

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G201609**

TERRI LOCKARD, EMPLOYEE	CLAIMANT
SAINT JEAN INDUSTRIES, INC., EMPLOYER	RESPONDENT #1
TRAVELERS PROPERTY AND CASUALTY, OF AMERICA INSURANCE CARRIER/TPA	RESPONDENT #1
DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED FEBRUARY 3, 2026

Hearing before Administrative Law Judge, James D. Kennedy, on the 9th day of December, 2025, in Little Rock, Arkansas.

Claimant is represented by Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents #1 are represented by Amy C. Markham, Attorney at Law, Little Rock, Arkansas.

Respondent #2 is represented by Christy L. King, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 9th day of December, 2025. The parties stipulated that the Arkansas Workers Compensation Commission has jurisdiction of the claim, there was an employer/employee/carrier or TPA relationship existing at all pertinent times, and specifically on October 18, 2010, and that the Claimant's average weekly wage was such that she is entitled to a compensation rate of \$303.00 temporary total disability and \$227.00 permanent partial disability. The Claimant reached maximum medical improvement on January 31, 2012, and the Claimant has been determined to be permanently and totally disabled. Further, the Six Prior Opinions are Res Judicata and the Law of the Case. Additionally, it was stipulated that the regular indemnity payments

to the Claimant stopped in February of 2021, but a later payment was made to the Claimant. The Trust Fund issued a Certificate of Acceptance on January 16, 2016, which set the Trust Fund's takeover date as August 21, 2023.

The primary issues as spelled out in the Prehearing Order and after statements by the party's representatives at the close of the hearing are the issues of a 20% penalty due the claimant for late payments by Respondents #1 plus the issue of any applicable attorney fees due the Claimant. The second matter before the Commission is the Trust Fund's contentions under what was previously known as Commission Rule 99.28 and now known as 11 C.A.R. 25-123 that Respondents #1 failed to comply with the notice requirements as required by the Certificate of Acceptance signed by Respondents #1, where they agreed to contact the Trust Fund in the event they stopped making payments in any way. Payments to the Claimant were stopped on or about February 28, 2021, and Respondents #1 did not notify the Trust Fund of this event and did not restart payments until September 12, 2025, and whether Respondents #1 should be penalized \$10,000.

It is noted that after the filing of the Responses to the Pre-hearing Questionnaires by all the parties, but prior to the actual hearing regarding this matter, that Respondents #1 issued checks totaling \$38,805.50, with a check made out to the Claimant's attorney dated July 19, 2024, for the sum of \$4,850.69 which consisted of the withheld portion from the Claimant's portion for her part of her attorney fees. A second check was issued to the Claimant dated July 22, 2024, for the sum of \$33,954.69 for the unpaid disability payments.

As far as the actual contentions of the parties, the Claimant's and Respondents' contentions are set out in their respective responses to the Pre-hearing questionnaire,

made part of the record without objection, and clarified at the time of the hearing. The Claimant contends that she was being paid permanent total disability benefits which were discontinued due to Respondents #1, apparently having difficulty locating her. The Claimant also contends that she has in fact been located and living at the same address where she resided when benefits were being paid. Claimant contends in her Pre-Hearing Questionnaire her entitlement to renew her permanent disability benefits and her entitlement to a 20 percent penalty in the sum of \$7761.11 along with attorney fees. Respondents #1 contend that the permanent total disability payments stopped in February of 2021 because all indemnity payments had been paid to the Claimant. Respondent #2 contend that Respondents #1 failed to comply with the notice requirements of Arkansas Workers' Compensation Rule 099.28, now codified and referred to as 11 C.A.R. 25-123 and referred to in the Form SF-7 (Certificate of Acceptance) and that the Rule allows for a \$15.00 per day penalty up to \$10,000.00 for a lack of notice and that a fine of \$10,000 is called for due to lack of notice due to when Respondents #1 stopped paying disability payments to the Claimant. The Trust Fund stands ready to commence weekly benefits in compliance with A.C.A. 11-9-502 and has not controverted the Claimant's entitlement to benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee/carrier or TPA relationship existed at all pertinent times and specifically October 18, 2010.

3. That the Claimant's average weekly wage was sufficient for a TTD rate of \$303.00 and a PTD rate of \$207.00.
4. That Claimant reached MMI on January 31, 2012, and was determined to be Permanently and Totally Disabled.
5. That the Six Prior Opinions that have been issued in this matter are Res Judicata and the Law of the Case.
6. That the regular indemnity payments stopped in February of 2021, but years later in July of 2024, a total of \$38,805.50 was paid to the Claimant, with the sum of \$4805.59 withheld from the total amount of payment and this sum was paid to the claimant's attorney as the Claimant's portion of her attorney fees.
7. That Claimant has satisfied the required burden of proof by a preponderance of the credible evidence that she is entitled to the sum of \$7761.11, a twenty (20%) penalty pursuant to A.C.A. 11-9-802, for installment payments not made within 15 days after the payments became due.
8. The Claimant is also entitled to attorney fees pursuant to A.C.A. 11-9-715 on the amount of \$7,761.11, which was in fact controverted. Additionally, if not already paid, Claimant's representative is also entitled to Respondents #1 portion of the attorney fees for the collection of the \$38,805.50 paid to the Claimant on or about July of 2024. This payment is entitled to interest pursuant to A.C.A.11-9-809.
9. Additionally it is found that the evidence preponderates that Respondents #1 failed to file the required Amended AR-D notice with the Trust Fund within fifteen (15) days of the change of status when Respondent #1 stopped

payments to the Claimant back in February of 2021, that payments were not paid over a period of three years, and that over two years had passed when Respondent #2, the Trust Fund requested information. Additionally, it is found that there is no good cause for the stoppage of the payments, and that Respondent #2 is entitled to a ten-thousand-dollar (\$10,000.00) penalty to be paid by Respondents #1, forthwith, pursuant to 1 C.A.R.25-123.

10. If not already paid, the Respondents #1 are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order along with the Responses to the Pre-hearing Questionnaires of the parties were made part of the record without objection. All proposed exhibits were admitted into the record without objection. Claimant's Exhibit One, which consisted of documentary evidence, was admitted into the record without objection. Respondents #1 Exhibit One, which also consisted of documentary evidence, was also admitted into the record without objection. Respondent #2 Exhibit One, which consisted of a Certification of Acceptance /Payment Detail, was also admitted into the record without objection. Additionally, the parties submitted briefs at the request of the Commission, and the briefs are "Blue-Backed" and made part of this opinion.

The sole witness was the Claimant, Ms. Terri Lockard, who testified that she lives at 80 Powell Road, Edgemont Arkansas, zip code 72044, and has lived there since 2009. The Claimant testified that in 2013, she was involved in a Workers' Compensation hearing where it was determined that she was totally disabled and that she received workers' compensation benefits, along with medical benefits. The records indicated she was last

paid in February of 2021, but she recently received a check in the amount of \$33,954.84. The Claimant further testified that she failed to receive payments between 2021 up until the recent payment of \$33,954.84. There had been an ongoing discussion within the last several months about the possibility of settling the case, with the exchange of some authorizations that had been requested by the insurance company and Medicare. She received the sum of \$33,954.84 in September of 2025, but denied receiving any additional money from a workers' compensation standpoint. (Tr. 5 – 8)

Under cross examination, the Claimant denied being contacted by anyone from Respondents #1. When asked about Respondents #1 taking the position that they attempted to contact her several times in 2021 and were unable to make contact, she responded that she was unaware of them attempting to contact her. She denied being told by her neighbors about any contact attempt and named four of her neighbors. When asked if there was an agreement between herself and Respondents #1 in regard to the settlement of her case, she responded "I thought we were going to." She admitted receiving a copy in 2024 of the Medicare set-aside report. She admitted not being aware the Medicare set-aside had to be submitted to Medicare for them to review and approve. She was aware that she had to sign certain authorizations. The Claimant responded "I think so" to the question of whether a long period of time went by when she had agreed to settle her case for all medical and indemnity and was waiting for the approval of the Medicare set aside. She was not aware the settlement could not be finished until authorizations were returned. She was also asked about receiving an authorization to sign back in October of 2024, and she responded "If it was '24 - - I'm sorry, I'm - - Time has kind of run together for me. I don't - - Whatever I received, I - - I signed and returned."

Terri Lockard – G201609

She was asked again about the authorizations sent to her attorney in October of 2024, and she responded that “Whenever I got anything from Mr. Davis, I returned it” and stated that she did it promptly. The following questioning then occurred:

Q: Okay. So, if - - Then if you don’t remember returning any back in 2024, you’re saying you don’t remember getting them, is that right.

A: Yes, that’s right.

Q: Okay. So, we weren’t able to settle your claim as we had agreed because those documents were never returned to us. Were you aware of that?

A: No.

Q: Okay. You have received a large check for the outstanding amount that Travelers owed to you, is that right?

A: Yes.

Q: Okay. But your claim remains open at this point, is that right?

A: Yes. (Tr. 8 – 12)

On redirect, the Claimant agreed she was aware of the fact that the amount of money owed to her by the insurance company from 2021 through 2024 had all accrued before there was a discussion about possibly trying to settle her case. She also testified that she returned the authorizations sent to her and believed she had returned everything. (Tr. 13)

On recross examination, the Claimant admitted that Craig and Tammy Carlton were her neighbors and that although she could not see their home, she thought that they lived about a half mile from her. She admitted talking to them and having their phone

number. She denied that they ever mentioned Respondents #1 sent someone to their house to determine if she lived in the area. (Tr. 14)

Under questioning by the Commission, the Claimant admitted that she had difficulty receiving her mail at times and at times received mail addressed to others. This led to further direct examination of the Claimant where she testified that she was receiving her checks in the mail back in 2021, at the same address. Under further questioning by the Commission, the Claimant admitted she had lived at her current location since 2009 and had three or four different mail carriers during that time. (Tr. 15 – 17)

Closing statements were then allowed. Respondent #2 argued that the Trust Fund was contending under old Rule 99.28 of the Commission, now 11 C.A.R. 25-123, that Respondents #1 failed to comply with the notice requirements in what is called the Certificate of Acceptance which was sent and signed by Respondents #1(Travelers Insurance), which provided it agreed to contact the Trust Fund in the event they stopped paying or changed their payments in any way. There was no contact and payments were stopped February 28, 2021, and payments did not restart until September 12, 2025. The Rule allows for a \$15.00-a-day penalty up to \$10,000.00, and the Fund is requesting a \$10,000.00 penalty for lack of notice due to when they stopped payment to the Claimant. (Tr. 18, 19)

The Claimant argued she was owed \$38,805.55 prior to the Trust Fund taking over and admitted Respondents #1 ultimately paid that sum after removing the amount for attorney fees. They “flat didn’t pay the benefits” from February 24, 2021, till July 19, 2024, and each check is subject to a 20 percent penalty which would result in a penalty of

\$7761.11. Discussions about potentially trying to settle the claim would not have taken place until after the accrual had already happened. (Tr. 19, 20)

Respondents #1 argued that Respondent Travelers made multiple attempts to contact the Claimant with no success and even hired an investigator to perform an “Alive-and-Well” inquiry at the Claimant’s residence. “They didn’t know if she was still around, if she was still alive and well, if she was hospitalized. They didn’t know. They just couldn’t get in contact her.” They sent an investigator to her home who spoke to a couple of neighbors. Since they were unable to get in contact with her, payments stopped. Communications resumed in 2024 and an MSA was prepared, which had to be submitted to the Centers for Medicare and Medicaid Services to effectuate settlement. These authorizations were sent to the attorney for the Claimant and were not returned for over a year. The Centers for Medicare and Medicaid Services have a six-month time span and if it’s more than six months old, they won’t review the same MSA. Respondent #1 (Travelers) contended that they were prepared to proceed with the settlement but couldn’t get an MSA reviewed by Medicare. The Claimant had received no medical treatment for a long time and Respondents #1 did not hear from Claimant’s attorney until later in 2025, based upon everything that had happened. That was when a hearing was requested. (Tr. 20 – 22)

At this point the Claimant’s representative was allowed to respond and stated that he contended that the Claimant still had an “open, active, available medical claim, that Doctor Silas, the Claimant’s doctor had retired, so consequently the Claimant needed Respondents #1 to make arrangement for an authorized treating physician. Additionally, Claimant again contended that Respondents #1 stopped making payments in 2021 and

that they did not know why. The private investigator provided information to Respondents #1 that Claimant was still around. (Tr. 23)

The Claimant submitted 53 pages of documentary evidence without objection. An ALJ Opinion dated September 21, 2013, found that an employee-employer-insurance carrier relationship existed on or about October 18, 2010, that the Claimant had reached the end of her healing period on January 31, 2012, and that the Claimant had proven by a preponderance of the evidence that she had been rendered permanently and totally disabled by her compensable head injury of October 18, 2010, beginning on January 31, 2012. (Cl. Ex. 1, P. 1 – 30)

An email from the Trust Fund dated May 2, 2024, to the attorney for Respondents #1, provided that the email was a follow up to the last year emails regarding the Claimant when Respondent #1 advised that they had not made any payments regarding medical or indemnity since 2020, and that an Agreed Decree of Divorce provided that the Claimant had been awarded sole possession of the residence in Edgemont, AR. The email also requested a complete indemnity payment history for an audit prior to the Trust Fund assuming payment of indemnity benefits. A second email from the Trust Fund dated May 16, 2023, provided that it appeared that Respondents #1 had not paid any benefits in over two years and had closed their file. The email further provided that “Unless Travelers begins payments at some point in the future satisfying their maximum obligation on indemnity benefits, the Trust Fund will not have liability in this claim.” An email from Respondent #1 (Travelers) dated May 16, 2023, from an individual located in Texas, provided they had closed their workers’ compensation file after multiple attempts to connect with the Claimant. Another email from the Trust Fund also dated May 16, 2023,

provided that the Trust Fund had still not received a payment history as of the date of the email. A Divorce Decree dated November 6th, 2023, provided that the Claimant would have possession of the property in Cleburne County, Arkansas, which appears to be the residence in Edgemont. (Cl. Ex. 1, P. 31 – 39)

On or about May 14, 2024, an email to the Commission from the office of the attorney for the Claimant, provided that the Claimant had received a call from the insurance adjuster advising her that the insurance carrier's responsibility to pay her was over. The email further provided he had not been informed that her benefits had been discontinued. The Claimant is permanently totally disabled. (Cl. Ex. 1, P. 40) A later email from the office of the Claimant's attorney dated July 8th, 2024, requested the payment record involving the Claimant. (Cl. Ex. 1, P. 41)

A follow up email from the attorney for Respondents #1 dated July 14, 2024, provided that after a thorough audit of the file payments, Respondents #1 acknowledged still owing the Claimant the sum of \$38,805.55 before the Fund takeover. (Cl. Ex. 1, P. 42) A Medicare Set-Aside Allocation along with three authorizations were mailed to the Claimant's attorney on October 8, 2024, requesting that the authorizations be returned to the attorney for Respondents #1 (Cl. Ex. 1, P. 43 – 49) An email dated June 23, 2025, from counsel provided that Respondents #1 still needed Claimant's personal medical while her claim was closed, and also her personal health notes from "All" of her physicians. An email on the same date from Claimant's attorney provided signed authorizations that were "finally received" back from the Claimant. (Cl. Ex. 1, P. 50) An email dated June 26, 2025, from the office of Claimant's attorney, provided that the Claimant had stopped receiving medical treatment due to her doctor retiring and that she

had not had any medication in over a year. (Cl. Ex. 1, P. 51) Nearly a month later, on July 23, 2025, an email from the Respondents #1 attorney provided that the Respondents no longer wished to settle the claim. (Cl. Ex. 1, P. 51) An email from the Claimant's attorney dated August 7, 2025, mentioned that his client being owed a couple of years of benefits and a twenty percent (20%) penalty on each installment. (Cl. Ex. 1, P. 53)

Respondents #1 submitted 22 pages of non-medical evidence without objection. A document from Respondent Saint Jean Industries titled Investigation and dated April 14, 2021, provided that three attempts to contact the attorney for the Claimant and schedule a "virtual alive and well check" had been made and they had not received a return call at that time. The document went on to provide that they would schedule an investigator to complete a neighborhood canvass. (Resp. #1, P. 1)

An "Alive and Well Check Report" dated March 23, 2021, provided that a neighborhood canvass in the area of Claimant's home had been made and it provided that Claimant still resided at the address and appeared to be in good health. The report went on to provide that the investigator placed a call to the office of the Claimant's attorney the following day, leaving a detailed voice message requesting a return call. The report further provided that a call to the office of Claimant's attorney was again made on March 30, 2021, March 31, 2021, and April 1, 2021, leaving a message and requesting a returned call. On April 6, 2021, the investigator received a return call from Linda at the office of the Claimant's attorney, and the investigator then made another call and again left a voice message requesting a returned call. On April 9, 2021, the report provided that the investigator spoke with Linda at the office of the Claimant's attorney and explained the nature of the call. He stated that he thought Linda felt skeptical of the investigator and

the call, but stated she would talk to Claimant's attorney. The investigator then provided in his report that he received a return call and voicemail where she declined a virtual Alive and Well Check for the Claimant and stated that they could set up a three-way phone call. The investigator then placed a return call to Linda and again, left a voice mail, and requested a return call. The final date in the report is April 21, 2021, when the investigator drove to Edgemont, the provided address of the Claimant, where he talked to neighbors, Mr. Craig and Ms. Tammy Carlton. Both reported that Claimant was still alive and well and both did not have any information about the Claimant's marital status. (Resp. #1, P. 2-5)

Respondents #1 also included a copy of a check made out to Claimant's attorney in the amount of \$4,850.69, dated July 19, 2024, and a second check made out to the Claimant in the amount of \$33,954.86, dated July 22, 2024, for the stated period of February 24, 2021, through July 19, 2024. (Resp. #1, P. 6,7)

On October 8, 2024, an email from the office of the attorney for Respondents #1 included a Medicare Set-Aside Allocation along with three authorizations to be returned. (Resp. #1, P. 8-14) Finally, payment details were provided for indemnity, medical, and expenses. (Resp. #1, P. 15 – 22)

Respondent #2 also submitted two pages of non-medical documents that were admitted without objection. A Certification of Acceptance, Form SF-7 from Special Funds which referred to the Trust Fund and listed Claimant and Respondents #1, provided that on August 21, 2023, the Trust Fund would assume liability provided there were no changes in the status of the beneficiary. The Certification of Acceptance which was signed by a representative of Respondents #1 provided that the Trust Fund would

assume liability of benefits, provided the employer/carrier provided proof of compliance pursuant to A.C.A. 11-9-502(b)(1), and that in the event of a change of status, an amended AR-D must be filed with the Trust Fund within 15 Calendar days of any such change. (Resp. #2, P. 1) A list of payments was also provided. (Resp. #2, P. 2)

DISCUSSION AND ADJUDICATION OF ISSUES

The issues before the Commission at the time of the hearing involve attorney fees and penalties, both a 20% penalty claimed by the Claimant against Respondents #1 for late indemnity payments pursuant to A.C.A. 11-9-802 and additionally, a claim by Respondent #2, the Trust Fund, for a Ten-Thousand-dollar (\$10,000.00) penalty from Respondents #1 for failing to file an Amended AR-D within fifteen (15) days of the Claimant's change of payment status and for not timely notifying the Trust Fund that payments to the Claimant had stopped back on February 18, 2021, and that these actions or failures to act constitute a violation of 11 C.A.R. 25-123(c)(1). It is noted that Respondents #1 made a payment to the Claimant and her representative prior to the date of the hearing in this matter in the sum total of \$38,805.50 which would have been the remainder owed to the Claimant by Respondents #1 prior to the Respondent #2, the Trust Fund, properly taking over, and consequently the issue where Claimant contends in her Pre-Hearing Questionnaire of a need for her to renew her Permanent and Total Disability benefits has in fact been resolved.

When deciding any issue, the Commission shall determine on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. A.C.A. 11-9-704(c)(2). The claimant has the burden of proving by a preponderance of the evidence that she is entitled to

benefits. Stone v. Patel, 28 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). The “preponderance of the evidence” means the evidence having greater weight or convincing force. Barre v. Hoffman, 2009 Ark. 373, 326 S.W.3d 415; Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W. 2d 442 (1947) In determining whether claimant has met her burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit to either party. A.C.A. 11-9-704(c)(4). Gencorp Polymer Products v. Landers, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987). All claims for workers’ compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. Dena Constr. Co. v. Herdon, 264 Ark. 791, 595 S.W.2d 155(1979); Ark. Department of Corrections v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); It is the Commission’s exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. Whaley v. Hardee’s, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant’s or another witness’s testimony but may accept and translate into findings of fact those portions of the testimony it deems believable. McClain v. Texaco, Inc. 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); Farmers Coop v. Biles, 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002).

In regard to the Claimant’s contention that she is entitled to a twenty percent (20%) penalty from Respondents #1, A.C.A. 11-9-802 (c) provides in relevant part:

(c) If any installment payable under the terms of an award is not paid within fifteen (15) days after it becomes due, there shall be added such unpaid installment an amount equal to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to the installment unless review of the compensation order making the award is provided in §§ 11-9-711 and §§11-9-712.

In the present matter before the Commission, it is clear and the parties agree, that the Claimant was found to be permanently and totally disabled due to a compensable head injury occurring on October 18, 2010, with the permanent and total disability beginning on January 31, 2012, per an opinion issued by an Administrative Law Judge and filed on September 24, 2023. It was stipulated at that time that the Claimant's wages are sufficient for a TTD rate of \$303.00 and a PTD rate of \$227.00. At the time of the current hearing before the Commission, it was agreed that the Claimant had in fact received the appropriate indemnity payments up until the last payment being made in February of 2021. The record provides that Respondents #1 attempted to contact the Claimant and for some reason was unable to do so. It is also clear from the evidence that there are issues with the mail in the rural Cleburne County area north of Greers Ferry Lake. In any case, Respondents #1 further investigated the situation by obtaining the services of a private investigator, who after making numerous phone calls in an attempt to contact the Claimant's representative or the Claimant herself, physically went to the property where Claimant was known to have resided, where she had previously received indemnity payments, and where the investigator performed an "Alive and Well Check Report." Although the investigator did not see the Claimant, he did talk to the nearest neighbors, who stated that the Claimant was in fact alive and well. The Claimant testified at the current hearing that she was still living in the same location as when she was receiving regular checks, and her testimony is found to be believable. It also appears that there have been some communication issues involving the Claimant, such as not returning her own representative's correspondence, and that a question was raised about Claimant's divorce proceedings. The Divorce Decree from Cleburne County awarded the

residence in question to the Claimant. An argument made by Respondents #1 was that at one point, the parties were in a discussion to settle this matter and had even progressed to the point that a Medicare Set Aside approval was sought from the Claimant, but this discussion appeared to cease when the Claimant mentioned the possibility of a need for additional medical. With all of that said, it is determined that it is clear that there is no legitimate basis to terminate the Claimant's indemnity payments for a period from February 18, 2021, until July of 2024, a period over three years, based upon the above facts, and based primarily upon the Respondents #1 "Alive and Well Check Report" that they in fact had authorized. Additionally, the money from the stopped payments had accrued prior to any discussion about the settlement of the claim. The Claimant has satisfied the required burden of proof by a preponderance of evidence for the 20% penalty of \$7,761.11 in regard to the late indemnity payments of \$38,805.50, pursuant to A.C.A. 11-9-802.

If not already paid, and this cannot be determined by the record, the Claimant's representative is entitled to the appropriate portion of attorney fees from Respondents #1 for the \$38,805.50 late indemnity payments recovered, plus additional attorney fees for the controverted recovery of the \$7761.11 penalty pursuant to A.C.A. 11-9-715. This award shall bear interest at the legal rate pursuant to A.C.A. 11-9-809.

As for the second penalty at issue in the current proceedings as requested by Respondent #2, under current rule 11 C.A.R. 25–123, and previously named Arkansas Workers' Compensation Commission Rule 099.28, it is clear that Respondents #1 failed to comply with the notice requirements spelled out in the document called a Certificate of Acceptance that was sent to and accepted by a representative of Respondents #1 and

which contained a signature of approval. This acceptance provided Respondents #1 would in fact contact the Trust Fund in the event it stopped payment or changed the payments in any way. The proof was clear and unambiguous that Respondents #1 failed to notify the Trust Fund that it stopped payment to the Claimant on February 28, 2021, that payment did not restart until September 12, 2025, and by this action or lack of it, Respondents #1 clearly did not comply with the Certificate of Acceptance which they signed and approved. 11 C.A.R. 25–123 provides employers or their designees shall provide notice to the Death and Permanent Total Disability Trust Fund within 15 days of controverting a claim for dependent benefits and that failure to comply with the notice requirements shall result in a penalty of \$15 per day for each day an employer or its designee fails to comply, up to a maximum of \$10,000.00, unless, after a showing of good cause, failure to provide notice is excused by the Commission.

Here, an email from the Trust Fund dated May 16, 2023, provided that it appeared Respondents #1 had not paid any benefits in years to the Claimant. Respondents #1 clearly failed to comply with the notice requirements as spelled out in the Certificate of Acceptance that was signed and approved by Respondents #1 representative and failed to notify Respondent #2, the Trust Fund, of this change of status. In regard to this issue, many of the same facts applicable in regard to the issue of the first penalty above, are also applicable here. Respondents #1 hired a firm to investigate the residency and whereabouts of the Claimant and the report that they commissioned provided that the Claimant was alive and well and residing at the very same residency that was awarded to her in a divorce decree. Additionally, the Claimant's own testimony is found to be believable where she testified that she resided in the same location when she was receiving

payments up and until they were stopped by Respondents #1. Here the proof has satisfied the required burden of proof by a preponderance of the evidence that the indemnity payments to the Claimant were not stopped for good cause, and that Respondents #1 failed to provide notice to the Trust Fund as required by statute and by the signed and approved Certificate of Acceptance. Due to the fact that the period of time the Claimant failed to receive any disability payments was for a period of over three years, it is found by the preponderance of the evidence that the full ten-thousand-dollar (\$10,00.00) penalty is due and applicable and to be paid by Respondents #1 to Respondent #2.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the Claimant has satisfied the required burden of proof by a preponderance of the evidence for an award of the 20% penalty of \$7761.11 for the full amount of late indemnity payment of \$38, 805.50, pursuant to A.C.A. 11-9-802, plus attorney fees pursuant to A.C.A. 11-9-715 for the award of the \$77611.11 penalty, plus the Respondents #1 portion of the attorney fees for the indemnity payment if not already paid, and this award shall bear interest at the legal rate pursuant to A.C.A. 11-9-809.

Additionally, there is no alternative but to find that Respondent #2 (The Trust Fund) has satisfied the burden of proof by a preponderance of the credible evidence that they are entitled to a \$10,000 penalty applicable and due from Respondent #1 and payable to Respondent #2 pursuant to 11 C.A.R. 25–123. If not already paid, Respondents #1 are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge