

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F112770

MICHAEL KNAULS, EMPLOYEE	CLAIMANT
HALLIBURTON ENERGY SERVICES, INC., EMPLOYER	RESPONDENT NO. 1
ESIS, INC., INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED SEPTEMBER 16, 2008

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

Claimant represented by the HONORABLE JOE D. BYARS, JR.,  
Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by the HONORABLE JAMES C.  
BAKER, JR., Attorney at Law, Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's  
opinion filed April 28, 2008. The administrative law judge  
found that the claimant failed to prove Respondent No. 1 or  
Respondent No. 2 were responsible for permanent total

disability benefits for the period of December 14, 2007 through February 12, 2008. The administrative law judge found that the claimant failed to prove that Respondent No. 1 or Respondent No. 2 were responsible for underpayment of permanent total disability benefits in the amount of \$25,252.57. The Full Commission reverses the administrative law judge's opinion. We find that Respondent No. 2, the Death and Permanent Total Disability Trust Fund, shall pay permanent and total disability benefits to the claimant for the period beginning October 25, 2002.

I. HISTORY

The parties stipulated that the claimant sustained a compensable injury to his back and both legs on November 1, 2001. The compensable injury caused the claimant to become a complete paraplegic. Dr. Thomas S. Kiser assigned the claimant a 92% whole-person impairment rating on October 25, 2002. The parties stipulated that the claimant's healing period ended on October 25, 2002. Dr. Earl Peeples examined the claimant on November 6, 2003 and essentially assigned a 75% whole-person impairment rating. The parties stipulated that Respondent No. 1 accepted a 75 percent impairment rating.

Respondent No. 1's attorney corresponded with a representative of the Death and Permanent Total Disability Trust Fund on November 9, 2007:

Haliburton (sic) has received a claim for permanent and total disability benefits pertaining to its employee, Michael C. Knauls who is the plaintiff in the above-captioned matter. Attached are the benefits paid to date by ESIS on behalf of Haliburton. Mr. Knauls is claiming permanent and total disability benefits. At this time, I do not have the entire file. I will forward to you medical records upon their receipt. For now, I am placing the fund on notice and I am asking the commission to make the fund a party to this claim for permanent and total disability benefits. Thank you for your attention to this matter.

The parties stipulated that Respondent No. 2, the Fund, received notice of the claim on November 16, 2007 when it received counsel's November 9, 2007 letter.

Correspondence dated November 27, 2007 indicated that Respondent No. 1 was accepting the claimant as being permanently and totally disabled. The parties stipulated that Respondent No. 1 accepted the claimant as permanently and totally disabled.

A pre-hearing order was filed on December 6, 2007. The claimant contended that he sustained a compensable injury on November 1, 2001 "when steel pipes fell from a trailer, falling on the claimant, causing a severe (complete) spinal

cord injury, injuries to both legs, left shoulder, and a traumatic brain injury. The claimant has been unable to work due to the injury since November 1, 2001, and is seeking permanent total disability benefits from November 1, 2001, to a date to be determined."

Respondent No. 1 contended that it had accepted the claimant has being permanently and totally disabled. Respondent No. 1 contended that "the Death and Permanent Disability Trust Fund has been put on notice. Thus, there are potential issues pertaining to the payout of the respondents' maximum liability in this case."

The parties agreed to litigate the following issue: "1. Death & Permanent Total Disability Trust Fund liability."

The claimant testified that he received his last bi-weekly benefit payment from Respondent No. 1 for the period ending December 14, 2007.

Counsel for Respondent No. 2 corresponded with the other parties on December 18, 2007 and stated in part, "my client takes the position that the Trust Fund cannot be liable for payment of permanent total disability benefits until February 13, 2008, ninety (90) days after it first received notice of this claim pursuant to Rule 28. Upon

receipt of the above information, the Trust Fund will begin payment of benefits as of February 13, 2008."

The parties stipulated that Respondent No. 2 accepted liability for permanent and total disability on December 18, 2007.

A hearing was held on January 31, 2008. At that time, the parties stipulated that Respondent No. 2 would begin paying permanent disability on February 13, 2008. The parties agreed to litigate the issue of whether Respondent No. 1 or Respondent No. 2 was liable for permanent total disability benefits between December 14, 2007 and February 12, 2008. The parties agreed to litigate the issue of whether there was an underpayment of permanent disability benefits in the amount of \$25,252.57.

