

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F112770

MICHAEL KNAULS, EMPLOYEE

CLAIMANT

**HALLIBURTON ENERGY SERVICES, INC.,
EMPLOYER**

RESPONDENT NO. 1

**ESIS, INC.,
INSURANCE CARRIER/TPA**

RESPONDENT NO. 1

**DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND**

RESPONDENT NO. 2

OPINION FILED APRIL 28, 2008

Hearing conducted before Administrative Law Judge S. Dale Douthit in Fort Smith, Sebastian, Arkansas.

Claimant was represented by Mr. Joe D. Byars, Jr., Attorney at Law, Fort Smith, Arkansas.

Respondent No. 1 was represented by Mr. James C. Baker, Jr., Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by Ms. Judy Rudd, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 31, 2008, the above captioned claim came on for a hearing in Fort Smith, Arkansas. A prehearing conference was conducted in this matter on December 6, 2007, by the Honorable Elizabeth Danielson, and Judge Danielson issued a Prehearing Order on that same date. A copy of the Prehearing Order was marked as Commission Exhibit "2" and made a part of the record herein without objection, subject to any modifications made at the full hearing. Subsequent to the prehearing

MICHAEL KNAULS - F112770

conference, Judge Danielson departed from the Workers' Compensation Commission, and the claim was assigned to this administrative law judge.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) On November 1, 2001, the relationship of employee/employer/carrier existed between the parties.
- 3) Claimant sustained compensable injuries to his back and both legs on November 1, 2001.
- 4) A 75% impairment rating was accepted by Respondent No. 1.
- 5) Respondent No. 1 has accepted the claimant is permanently and totally disabled.
- 6) The claimant's weekly compensation rates are \$410.00 a week for temporary total disability and \$308.00 for permanent partial disability.
- 7) Respondent No. 2, Death & Permanent Total Disability Trust Fund, will begin paying the claimant permanent and total disability benefits on February 13, 2008.
- 8) Claimant's healing period ended on October 25, 2002.
- 9) The Trust Fund received notice in this matter on November 16, 2007.
- 10) The Trust Fund accepted liability for permanent and total disability on December 18, 2007.
- 11) All issues not addressed herein are reserved. (T. pg. 16, lines 19-23).

MICHAEL KNAULS - F112770

At the prehearing conference, conducted by Judge Danielson, the parties agreed the only issue was Death and Permanent Total Disability Trust Fund liability. However, at the full hearing on January 31, 2008, the Death and Permanent Total Disability Trust Fund acknowledged that it would be accepting the claimant as permanently and totally disabled and commence payments on February 13, 2008. By letter dated January 8, 2008, claimant's attorney advised the Commission and opposing counsel that he was aware of the Fund's acceptance of liability at that time but still requested other issues be heard at the January 31, 2008, hearing. Claimant's attorney's letter of January 8, 2008, was introduced into the record as Commission Exhibit "1".

At the full hearing, the parties agreed to litigate the following issues:

- 1) Whether Respondent No. 1 or Respondent No. 2 are liable for permanent disability benefits for the period of December 14, 2007, through February 12, 2008.
- 2) Whether Respondent No. 1 or Respondent No. 2 are liable for an underpayment of permanent disability benefits in the amount of \$25,252.57.
- 3) Originally, the issue of claimant's entitlement to additional home care assistance was to be litigated; however, near the end of the full hearing the claimant requested that issue not be heard and was thereby reserved.
- 4) All issues not addressed or outlined herein were reserved.

At the full hearing, Respondent No. 1 contended, in summary, that their

MICHAEL KNAULS - F112770

liability is limited to \$75,000.00 pursuant to A.C.A. § 11-9-502, irrespective of notice and gaps. Pursuant to Death and Permanent Total Disability Trust Fund vs. Legacy Insurance Services, 235 S.W.3d 544 (2006), Respondent No. 1 contended they are entitled to a credit for all disability benefits paid after the healing period ends.

Respondent No. 1 contended they get credit for all PPD benefits that were paid at the lower rate against the \$75,000.00 cap. Respondent No. 1 contended they have discharged their obligation under the Arkansas Workers' Compensation Commission Act by paying \$75,000.00 in permanent disability benefits. That the Commission has no authority to order Respondent No. 1 to pay continued permanent total disability benefits beyond the statutory maximum, and therefore the claimant's petition for additional permanent total disability benefits by Respondent No. 1 should be denied.

Respondent No. 2 contended at the full hearing, in summary, that carriers and employers were to give the Death and Permanent Total Disability Trust Fund ninety days notice prior to final payment of their \$75,000.00 liability. The Trust Fund had no independent knowledge of a claim prior to notice by a party, therefore the Trust Fund is entitled to sufficient time to investigate, assess defenses, or liabilities and insure that monies are available to pay all viable claims made against the Fund. Since the Trust Fund first received notice of this claim for permanent total disability benefits on November 16, 2007, it is not responsible for the payment of benefits before

MICHAEL KNAULS - F112770

February 13, 2008. Notwithstanding the notice requirement of Rule 28, A.C.A. § 11-9-502 prohibits the Trust Fund from paying benefits in this claim before December 14, 2007, when Respondent No. 1 completed payment of its \$75,000.00 in liability.

At the full hearing, claimant contended, in summary, that A.C.A. § 11-9-502 and § 11-9-501 both contemplate payment of weekly benefits. That in § 11-9-502 there is no reference to a ninety day notice provision. That the Legislature did not intend for this situation to arise that would allow Respondent No. 1 and/or the State to avoid making payment of weekly benefits where one of the parties failed to provide the required notice. That claimant was paid weekly benefits at the PPD rate as opposed to the total rate and that Respondent No. 1 should not get credit for those payments as they were truly in the nature of temporary total disability benefits payments. That for all times Mr. Knauls was permanently and totally disabled that he should have been receiving the higher total rate of \$410.00 per week which resulted in an underpayment to the claimant in the amount of \$25,252.57, and that either Respondent No. 1 or Respondent No. 2 should be responsible for said underpayment.

DISCUSSION

I. History

The facts in this case are relatively clear. On November 1, 2001, the claimant sustained a devastating injury while working for Respondent No. 1 when steel pipes

MICHAEL KNAULS - F112770

weighing approximately 200 pounds fell on top of the claimant leaving him a complete paraplegic. Respondent No. 1 accepted the claim as compensable. The claimant was found to be at maximum medical improvement on October 25, 2002, and the parties agreed the claimant sustained a 75% whole body impairment which Respondent No. 1 accepted and began making payments. The parties stipulated the claimant's PPD rate was \$308.00 per week and the TTD rate was \$410.00 per week. The Commission file reflects that the First Report of Injury was filed with the Commission on November 9, 2001, and the employer's intent to accept or controvert the claim Form AR-2 was filed on November 15, 2001, which indicated the employer did not controvert the claim. I take judicial notice of the First Report of Injury and the Form AR-2 both filed in 2001 and contained in the Commission file. The Commission file reflects that very little action was taken between the claimant's compensable injury date and October 18, 2007.

The Commission file reflects that claimant's attorney filed a Form AR-C with the Workers' Compensation Commission on October 18, 2007, requesting permanent and total disability benefits. Approximately four days later on October 22, 2007, claimant's attorney filed a prehearing questionnaire requesting permanent and total disability benefits. On November 9, 2007, Respondent No. 1's attorney sent a letter to the Death and Permanent Total Disability Trust Fund stating that they had received a

MICHAEL KNAULS - F112770

claim for permanent and total disability benefits pertaining to Mr. Michael Knauls. In the November 9, 2007, letter Respondent No. 1's attorney placed the Fund on notice which is evidenced by Respondent No. 2's Exhibit 1, page 1. Respondent No. 1 filed a response to the prehearing questionnaire on November 28, 2007, and accepted the claimant as permanently and totally disabled as evidenced in Respondent No. 2's Exhibit 1, pages 12 and 13. Respondent No. 1 filed a Form AR-D with the Arkansas Workers' Compensation Commission on December 21, 2007, as evidenced by Respondent No. 2's Exhibit 1, page 29. The parties stipulated that the Trust Fund accepted the claimant as permanently and totally disabled on December 18, 2007.

The Trust Fund, upon accepting the claimant as permanently and totally disabled reviewed the payments made by Respondent No. 1 since the end of the claimant's healing period in October of 2002 and found that Respondent No. 1 would have paid out \$75,000.00 in permanent disability benefits on December 14, 2007. The Fund argued that under Rule 28 they were allowed ninety days to investigate the viability of claimant's claim for permanent and total disability benefits and therefore based upon their investigative period, Respondent No. 2 contended they would not be starting permanent and total disability benefits until February 13, 2008. Therefore, since Respondent No. 1's \$75,000.00 was to pay out on December 14, 2007, and Respondent No. 2 would not pick up permanent and total disability benefits until

MICHAEL KNAULS - F112770

February 13, 2008; the issue of Respondent No. 1 or Respondent No. 2's liability for permanent disability benefits for the period of December 14, 2007, through February 12, 2008, arose.

Additionally, claimant argues that since Respondent No. 1 and Respondent No. 2 both now stipulate to the claimant being permanently and totally disabled, that the claimant was underpaid \$25,252.57. The claimant came up with the figure of \$25,252.57 based on the argument that Respondent No. 1 had been paying the 75% anatomical rating at the rate of \$308.00 per week but should have been paying the claimant the total disability rate of \$410.00 per week since the claimant reached maximum medical improvement in October of 2002. Claimant seeks the \$25,252.57 in the alleged underpayment from either Respondent No. 1 or Respondent No. 2.

II. Adjudication

It is clear to this examiner that certain rules and statutes that were in effect at the time the claimant sustained his compensable injury did not contemplate an impairment rating going above the \$75,000.00 cap. Unfortunately, the failure to raise the \$75,000.00 maximum liability outlined in A.C.A. § 11-9-502(b)(1) leads to an awkward result in this case. It must also be noted that the claimant's failure to request permanent total disability benefits until October of 2007 also created some unusual circumstances.

MICHAEL KNAULS - F112770

The first issue to address is claimant's contention that Respondent No. 1 or the Fund are liable for the gap between Respondent No. 1's payout of \$75,000.00 in permanent benefits and the Fund's inception date of permanent total disability benefits on February 13, 2008. Claimant contends that Respondent No. 1 violated Commission Rule 28 because of its failure to timely file Form AR-D and put the Fund on notice. At the hearing in this matter and in the parties' subsequent post-hearing briefs, the parties argued Commission Rule 99.28 as it stands today. However, Commission Rule 28 was revised in 2004, and the claimant's compensable injury occurred in 2001. The claimant in his post-hearing brief also cited the case of Coplin v. S&S Const., 2001 AWCC 136 (Claim No. E205334). To make things more confusing, the Coplin case relied on Rule 28 as it stood in 2001. In order to determine whether to apply Rule 28 as it was written in 2001 or the 2004 revision of Commission Rule 99.28, it must be determined whether the Rule was a procedural change or a substantive change.

Very clearly, the Rule deals with notice requirements and thereby affecting one's due process. Based on these notice changes, I find that Rule 28 as it was revised in 2004 was a substantive change and therefore I find that Rule 28 as was written in 2001, at the time of the claimant's compensable injury, should be applied to the facts in this case.

