

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E401630

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| MICHAEL MORTON, EMPLOYEE | CLAIMANT |
| MT. HOLLY PUBLIC SCHOOLS, EMPLOYER | RESPONDENT NO. 1 |
| PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER | RESPONDENT NO. 1 |
| DEATH & PERMANENT TOTAL DISABILITY TRUST FUND | RESPONDENT NO. 2 |

OPINION FILED APRIL 13, 2009

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

Claimant represented by HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondent No. 1 represented by HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Affirmed, as modified.

OPINION AND ORDER

This matter is currently before the Full Workers' Compensation Commission on an appeal by respondent no. 1 of an opinion filed November 18, 2008, by an Administrative Law Judge wherein it was found that the claimant proved by a preponderance of the evidence that the claimant was entitled to temporary total disability benefits for the period May 20, 1999, through May 13, 2002. Respondent no. 1

contended that the opinion failed to address the issue regarding the permanent partial disability benefits in the amount of 18% that respondent no. 1 had previously paid to the claimant and whether or not respondent no. 1 should be given a credit for the permanent partial benefits previously paid.

Respondent no. 1 filed a Motion for Clarification with the Administrative Law Judge on December 19, 2008, asking for the order to be amended to address the issue. Respondent no. 1 also filed an appeal to the Full Commission on the same date. In a one-page letter response dated January 5, 2009, the Administrative Law Judge stated "no" in answer to the question of whether respondent no. 1 could take credit for the permanent partial benefits paid. Respondent no. 1 is now asking the Full Commission to enter an order clarifying this issue.

The claimant was accepted as permanently and totally disabled by both of the respondents. Respondent no. 1 had previously accepted an 18% anatomical impairment rating assessed on May 19, 1999, and paid that rating during

the period May 20, 1999, through December 6, 2000. The Administrative Law Judge found that the claimant did not reach the end of his healing period until May 13, 2002, therefore, the claimant was entitled to temporary total disability benefits for the period May 20, 1999, through May 13, 2002. Respondent no. 1 does not appeal the issue regarding the finding that the claimant's healing period ended on May 13, 2002.

The Full Commission has previously dealt with this issue. In Death & Permanent Total Dis. v. Legacy Ins., Ark. App. , 235 S.W.3d 544 (2006), the Court of Appeals affirmed the Commission's finding that the carrier was entitled to a credit for previously made payments toward a permanent anatomical impairment rating against its \$75,000 maximum liability for permanent total disability benefits. As such, respondent no. 1 is entitled to a credit toward the \$75,000 maximum liability for any permanent partial disability benefits it paid to the claimant during the period May 20, 1999, through December 6, 2000. We note that this was the period prior to the claimant being found to be at the end of

his healing period and prior to the claimant being found to be permanently and totally disabled.

Alternatively, respondent no. 1 can take credit for the permanent partial disability benefits previously paid when paying the claimant the temporary total disability benefits for the period May 20, 1999, through December 6, 2000. Therefore, respondent no. 1 may take credit either against the temporary total disability benefits it is required to pay for the period May 20, 1999, through December 6, 2000, or it may take credit against its total liability of \$75,000 for the permanent and total disability benefits it is to pay the claimant. It can not take both credits.

Therefore, we find that respondent no. 1 is entitled to a credit for the permanent partial disability benefits respondent no. 1 has previously paid to the claimant prior to the claimant reaching the end of his healing period.

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner