

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705733

CHARLES MCGILL, EMPLOYEE	CLAIMANT
NEWBERRY'S GREEN FOREST PRODUCTS, EMPLOYER	RESPONDENT NO. 1
AIG DOMESTIC CLAIMS, INC., INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MAY 23, 2011

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

Claimant represented by the HONORABLE M. KEITH WREN, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE MELISSA WOOD, 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 February 7, 2011. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the prehearing conference conducted on August 18, 2010, and contained in a pre-hearing order filed August 20, 2010, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that he is permanently and totally disabled.
3. The claimant has proven that he has suffered a loss in wage earning capacity as a result of his compensable injuries in an amount that would equal 15 percent impairment to the body as a whole.
4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from December 9, 2008, to August 11, 2009.
5. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from September 23, 2009, to October 7, 2009.
6. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from November 19, 2009, to December 1, 2009.
7. The claimant reached maximum medical improvement on December 1, 2009.
8. The claimant's attorney is entitled to a fee in This matter is presently before the Full Commission on commiserate (sic) with the Arkansas Workers' Compensation Act.

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 February 7, 2011 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.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs in part and dissents in part.

**CONCURRING DISSENTING OPINION**

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the claimant has failed to prove he is permanently and totally disabled and that he is not entitled to temporary total disability benefits from December 9, 2008, to August 11, 2009. However, I must respectfully dissent from the majority's award of a 15% loss in wage-earning capacity in addition to his permanent anatomical impairment.

In my opinion, a review of the evidence demonstrates that the claimant is not entitled to any wage loss disability benefits in addition to his permanent anatomical impairment. The claimant's treating physician, Dr. Christopher Reeves released the claimant from his care on December 9, 2009, with absolutely no

restrictions whatsoever. Ms. Heather Taylor testified that the claimant's work history consisted of truck driving only. However, Ms. Taylor stated that the claimant could return to work as a truck driver. The claimant is 70 years old, and he does not want to work. His injury is not what is keeping him from working. What is keeping the claimant from working is the fact that the claimant simply does not want to work anymore but wants to retire. The claimant should not be awarded any wage loss disability benefits because he does not want to pursue employment.

Therefore, for all the for all the reasons set forth herein, I respectfully dissent from the majority's award of a 15% loss in wage earning capacity in addition to his permanent anatomical impairment.

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KAREN H. MCKINNEY, COMMISSIONER