

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F907874

ROBERT YOUNG,  
EMPLOYEE

CLAIMANT

JR SERVICES,  
EMPLOYER

RESPONDENT

PROTECTIVE INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 11, 2011

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

Claimant represented by the HONORABLE BRENT BABER,  
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS,  
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 December 28, 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 employer/employee/carrier relationship existed on or about August 10, 2009, when the claimant contends he sustained a compensable injury.
3. Based on an average weekly wage of \$493.00, the claimant would be entitled to compensation

rates of \$329.00 for temporary total disability benefits and \$247.00 for permanent partial disability benefits.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left upper extremity on August 10, 2009.
5. The claimant has proven by a preponderance of the evidence that he is entitled to medical benefits and temporary total disability benefits from August 18, 2009 until a date yet to be determined, as a result of his compensable injury. With respect to any week for which the claimant received unemployment benefits, the claimant is entitled to temporary total disability benefits only to the extent the temporary total disability otherwise payable exceeds such unemployment benefits pursuant to Ark. Code Ann. § 11-9-506.
6. The respondents have fully controverted claimant's entitlement to disability benefits. Claimant is entitled to a twenty-five percent (25%) statutory attorney's fee on the indemnity benefits awarded herein, one-half to be paid by the respondents and one-half to be withheld from the claimant's award of 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 December 28, 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 finding that the claimant proved by a preponderance of the evidence that he sustained a compensable injury to his left arm. In my opinion, a review of the evidence demonstrates that the claimant has failed to meet his burden of proof.

The evidence demonstrates that the on the day the alleged incident took place, the claimant was hospitalized for strep throat which had progressed to glomerulonephritis, dehydration and renal failure. The medical records from the claimant's hospitalization fail to reference any work incident whatsoever. There is absolutely no reference to left arm pain, tenderness, weakness, swelling or bruising. In fact, the records indicate that an examination of the claimant's extremities were "non-tender." The section dealing with

pain history does not mention any pain in the claimant's arm. Further, there is a note indicating that the claimant's IV was in his left arm but the claimant did not complain of pain from that. The claimant testified that he was in excruciating pain. However, the medical records fail to support his testimony.

Simply put, I find that the evidence does not support a finding that the claimant sustained a compensable injury to his left arm on August 10, 2009. Therefore, for all the reasons set forth herein I must respectfully dissent from the majority's award of benefits.

---

KAREN H. MCKINNEY, Commissioner