

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E800894

CALVIN RANDLE, EMPLOYEE	CLAIMANT
GENERAL ELECTRIC RAILCAR, EMPLOYER	RESPONDENT NO. 1
ELECTRIC INSURANCE CO., CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

ORDER FILED SEPTEMBER 2, 2004

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

Claimant represented by HONORABLE THOMAS H. JOHNSON, Attorney at Law, Texarkana, Arkansas.

Respondent No. 1 represented by HONORABLE CHARLES D. BARNETTE, Attorney at Law, Texarkana, Arkansas.

Respondent No. 2 represented by HONORABLE JUDY W. RUDD, Attorney at Law, Little Rock, Arkansas.

ORDER

Respondent No. 2, namely the Second Injury Fund, moves the Full Commission to reconsider its July 13, 2004 Opinion in light of the "same employer" defense and render an Opinion addressing either the applicability or inapplicability of that defense. A Notice of Appeal and Designation of Record, filed by respondent No. 2, and a Notice of Cross-Appeal and Designation of Record, filed by respondent No. 1, from the Opinion of the Arkansas Workers' Compensation Commission filed July 13, 2004, have each been filed in a timely manner to the Arkansas Court of Appeals.

After reviewing respondent No. 2's motion, a letter of reply to that motion filed on July 23, 2004, by Respondent No. 1's counsel, and all other matters properly before the Commission, we find that the motion to reconsider must be denied.

In its motion for reconsideration, respondent No. 2 asserts that both the Administrative Law Judge and the Full Commission failed to address the issue of the availability of the "same employer" defense in their respective Opinions. Respondent No. 2, therefore, contends that the Full Commission should now address this issue in order to prevent remand of this issue by the Court of Appeals and/or preclusion of the Second Injury Fund from raising a defense raised at the administrative law judge level.

In Morrison v. Tyson Foods, 11 Ark. App. 161, 668 S.W.2d 47 (1984), the Arkansas Court of appeals found that a motion for reconsideration, or rehearing, may be acted upon within the ninety-day period in which the record on appeal must be filed and docketed since the trial court, and by analogy, the Commission retains jurisdiction until the record on appeal is lodged in the appellate court. Moreover,

whether new evidence may be introduced and whether the Commission should remand to an administrative law judge are matters for the Commission to settle and only the Commission has the authority to grant the motion for reconsideration. Id. Furthermore, after conducting a de novo review, the Commission may adopt the administrative law judge's findings which are identical to those arrived at by the Commission. ITT/Higbie Mfg. v. Gilliam, 34 Ark. App. 154, 807 S.W. 2d 44 (1991). Moreover, the Commission must make sufficient factual findings to justify the decision made, and may satisfy this standard by adopting an opinion of the law judge which contains adequate findings. Willmon v. Allen Canning Co., 38 Ark. App. 105, 828 S.W.2d 868 (1991). To date, the record of this claim has not been lodged with the appellate court, and pursuant to Morrison supra, the Full Commission retains jurisdiction to reconsider an issue not properly addressed in its opinion. A carefully conducted review of the record, however, reveals that the "same employer" defense issue was thoroughly addressed by the Administrative Law Judge in his Opinion filed September 2, 2003, which was affirmed and adopted by the Full Commission in its Opinion filed July 13, 2004. Furthermore, the

Commission has found unanimously that respondent No.2 may not assert the "same employer" defense in this claim.

Therefore, for the reasons set forth herein, respondent No. 2's motion for reconsideration is hereby denied.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner