

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501098

LARRY ROBERTS, EMPLOYEE	CLAIMANT
WHIRLPOOL CORPORATION, EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JULY 30, 2008

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

Claimant represented by the HONORABLE EDDIE WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The above-styled matter is back before the Full Commission upon remand from the Arkansas Court of Appeals. Roberts v. Whirlpool, CA07-1032 (Ark. App. May 14, 2008). After again reviewing the entire record de novo, it is our opinion that the decision of the Administrative Law Judge is correct and should be affirmed. The Full Commission finds that the findings of fact entered by the Administrative Law Judge are correct and are, therefore, adopted by the Full Commission. We therefore affirm the October 12, 2006

opinion of the Administrative Law Judge and Adopt the opinion as the decision of 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).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. This matter is currently before the Full Workers' Compensation Commission on remand from the Court of Appeals. The Court has reversed and remanded for proceedings consistent with their opinion. Specifically, the Court stated:

In finding that appellant's cervical injury was not related to the accident at work, the Commission dismissed entirely the opinion of Dr. Johnson because it was "based on the claimant's history" and because "he did not review the claimant's medical records." The Commission then relied on the comments of Dr. Smelz and denied appellant's claim because "he was not diagnosed with a herniated disc in his cervical spine until 8 months after his injury"; because appellant "never complained of neck pain"; and because appellant had "significant degenerative changes in his spine."

The Court directed the Commission to fully examine the relevant evidence presented in this case.

After further review of Dr. Johnson's medical records and his deposition, it is still my opinion that the claimant cannot prove by a preponderance of the evidence that the claimant sustained a compensable injury to his cervical spine on September 10, 2004.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner