

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F207356/F213122

CHARLENE LOUISE HERRING,
EMPLOYEE

CLAIMANT

K-MAC ENTERPRISES, INC., D/B/A
GOLDEN CORRAL RESTAURANT,
EMPLOYER

RESPONDENT NO. 1

TRAVELERS INDEMNITY CO. OF ILLINOIS,
INSURANCE CARRIER

RESPONDENT NO. 2

WAUSAU UNDERWRITERS INS. CO.,
INSURANCE CARRIER

RESPONDENT NO. 3

OPINION FILED DECEMBER 15, 2003

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE J. GARY DAVIS, Attorney at
Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE ROBERT H.
MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the
Administrative Law Judge filed July 24, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission
has jurisdiction of the parties and subject
matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant sustained a compensable injury to her right shoulder on or about April 4, 2002, when Travelers provided workers' compensation coverage; on September 18, 2002, Wausau assumed workers' compensation insurance coverage; and the claimant's average weekly wage was \$200.00 on April 4, 2002 and \$175.50 on November 4, 2002.
3. The preponderance of the evidence shows that the claimant suffered a compensable back injury by gradual onset, first requiring medical attention November 4, 2002, arising out of and in the course of claimant's employment during the coverage period of Respondent No. 3 and fails to show that her back injury is a compensable consequence of her earlier shoulder injury.
4. As a result of her compensable back injury, the claimant has incurred reasonably necessary medical and related expenses and was totally incapacitated to earn wages during her healing period from March 13, 2003, until a date to be determined, so that she is entitled to temporary total disability benefits for that period.
5. Respondent No. 3 has controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by Respondent No. 3

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact

made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.