

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406472

MARTHA TAGGART,
EMPLOYEE

CLAIMANT

MID-AMERICA PACKAGING,
EMPLOYER

RESPONDENT

CONTINENTAL CASUALTY COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 3, 2008

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

Claimant represented by the HONORABLE KENNETH E. BUCKNER,
Attorney at Law, Pine Bluff, Arkansas.

Respondent represented by the HONORABLE FRANK NEWELL,
Attorney at Law, Little Rock, Arkansas.

ORDER

This case comes before the Full Commission on Respondent's Petition for Reconsideration regarding attorney's fees awarded on appeal. After the hearing, the Administrative Law Judge found claimant sustained a compensable injury and awarded benefits. Claimant appealed seeking higher wage loss than the 20% awarded. The Full Commission affirmed and adopted the decision of the administrative law judge, with Commissioner Hood dissenting

and asserting claimant deserved more wage loss. Claimant did not prevail on appeal and Respondent did not cross appeal any issue.

The majority opinion gave claimant's attorney a fee for prevailing on appeal. Obviously, claimant did not prevail and it was error for the Full Commission to award fees. Thus, we grant Respondent's motion to reconsider the award of attorney's fee for prevailing on appeal. We hereby order that claimant's attorney should not receive the \$500 awarded in our opinion on August 27, 2008.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING ORDER

This matter comes on for review before the Full Commission on respondent's Petition for Reconsideration regarding attorney's fees which were awarded to the claimant's attorney. The claimant was awarded benefits

for her compensable injury by the Administrative Law Judge in an opinion dated August 8, 2007. In the Administrative Law Judge's opinion, the judge found that the claimant was entitled to 20% wage loss benefits and that the respondents were not entitled to a credit under Ark. Code Ann. § 11-9-411. In an Opinion and Order dated August 27, 2008, the Full Commission found that, similar to the Administrative Law Judge, the claimant was entitled to 20% wage loss benefits and that the respondents were not entitled to a credit under Ark. Code Ann. § 11-9-411. The Full Commission then awarded the claimant's attorney \$500 in attorney's fees, as directed by Ark. Code Ann. § 11-9-715(b)(1). Subsequently, on September 2, 2008, the respondent appealed the decision of this Commission awarding the claimant's attorney fees. I find that the majority has erred and that the claimant is entitled to attorney's fees.

The statute governing this issue, Ark. Code Ann. § 11-9-715(b)(1), states:

If the claimant prevails on appeal, the attorney for the claimant shall be entitled to an additional fee at the full commission and appellate

court levels in addition to the fees provided in subdivision (a)(1) of this section...

In the respondent's brief in the appeal to the Full Commission, the respondent argued that the "respondents are entitled to an appropriate credit under Ark. Code Ann. § 11-9-411 for any long-term disability benefits paid.... Respondents also deny liability for wage loss disability benefits." These contentions by the respondent demonstrate that the respondents were actively contesting the award of benefits by the Administrative Law Judge. The claimant was awarded benefits by the Administrative Law Judge and could have lost these benefits but for the work of her attorney. To "prevail" does not merely mean gaining something new for the claimant; the claimant can prevail by simply successfully defending what the respondent appeals and attempts to take away. Furthermore, the claimant's attorney did actively, and successfully, defended the award of the Administrative Law Judge before the Full Commission. Therefore, the claimant prevailed in the claim by successfully defending the benefits awarded to the claimant by the Administrative Law Judge.

Accordingly, I find that Respondent's Motion for Reconsideration regarding attorney's fees should be denied. Therefore, I must respectfully dissent from the order issued by the majority.

PHILIP A. HOOD, Commissioner