

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300590/F302846

MARY MORPHIS,
EMPLOYEE

CLAIMANT

ARKANSAS DEPARTMENT OF HEALTH,
EMPLOYER

RESPONDENT NO. 1

PUBLIC EMPLOYEE CLAIMS,
INSURANCE CARRIER

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED MARCH 15, 2005

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

Claimant represented by HONORABLE MICHAEL HAMBY, Attorney at
Law, Greenwood, Arkansas.

Respondents No. 1 represented by HONORABLE RICHARD SMITH,
Attorney at Law, Little Rock, 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 respondents No. 1 cross-appeal
from a decision of the Administrative Law Judge filed August
11, 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 pertinent dates, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a weekly compensation rate of \$224.00 for temporary total disability and \$168.00 for permanent partial disability.
4. The claimant has proven by a preponderance of the evidence that she experienced a temporary aggravation on January 6, 2003, to her preexisting degenerative neck problems. It is further noted that these temporary aggravating conditions resolve themselves (sic) by March 18, 2003, when the claimant was seen by Dr. Johnson.
5. The respondents should pay for the medical treatment for this claimant's temporary aggravation from January 6, 2003, through March 18, 2003.
6. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability for her compensable injury from January 13, 2003, until March 18, 2003. This was the period of time which Dr. Johnson had released the claimant from work.
7. The respondents have controverted this claim in its entirety.
8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the temporary total disability awarded herein.
9. The statute of limitations bars the claim filed by the claimant indicating that she hurt her low back in January 2000 and that she filed her AR-C in March 2003. Arkansas law prohibits the filing of a workers' compensation claim when there has been more

than a two year lapse from the date of injury to the time of filing.

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 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 in part 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

KAREN H. McKINNEY, Commissioner

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I concur in part and dissent in part from the majority opinion. Specifically, I find that the Administrative Law Judge's opinion should be affirmed with respect to the finding that claimant is entitled to temporary total disability from January 13, 2003, to March 18, 2003, and that she incurred a compensable aggravation on January 6, 2003. I dissent, however, with respect to the majority's failure to award additional medical treatment and TTD benefits after March 18, 2003, for claimant's continued neck problems relating to her compensable aggravation.

I find that claimant is entitled to additional benefits based upon Dr. Johnson's March 18, 2003, office

note. On that date, Dr. Johnson recommended that claimant continue physical therapy and remain off work until seen in follow-up six months later. Claimant was subsequently unable to keep the follow-up appointment because respondents had controverted the claim and claimant was unable to pay for medical treatment. I find that claimant is entitled to continuing medical treatment upon the recommendation of Dr. Johnson and that claimant is entitled to additional TTD benefits pursuant to Dr. Johnson's office note in which he released her from work at least through September 18, 2003.

For these reasons, I find that the Administrative Law Judge's decision should be affirmed in part and reversed in part.

SHELBY W. TURNER, Commissioner