

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F207988

KALEN RICHARDSON,
EMPLOYEE

CLAIMANT

PACKAGING SPECIALTIES,
EMPLOYER

RESPONDENT

FAIRFIELD INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 28, 2009

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

Claimant represented by the HONORABLE MARK FREEMAN,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE MICHAEL E.
RYBURN, 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 18, 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 June 11, 2002, the relationship of employee-employer-carrier existed between the parties.
3. On June 11, 2002, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$383.00 for total disability and

\$287.00 for permanent partial disability, when such benefits should be appropriate.

4. On June 11, 2002, the claimant sustained a compensable injury to his lumbar spine, which was in the form of a tear of the annulus and protrusion or herniation of the L4-5 intervertebral disc with resulting nerve root impingement.

5. There is no dispute, at present, over the payment of medical services incurred prior to February 6, 2007.

6. The respondents have accepted liability for and have paid the expenses incurred for the claimant's initial visit by Dr. James Blankenship, which was conducted pursuant to a change of physicians that was granted by this Commission.

7. The medical services provided and recommended to the claimant for his chronic low back and radicular difficulties, by and at the direction of Dr. James Blankenship on and after October 28, 2008, constitutes reasonably necessary medical services for the claimant's compensable lumbar injury. Specifically, the medical services provided and recommended by Dr. Blankenship have been proven to be necessitated by or connected with the claimant's compensable injury and have been proven to have a reasonable expectation of successfully accomplishing their intended purpose. Pursuant to the provisions of Ark. Code Ann. §11-9-508, the respondents would be liable for these expenses, subject to the Commission's medical fee schedule.

8. The respondents have failed to prove that the medical services provided and recommended by Dr. Blankenship for the claimant's chronic lumbar and radicular difficulties were in any way caused by an independent intervening event, so as to relieve the respondents of liability for these expenses.

9. There is no dispute, at the present time, over the claimant's entitlement to temporary total disability benefits.

10. The respondents have denied the claimant's entitlement to any additional medical services after February 6, 2007, with the exception of the initial evaluation by Dr. Blankenship that was performed pursuant to a change of physicians granted by this Commission.

11. As no controverted benefits have herein been awarded to the claimant, no controverted attorney's fee can be awarded to his attorney.

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 18, 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.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.