation for the aforementioned period. The granting of a credit for benefits collected under short-term disability does not diminish the fact that respondent #1 controverted and did not pay temporary total disability compensation, nor does the granting of a credit for benefits collected under short-term disability diminish the claimant's attorney's fee for having established a claim for temporary total disability compensation in this controverted claim. See Goodwin v. Phillips Petroleum Co., 72 Ark. App. 302, 37 S.W. 3d 644 (2001).

Therefore, I find that the claimant's attorney is entitled to an attorney's fee calculated on all the indemnity benefits awarded, despite the fact that respondent #1 will not pay the entire award to the claimant due to its credit, which was awarded for short-term disability collected by the claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed on July 26, 2005, and at all relevant times.

3. The claimant sustained a compensable hip fracture on July 26, 2005.

4. The claimant was awarded temporary total disability compensation from July 26, 2005, through December 12, 2005.

5. The claimant received group insurance for short-term and long-term disability within the meaning of Ark. Code Ann. § 11-9-411.

6. The provisions of Ark. Code Ann. § 11-9-411 apply to the temporary disability benefits awarded therein and to payments of any medical treatment for which the respondent is liable as a result of the afore findings.

7. The claimant's appropriate weekly compensation rate for temporary total disability is \$332.00, and she collected weekly short-term disability at the rate of \$299.52 per week, during the period for which temporary total disability was awarded.

8. Administrative Law Judge Opinion of August 10, 2006, and the Full Commission Opinion of May 8, 2007, is the law of the case.

9. The attorney's fee due the claimant's attorney for the temporary total disability compensation awarded for the period of July 26, 2005 through December 12, 2005, should be calculated on all the indemnity benefits awarded rather than the difference between her weekly temporary total disability rate of \$332.00,

and the amount she collected from short-term disability, which was at a weekly rate of \$299.52.

ORDER

Respondent #1 is directed to pay attorney's fees in accordance with the Findings of Fact and Conclusions of Law set forth herein.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge