

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F007980

JAMES D. JONES, EMPLOYEE	CLAIMANT
CITY OF NORTH LITTLE ROCK, EMPLOYER	RESPONDENT NO. 1
MUNICIPAL LEAGUE WC TRUST, CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED APRIL 11, 2007

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

Claimant represented by HONORABLE STEVEN R. McNEELY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 1 represented by HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE JUDY RUDD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, and reversed, in part.

OPINION AND ORDER

The claimant appeals and Respondent No. 1 and Respondent No. 2 cross appeal from the March 1, 2006, opinion of the Administrative Law Judge. Specifically, claimant appeals from the finding that A.C.A. § 11-9-522(f) is constitutional. Respondent No. 1 appeals from the finding

that the claimant's deep vein thrombosis is an unscheduled injury. Respondent No. 2 filed an appeal from the finding that Respondent No. 1 was entitled to a credit for benefits paid toward the claimant's anatomical impairment rating against their cap of \$75,000 for permanent and total disability benefits. Respondent No. 2 subsequently filed a motion to dismiss its appeal. In an opinion filed June 21, 2006, the Full Commission dismissed Respondent No. 2's cross appeal in this claim. After conducting a de novo review of the entire record, we find that the decision of the Administrative Law Judge should be affirmed in part, and reversed in part.

Specifically, we find that since Respondent No. 2 has dismissed its appeal of the issue of credit, the finding of the Administrative Law Judge that Respondent No. 1's payment of permanent partial disability benefits paid towards the claimant's anatomical impairment rating are subject to a credit towards Respondent No. 1's \$75,000 maximum liability pursuant to A.C.A. § 11-9-502, is correct and should be affirmed. We further find that Act 1168 of

1999 is unconstitutional. Therefore, we find that the finding of the Administrative Law Judge finding that this Act is constitutional must be reversed. Finally, we find that since Respondent No. 1 accepted the claimant as permanently and totally disabled, the payment of all benefits after the end of the claimant's healing period are credited towards the employer's maximum liability of \$75,000, which renders the issue of whether the claimant sustained a scheduled or unscheduled injury moot.

With regard to the issue of the constitutionality of Act 1168 of 1999, this issue has been settled by the recent Court of Appeals opinion in Osborne v. Bekaert Corp, ___ Ark. App. ___, ___ S.W.3d ___ (2006), which found that the limit of 260 weeks of permanent and total disability benefits for person's over the age of 60 is unconstitutional. Therefore, we find that the finding of the Administrative Law Judge that Act 1168 of 1999 is constitutional must be reversed.

Finally, with regard to the issue of whether the claimant's deep vein thrombosis is a scheduled or

nonscheduled injury, we find that this issue is moot. In Death and Permanent Total Disability Trust Fund v. Legacy, ___ Ark. App. ___, ___ S.W.3d ___ (May 10, 2006), the Court of Appeals held that when a claimant has been accepted as permanently and totally disabled, all payments made after the healing period has ended are classified as permanent-total-disability payments that are to be applied towards the \$75,000 maximum pursuant to A.C.A. § 11-9-502. Accordingly, whether the respondents paid benefits on a scheduled or nonscheduled injury is of no moment. All payments made by Respondent No. 1's after the claimant's healing period apply toward respondent's payment of \$75,000. Regardless of whether the claimant sustained a scheduled or unscheduled injury, respondent no. 1 must pay a total of \$75,000 in indemnity benefits to the claimant once his healing period has ended prior to Respondent no. 2 assuming liability for permanent total disability benefits. The issue would only be relevant if the anatomical impairment rating had to be paid prior to commencing payment towards respondents \$75,000

maximum liability for a permanent and total disability claim. Accordingly, we find that this issue is moot.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I must respectfully concur in part and dissent in part from the Majority opinion. Specifically, I concur with the Majority's finding that the 11-9-522(f) is unconstitutional and that Respondent No. 1 is entitled to a credit for benefits paid toward the claimant's anatomical impairment rating against their cap of \$75,000 for permanent and total disability benefits. However, I must respectfully dissent from the finding that the issue of whether the claimant's injury is scheduled or unscheduled is moot. First, I find that while the parties have stipulated that

the claimant is permanently and totally disabled at this time, that classification is not static. As such, the issue of whether the claimant sustained a scheduled or an unscheduled injury is not moot. Furthermore, I find that the present case is not moot because it serves the public interest and would prevent future litigation.

As noted in Wilson v. Pulaski County Ass'n of Classroom Teachers, 330 Ark. A298, 954 S.W.2d 221,

Under Arkansas law, a case becomes moot when any judgement rendered would have no practical legal effect on an existing legal controversy. An exception to the mootness doctrine, however, allows review for appeals involving the public interest and the prevention of future litigation. (Internal citations omitted).

In the present instance, it is clear that the claimant's claim has not become moot. Specifically, I note that pursuant to Ark. Code Ann. §11-9-519(d), a claimant's permanent and total disability benefits are capable of being reviewed and cut off. Certainly, in this case, if the claimant's benefits were cut off under that section of law, then there would be a dispute as to whether the claimant's

injury was scheduled or unscheduled in order to determine what rating should be paid and which respondent would be liable for payment. Accordingly, I find that the present case is not moot.

Finally, I find that even if the claimant's case is moot, (a finding I do not make), then an exception should be applied and the Commission should consider the case. Specifically, I find that the present case should be considered because it would serve public interest and prevent future litigation in that a decision on the issue would help clarify what exactly constitutes a scheduled or unscheduled injury for future cases.

Accordingly, I must respectfully dissent.

PHILIP A. HOOD, Commissioner