

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211602

TRAVIS BURNETTE, EMPLOYEE	CLAIMANT
MEHAFFY CONSTRUCTION CO., INC., EMPLOYER	RESPONDENT
BITUMINOUS INSURANCE COMPANIES, CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED OCTOBER 4, 2005

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

Claimant represented by HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent No. 1 represented by HONORABLE RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, 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 December 16, 2004.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on October 3, 2002 at which time the claimant sustained compensable injuries (back, left leg) at a compensation rate of \$328.00/\$246.00. Medical expenses, temporary total disability benefits (until July 10, 2003) and anatomical impairment (7% to the lower extremity as assessed by Dr. Safman in his report of June 19, 2003 and 5% to the body as a whole as assessed by Dr. Ackerman in his report of March 5, 2003) have been paid.

2. The claimant's healing period ended June 16, 2003 based on Dr. Safman's assessment and Respondent No. 1 is entitled to a credit for overpayment of temporary

3. The claimant will require follow-up medical care for his compensable leg injuries with a general practitioner at the expense of Respondent No. 1.

4. The claimant has failed to prove that he sustained permanent impairment to his back as a result of his leg injuries. Therefore, he is not entitled to an award of wage loss.

5. Even assuming, arguendo, that the claimant is entitled to a rating to the body as a whole, Respondent No. 1 has failed to prove a combination of injuries to cause disability and invoke Second Injury Fund liability.

6. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992) (E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

In affirming and adopting the December 16, 2004, decision of the Administrative Law Judge, we further find that the claimant is entitled to vocational rehabilitation evaluation at the respondent's expense.

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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.