

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H304672

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|---------------------------------|------------|
| GREGORY ROBERSON, Employee      | CLAIMANT   |
| PEPPER SOURCE, LTD., Employer   | RESPONDENT |
| SUMMIT CONSULTING, LLC, Carrier | RESPONDENT |

OPINION FILED JULY 22, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 30, 2025, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on June 18, 2025, and a pre-hearing order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed among the parties on July 14, 2022.

3. Prior opinion of March 13, 2024, is final.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$1,070.00 which would entitle him to compensation at the rates of \$713.00 for total disability benefits and \$535.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Attorney Fee

The claimant contends that once the respondents controverted whether he sustained a compensable injury to his lumbar spine they also controverted his entitlement to any indemnity benefits arising out of that injury. Accordingly, the claimant contends that his attorney is entitled to an attorney's fee on indemnity benefits arising out of surgery that he underwent on March 4, 2025.

The respondents contend no indemnity benefits have been controverted or awarded. Attorney's fees can only be awarded on indemnity benefits that have been controverted and awarded. See Ark. Coder Ann. §11-9-715(a)(2)(B)(ii). No indemnity benefits existed or were at issue at the time and the previous decision did not award indemnity benefits. Respondents accepted and paid all indemnity benefits as soon as or before they were due. No attorney's fee is owed.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 18, 2025, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$1,070.00 which would entitle him to compensation at the rates of \$713.00 for total disability benefits and \$535.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant's attorney is entitled to an attorney fee on payment of temporary total disability benefits paid by the respondent beginning on February 24, 2025.

FACTUAL BACKGROUND

On July 14, 2022, while working for respondent, claimant was pinned between two totes weighing 160-200 lbs. Respondent initially paid medical benefits for claimant's right shoulder, cervical spine, thoracic spine, and lumbar spine. However, it subsequently denied liability of compensable injuries to the spine. As a result, a hearing was conducted and an Opinion filed on March 13, 2024, finding that claimant had failed to prove a compensable injury to his cervical spine, but finding that he had proven compensable injuries to his thoracic and lumbar spine. This opinion was not appealed and the parties have stipulated that it is final.

After the last hearing, claimant continued to work for a period of time before undergoing back surgery. Because claimant was taken off work for this surgery, respondent instituted payment of temporary total disability benefits beginning on

February 24, 2025. Based upon respondent's controversion of the back injury, Attorney Walker requested an attorney fee on the indemnity benefits. Respondent has denied liability for payment of a fee and a hearing was requested on Attorney Walker's entitlement to a fee.

### ADJUDICATION

Claimant contends that his attorney is entitled to an attorney fee on temporary total disability benefits paid as a result of surgery on his back. I find that Attorney Walker is entitled to a controverted attorney fee.

Respondent contends that it is not liable for an attorney fee because claimant's entitlement to temporary total disability benefits was not an issue at the time of the first hearing and when claimant did undergo surgery it voluntarily paid temporary total disability benefits. Therefore, those benefits were not controverted and awarded pursuant to A.C.A. §11-9-715.

However, the Arkansas Workers' Compensation Commission and more importantly, the Arkansas Court of Appeals have found that under similar circumstances an attorney fee is appropriate. *Walmart Stores, Inc. v. Brown*, 73 Ark. App. 174, 40 S.W.3d 835 (2001). In *Brown* the respondent initially accepted a claim and paid some compensation benefits. However, at a prehearing conference the employer controverted claimant's entitlement to temporary partial disability benefits and a hearing was scheduled. Approximately one month before the scheduled hearing the employer indicated that it would accept the temporary partial disability and pay appropriate benefits. However, it refused to pay an attorney fee on the temporary partial disability.

The Arkansas Court of Appeals affirmed the Commission's decision to award an attorney fee. In doing so, the Court stated:

The Commission interpreted the requirements of §11-9-715(a)(2)(B)(ii) to be that where an employer controverts an injured employee's entitlement to certain benefits, but later accepts liability prior to a hearing on the merits, the employee's attorney may still request a hearing for an attorney's fee on those controverted benefits. The Commission found that when there is no dispute that the employer controverted benefits but then paid the benefits on which an attorney fee is sought, that the employee has established an award of those benefits for purposes of an attorney seeking an attorney's fee under Ark. Code Ann. §11-9-715(a)(2)(B)(ii). The Commission found no requirement in §11-9-715(a)(2)(B)(ii) requiring that an award of controverted benefits must precede the employer's payment of benefits for the claimant's attorney to be entitled to a fee. We agree and hold that the Commission's findings are supported by substantial evidence. (Emphasis added.)

In reaching the decision in *Brown*, the Court relied upon a decision from the Arkansas Supreme Court discussing the purpose of making an employer liable for an attorney fee. In *Cleek v. Great Southern Metals*, 335 Ark. 342, 981 S.W.2d 529 (1998), the Court stated:

In conclusion, this court has long recognized that making an employer liable for attorney's fees serves legitimate social purposes such as discouraging oppressive delay in recognition of liability, deterring arbitrary or capricious denial of claims, and insuring the ability of necessitous claimants to obtain adequate and competent legal representation. [Citation omitted.] In the instant case, while Great Southern paid all but \$35.00 of Cleek's medical expenses, it never recognized liability for her injury, and if Cleek had not prevailed on the liability issue of her claim, she would have been barred from seeking any future medical expenses or disability benefits. Great Southern's undisputed controversion of Cleek's injury claim forced Cleek to try this case fully on the merits. If Cleek had not employed counsel to assist her in this matter, it is reasonable to conclude both

her present and future claims for medical expenses and benefits would not have been properly presented and protected. [Citation omitted.] If the fundamental purposes of attorney's fees statutes such as §11-9-715 are to be achieved, it must be considered that their real object is to place the burden of litigation expenses upon the party which made it necessary.

Likewise, in this case, even though respondent accepted liability for temporary total disability benefits as a result of claimant's back surgery, it did not initially recognize liability for his back injury. If claimant had not prevailed on the compensability issue of his back claim, he would not have been entitled to any future disability benefits. Specifically, if claimant had not employed Attorney Walker to assist him in this matter, it is reasonable to conclude that his future claim for benefits would not have been properly presented and protected. By denying compensability of claimant's back injury, respondent made litigation necessary.

Based upon the evidence presented as well as the decisions from the Arkansas Court of Appeals and the Arkansas Supreme Court, I find that by controverting claimant's entitlement to his back injury, respondent likewise controverted claimant's entitlement to any future payment of temporary total disability benefits. Had claimant not prevailed in his claim for compensability, he would not be receiving temporary total disability benefits at this time. Therefore, I find that an attorney fee is appropriate.

#### AWARD

Claimant has proven that his attorney is entitled to a controverted attorney fee on temporary total disability benefits paid by respondent beginning on February 24, 2025.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant.

All sums herein accrued are payable in a lump sum and without discount. This award shall bear interest at the maximum legal rate until paid.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$276.00.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE