

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E800894

CALVIN RANDLE,
EMPLOYEE

CLAIMANT

GENERAL ELECTRIC RAILCAR,
EMPLOYER

RESPONDENT #1

ELECTRIC INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT #1

SECOND INJURY FUND

RESPONDENT #2

OPINION FILED JULY 13, 2004

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

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

Respondents 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.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

Respondents #2 appeal and Respondent #1 cross-appeals
from a decision of the Administrative Law Judge filed
September 2, 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. At all times pertinent the employment relationship existed between the claimant and Respondent #1.
3. In and around August 1997, claimant sustained an injury to his back arising out of and in the course of his employment, during which time he earned wages sufficient to entitle his (sic) to workers' compensation benefits at the maximum applicable rates of \$348.00/\$261.00, for temporary total/permanent partial disability benefits, respectively.
4. The claimant was temporarily totally disabled for the period beginning January 20, 1998, and continuing through the end of his healing period, August 28, 2001.
5. The claimant has a permanent physical impairment in the amount of 10% to the body as a whole growing out of his compensable injury of August 1997.
6. In 1991, claimant suffered an injury to his back in the employment of Respondents #1, for which he underwent two (2) surgical procedures and resulted in permanent physical impairment of 15% to the body as a whole.
7. The provisions of Ark. Code Ann. § 11-9-512, are not applicable to the instant claim, in that claimant's refusal to undergo surgery at this time relative to his August 1997, compensable injury is not unreasonable. Further, the record does not reflect the recommendation of two qualified physicians regarding the surgical procedures.
8. When the claimant's general health, age, education, work experience, permanent restrictions and limitations, degree of pain, and other matters reasonably expected to affect his future earning (sic) capacity, are considered, he has been rendered permanently

totally disabled from engaging in gainful employment.

9. Respondent #2 is liable for the payment of permanent disability benefits to claimant in excess of the anatomical impairment growing out of the August 1997 compensable injury in that claimant suffered a compensable injury in August 1997, in the employment of Respondents #1; prior to the afore, claimant has sustained a permanent partial disability/impairment in the amount of 15% to the body as a whole as a result of a 1991 work related injury in the employment of Respondents #1; and the prior disability/impairment has combined with the August 1997, compensable injury to produce the claimant's current disability status.
10. Respondents #1 shall pay all reasonable hospital and medical expenses arising out or (sic) the injury of August 1997.
11. Respondents #1 and Respondent #2 have controverted this claim in its entirety.

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 prior to July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as it existed prior to the amendments of 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 \$250.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority opinion. Based upon my de novo review of the record, I find that the claimant's healing period ended on January 14, 1999, when the claimant was assessed a 25% disability rating by Dr. DeHaan. Therefore, I must respectfully dissent from the majority opinion finding that the claimant's healing period ended on August 28, 2001. However, I concur with the finding the Second Injury Fund has liability for the claimant's permanent and total disability benefits.

With respect to the issue of when the claimant's healing period ended, I find that the claimant's healing period ended on January 14, 1999, when Dr. DeHaan assessed the claimant with a permanent disability rating.

The evidence demonstrates that Dr. DeHaan issued a permanent impairment rating for the claimant on January 14, 1999. The claimant argues that this 25% was merely an estimate. However, it is of note that Dr. Green assessed the claimant with the exact same permanent impairment rating two years later. Therefore, I would find that the claimant's healing period ended January 14, 1999.

Accordingly, I respectfully concur in part and dissent in part from the majority opinion.

KAREN H. MCKINNEY, Commissioner