

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508325

JANICE K. SWAFFORD, EMPLOYEE	CLAIMANT
POCAHONTAS PUBLIC SCHOOLS, SELF-INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED DECEMBER 3, 2008

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

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, 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. Swafford v. Pocahontas Public Schools, CA08-111 (Ark. App. October 1, 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 February 5, 2007,

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 respectfully dissent from the majority's findings on remand from the Court of Appeals. After reviewing this claim in light of the Court's remand, I find that the Commission made the correct decision on all matters in our initial opinion of December 3, 2007.

With regard to the finding that the claimant's left extremity carpal tunnel syndrome was not related to the claimant's compensable right arm injury, I give more weight to the opinions of Dr. Moore and Dr. Bindra, who are both highly regarded hand and upper extremity specialists. Dr. Barrett-Tuck is a general neurosurgeon. When I review Dr. Moore's records dated June 8, 2006, he very clearly opined that "the left carpal tunnel syndrome is not related to the injury which occurred to her right hand and arm on July 27, 2005." It is crystal clear that Dr. Moore did not think that the claimant's left carpal tunnel syndrome was related to her right hand and arm injury. I cannot see how this statement can be interpreted any other way.

With respect to the finding that the claimant's surgery on her right upper extremity was not reasonable and necessary, I would affirm this finding as well. Neither Dr. Moore nor Dr. Rutherford recommended surgery. Dr. Bindra determined the claimant had

functional overlay and gave the claimant a guarded prognosis. He felt that it was unlikely the claimant had carpal tunnel syndrome because the injection did not provide the claimant with any relief. Once again, I give more weight to their opinions than the opinion of Dr. Barrett-Tuck.

Therefore, for all the reasons set forth herein, I must dissent from the majority's award of benefits.

KAREN H. MCKINNEY, Commissioner