

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311119

BILLY THARP, EMPLOYEE	CLAIMANT
JUSTICE FARMS, INC., EMPLOYER	RESPONDENT NO. 1
COMMERCE & INDUSTRY INS. CO., INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED SEPTEMBER 1, 2011

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

Claimant represented by the HONORABLE KEVIN M. O'DWYER, 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 DAVID SIMMONS, Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by the HONORABLE CHRISTY KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents No. 1 appeal an opinion and order of the Administrative Law Judge filed May 16, 2011. 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 and recited herein are reasonable and are hereby accepted as fact.
3. I find that neither Respondents No. 1 nor Respondent No. 2 showed that the claimant's refusal to participate in vocational rehabilitation was without any reasonable cause. I specifically find that when taking into account all the claimant's other non-compensable ailments such as diabetes, arthritis, anxiety, depression, numerous medications such as Hydrocodone, and all other relevant factors, that the claimant's refusal to participate in vocational rehabilitation was with reasonable cause. Therefore, claimant is not barred from receiving any wage loss disability benefits.
4. It has not been proven by a preponderance of the evidence that the claimant's prior impairment has combined with the recent compensable injury to produce the claimant's current disability status. Therefore, the third hurdle of Mid-State as outlined herein has not been met and therefore there is no Second Injury Fund liability.
5. With no Second Injury Fund liability, the claimant's wage loss disability benefits awarded in the October 23, 2009, administrative law judge Opinion and affirmed by the Court of Appeals in their December 8, 2010, Opinion is therefore the responsibility of Respondents No. 1. Respondents No. 1 controverted the claimant's claim for

permanent partial disability benefits in the form of the wage loss award herein and therefore Respondents No. 1 are liable for the maximum attorney's fees pursuant to Ark. Code Ann. § 11-9-715(a)(2)(A).

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 May 16, 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.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.