

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405712

SANDY BISHOP, EMPLOYEE	CLAIMANT
SMALL FLORIST, EMPLOYER	RESPONDENT NO. 1
MARYLAND CASUALTY COMPANY, INSURANCE CARRIER,	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED NOVEMBER 5, 2008

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

Claimant represented by the HONORABLE H. OSCAR HIRBY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY KING, Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is claimant's Petition for Reconsideration or Review by Full Commission. After consideration of claimant's petition, respondents' response thereto, and all other matters properly before the Commission we find that the Petition for Reconsideration must be denied, but that the petition for review should be granted.

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After several failed attempts to schedule a hearing and after respondents' motions to dismiss for lack of prosecution were denied, a hearing on this claim was held on June 11, 2008. Pursuant to the Prehearing Order filed June 20, 2007, the parties stipulated to the claimant's compensation rate, end of healing period and 10% whole body impairment. In addition the parties agreed to limit the issues at the hearing to the compensability of an injury to the claimant's left arm, additional medical expenses by Dr. Frazier, vocational rehabilitation, wage loss, and attorney's fees. At the beginning of the hearing, claimant attempted to raise the issue of the proper calculation of the claimant's compensation rate as well as the claimant's healing period. The Administrative Law Judge refused to allow the claimant to litigate these issues as they conflicted with the parties stipulations and were not raised sufficiently in advance of the hearing so as to allow the respondents an opportunity to properly defend against them. Moreover, the documentary evidence relied upon by the claimant in support of these newly raised issues was not properly disclosed to respondents in a timely manner.

The Administrative Law Judge issued her opinion on September 9, 2008. On October 10, 2008, the claimant filed the present petition for reconsideration or review. Claimant seeks

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to either ask the Administrative Law Judge to reconsider the evidence or ask the Full Commission to review this evidence on appeal. As the Full Commission conducts a de novo review of the entire record, including but not limited to a review of the Administrative Law Judge's evidentiary ruling, we find that by granting the petition for review, claimant's petition for reconsideration is hereby rendered moot.

Claimant has specifically alleged that the findings and conclusions of the Administrative Law Judge as to the compensation rate, the determination made on the claim for the secondary injury claimant had sustained to her arm/elbow, and the degree of permanent disability assessed or determined by the opinion were contrary to the law and the facts of the case. We find that this sufficiently sets forth the issues to be reviewed in a notice of appeal. Therefore, claimant's petition for review by the Full Commission is hereby granted.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner