

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC CLAIM NO. F106883

JAMES HENSON, EMPLOYEE	CLAIMANT
GENERAL ELECTRIC, EMPLOYER	RESPONDENT NO. 1
ELECTRIC INSURANCE/SEDGWICK, CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

ORDER FILED DECEMBER 29, 2005

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

Claimant represented by the HONORABLE PHILLIP WELLS, Attorney at Law, Jonesboro, Arkansas.

Respondent No. 1 represented by the HONORABLE MARK MAYFIELD, Attorney at Law, Jonesboro, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID PAKE, Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by the HONORABLE JUDY RUDD, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter comes before the Full Commission on Respondent No. 1's (hereinafter referred to as "General Electric") motion to file a supplemental brief. Respondent No. 2 (hereinafter referred to as the "Second Injury Fund") has filed an objection to General Electric's motion and Claimant filed a response as well. After giving due consideration to General Electric's motion, the

Second Injury Fund's objection, Claimant's response, and all other matters properly before the Commission, we find that General Electric's motion must be denied.

General Electric's motion argues that the Second Injury Fund filed an initial brief in this matter asserting a claim of estoppel as to General Electric. They also argue that Claimant has filed its brief "making erroneous arguments" about waiver. Likewise, General Electric argues that Claimant cited a case in its brief (not cited by the Second Injury Fund) and has raised separate arguments to which it has not had an opportunity to respond.

The Second Injury Fund submitted a response objecting to General Electric's motion stating that General Electric erroneously alleged that the Fund did not address "waiver." The Second Injury Fund states in its response that it argued "waiver" throughout its initial brief. Additionally, the Fund objects to General Electric's motion because it attached a supplemental brief to the motion to submit a supplemental brief and by doing so, failed to give the other parties notice of its intention and an opportunity to respond.

Claimant contends that the "waiver" argument in its brief was appropriate based on the facts and circumstances raised by all parties through contentions, depositions and hearing testimony. Accordingly, Claimant adopts the argument of the Second Injury Fund, that is, that the issue of waiver was raised in an initial

brief that invited General Electric to address the issue.

Based on the foregoing, we find that General Electric has failed to state adequate grounds that would permit granting its motion to file a supplemental brief. General Electric had an opportunity to address the issue of waiver and chose not to do so. Therefore, it would be inappropriate for it to be allowed to supplement its brief at this time. The issue of waiver is a question of fact that will be decided by the Commission. General Electric will not be prejudiced by the Commission considering the arguments made by all parties to date. Therefore, we find that any benefit to be gained by extending the briefing process would be outweighed by the delay in addressing the substance of the present appeal.

Accordingly, for the reasons discussed herein, we find that the General Electric's motion to file a supplemental brief must be, and hereby is, denied.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.