

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202289

GLORIA TAYLOR,
EMPLOYEE

CLAIMANT

CV'S FAMILY FOODS,
EMPLOYER

RESPONDENT NO. 1

BENCHMARK INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT NO. 1

WAUSAU INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT NO. 2

OPINION FILED DECEMBER 3, 2003

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

Claimant represented by HONORABLE EDDIE WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by HONORABLE WILLIAM FRYE,
Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE MICHAEL RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

Respondents No. 1 appeals from a decision of the
Administrative Law Judge filed March 27, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

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

2. On January 27, 2002, the relationship of employee-employer-carrier existed between the claimant, CV's Family Foods, and Benchmark Insurance Company.
3. The appropriate weekly compensation rates on that date were \$308.00 for total disability and \$231.00 for permanent partial disability.
4. On November 7, 1998, the relationship of employee-employer-carrier existed between the claimant, CV's Family Foods, and Wausau Insurance Company.
5. The appropriate weekly compensation rates on that date were \$217.00 for total disability and \$162.00 for permanent partial disability.
6. It has previously been held in WCC Claim No. E907075, that the claimant failed to prove the occurrence of a compensable injury to her lower back or lumbar spine on November 7, 1998, and this decision remains controlling on this issue.
7. On November 7, 1998, the claimant sustained a compensable injury to her neck and right shoulder.
8. All appropriate benefits for these compensable injuries have been paid on behalf of CV's Family Foods by Wausau Insurance Company.
9. The greater weight of the credible evidence presented fails to prove that the claimant's current neck or cervical difficulties are in any way causally related to the compensable neck injury of November 7, 1998. Thus, CV's Family Foods and Wausau Insurance Company will not be liable for any workers' compensation benefits attributable to these neck or cervical difficulties.

10. The claimant has failed to prove by the greater weight of the credible evidence presented that she sustained a "compensable injury" to her neck or cervical spine as the result of a specific employment related incident on January 27, 2002. Specifically, she has failed to prove the existence of a causal relationship between this incident and her current episode of neck or cervical spine difficulties. Thus, the respondents CV's Family Foods and Benchmark Insurance Company would not be liable for any workers' compensation benefits attributable to these difficulties.
11. On January 27, 2002, the claimant sustained a compensable injury to her back or lumbar spine. Specifically, she has proven by the greater weight of the credible evidence that on that date she sustained a physical injury to her back or lumbar spine that is established by the medical evidence, is supported by objective medical findings, arose out of and occurred in the course of her employment, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal physical harm to her body, required medical services, and resulted in disability.
12. The medical services provided and recommended to the claimant for her compensable lower back or lumbar spine injury by and at the direction of Dr. Harold Chakales constitutes reasonably necessary medical services for her compensable injury. Respondents CV's Family Foods and Benchmark Insurance Company is liable for the expense of such services, subject to the medical fee schedule established day (sic) this Commission.
13. The claimant has been rendered temporarily totally disabled as a result of her compensable lower back or lumbar spine injury of January 27, 2002, for the period beginning

February 18, 2002 and continuing through a date yet to be determined. Respondents CV's Family Foods and Benchmark Insurance Company is liable to the claimant for such benefits.

14. The respondents CV's Family Foods and Wausau Insurance Company have controverted the claimant's entitlement to any benefits unpaid as of the date of hearing.
15. The respondents CV's Family Foods and Benchmark Insurance Company have controverted the claimant's entitlement to the payment of any benefits.
16. A reasonable attorney's fee for the claimant's attorney is the maximum statutory attorney's fee on all controverted indemnity benefits herein awarded.

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 in part 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

KAREN H. MCKINNEY, Commissioner