MICHAEL KNAULS - F112770

Commission Rule 28 as revised in 2004 stated:

A. DEATH CLAIMS

- (1) Employers or their designees shall report all work-related deaths by filing forms AR-D and AR-W with the Death and Permanent Total Disability Trust Fund within 30 days of the death.
- (2) Employers or their designees shall update the AR-D form in A.(1) within 10 days of receipt of additional information or claims.
- (3) Employers or their designees shall provide notice to the Death and Permanent Total Disability Trust Fund within 15 days of controverting a claim for dependent benefits.

B. PERMANENT TOTAL DISABILITY CLAIMS

- (1) Employers or their designees shall file an AR-D form with the Death and Permanent Total Disability Trust Fund within 30 days of acknowledging permanent total disability liability. Thereafter, an AR-D form shall be filed with the Death and Permanent Total Disability Trust Fund January 31 of each year benefits are paid except in claims in which the Death and Permanent Total Disability Trust Fund has issued a Certificate of Acceptance.
- (2) (a) Any party desiring to join the Death and Permanent Total Disability Trust Fund in a controverted claim for permanent and total disability benefits shall notify the Workers' Compensation Commission Special Funds Administrator and all other parties by written notice and a form of mail requiring a signed receipt, no later than sixty (60) days prior to the hearing.
(b) The notice provided in B.(2)(a) must include all documentary and other evidence the party intends to rely upon to support the claim of liability.
- (3) Failure to provide notice as set out in B.(2) shall constitute a waiver of a claim of Death and Permanent Total Disability Trust Fund liability until such time as the notice requirements are met.

C. DELINQUENT CLAIMS

- (1) Failure to comply with the notice requirements of A.(1) and B.(1) above shall result in a penalty of \$15 per day for each day an employer or its designee fails to comply, up to a maximum penalty of \$10,000, unless, after a showing of good cause, failure to provide notice is excused by the Commission.
- (2) Employers or their designees who violate C.(1) shall continue to

MICHAEL KNAULS - F112770

make payments for appropriate death and permanent total disability benefits in addition to the statutory maximum provided in Ark. Code Ann. § 11-9-502(b)(1) for 90 days after the AR-D form is filed with the Death and Permanent Total Disability Trust Fund.

D. DUE PROCESS RIGHTS

The Death and Permanent Total Disability Trust Fund has an absolute right to investigate, challenge, and defend any claim made against it within 90 days of receipt of notice of the claim, or a longer period for good cause shown.

(Effective originally on April 1, 1989; Revision approved December 1, 2003, effective January 1, 2004)

Commission Rule 28 as written in 2001 stated:

(a) A party desiring to raise the issue of liability of the Death and Permanent Total Disability Trust Fund shall name the Trust Fund as a party by notifying the Special Funds Administrator of the Workers' Compensation Commission and all other parties no later than 90 days prior to the completion of payment of the first \$50,000 or \$75,000 (depending on the applicable limit) in weekly benefits pursuant to 11-9-502(b) of the Act in writing by a form of mail requiring a signed receipt. The Notice shall include a current Form A30[*] to be filed with the Workers' Compensation Commission.

(b) Failure to give notice as set out above shall constitute a waiver of a claim of Death and Permanent Total Disability Trust Fund liability until such time as the Notice requirements in (a) above are met. In no event shall the employer or its carrier cease payments for death or permanent total disability prior to compliance with the Notice requirement above.

(c) This rule shall not apply in claims where a Certification of Acceptance has been received from the Death and Permanent Total Disability Trust Fund and there have been no changes since the date of the Certification of Acceptance. (Effective date April 1, 1989)

It is clear that the Commission rule and the Workers' Compensation Act never intended for there to be a gap in benefits as has occurred in this case. Rule 28 as

MICHAEL KNAULS - F112770

written in 2001 states clearly “In no event shall the employer or its carrier cease payments for death or permanent total disability prior to compliance with the Notice requirement above. . . .” However, once again, it must be pointed out that Rule 28 as it stood in 2001 did not adequately consider the rising compensation rates and/or an anatomical rating that would exceed \$75,000.00.

