

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F800833

RICHARD TUBERVILLE, EMPLOYEE	CLAIMANT
MACHINES INTERNATIONAL, EMPLOYER	RESPONDENT NO. 1
WEST AMERICAN INSURANCE CO., INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED APRIL 5, 2010

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

Claimant represented by the HONORABLE KRISTOFER
RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondent No. 1 represented by the HONORABLE MICHAEL E.
RYBURN, Attorney at Law, Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Affirmed, as
modified.

OPINION AND ORDER

Respondents appeal an opinion and order of
the Administrative Law Judge filed November 10, 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 which arose on January 23, 2008, during which time the employee-employer-carrier relationship existed among the parties when the claimant sustained an injury arising out of and in the course of his employment.

2. On January 23, 2008, the claimant earned wages sufficient to entitle him to weekly workers' compensation benefits at the maximum applicable rate of \$522.00/\$392.00, for total/permanent partial disability.
3. The claimant reached the end of his healing period on January 27, 2009, with a residual anatomical impairment of 12% to the body as a whole as a result of the January 23, 2008, compensable injury.
4. When the claimant's age, education, work experience, and other matters reasonably expected to affect his future earning capacity are considered, the evidence preponderates that the claimant has sustained a loss of earning capacity in the amount of 88% over and above his anatomical impairment.
5. The evidence preponderates that the claimant has been rendered incapable, because of the January 23, 2008, compensable injury, to earn any meaningful wages in the same or other employment, thereby rendering him permanently totally disabled, pursuant to Ark. Code Ann . §11-9-519(e).
6. Respondents #1 shall pay all reasonably necessary and related hospital and medical expenses arising out of the injury of January 23, 2008.
7. Respondents #1 have controverted the claimant's entitlement to permanent total disability benefits in excess of the 12% anatomical impairment.

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. However, the Full Commission finds that finding No. 4 regarding wage loss disability is unnecessary, and is not affirmed by the Full Commission. The claimant is permanently and totally disabled and is entitled to permanent and total disability benefits, not wage loss disability benefits. We find from a preponderance of the evidence that the findings made by the Administrative Law Judge, with the exception of finding No. 4, are correct and they are, therefore, adopted, by the Full Commission.

We therefore affirm and adopt, as modified, the November 10, 2009 decision of the Administrative Law Judge 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.