

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H205106**

**JUAN D. RUIZ ACEVEDO,
EMPLOYEE**

CLAIMANT

**PORTILLOS CONSTR., INC.,
EMPLOYER**

RESPONDENT

**OHIO SECURITY INS. CO./
LIBERTY MUTUAL INS. GRP.,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION AND ORDER FILED NOVEMBER 6, 2023

Single issue presented for decision based on the parties' written briefs and designated record before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge Mike Pickens, submitted on August 21, 2023.

The claimant is represented by the Honorable Mark Alan Peoples, Peoples Law Firm, Little Rock, Pulaski County, Arkansas.

The respondents are represented by the Honorable Zachary Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In lieu of a hearing and pursuant to the parties' mutual agreement made during the course of the aforementioned prehearing teleconference memorialized in the Amended Prehearing Order filed July 21, 2023, the parties waive their right to a hearing on the subject issues. Instead, the parties' have agreed the ALJ may render an opinion and order based on the record designated by and agreed to by the parties as set forth below.

Pursuant to the Prehearing Order filed July 21, 2023, the parties have agreed to the following relevant stipulations:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim and the issue herein – specifically, enforcement of the

Joint Petition Order (JP Order) filed June 2, 2023.

2. Both the claimant and respondents waive their right to a hearing on this issue. In lieu of a hearing, and pursuant to the parties' mutual agreement, they will submit this matter to be decided based on their respective briefs and the record as described above.
3. The JP Order was approved and filed with the Commission on June 2, 2023. As of the date of the parties' July 19, 2023, prehearing telephone conference – some 47 days after approval and filing of the June 2, 2023, Joint Petition Order – the claimant still had not received the \$5,000.00 settlement check awarded in the subject order.

(Commission Exhibit 1 at 2). Again, pursuant to the parties' mutual agreement the sole issue to be litigated based on the parties' blue-backed briefs and designated and mutually agreed record is:

1. Whether, and if so to what extent, the respondents are subject to a late payment penalty based on the amount of the sum approved and awarded to the claimant in the Joint Petition Order approved and filed June 2, 2023.

(Comms'n Ex. 1 at 2).

The claimant contends he is entitled to a late payment penalty pursuant to *Ark. Code Ann.* § 11-9-802 (2023 Lexis Replacement) based on the total amount of his joint petition settlement award of \$5,000.00. (Comms'n Ex. 1 at 2).

The respondents contend they are not subject to the payment of any such late payment penalty. Moreover, the respondents contend the claimant should be held in contempt for filing a frivolous motion and, therefore, the claimant should be deemed liable for payment of their attorney's fees and costs in responding to the motion. (Comms'n Ex. 1 at 3).

The record herein consists of the blue-backed documents attached hereto as Commission Exhibit 1 (the Amended Prehearing Order Filed July 21, 2023); Joint Exhibit 1, pages 1-57; Joint Exhibit 2, pages 1-17; the parties' respective blue-backed briefs; any and all other relevant, agreed documents, if any, they may have attached to their respective briefs; as well as the Commission's entire file by reference including but not limited to the digital recording of the June 2, 2023, JP hearing.

STATEMENT OF THE CASE

The relevant facts of this case are not in dispute. The issue to be decided is a matter of law, as stated *supra*: Whether, and if so, to what extent, if any, the respondents are subject to a late payment penalty pursuant to *Ark. Code Ann.* Section 11-9-802 (2023 Lexis Repl.) related a joint petition settlement hearing (JP hearing) that was held on June 2, 2023. A prehearing order filed March 17, 2023, scheduled a hearing on the merits for Friday, June 2, 2023. The parties settled the claim before the hearing date, and the claimant requested the June 2, 2023, hearing date and time be used for the JP hearing. The respondents agreed to this request, as did the ALJ.

The claimant knew the respondents would not and did not have the two (2) settlement checks in their possession at the hearing, but had previously agreed this was acceptable and he wished to proceed with the JP hearing with the understanding he would receive his settlement check after the JP hearing. The ALJ found the settlement was in the both the claimant's and respondents' best interests, approved the settlement, and signed and filed the JP Order dated June 2, 2023.

On June 16, 2023 – 15 days after the date the JP Order was signed (which was on a Friday)

Juan D. Ruiz Acevedo, AWCC No. H205106

– the respondents delivered the \$5,000 settlement check to the claimant. The check was made payable to both the claimant and his attorney. The claimant’s attorney advised the respondents’ attorney the claimant was unable to cash the check since it was made payable to both him and his attorney. Consequently, the claimant’s attorney requested the respondents issue a second check made payable only to the claimant. It appears the claimant’s attorney made this request on June 16, 2023. While the first settlement check could have been cashed soon after the claimant received it if both the claimant and his attorney signed it, the record is devoid of evidence demonstrating any effort was made to obtain the claimant’s attorney’s(s’) signature(s) on the check. Consequently, the respondents agreed to send a new check listing only the claimant’s name as payee. Of course, pursuant to the terms of the JP settlement agreement, the claimant’s attorney received his fee via a separate check made payable solely to him.

The claimant and/or his attorney returned the first settlement check to the respondent’s attorney, who received it and sent it back to Liberty Mutual, the respondent-carrier. Liberty Mutual issued a stop payment on the first JP settlement check so a new, second check could be sent before they – Liberty Mutual – actually received the claimant’s first, returned settlement check, purportedly in an attempt to expedite the claimant’s receipt of the second check. The new/second check was mailed to the claimant’s attorney, returned to sender, and subsequently sent directly to the claimant. The claimant received the second, newly-issued settlement check on or about July 31, 2023, some 59 days after the date the JP order was signed and thereafter filed of record with the Commission.

Finally, it should be noted – as the claimant’s attorney accurately explained in his brief – the

Juan D. Ruiz Acevedo, AWCC No. H205106

claimant and his attorney made numerous efforts to obtain receipt of the second settlement check, and exercised a demonstrable degree of patience before the claimant finally felt compelled and believed it necessary to file his motion for a late payment penalty pursuant to ***Ark. Code Ann.*** Section 11-9-802.

On June 15, 2023, claimant received a check in the mail from Liberty Mutual, however, the check was made payable to “Mark Peoples PLC and Ruiz Acevedo Juan.” The claimant attempted to negotiate the check without success. On June 16, 2023, the claimant informed his attorney he had been unable to cash the JP settlement check. Immediately thereafter, on the same day the claimant’s attorney informed the respondents’ attorney of this issue, and requested the respondents issue a new check to the claimant as soon as possible.

Thereafter, on Thursday, June 22, 2023, the claimant’s attorney informed the respondents’ attorney the claimant still had not received his settlement check. On Monday, June 26, 2023, the claimant’s attorney once again informed the respondents’ attorney the claimant still had not received his check. On Wednesday, June 28, 2023, the claimant’s attorney once again informed the respondents’ attorney the claimant still had not received his JP settlement check. At this time the claimant’s attorney placed the respondents’ attorney on notice that if the check did not arrive on or before close of business on Monday July 3, 2023, the claimant would seek a penalty for late payment pursuant to ***Ark. Code Ann.*** Section 11-9-802(c) (2023 Lexis Repl.).

In an email dated Friday, July 7, 2023, the claimant’s attorney asked the respondents’ attorney for voluntary compliance: “Today marks 5 weeks since the JP hearing. Claimant has still not been paid. Please ask Liberty to send him an additional \$1,000 as late payment penalty. Let

Juan D. Ruiz Acevedo, AWCC No. H205106

me know by Wednesday whether they will agree to pay the penalty. *If they voluntarily agree to pay penalty, I will forego any fee associated therewith.* If they do not agree, I will move for a 36% penalty for willful late payment and an associated atty fee. Thanks much.” (Italics added; underlining in original). In an email to the claimant’s attorney dated Monday, July 10, 2023, the respondents’ attorney advised that no late payment penalty was applicable to the alleged late payment of a JP settlement check.

Consequently, since the claimant still had not received his JP settlement check, on July 10, 2023, the claimant’s attorney filed a motion for penalties with the Commission, requesting the Commission issue an order requiring the respondents to pay claimant the sum of \$6,800, which sum represents the \$5,000 JP settlement amount, plus an additional \$1,800, which the claimant’s attorney advised represented a 36% penalty based on *Ark. Code Ann.* Section 11-9-802(e) (2023 Lexis Repl.). Alternatively, the claimant’s attorney requested the Commission issue an order requiring the respondents to pay the claimant an additional \$1,000 as a 20% penalty pursuant to *Ark. Code Ann.* Section 11-9-802(c), as well as a maximum statutory attorney’s fee based on the amount of any penalty awarded. Again, the claimant received the second settlement check on July 31, 2023, some 59 days after the date the ALJ signed the JP Order on June 2, 2023. In response to the claimant’s motion, the respondents filed a motion for sanctions, requesting the Commission order the claimant to pay their attorney’s fees and costs as they argued the claimant’s motion for a late payment penalty on these facts was, “baseless and frivolous.”

DISCUSSION

While both claimant’s and respondents’ attorneys arguments were well and clearly made,

Juan D. Ruiz Acevedo, AWCC No. H205106

based on the applicable law as applied to the facts of this case, I am compelled to find that both the claimant's and the respondents' motions should be, and hereby are, denied for the following reasons.

First, while *Ark. Code Ann.* Section 11-9-805 (2023 Lexis Repl.) does in fact characterize the Commission's approval of either a partial or full and final settlement of a claim to be an "award" (*see, e.g.,* 11-9-805 (a)(2)(A) and (B), *et seq.*) *Ark. Code Ann.* Section 11-9-802 is entitled, "INSTALLMENTS", and *all the provisions* of *Ark. Code Ann.* Section 11-9-802 quite specifically and clearly apply to the late payment of an, "installment of compensation." *See, Ark. Code Ann.* Section 11-9-802(a), (b), and (c). All of these provisions specifically refer and apply to "installment" payments of compensation benefits, and not to a JP settlement "award" which is not made in installment payments, but is in fact and of course made in a lump sum payment. Nowhere in *Ark. Code Ann.* Section 11-9-802 does there exist a penalty provision that purports to apply to a JP settlement agreement, whether the JP settlement is a partial settlement of all but medical benefits, or a full and final settlement of the entire claim, both including both medical and indemnity benefits.

Second, as applicable in this case, pursuant to *Ark. Code Ann.* Section 11-9-805 (b)(1)(B): "After the Commission enters an order with regard to any full settlement, the commission does not have jurisdiction over any claim for the same injury or any results arising from it. *Ark. Code Ann.* Section 11-9-805 does not contain any penalty for the late payment of a JP settlement award. While it is both egregious and unacceptable for it to take some 59 days for the respondents to deliver the claimant's settlement check to him, there exists no provision in the Act giving the Commission the

Juan D. Ruiz Acevedo, AWCC No. H205106

statutory authority to levy a penalty against a respondent who fails to timely deliver a claimant's settlement check to him or her, much less a statute that provides the Commission with any guidance concerning how any such penalty – if one did in fact exist – shall be determined. Moreover, if there existed any case law providing the Commission the authority to levy a penalty against the respondents on these facts, I am reasonably certain the claimant's most capable and experienced attorney would not only be aware of it, but he would have cited it in his brief. Therefore, without any statutory or other mandatory authority allowing the Commission to levy a penalty in a case such as this one, it has no such authority.

