

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700734

DELSHON TYOUS, EMPLOYEE	CLAIMANT
CMC STEEL FABRICATORS, INC., EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 11, 2010

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.

Respondents represented by the HONORABLE GILL A. ROGERS, 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 August 26, 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 over this claim.
2. The stipulations agreed to by the parties at the full hearing and recited herein are reasonable and are hereby accepted as fact.

3. The respondents are in contempt of the Commission's November 5, 2008, award (which affirmed and adopted the administrative law judge decision dated January 17, 2008) and are hereby fined \$2,000.00 to be made payable to the Commission's fiscal officer, pursuant to Arkansas Code Annotated Section 11-9-706.
4. The respondents are directed to pay the claimant a 36% late payment penalty pursuant to Arkansas Code Annotated Section 11-9-802(e) on the award affirmed and adopted by the Full Commission dated November 5, 2008. Respondents were to pay the Full Commission award within 30 days as no appeal was taken, and I find that respondents' failure to pay the workers' compensation benefit awarded herein was willful and intentional.
5. The respondents have controverted the claimant's entitlement to any penalty provided by Arkansas Code Annotated Section 11-9-802.
6. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fees on the controverted penalties awarded herein. This fee shall be in addition to the controverted attorney's fees previously awarded.

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.

However, Ark. Code Ann. §11-9-706 allows a maximum fine of \$10,000 for contempt of the Commission. It is our opinion that the behavior by the respondent in this claim warrants the imposition of the maximum fine, not the \$2,000 fine imposed by the Administrative Law Judge. It is within the Commission's discretion to impose the maximum fine and the Commission is exercising its authority to do so. The Commission hereby finds that respondents are in contempt of the Commission's November 5, 2008, award (which affirmed and adopted the administrative law judge decision dated January 17, 2008) and are hereby fined \$10,000.00 to be made payable to the Commission's fiscal officer, pursuant to Arkansas Code Annotated Section 11-9-706.

We therefore affirm as modified the August 26, 2009, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein.

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.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

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PHILIP A. HOOD, Commissioner