

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512904 & F709399

JOHN HOWARD, EMPLOYEE	CLAIMANT
BIEKER ELECTRIC COMPANY, EMPLOYER	RESPONDENT NO. 1
WESTPORT INSURANCE CORPORATION, INSURANCE CARRIER	RESPONDENT NO. 1
BRIDGEFIELD CASUALTY INS. COMPANY	RESPONDENT NO. 2

OPINION FILED JUNE 24, 2008

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

Claimant represented by the HONORABLE RANDOLPH J. SCOTT, Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by the HONORABLE MICHAEL R. MAYTON, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE JAMES ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

## OPINION AND ORDER

Respondent No. 2 appeal and Respondents No. 1 cross-appeals an opinion and order of the Administrative Law Judge filed January 28, 2008. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On September 8, 2005, the relationship of employee-employer-carrier existed between the claimant, Bieker Electric Company, and Westport Insurance Company.
3. On September 8, 2005, the claimant earned an average weekly wage of \$508.00. This would entitle the claimant to weekly compensation benefits of \$339.00 for total disability and \$254.00 for permanent partial disability.
4. On September 8, 2005, the claimant sustained a compensable injury to his low back or lumbar spine. All expenses incurred for medical services for this compensable injury, which accrued through March 23, 2007, have been paid by Westport Insurance Company.
5. Temporary total disability benefits were paid by Westport Insurance Company for the period of November 25, 2005 through May 24, 2006, at the weekly rate of \$372.00. This has resulted in overpayment in the amount of \$858.00 for which respondent Westport Insurance Company is entitled to a credit against any future indemnity benefits awarded to the claimant.
6. Respondent Westport Insurance Company is liable for the expense of any medical services provided to the claimant by and at the direction of Dr. Cyril Raben for his compensable lumbar injury during the period between March 23, 2007 and May 11, 2007.
7. On May 11, 2007, the relationship of employee-employer-carrier existed between the claimant, Bieker Electric Company and Bridgefield Casualty Insurance Company. On May 11, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$307.00 for total disability and \$230.00 for permanent partial disability.
8. On May 11, 2007, the claimant sustained a second compensable injury to his lumbar spine, in the form of a lumbar strain. Specifically, the claimant has established the existence of such an injury by medical evidence, which is supported by

medical findings. He has further proven by the greater weight of the credible evidence that this injury arose out of and occurred in the course of his employment with Bieker Electric on May 11, 2007, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal physical harm to his body, and required medical services.

9. The medical services provided to the claimant by and at the direction of the physicians of St. Edwards Mercy Medical Center and by and at the direction of Dr. Randall Carson for his compensable lumbar strain, on and after May 11, 2007, represents reasonably necessary medical services under Ark. Code Ann. §11-9-508. The greater weight of the evidence proves that such medical services were necessitated by and were connected with the claimant's second compensable injury of May 11, 2007, and have a reasonable expectation of accomplishing the purpose of goal for which they were intended. Pursuant to Ark. Code Ann. §11-9-508, the respondent Bridgefield Casualty Insurance Company is liable for the expense of these services, subject to the medical fee schedule established by this Commission.

10. The claimant has failed to prove that he is entitled to temporary partial disability benefits for the period of May 25, 2006 through a date yet to be determined. Specifically, the claimant has failed to prove by the greater weight of the evidence that he continued within his healing period from the effects of his compensable lumbar injury of September 8, 2005, on and after May 25, 2006. Although the claimant entered his healing period from the effects of his second compensable lumbar injury of May 11, 2007, he has failed to prove that he has sustained any reduction in his average weekly wage or any actual "disability" as a result of this second compensable lumbar injury.

11. Respondent Westport Insurance Company has controverted the claimant's entitlement to any temporary partial disability benefits and any medical expenses incurred after March 23, 2007.

12. Respondent Bridgefield Casualty Insurance Company has denied the occurrence of any compensable injury, while it provided workers' compensation coverage for respondent Bieker Electric, and controvert the claimant's entitlement to any benefits from Bridgefield Casualty Insurance Company.

13. As no controverted benefits have herein been awarded directly to the claimant, no controverted attorney's fee can be awarded to his attorney.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the January 28, 2008 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's

decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

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 this 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

---

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.