Third, while it is well-settled the Commission retains jurisdiction to enforce the terms and provisions of the JP settlement agreement to ensure – for example in a case like this one – that a claimant receives his settlement check, in this case the claimant did receive his settlement check, albeit in a highly untimely manner. Arguably, if there were a provision in either or both the JP settlement agreement and/or order specifically stating the respondents must deliver the claimant's settlement check to him on or before a date certain or they would be subject to some specifically agreed penalty (similar to, for example, a liquidated damages provision in a contract), the Commission would in fact have the authority to enforce this JP settlement agreed penalty provision just as it undoubtedly now has to enforce any and all of the terms and provisions of the JP settlement agreement. However, no such provision exists in this particular JP settlement agreement or order, nor in any other of the standard JP settlement agreements and orders which the Commission approves and/or signs and files of record. It is unlikely either party would ever want to include such a provision, as such language would almost certainly prove to be a disincentive to

Juan D. Ruiz Acevedo, AWCC No. H205106

a JP settlement agreement for one or both parties. Therefore, if the claimant has any remedy whatsoever under the Act on these facts, it does not and cannot arise out of any of the provisions of *Ark. Code Ann.* Section 11-9-802.

Likewise, concerning the respondents' motion for sanctions in the form of attorney's fees and costs for having to respond to the claimant's motion, I find the respondents' motion to be without either precedent, or merit. It is somewhat difficult for this ALJ to understand how the respondents' can reasonably expect me to award sanctions against either/or a claimant or his attorney when both the claimant and his attorney in good faith agree to proceed with a JP settlement hearing with the undeniably reasonable expectation that both the claimant and his attorney would receive their checks in a timely manner. Indeed, any reasonable claimant and his attorney would expect the claimant would receive his settlement check soon after the signing, entry, and issuance of the JP Order. Most certainly a claimant should expect to receive his settlement check well before 59 days *after* the signing, entry, and issuance of the subject JP Order.

While the record does not contain specific facts as to why and how the first check apparently inaccurately listed the claimant's name, and in addition listed his attorney's name, as a payee on the first check issued some 15 days after the JP Order was signed; or whether the claimant's attorney could simply have signed the check so a bank may have cashed it (but if the claimant's name was incorrectly/inaccurately listed as the payee on the check, would a, or any, bank cash such a check?), the record also is devoid of any evidence why it should take the respondents an additional 44 some-odd days – almost one and one-half (1 ½) months – to issue and deliver a second settlement check to the claimant. Regardless of the reason(s), the evidence in the record

Juan D. Ruiz Acevedo, AWCC No. H205106

does not sufficiently explain why it took the respondents such a long time to get the claimant a second check that listed the correct payee, and accurately stated his name. Most respectfully, but also most sincerely, rather than file a motion for sanctions against the claimant and/or his attorney on these facts, the respondents should be thankful the claimant and his attorney did not file a motion for contempt and/or sanctions against them. The respondents motion for sanctions in the form of attorney's fees and costs is hereby respectfully denied on these facts or, more accurately stated, the lack of facts/evidence justifying the granting of such a motion.

These and all other respondents may also want to consider that if a claimant cannot expect to receive a JP settlement check before the expiration almost 60 days – some two (2) months – after the date of the JP Order (and more likely than not long after the respondents have filed the necessary form(s) with the Commission to close the claimant's claim) both a claimant and/or his attorney may very well understandably be less willing to settle a case and proceed with a JP hearing without the respondents' attorney being able to have the settlement checks in hand and able to present them on the record at the time of the hearing. And this could result in the delay of JP settlement agreements and hearing dates, which would not be a good situation for either claimants or respondents.

Therefore, for all the aforementioned reasons, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. When the ALJ found the subject joint petition settlement agreement to be in the parties' best interests; and the ALJ signed, and caused the JP Order to be entered of record, and issued, the Commission lost jurisdiction over all aspects of this claim except for its jurisdiction and ability to enforce the specific terms and provisions of the settlement agreement. There exists no evidence herein that either party failed to abide by the specific

terms and provisions of the subject joint petition settlement agreement.

2. **Ark. Code Ann.** Section 11-9-802 does not apply to the alleged late payment of an award made pursuant to the ALJ's approval of a joint petition settlement agreement. Consequently, the respondents cannot be deemed liable for the alleged late payment of a joint petition settlement award pursuant to **Ark. Code Ann.** Section 11-9-802.
3. The respondents have failed to meet their burden of proof that the claimant and/or his attorney should be subject to sanctions in the form of attorney's fees and costs. On these facts, I cannot find the claimant's and/or his attorney's motion to be either "baseless" or "frivolous".

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp