

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403161

RICKY STEWART, EMPLOYEE	CLAIMANT
GAITHER'S APPLIANCE, EMPLOYER	RESPONDENT NO. 1
WESTPORT INS. CORP., CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

**ORDER FILED DECEMBER 2, 2008**

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

Claimant represented by HONORABLE NELSON SHAW, Attorney at Law, Texarkana, Arkansas.

Respondent No. 1 represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is presently before the Full Commission on remand from the Court of Appeals. In an opinion delivered October 22, 2008, the Court of Appeals affirmed the April 24, 2007, Full Commission opinion in part and reversed and remanded in part. Specifically, the Court of Appeals affirmed the Full Commission finding that the claimant sustained a 12% anatomical impairment rating and the claimant's entitlement to additional medical treatment. The Court of Appeals reversed the Full Commission finding that the claimant did not refuse to participate in an

offered program in rehabilitation. In reversing the Full Commission on this issue, the Court stated:

Here, however, given the undisputed evidence that [claimant] was contacted by [respondent's] vocational rehabilitation specialist but refused to speak to her until after the hearing was concluded, we think that the only reasonable conclusion to be drawn was that a rehabilitation plan existed and that [claimant] manifested an unwillingness to cooperate. Therefore, we reverse the Commission's award of wage-loss benefits in excess of [claimant's] anatomical impairment.

Accordingly, we hereby find that pursuant to Ark. Code Ann. §11-9-505(b)(3) (Repl. 2002), the claimant has failed to prove by a preponderance of the evidence that he is entitled to any permanent partial disability benefits in excess of his percentage of permanent physical impairment.

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