

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F604736

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| CHAD GULLY, EMPLOYEE | CLAIMANT |
| RHEEM MANUFACTURING, EMPLOYER | RESPONDENT |
| OLD REPUBLIC INSURANCE, CARRIER | RESPONDENT |

OPINION FILED SEPTEMBER 12, 2008

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE E. DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

ORDER

This matter is presently before the Full Commission on respondents' Motion to Strike. After our consideration of respondents' motion, claimant's response thereto and all other matters properly before the Commission, we find that respondents' motion should be granted.

The claimant's deposition testimony was not introduced into evidence at the hearing held before the Administrative Law Judge on January 15, 2008. In the Reply Brief claimant filed with the Commission, claimant twice referenced the claimant's deposition testimony. Claimant is in agreement that the deposition testimony referenced on page two of the Reply Brief which begins in line eight and continues through line fourteen

may and should be excluded. However, claimant contends that the deposition testimony referenced by claimant on page one of the Reply Brief was incorporated by reference through the claimant's hearing testimony and should not be excluded from the brief.

As the claimant's deposition was not introduced into evidence at the hearing, any reference to the claimant's deposition testimony is not properly before the Commission. Accordingly, we find that any reference to the claimant's deposition testimony must be struck and will not be considered by the Commission on appeal. However, we take this opportunity to assure the claimant that the entire record is reviewed de novo and the claimant's entire hearing testimony will be considered on appeal together with any arguments made with regard to the claimant's testimony.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner