

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E910613

MELISSA CAROL THETFORD, EMPLOYEE	CLAIMANT
ELECTRIC COWBOY, EMPLOYER	RESPONDENT NO. 1
FREMONT COMPENSATION, CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT DISABILITY TRUST FUND	RESPONDENT NO. 2

ORDER FILED MARCH 13, 2008

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

Claimant represented by HONORABLE STEPHEN T. ARNOLD,
Attorney at Law, Texarkana, Arkansas.

Respondent No. 1 represented by HONORABLE JEREMY SWEARINGEN,
Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE JUDY RUDD,
Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is claimant's Motion for a Hearing. After consideration of the claimant's motion, respondents' response thereto, and all other matters properly before the Commission, we find that the Commission does not have jurisdiction at this time; therefore, claimant's motion must be denied.

Presently, this claim is pending before the Arkansas Court of Appeals. In a decision filed April 19, 2007, the Full Commission found that the claimant failed to

prove by a preponderance of the evidence that she was permanently and totally disabled and that she was barred from receiving wage loss disability. The claimant filed a timely notice of appeal and has perfected her appeal to the Court of Appeals. After the claimant and respondents filed their initial briefs with the court, but prior to filing her Reply Brief, the claimant filed a Motion with the Court of Appeals to Suspend Appeal and Reply Brief and for Leave to File a Motion for New Trial. In her Motion, claimant contended that the claimant was recently examined by her current treating physician and may be in need of additional surgery. This motion was denied in a Per Curium Order as reflected in the Court of Appeals' November 14, 2007, Docket. Despite this ruling, the claimant now requests that the Commission set her claim for a hearing on the issue of additional medical treatment and temporary total disability.

After being advised by the Clerk of the Commission that the Commission did not have jurisdiction on this claim while it was pending before the Court of Appeals, the claimant continued to make requests for a hearing. On January 18, 2008, at the request of the Clerk of the

Commission, Chief Administrative Law Judge Dave Greenbaum, wrote the parties advising that "the Commission has lost jurisdiction for all purposes pending the appeal of the claim to the Arkansas Court of Appeals." Judge Greenbaum further advised:

Further, I feel compelled to point that the claim which is currently on appeal is for permanent total disability. A hearing for resumption of temporary total disability would appear to be inconsistent with a claim for permanent total disability. Until the current appeal is either exhausted or the claimant elects to dismiss the appeal and be bound by the findings of the Full Commission, my suggestion is the Commission is currently without jurisdiction. In the event the claimant believes otherwise, please provide authority in support of a hearing request to the Commission's Clerk.

In correspondence to the Commission dated January 29 and 30, 2008, the claimant demanded a hearing at this time. In support of her contention, the claimant relies upon Erwin v. Riverside Furniture Corp., 97 Ark. App. 42 (2006), which sets forth the long standing holding that in order for the Court to review a decision from the Workers' Compensation Commission the order must be final so as to

avoid piecemeal litigation. In Erwin the Court remanded the claim back to the Commission because the Commission had failed to rule on key issues in controversy. Applying this holding, claimant contends that her request for a hearing is not on a key issue to the controversy pending before the Court of Appeals since the Court has already refused to remand for a new trial. We do not agree.

The claimant proceeded to a hearing on permanent total disability and wage loss benefits. She did not prevail and is now appealing this issue to the Court of Appeals. Now she demands a new hearing on whether she has remained in her healing period, relying in part upon medical evidence presented at the first hearing which went against her on the permanent total issue as well as on current medical evidence that the claimant may require additional surgery. Claimant argues that whether she is permanent total or still within her healing period, she is entitled to the same benefits, therefore the issues are not inconsistent. Claimant further argues that one may be temporarily disabled and not foreclosed from her contention that she is permanently disabled when the issue of the temporary nature of her

injuries has not been finally adjudicated. Temporary total benefits are only payable while the claimant is within her healing period. Permanent total benefits are only payable after the healing period has ended and a determination of permanent total disability has been made. A.C.A. § 11-9-502; Thomas v. Legacy Ins. Services, Full Commission Opinion filed May 4, 2005 (F100487). When the claimant went forward with her hearing on permanent total disability, she contended for all purposes that she was no longer temporarily totally disabled. Now she contends otherwise.

As the claimant has not dismissed her appeal before the Arkansas Court of Appeals, this Commission lacks jurisdiction to hear a claim for additional benefits. Walker v. J & J Pest Control, 6 Ark. App. 171, 639 S.W.2d 748 (1982); Blasingame v. Multistaff Leasing, Full Commission Opinion filed April 3, 2003 (F009694). Once a final determination has been rendered by the Court of Appeals or the claimant dismisses her appeal and the issue as to whether the claimant is permanently and totally disabled becomes final, the claimant may request a new hearing. Until such time, the Commission does not have jurisdiction on this

claim. Therefore, we find that the claimant's motion for a hearing must be denied.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.