

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209440

WILLIAM F. WARREN,
EMPLOYEE

CLAIMANT

H & L POULTRY PROCESSING, LLC,
EMPLOYER

RESPONDENT

SECURITY INS. CO. OF HARTFORD,
c/o THE INSURANCE LINK (TPA),
INSURANCE CARRIER

RESPONDENT NO. 1

COMMERCE & INDUSTRY INS. CO.,
c/o AIG CLAIM SERVICES (TPA),
INSURANCE CARRIER

RESPONDENT NO. 2

ORDER FILED AUGUST 1, 2005

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

Claimant represented by the HONORABLE KENNETH A. HARPER,
Attorney at Law, Monticello, Arkansas.

Respondent No. 1 represented by the HONORABLE LEE J.
MULDROW, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE JOHN P.
TALBOT, Attorney at Law, Pine Bluff, Arkansas.

ORDER

Presently before the Commission is Claimant's
Motion for Initiation of Temporary Total Disability
Benefits. After consideration of the claimant's motion,
respondents' responses thereto, and all other matters
properly before the Commission, we find that the
claimant's motion must be granted.

The Administrative Law Judge issued an opinion February 15, 2005, finding that the claimant proved by a preponderance of the evidence that:

1. The stipulations agreed to by the parties are accepted as fact.
2. Claimant's January 25, 2002 injury to his right wrist was accepted as compensable and benefits have been paid.
3. Claimant is entitled to treatment, both past and future, for complaints associated with the recurrence of his January 25, 2002, compensable right wrist injury, including an NCV/EMG post-operative study to determine an impairment rating, if any for that injury.
4. Claimant has proven by a preponderance of the credible evidence that he sustained a compensable injury to his left wrist.
5. Claimant is entitled to temporary total disability indemnity benefits in relation to his left wrist injury from January 25, 2002, until his healing period for this injury has ended, which is a date yet to be determined. Respondents are entitled to a setoff, however, for unemployment benefits received by the claimant.
6. Respondent carrier No. 1 bears liability, as said respondent was on the risk at the time of claimant's left, as well as right, carpal tunnel injuries.
7. Respondents have controverted the compensability of the left wrist claim.

At the time of claimant's original injury on January 25, 2002, respondent carrier no. 1, The Insurance

Link, was on the risk. A second injury occurred on April 25, 2002 and during that time period, respondent no. 2, Commerce & Industry Insurance Company was on the risk. The Administrative Law Judge found that claimant's second injury was not an aggravation of the first injury, but at most would amount to a recurrence.

The respondent carrier no. 1 filed a timely appeal of this decision which is presently before the Full Commission. The claimant has filed a motion seeking initiation of temporary total disability benefits. Respondent carrier no. 1 responded to claimant's motion stating that it does not object to payment of indemnity benefits on an equal basis between both insurance carriers.

The respondent carrier no. 2 filed a response stating that it objects to the payment of temporary total disability benefits based on Ark. Code Ann. § 11-9-711(a) (1), which states that an order becomes final only when thirty (30) days elapse without a petition for review by the Full Commission. In this case, a petition for review by the Full Commission has been requested. However, Ark. Code Ann. § 11-9-806 is controlling in this case and states in relevant part:

- (a) In any case where an employer changes insurance carriers . . . and the only dispute in a claim against that employer is the proper source of payment of benefits, the Workers' Compensation Commission shall direct that the appropriate compensation benefits be paid on an equal basis by the carriers.
- (b) Upon eventual resolution of the issue, the prevailing respondent shall be entitled to reimbursement from the other respondent of all moneys paid together with interest at the legal rate from the date of payment.

Accordingly, for the reasons discussed herein, specifically the directive in Ark. Code Ann. § 11-9-806, the Commission directs that benefits be paid on an equal basis by both carriers until the matter of liability is resolved. At the resolution of this matter, the prevailing carrier will be entitled to reimbursement from the other carrier. Therefore, we find that the claimant's motion must be granted.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.