

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212312

MAYS STILLS, EMPLOYEE	CLAIMANT
ARMSTRONG BROTHERS TOOL COMPANY, EMPLOYER	RESPONDENT
FIDELITY & GUARANTY INSURANCE, CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED FEBRUARY 19, 2004

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE DIANE GRAHAM, Attorney at Law, Fort Smith.

Second Injury Fund represented by HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed September 30, 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 October 9, 2002, the relationship of employee-employer-carrier existed between the parties.

3. On October 9, 2002, the claimant earned wages sufficient to entitle him to weekly compensation rates of \$425.00 for total disability and \$319.00 for permanent partial disability.
4. On October 9, 2002, the claimant sustained a compensable injury to his back or lumbar spine.
5. There is no dispute, at the present time, over the payment of medical expenses.
6. There is no dispute over the payment of temporary total disability benefits accruing through February 10, 2003, and all such benefits have previously been paid.
7. The claimant has proven by the great weight of the credible evidence that he is entitled to continuing temporary total disability benefits from February 11, 2003, [sic] through March 7, 2003. Specifically, he has proven by the greater weight of the credible evidence that during this period he continued within his healing period from the effects of his compensable injury and was rendered totally disabled from performing regular gainful employment as a result of the injury. The claimant has failed to prove by the greater weight of the credible evidence that his healing period from the effects of his compensable injury extended beyond March 7, 2003. Thus, he would not be entitled to temporary total disability after that date.
8. The claimant has failed to prove that the compensable injury of October 9, 2002, was the major cause of any specific degree or percentage of permanent partial impairment, which would be supported by objective and measurable physical findings and could be

calculated in a manner that conforms to the official rating guide adopted by this Commission.

9. As the claimant has failed to prove that his compensable injury was the major cause of any specific degree or percentage of permanent physical impairment, he is not entitled to any benefits for actual permanent "disability" or loss of wage earning capacity.
10. The claimant is not barred from receiving the additional temporary total disability benefits, herein awarded, by the provisions of Ark. Code Ann. § 11-9-526. Specifically that the respondents have failed to prove that he unjustifiably refused suitable employment during this period.
11. As the claimant has failed to prove that he is entitled to benefits for permanent partial impairment or permanent disability, Ark. Code Ann. § 11-9-525 would be inapplicable to this claim and the Second Injury Fund would have no liability for benefits.
12. The respondents have controverted the claimant's entitlement to any additional temporary total disability benefits after February 10, 2003, and his entitlement to any permanent disability benefits for either permanent partial impairment or permanent "Disability" (i.e. loss of wage earning capacity).
13. The Second Injury Fund has controverted the claimant's entitlement to any benefits from said Fund.
14. A reasonable fee for claimant's attorney is the maximum statutory attorney's fee on the

additional temporary total disability  
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.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.