

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F801659

GEORGE TYREE,
EMPLOYEE

CLAIMANT

ELECTRICAL RESOURCES, INC.,
EMPLOYER

RESPONDENT

COMPANION PROPERTY & CASUALTY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 29, 2009

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

Claimant represented by the HONORABLE KENNETH L.
OSBORNE, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE ANDY L.
CALDWELL, 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 27, 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 or about January 30, 2008, the relationship of employee-employer-carrier existed between the parties.
3. On or about January 30, 2008, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$285.00 for total

disability and \$214.00 for permanent partial disability.

4. On or about January 30, 2008, the claimant sustained a compensable injury in the form of a left inguinal hernia. The claimant has proven by the greater weight of the credible evidence that this hernia arose out of and occurred in the course of his employment with the respondent, that it immediately followed as the result of sudden effort or strain, that there was severe pain in the hernial region that this pain caused the claimant to cease work immediately, that notice of this injury was given to the employer within 48 hours after its occurrence, and that the physical distress following the occurrence of this hernia was such as to reasonably require the attendance of a licensed physician within 72 hours.

5. The medical services provided and recommended by physicians at Mercy Convenient Care and Business Health Clinic (particularly Dr. David Sitzes) and by and at the direction of physicians at the Northwest Arkansas Surgical Clinic represent reasonably necessary medical services for the claimant's compensable left inguinal hernia. This expressly includes the recommended surgical repair. Pursuant to the provisions of Ark. Code Ann. § 11-9-523(b), the respondents are liable for the expense of these services subject to the medical fee schedule established by this Commission.

6. The claimant has proven by the greater weight of the credible evidence that he is entitled to the maximum 26 weeks of compensation at the weekly rate for temporary total disability, as a result of his compensable left inguinal hernia. The respondents are liable for such compensation pursuant to the provisions of Ark. Code Ann. § 11-9-523(b)(1).

7. The respondents have denied the occurrence of any compensable hernia and have controverted the claimant's entitlement to any benefits.

8. The appropriate fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted compensation herein awarded to the claimant.

9. This Commission has no authority, under the Act or the Commission's Rules, to hold the respondents liable for an appearance fee for a court reporter for a deposition which was scheduled by the claimant, that did not occur due to the deponent's failure to appear.

10. This Commission also lacks authority, under the Act or the Commission's Rules, to hold the respondents liable for the cost of service of a deponent.

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 27, 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.