## II. ADJUDICATION

Ark. Code Ann. §11-9-502(b) (Repl. 2002) provides:

(1) For injuries occurring on and after March 1, 1981, the first seventy-five thousand dollars (\$75,000) of weekly benefits for death or permanent total disability shall be paid by the employer or its insurance carrier in the manner provided in this chapter.

(2) An employee or dependent of an employee who receives a total of seventy-five thousand dollars (\$75,000) in weekly benefits shall be eligible to continue to draw benefits at the rates prescribed in this chapter, but all benefits in excess of seventy-five thousand dollars (\$75,000) shall be

payable from the Death and Permanent Total  
Disability Trust Fund.

*Death & Permanent Total Disability Trust Fund v. Legacy*

*Ins. Servs.*, 95 Ark. App. 189, 235 S.W.3d 544 (2006).

Ark. Code Ann. §11-9-519(Repl. 2002) provides:

(b) In the absence of clear and convincing proof to the contrary, the loss of both hands, both arms, both legs, both eyes, or of any two (2) thereof shall constitute permanent total disability.

(c) In all other cases, permanent total disability shall be determined in accordance with the facts....

(e)(1) "Permanent total disability" means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.

(2) The burden of proof shall be on the employee to prove inability to earn any meaningful wage in the same or other employment.

In the present matter, an administrative law judge found that neither Respondent No. 1 nor Respondent No. 2 were liable for the gap in payment between December 14, 2007 and February 12, 2008. The administrative law judge found that neither Respondent was liable for an alleged underpayment of permanent total disability benefits. The Full Commission reverses the administrative law judge's finding.

The claimant sustained a traumatic compensable injury on November 1, 2001, leaving the claimant in chronic pain,

with bladder and bowel difficulties, and wheelchair-bound. The claimant's healing period ended on October 25, 2002. Respondent No. 1 began paying bi-weekly benefits for permanent partial disability based on a 75% anatomical impairment. The evidence indicates that the claimant consulted at length with a vocational rehabilitation specialist and attempted, unsuccessfully, to find suitable employment. The claimant did not at first contend he was entitled to permanent total disability benefits. The claimant requested permanent total disability on October 18, 2007. Respondent No. 1 subsequently sent notice to the Death & Permanent Disability Trust Fund pursuant to Commission Rule 28. Respondent No. 1 paid the claimant his last permanent partial disability check for the period ending December 14, 2007. Respondent No. 2, the Fund, took up payments for the period beginning February 13, 2008.

The administrative law judge found that neither of the Respondents were liable for the gap in payment from December 14, 2007 until February 13, 2008. The administrative law judge also found that the claimant was not entitled to an underpayment of \$25,252.57 for permanent total disability. The Full Commission reverses this finding. Respondent No. 1

correctly states that its cap pursuant to Ark. Code Ann. §11-9-502 is \$75,000. The claimant's healing period ended on October 25, 2002, and Respondent No. 1 subsequently began paying the claimant benefits at the rate for permanent partial disability. Based on the record before us in the present matter, the record indicates that the instant claimant was in fact permanently and totally disabled beginning October 25, 2002.

Respondent No. 2, the Fund, argues that it began to conduct discovery when Respondent No. 2 received notice on November 16, 2007. The Fund argues, pursuant to Commission Rule 28, that it should not be liable for permanent benefits until the expiration of ninety (90) days pursuant to the Rule. We again note, however, that Respondent No. 2 accepted liability for permanent and total disability benefits on December 18, 2007. The ninety-day period described in Commission Rule 28, whichever version of the Rule is applied, does not trump Respondent No. 2's statutory responsibility once the Fund agreed it was liable for permanent benefits. Although Respondent No. 2 did not accept liability until December 18, 2007, the record in the present matter demonstrates that the claimant was

permanently and totally disabled beginning October 25, 2002.

Based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's finding that the claimant did not prove he was entitled to permanent total disability benefits in the amount of \$25,252.57. The Full Commission finds that Respondent No. 2, the Death and Permanent Total Disability Trust Fund, is liable for the underpayment of permanent total disability benefits in the amount of \$25,252.57. The Full Commission directs Respondent No. 2, the Fund, to reimburse the claimant for the \$25,252.57 underpayment of permanent total disability benefits to which the claimant is entitled. The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

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PHILIP A. HOOD, Commissioner