

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304726

DANNY SMITH,
EMPLOYEE

CLAIMANT

COOPER TIRE & RUBBER COMPANY,
SELF-INSURED EMPLOYER

RESPONDENT

CROCKETT ADJUSTMENT,
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 29, 2004

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

Claimant represented by HONORABLE NELSON V. SHAW, Attorney
at Law, Texarkana, Texas.

Respondents represented by HONORABLE WILLIAM BULLOCK,
Attorney at Law, Texarkana, Texas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the
Administrative Law Judge filed February 18, 2004. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission
has jurisdiction over this claim.
2. The stipulations agreed to by the parties and
set forth above are hereby accepted as fact.
3. The respondents controverted this claim in
its entirety.

4. The claimant's current shoulder problems are the result of natural progression of the claimant's prior compensable injury.
5. I find that a preponderance of the evidence fails to establish that the statute of limitations bars a claim for compensation related to the prior injury.
6. I find that the respondents remain liable for benefits related to the claimant's prior compensable injury.
7. The respondents 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.

However, we note that although the statute of limitations defense may have been raised at the pre-hearing conference, it was not raised or developed at the hearing. As a result, we find that where the respondents have not placed into evidence the necessary proof to establish this defense, such action makes a decision of the matter on appeal impossible. It for this reason that we find that the

respondents should not be allowed to raise the issue on appeal.

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 after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by 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 \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.