

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E802937

GARLAN FOOTE, EMPLOYEE	CLAIMANT
HILAND DAIRY CO. JOINT VENTURE, EMPLOYER	RESPONDENT
CRAWFORD & COMPANY, CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED AUGUST 17, 2004

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

Claimant represented by HONORABLE MICHAEL HAMBY, Attorney at Law, Greenwood, Arkansas.

Respondent No. 1 represented by HONORABLE CAROL WORLEY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and adopted in part and vacated in part.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed January 2, 2004.

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 March 2, 1998, the relationship of employee-employer-carrier existed between the parties.

3. Prior opinions are *res judicata* and the law of the case as the Respondent No. 1 and the claimant.

4. The claimant has failed to prove by a preponderance of the evidence that he is permanently and totally disabled as a result of his compensable right knee injury. There has been no showing that the claimant has a combination of a preexisting disability which combined with his compensable injury would entitle him to benefits for permanent and total disability. The claimant certainly has not shown that his right knee injury has permanently and totally disabled him and without a showing of permanent and total disability, there is no wage loss entitlement for a scheduled injury.

5. There is no Second Injury Fund liability in this matter.

6. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable right knee injury at the expense of Respondents No. 1.

7. The respondents have controverted this claimant's entitlement to additional medical treatment.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee for the benefits awarded herein.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's findings 1 through 5 are 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 number 1 through 5 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We further find that the findings of fact numbers 6 through 8 which address claimant's entitlement to additional medical treatment, controversion of such treatment and attorney's fee for these conversions was awarded in error. Respondents No. 1's contentions clearly indicate that they accepted compensability for continuing reasonable and necessary medical treatment in connection with the claimant's compensable right knee injury. Accordingly, we find that the findings of fact numbers 6, 7, and 8 must be and hereby are vacated.

Thus, we affirm and adopt the decision and findings of fact numbers 1 through 5 of the Administrative Law Judge, including all findings and conclusions therein,

as the decision of the Full Commission on appeal, and vacate findings of facts numbers 6, 7 and 8.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.