In order to find Respondent No. 1 responsible for this gap in benefits as requested by the claimant, I must conclude that they violated Rule 28 as was written in 2001. I cannot reach that conclusion for a number of reasons. First, the Rule states that “A party desiring to raise the issue of liability of the Death and Permanent Total Disability Trust Fund shall name the Trust Fund as a party by notifying the Special Funds Administrator of the Workers’ Compensation Commission and all other parties no later than 90 days prior to the completion of payment of the first \$50,000 or \$75,000 (depending on the applicable limit) in weekly benefits pursuant to 11-9-502(b)” Arkansas Code § 11-9-502(b) states that “[t]he first seventy-five thousand dollars (\$75,000) of weekly benefits for death or permanent total disability shall be paid by the employer or its insurance carrier” (Emphasis added) Under the language outlined in the Rule and the Code, Respondent No. 1 was placed in a catch-22 position. Respondent No. 1 was in a catch-22 because ninety days prior to Respondent No. 1 paying out their \$75,000.00 on the claimant’s 75% permanent

MICHAEL KNAULS - F112770

anatomical rating would have occurred on or about September 14, 2007. On September 14, 2007, claimant had not ever requested permanent and total disability benefits. In fact for the years that Respondent No. 1 was paying the anatomical impairment rating, claimant was undergoing rehabilitation programs and had attempted to return to the workforce according the claimant's response to interrogatories propounded by the Death and Permanent Total Disability Trust Fund contained at Respondent No. 2's Exhibit 1, pages 20-27. Further, claimant had not filed an AR-C requesting permanent and total disability benefits until October of 2007. Second, the Commission Rule 28 as written in 2001 states "A party desiring to raise the issue of liability. . . ." (Emphasis added) Clearly, Respondent No. 1 would not have desired to raise the issue of Death and Permanent Total Disability Trust Fund liability in September of 2007 because the claimant had not even asked for permanent total disability benefits.

Claimant also argues that, alternatively, Respondent No. 2, Death and Permanent Total Disability Trust Fund, should be liable for this gap in benefits. If one were to follow the same logic the Supreme Court used in Stucco Plus, Inc. v. Rose, 327 Ark. 314, 938 S.W.2d 556 (1997), it would seem that the Trust Fund would have liability. However, the Supreme Court in Stucco dealt with the Second Injury Fund and applied A.C.A. § 11-9-525(b)(5). In Stucco, the Court found that the employer's

MICHAEL KNAULS - F112770

liability was limited to the employee's work related injury considered alone and of itself. The Court further interpreted A.C.A. § 11-9-525(b)(5) to mean that after the employer's payment of its weekly liability, the Second Injury Fund must pay the balance of the total disability benefits. Of course, 11-9-525 deals with the Second Injury Fund and not the Death and Permanent Total Disability Trust Fund. I cannot find a provision in the Arkansas Workers' Compensation Commission Act or Commission Rules that would allow retroactive Death and Permanent Total Disability Trust Fund payments.

It is clear the intent of Rule 28 was to allow the Fund time to assess viability of claims made against it. The only provision to require a party to pay a "gap" as has occurred in this case is Rule 28. Rule 28 states "In no event shall the employer or its carrier cease payments for death or permanent total disability prior to the compliance with the Notice requirement above" (Emphasis added) Clearly, the Rule did not intend or foresee a situation for the Fund to be responsible for this gap in benefits because it clearly states that an employer or their carrier would be responsible. Once again, this is due to the fact that the claimant's 75% anatomical impairment exceeded the \$75,000.00 limit. Additionally, Rule 28(b) states "Failure to give notice...shall constitute a waiver of a claim of Death and Permanent Total Disability Trust Fund liability until such time as the notice requirements in (a) above are met." (Emphasis

MICHAEL KNAULS - F112770

added) Notice was not given and, therefore, Death and Permanent Total Disability Trust Fund liability was waived. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that Respondent No. 1 or Respondent No. 2 are liable for permanent total disability benefits for the period of December 14, 2007, through February 12, 2008.

The next issue to be adjudicated is whether Respondent No. 1 or Respondent No. 2 are liable to the claimant in the amount of \$25,252.57 for the alleged underpayment of permanent total disability benefits. It is difficult for this examiner to find any fault on behalf of Respondent No. 1 in this matter. It is clear that Respondent No. 1 immediately accepted this claim as compensable and accepted the claimant's 75% anatomical rating which they proceeded to pay out. Several years went by without the claimant requesting permanent total disability benefits, and the records reflect that during that time claimant was seeking a college degree and rehab management. Then, in October of 2007, claimant files an AR-C requesting permanent total disability benefits upon which Respondent No. 1 accept in a timely manner and notify the Death and Permanent Total Disability Trust Fund in less than thirty days from the AR-C. Thereafter, the Death and Permanent Total Disability Trust Fund after their ninety day investigative period accepts the claimant is permanently and totally disabled and then proceeds to start benefits on February 13, 2008.

MICHAEL KNAULS - F112770

Claimant contends that Respondent No. 1 knew or should have known that claimant was permanently and totally disabled in October of 2002 when the claimant reached maximum medical improvement. Claimant relies on A.C.A. § 11-9-519 which states in part that “In the absence of clear and convincing proof to the contrary, the loss of both hands, both arms, both legs, both eyes, or any two (2) thereof, shall constitute permanent total disability.” However, the plain and clear reading of 11-9-519 shows the language “loss of” and not the words “loss of use.” Claimant makes a good argument that the fact that the claimant is a paraplegic that the loss of use is equivalent to the loss of both of his legs and therefore 11-9-519 would create a statutory presumption of permanent and total disability. However, other sections of the Arkansas Workers’ Compensation Commission Act clearly use the words “loss of use” and if the Legislature so intended in 11-9-519 it would have been clearly stated. Also, I find claimant’s argument that claimant was presumed to be statutorily permanently and totally disabled as of the date he reached maximum medical improvement due to his paraplegic condition to only be a statutory presumption and not a finding. The issue of permanent total disability was never litigated or even requested by the claimant until October 2007. With the claimant seeking a college degree, other employment, and rehabilitation, it is of course very possible that claimant could have returned to the workforce in some capacity. Therefore, I cannot

MICHAEL KNAULS - F112770

find that Respondent No. 1 “should have known” or “knew” that the claimant was permanently and totally disabled. Therefore, I cannot find that Respondent No. 1 should have been paying permanent total disability benefits at the rate of \$410.00 per week from the date the claimant reached maximum medical improvement until it reached its \$75,000.00 limit.

Claimant argues that Respondent No. 1 cannot now stipulate that the claimant is permanently and totally disabled and not be found responsible for the \$25,252.57 underpayment that occurred due to the fact that Respondent No. 1 was paying the claimant at the permanent partial disability rate of \$308.00 per week rather than the appropriate \$410.00 a week for permanent total disability benefits. I cannot impute knowledge of the claimant’s permanent total disability to the respondents prior to the AR-C claim filed by the claimant in October 2007.

Documents now before the Commission lead this examiner to find that Respondent No. 1 paid \$75,000.00 in permanent partial disability benefits as of December 14, 2007, and it seems that the Court in Death and Permanent Total Disability Trust Fund vs. Legacy Insurance Services, 235 S.W.3d 544 (Ark. App. 2006) has found that respondents are entitled to a credit for permanent partial disability benefits paid against the \$75,000.00 maximum limit of liability established pursuant to A.C.A. § 11-9-502(b)(1). In order for this administrative law judge to find

MICHAEL KNAULS - F112770

that the respondents are liable for the alleged underpayment, I would have to disregard the Legacy Opinion and find that the respondents have violated Commission Rule 28.

