

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403161

RICKY STEWART, EMPLOYEE	CLAIMANT
GAITHERS APPLIANCE, EMPLOYER	RESPONDENT NO. 1
WESTPORT INSURANCE CO., CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

ORDER FILED AUGUST 1, 2006

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

Claimant represented by HONORABLE NELSON SHAW, Attorney at Law, Texarkana, Arkansas.

Respondent No. 1 represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

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

ORDER

Presently before the Commission is the Second Injury Fund's Motion to Strike a Portion of the Claimant's Brief. Respondent No. 1, the employer-carrier, has filed a response thereto stating that there may have been some miscommunication. The claimant has not filed a response to the motion. After consideration of the Second Injury Fund's Motion, respondent no. 1's response thereto and all others matters properly before the Commission, we find that the

Second Injury Fund's motion must be denied.

In an opinion filed March 17, 2006, the Administrative Law Judge found that the claimant sustained a 10% anatomical impairment rating but that the claimant failed to prove that he was entitled to any permanent partial disability benefits in excess of his rating for wage loss disability. Respondent no. 1 filed a timely Notice of Appeal from the award of a 10% permanent partial impairment rating. The claimant filed a Notice of Cross-Appeal stating that "while the award of a permanent partial disability impairment to Claimant was correct, the rating should be in excess of the awarded 10%." Interpreting this statement to mean that the claimant was not appealing the denial of wage loss disability, counsel for the Second Injury Fund advised the Commission that it would not be filing a brief. However, in its brief, respondent no. 1 argues that the Administrative Law Judge correctly denied wage loss disability. Likewise, in his brief, the claimant argues that he is entitled to wage loss disability. As the claimant's Notice of Cross Appeal which states that the Administrative

Law Judge correctly awarded a permanent partial disability impairment to the claimant, but that the "rating should be in excess of the awarded 10%" may arguably be intended as an appeal of wage loss disability, we find that the Second Injury Fund's Motion to Strike Portions of Claimant's Brief, must be denied.

Due to miscommunications among the parties, we hereby direct the Clerk of the Commission to issue a new briefing scheduling for the Second Injury Fund to file a brief in response to the issue of wage loss which was raised on appeal by both respondent no. 1 and the claimant.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner