

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F113732

BILL SMITH, EMPLOYEE	CLAIMANT
A & M TRUCKING, EMPLOYER	RESPONDENT NO. 1
HARTFORD INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED JULY 6, 2004

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

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

Respondents No. 1 represented by HONORABLE TOM HARPER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondent No. 2 represented by HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and adopted.

OPINION AND ORDER

The claimant appeals and Respondent No. 1 cross-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 all relevant dates, including March 20, 2000, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is not estopped from pursuing this claim before the Arkansas Workers' Compensation Commission by the doctrine of the election of remedies.
4. The claimant has failed to prove that he sustained a "compensable injury" within the meaning of Ark. Code Ann. § 11-9-102(4)(A)(i), to his lower back or lumbar spine on or about March 20, 2000. Specifically, he has failed to prove the existence of a causal relationship between any specific employment related incident, on or about March 20, 2000, and any medically "established" or objective documented physical injuries or condition involving his lumbar spine.
5. The respondents have failed to prove that this claim has been brought or maintained "without reasonable grounds." Thus, the sanctions or penalties provided by Ark. Code Ann. § 11-9-714 are inapplicable.
6. The respondent employer and carrier has denied the occurrence of any compensable injury to the claimant's lumbar sine (sic), while the claimant was in the employ of A & M Trucking, and controverts this claim in its entirety.
7. The respondent Second Injury Fund controverts the claimant's entitlement to any benefits from the Fund.

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 in part 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

KAREN H. MCKINNEY, Commissioner

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I concur with the principal opinion's findings that the doctrine of election of remedies does not bar Claimant's pursuit of this claim before this Commission and that the Respondents have failed to prove that this claim has been brought or maintained "without reasonable cause." However, I must respectfully dissent from the principal opinion's denial of benefits to Claimant.

SHELBY W. TURNER, Commissioner