

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410921

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| LAVERN CARTHAN, EMPLOYEE | CLAIMANT |
| SCHOOL APPAREL, INC., EMPLOYER | RESPONDENT |
| CONTINENTAL CASUALTY COMPANY, CARRIER | RESPONDENT |

OPINION FILED DECEMBER 18, 2006

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

Claimant represented by HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter comes before the Full Commission on the claimant's Motion for Attorney's Fees for Prevailing on Appeal. After giving due consideration to the claimant's motion, response of the respondents, and all other matters properly before the Commission, we find that the claimant's motion should be granted.

A hearing in this case was held on June 9, 2006. The Administrative Law Judge filed an opinion on September 13, 2006 in which it was determined that this claim is barred by

the statute of limitations. Claimant filed an appeal from Administrative Law Judge's opinion on September 29, 2006.

The Full Commission filed an opinion on November 28, 2006. The Full Commission's opinion vacated in part, and remanded the claim back to the Administrative Law Judge finding that the issue of the statute of limitations had been raised *sua sponte* by the Administrative Law Judge. Claimant filed the motion presently before us on December 1, 2006.

Ark. Code Ann. §11-9-715(b)(1)-(3) states:

- (b)(1) If the claimant prevails on appeal, the attorney for the claimant shall be entitled to an additional fee at the full commission and appellate court levels in addition to the fees provided in subdivision (a)(1) of this section, the additional fee to be paid equally by the employer or carrier and by the injured employee or dependents of a deceased employee, as provided above and set by the commission or appellate court.

- (2) The maximum fees allowable pursuant to this subsection shall be the sum of five hundred dollars (\$500) on appeals to the full commission from a decision of the administrative law judge and the sum of one thousand dollars (\$1,000) on appeals to the Court of Appeals or Supreme Court from a decision of the commission.

- (3) In determining the amount of fees, the commission and the court shall take into consideration the nature, length, and complexity of the services performed and the benefits resulting to the compensation beneficiary.

We have previously awarded attorney's fee for prevailing on appeal when the case has been remanded to the Administrative Law Judge. See, Woodall v. Pike County Department of Health, Full Commission Opinion, Filed March 16, 2001 (Claim No. F003819); Kelley v. Bob's Auto Parts, Full Commission Opinion, Filed April 5, 2001 (Claim No. F005909); Hill v. Timber Ridge Group, Full Commission opinion, Filed May 16, 2001 (Claim No. F001926); Rose v. City of Waldron, Full Commission Opinion, Filed February 5, 2004; West v. Arkansas Technical Contractors, Full Commission Opinion, Filed February 6, 2004.

Claimant appealed the decision of the Administrative Law Judge including in her brief an argument addressing the failure of the respondent's to raise the statute of limitation defense prior to the hearing. But for the Administrative Law Judge *sua sponte* raising the statute of limitations, the Claimant would not have had to expend time and energy briefing this issue. Claimant did prevail on this issue and attorney's fees for prevailing on appeal should be awarded.

For the foregoing reasons, Claimant's Motion for Attorney's Fees for Prevailing on Appeal is hereby granted. 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 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

KAREN H. MCKINNEY, Commissioner