The only provision I can find that allows the respondents to pay more than the \$75,000.00 that they have already paid would be under Commission Rule 28. I must also note that even if this administrative law judge applied Commission Rule 99.28 under its current 2004 revision to this case, I still could not find that Respondent No. 1 violated Rule 28. Commission Rule 99.28 as it stands today under subsection B states “Employers or their designees shall file an AR-D form with the Death and Permanent Total Disability Trust Fund within 30 days of acknowledging permanent total disability.” (Emphasis added) I find that Respondent No. 1 complied with Rule 28 in its current form as well because the record is clear that they did file an AR-D within 30 days of acknowledging permanent total disability liability.

Additionally, I cannot find Death and Permanent Total Disability Trust Fund liability prior to the Fund receiving its notice under Rule 28 and A.C.A. § 11-9-502 which does not invoke Death and Permanent Total Disability Trust Fund liability until Respondent No. 1 has completed payment of its \$75,000.00 in liability. Further, I find that Death and Permanent Total Disability Trust Fund liability could not be invoked until the notice requirement was met pursuant to Rule 28 as it was written in 2001. Rule 28(b) as written in 2001 stated “Failure to give notice as set out above shall

MICHAEL KNAULS - F112770

constitute a waiver of a claim of Death and Permanent Total Disability Trust Fund liability until such time as the Notice requirements in (a) above met.” As stated earlier, Rule 28(a) as it was written in 2001 states “A party desiring to raise the issue of liability of the Death and Permanent Total Disability Trust Fund shall name the Trust Fund” In this case, I cannot find any failure to report a claim for permanent total disability on the part of Respondent No. 1. Further, I cannot find that Respondent No. 1 have violated Rule 28 in its current or 2001 form with regard to putting the Trust Fund on notice. I find that the language “a party desiring” could be either the claimant or respondents.

In the absence of any violation of Rule 28 on the part of Respondent No. 1, the only other party “desiring” to raise the issue of the liability of the Fund would have been the claimant. Clearly Rule 28(b) shows that the Death and Permanent Total Disability Trust Fund is waived of any liability until the notice requirements are met. Rule 28 outlines the requirements and possible damages for Respondent No. 1 should they fail to comply with the Rule; but, in this instance I cannot find that Respondent No. 1 has violated Commission Rule 28. As such, I cannot find that Respondent No. 1 has any liability over and above their \$75,000.00 they have already paid in permanent partial disability benefits pursuant to the Legacy decision. Further, I cannot find any liability on the part of the Death and Permanent Total Disability Trust Fund because

MICHAEL KNAULS - F112770

they were waived of any liability pursuant to Commission Rule 28(b) because the party “desiring” to raise the issue of Fund liability failed to give notice. In this instance, the party desiring to raise Fund liability who failed to give proper notice was the claimant.

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 agreed to by the parties are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that either Respondent No. 1 or Respondent No. 2 are responsible for permanent total disability benefits for the period of December 14, 2007, through February 12, 2008.
- 4) The claimant has failed to prove by a preponderance of the evidence that Respondent No. 1 or Respondent No. 2 are responsible for underpayment of permanent total disability benefits in the amount of \$25,252.57.

ORDER

MICHAEL KNAULS - F112770

After careful consideration of all the evidence in this matter, reviewing such impartially and without giving the benefit of the doubt to either party, I find that claimant has failed prove by a preponderance of the evidence that Respondent No. 1 or Respondent No. 2 are liable for permanent total disability benefits for the period of December 14, 2007, through February 12, 2008. I further find that claimant has failed to prove by a preponderance of the evidence that Respondent No. 1 or Respondent No. 2 are liable for the underpayment of permanent total disability benefits in the amount of \$25,252.57 for the reasons outlined herein. With regard to the issues addressed herein, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb