

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213823

MARIE HERRON, EMPLOYEE	CLAIMANT
MEDICALODGE PROGRESSIVE CARE, EMPLOYER	RESPONDENT NO. 1
TRAVELERS INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

ORDER FILED SEPTEMBER 8, 2009

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

Claimant represented by the HONORABLE GREGORY R. GILES,
Attorney at Law, Texarkana, Arkansas.

Respondent No. 1 represented by the HONORABLE PHILLIP
CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE CHRISTY
KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

ORDER

Respondent No. 2, the Death and Permanent
Total Disability Trust Fund, has filed a Petition for
Clarification of the Commission's July 28, 2009 Opinion
and Order awarding the claimant permanent and total
disability benefits. In its petition respondent No. 2
states:

1. That the Full Commission issued an opinion on July 28, 2009, in which it made the following determinations and conclusions:

(A) The claimant has shown a change in facts pursuant to Ark. Code Ann. §11-9-522(d) as well as a change in physical condition pursuant to §11-9-713(a).

(B) The claimant has proved by a preponderance of the evidence her entitlement to permanent and total disability benefits under Ark. Code Ann. §11-9-509(e) (1).

(C) The January 11, 2005, and January 15, 2005 hospitalization was reasonably necessary and causally related to the claimant's compensable injury and is a liability of the respondent.

2. That "when did permanent and total disability benefits begin to accrue if the claimant is found permanently and totally disabled" was an issue for determination which was set forth in both the Prehearing Order filed February 25, 2008, and the Administrative Law Judge's July 25, 2008 Opinion.

(A) That the issue of when did permanent and total disability benefits begin to accrue if the claimant is found permanently and totally disabled was not addressed in the July 25, 2008, Administrative Law Judge Opinion nor in the Full Commission's July 28, 2009, Opinion.

(B) That without a determination of the date of entitlement to permanent and total disability benefits, the Trust Fund cannot properly determine when Respondent No. 1 has paid its maximum statutory liability pursuant to Ark. Code Ann. §11-9-502(b) (1) (A).

3. That Respondent No. 2, the Death and Permanent Total Disability Trust Fund, hereby petitions The Full Commission to clarify its July 28, 2009, Opinion by determining the date of claimant's entitlement to permanent and total disability benefits.

In response to Respondent No. 2's Petition for Clarification, the Full Commission hereby finds that the claimant became permanently and totally disabled and entitled to permanent and total disability benefits on April 1, 2008, the date of a Functional Capacity Evaluation report indicating that the claimant has no capacity to do any type of work due to her physical limitations.

IT IS SO ORDERED.

A. WATSON BELL, Commissioner

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.