

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600676

BARBARA PLAUCK,
EMPLOYEE

CLAIMANT

EPOXYN PRODUCTS,
EMPLOYER

RESPONDENT

NEW HAMPSHIRE INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 21, 2008

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

Claimant represented by the HONORABLE FREDERICK S.
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD
WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed September 4, 2007. 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 over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Because admission of Claimant's deposition will help to "best ascertain the rights of the parties," Claimant's proffered Exhibit 2 should be admitted into evidence.

4. Judicial notice cannot be taken of the testimony given in Claim Nos. F513076 and F513426; Claimant's motion that the Commission take such judicial notice is denied.

5. Claimant has proven by a preponderance of the evidence that she is entitled to additional reasonable and necessary medical treatment.

6. Claimant has not proven by a preponderance of the evidence that she is entitled to the fifteen percent (15%) impairment rating given to her by Dr. Philip Hardin under Class 2, Table 2, page 280 of the AMA Guides.

7. Claimant has proven by a preponderance of the evidence that she is entitled to a nine percent (9%) impairment rating to the body as a whole under Class 1, Table 2, page 280 of the AMA Guides.

8. Claimant is entitled to receive the maximum statutory attorney's fee on the eight percent (8%) of the nine percent (9%) impairment rating that Respondents have controverted.

9. While Respondents contend that they were entitled to an offset against Claimant's unemployment benefits, this was not made an issue; hence, the question of an offset will not be addressed but will be treated as a reserved issue.

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 of fact made by the Administrative Law Judge

are correct and they are, therefore, adopted by the Full Commission.

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).

Therefore we affirm and adopt the September 4, 2007 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

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

CONCURRING AND DISSENTING OPINION

I respectfully concur, in part, and dissent, in part, from the majority's opinion. Specifically, I dissent from the majority's finding that the claimant proved by a preponderance of the evidence that she was entitled to additional medical treatment and the finding that the claimant was entitled to a 9% anatomical permanent impairment rating. In all other findings, I respectfully concur.

In my opinion, a review of the evidence demonstrates that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment. What the majority did equated to awarding the claimant additional medical care based upon the unfounded premise that the claimant continues to have skin troubles that require treatment and medication. The evidence demonstrates that the claimant has an allergy to epoxy resin. The only recommendation that has been made by Dr. Hardin was that she refrain from working around the substance. The claimant is no longer working for the respondent employer. The claimant has not experienced any new

patches of full-blown dermatitis since soon after she left working for the respondent employer. The claimant noted that the rash she had on her arm in the summer of 2005 subsided once she started using the cream prescribed for her. Her condition also improved tremendously once she was able to leave the respondent employer and stop her exposure to the epoxy resin. In fact, the claimant specifically stated that she had not run across anything since she left working for the respondent employer that caused a flare-up of her condition.

The claimant also did not seek treatment from the time of her last visit with Dr. Hardin in 2005 until she underwent an independent medical evaluation in April of 2006. There is no documentation from that period of time indicating that the claimant was in need of ongoing treatment. In a May 13, 2005, report, Dr. Hardin conservatively estimated that the claimant would need treatment for a few more months. In his July 12, 2005, correspondence to Ann Ginnevan, R.N., Dr. Hardin indicated that the length of treatment would depend on the claimant's exposure to the offending agents. The claimant has not been exposed to epoxy resin or any of the "offending agents" referenced by Dr. Hardin since

leaving her employment with the respondent employer in the summer of 2005.

Further, Dr. Jerry Hoskyn's stated in his report that the claimant appeared to be breaking out from allergens other than the epoxy resin. Dr. Hoskyn's stated: "she continues to have intermittent signs and symptoms of contact dermatitis on her hands. In the absence of exposure to epoxy I cannot attribute this to epoxy resin." Dr. Hoskyn opined that the claimant would need more comprehensive patch testing in order to clarify the source of her continued problems. Dr. Hoskyn noted that the claimant likely had sensitivity to other allergens. In fact, the claimant indicated in her OSHA Respirator Medical Evaluation Questionnaire that she had a history of skin allergies or rashes prior to going to work for the respondent employer. Therefore, when I consider Dr. Hoskyn's opinions, together with the fact that the claimant has had problems with rashes and skin allergies prior to going to work for the respondent employer, along with the fact that the claimant was removed from the source of the offending agent, I find that the claimant is not entitled to any additional medical treatment. Therefore, for all the reasons set

forth herein, I must respectfully dissent from the majority's award of additional medical treatment.

I also dissent from the majority's finding that the claimant is entitled to a 9% permanent anatomical impairment rating to the body as a whole. In my opinion this impairment rating is inappropriate. The evidence demonstrates that the claimant has a skin allergy and her only restriction is that she cannot work around epoxy resin. The claimant noted that she is working as a housekeeper and working with chemicals at a local nursing home with no difficulties. She can drive and do all the things she could do before working for the respondent employer. In fact, the claimant listed on her Unemployment Application that she had absolutely no disabilities that would prevent her from beginning full time work immediately.

Further, the claimant has not tried to do anything away from work that she was not able to do because of her allergy. The claimant clearly has no functional impairment to her body which has interfered with her job duties. In my opinion, a 9% permanent anatomical impairment is clearly out of proportion to the claimant's problems. I note, that an injured worker who undergoes spinal surgery warrants a 9% rating

because of the objective evidence of impairment reflected in their diagnostic studies. The claimant's situation clearly does not compare to a claimant that has undergone spinal surgery. The claimant has not presented any objective evidence of permanent impairment as a result of her allergic reaction. Accordingly, I find the claimant is not entitled to 9% in permanent anatomical impairment. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority's award additional medical treatment and permanent anatomical impairment in the amount of 9% to the body as a whole. I concur with all other findings.

KAREN H. McKINNEY, Commissioner

Commissioner Hood concurs & dissents.

CONCURRING & DISSENTING OPINION

I must respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the claimant has proved by a preponderance of the evidence that she is entitled to the nine percent (9%) permanent impairment rating assigned by the majority. However, I must

respectfully dissent from the majority's finding that the claimant failed to prove by a preponderance of the evidence that she is entitled to the additional six percent (6%) permanent impairment rating assigned by the claimant's treating physician. In all other findings I respectfully concur.

The Commission had adopted the AMA Guides to the Evaluation of Permanent Impairment, (4th ed. 1993) for use in assessing the extent of permanent anatomical impairment. Here, Dr. Phillip Hardin, the claimant's treating physician, who has been a dermatologist for thirty years, assigned the claimant a fifteen percent (15%) permanent impairment rating based on his finding that the claimant's condition placed her under Class 2 in Table 2 on page 280 of the Guides. The majority has chosen to disregard Dr. Hardin's medical opinion in favor of a nine percent (9%) permanent impairment rating, based on its finding that the claimant's condition placed her under Class 1 in Table 2 on page 280 of the Guides. While the Commission may determine its own impairment rating under the Guides, rather than simply assessing the validity of the ratings that have been assigned, Avaya v. Bryant, 82 Ark. App. 273, 105 S.W. 3d 811 (2003), I find no convincing evidence of

record indicating that the nine percent (9%) rating assigned by the majority is more appropriate than the fifteen percent (15%) rating assigned by Dr. Hardin. Based on a de novo review of the record, I find that the preponderance of the evidence shows that the claimant is entitled to an additional six percent (6%) permanent impairment rating, for a total permanent impairment rating of fifteen percent (15%) as assigned by the claimant's treating physician.

For the aforementioned reasons, I must respectfully concur in part and dissent in part.

PHILIP A. HOOD, Commissioner