

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409640

FARRELL HIGHFILL, EMPLOYEE	CLAIMANT
AMERICAN RAILCAR INDUSTRIES, EMPLOYER	RESPONDENT NO. 1
HARTFORD INS. CO. OF MIDWEST, INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JANUARY 7, 2011

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

Claimant represented by the HONORABLE PHILLIP WELS,
Attorney at Law, Jonesboro, Arkansas.

Respondents No. 1 represented by the HONORABLE JARROD
RUSSELL, 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 and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of
the Administrative Law Judge filed August 30, 2010. 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. The employment relationship existed on September 9, 2004, when the claimant sustained compensable injuries to his lower extremities, during which time the claimant earned an average weekly wage of \$537.00, with corresponding compensation benefit rates of \$358.00/\$269.00, for total/permanent partial disability.
3. The claimant reached the end of his healing period/maximum medical improvement on September 28, 2006, with a residual anatomical impairment of 16% to the body as a whole.
4. When the claimant's age, education, work experience, permanent restriction and limitations are considered, the evidence preponderates that the claimant has been rendered permanently and totally disabled within the preview (sic) of the Arkansas Workers' Compensation Act, pursuant to Ark. Code Ann. §11-9-519.
5. Respondents #1 shall pay all reasonably necessary medical, hospital, nursing, and other apparatus expenses growing out of the claimant's compensable injury of September 9, 2004.
6. Respondents #1 have controverted the claimant's entitlement to permanent total disability benefits.

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 August 30, 2010, 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.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that he was permanently and totally disabled. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof.

The claimant was employed by the respondent employer helping to build railcars. On September 9, 2004, the claimant sustained admittedly compensable injuries to his legs and feet. These injuries were very serious with the claimant requiring to be bedridden for one year and half in order to recover. At this time, the claimant contends that he is permanently and totally disabled. The claimant suffered a scheduled injury and is precluded from wage loss disability benefits over his

permanent anatomical impairment unless he can prove by a preponderance of the evidence that he is permanently and totally disabled. In my opinion, the claimant cannot meet that burden of proof.

The claimant underwent a functional capacity evaluation (FCE) on July 11, 2006. The results of the testing indicated that the claimant gave a reliable effort. The claimant demonstrated he had the ability to perform work in the light work classification as defined by the U.S. Department of Labor.

After the claimant was released to return to work, he went to work for the respondent employer, asking for light duty and the respondent employer was unable to provide the claimant with any light duty. The claimant has failed to look for any other employment after being told there was no light duty available with the respondent employer.

The evidence demonstrates that the claimant cannot prove that he is physically unable to work. The claimant's FCE indicates that he is able to perform light duty, and the claimant has not sought other employment opportunities that would accommodate his physical limitations. I find this to be a close case, but the evidence is simply insufficient to prove that the claimant is entitled to permanent and total

disability benefits. Accordingly, for all the reasons set forth herein, I respectfully dissent from the majority's award of permanent and total disability benefits.

KAREN H. MCKINNEY, Commissioner