

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F805329

LAVEENA KAY ADAMS, EMPLOYEE	CLAIMANT
NETTLETON SCHOOL DISTRICT, SELF-INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 25, 2009

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

Claimant represented by the HONORABLE M. SCOTT WILLHITE, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

## OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed March 4, 2009. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 29, 2008, the relationship of employee-employer existed between the parties, when the claimant sustained an injury to her right upper extremity, and

she earned wages sufficient to entitle her to weekly compensation benefits of \$294.00/\$221.00, for temporary total/permanent partial disability.

3. The claimant was temporarily totally disable (sic) for the period beginning May 30, 2008, and continuing through the ending of the healing period, a date to be determined.
4. The claimant was not furnished a copy foe (sic) the notice, Form AR-N, in accordance with Ark. Code Ann. §11-9-514(c), and as such the change of physician rules are not applicable.
5. The medical treatment rendered to the claimant under the care of Dr. Michael M. Moore and Dr. Reginald J. Rutherford, as well as referrals therefrom, is reasonably necessary in connection to the treatment of the claimant's May 29, 2008, compensable injury.
6. The respondent shall pay all reasonably necessary hospital, nursing and medical expenses arising out of and in connection with the injury of May 29, 2008.
7. The respondent has controverted the payment of workers' compensation benefits in this claim subsequent to September 3, 2008.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the

findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the March 4, 2009 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

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.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion affirming and adopting the decision of the Administrative Law Judge. Based upon my de novo review of the record I find that it is clear error to find that the respondents did not deliver the AR-N to the claimant and that the claimant was not furnished a copy of the notice.

The Administrative Law Judge, and now the majority, found that the change of physician rules do not apply because the claimant was not "furnished" a copy of the AR-N. However, the claimant clearly admitted on cross-examination that she completed and signed the form AR-N on May 29, 2008, a copy of which was introduced into evidence by respondents. This form

states in pertinent part: "My signature below also indicates that I have been provided with my rights regarding change-of-physician." Moreover, the Administrative Law Judge explicitly asked the claimant, "You did receive the Form N in this claim. You acknowledged completing this Form N, is that correct?" to which she responded, "Yes, sir." Under further questioning, however, the claimant testified that she did not receive a copy of the Form N; that the school had the form. The only evidence that she was not "furnished" a copy of the AR-N is the claimant's own self serving testimony. The Arkansas Court of Appeals has unequivocally held that a claimant's signature on the AR-N is sufficient evidence that the claimant received notice and was furnished a copy of the AR-N, despite a claimant's testimony to the contrary. Sharp v. Lewis Ford, 78 Ark. App. 164, 78 S.W.3d 746 (2002) The Act allows respondents to deliver in person a copy of the notice. A signed receipt of delivery is not required by statute nor is it required by case law to prove that a claimant was furnished a copy of her change of physician rights sufficient to satisfy A.C.A. § 11-9-514(c).

In the present claim, the claimant acknowledged receiving the AR-N and signing this form on

May 29, 2008. Claimant at first testified that she received the AR-N when she was asked by the Administrative Law Judge. The statute requires that the claimant be "delivered" either in person or by certified or registered mail "a copy of a notice" advising the claimant of her change of physician rights. The statute further provides that if the claimant is not furnished a copy of these rights then the change of physician rules do not apply. The Administrative Law Judge, and now the majority have interpreted this second provision to mean that the claimant must be given a copy of the notice after the original has been delivered to her. Even a strict construction of the statute does not require "delivery" or "furnishing" of a copy of the original to the claimant. When A.C.A. § 11-9-514(c) subsections (1) and (2) are read together, it is clear that the respondents need only "deliver" "a copy" of the AR-N to the claimant and if this delivery of the copy is not made, then the change of physician rules do not apply. The court has made it clear that deliver of the AR-N and furnishing of the form to the claimant is satisfied by evidence that the claimant signed the form after her injury. The statute does not require the actual copying of the signed form be made and then "redelivered" or "refurnished" to the claimant. The statute only

requires that a copy of Form AR-N, Employee's Notice Of Injury, be delivered to the claimant. A claimant's signature on this copy is therefore, sufficient to invoke the statutory change of physician rules. See, Ark. Code Ann. § 11-9-514(c) Nguyen v. Riverside Furniture, Full Commission Opinion filed December 20, 2007 (F603172); Baker v. Quebecor World, Full Commission Opinion filed May 4, 2005(F304342). MAY 4, 2005.

Accordingly, for those reasons set forth herein, I find that it is clear error to find that the change of physician rules do not apply, and I must respectfully dissent.

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KAREN H. MCKINNEY, Commissioner