

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA12-27

EARVIN DAVIS, JR.

APPELLANT

V.

ACTION MECHANICAL, CNA
INSURANCE COMPANY, and
SECOND INJURY FUND

APPELLEES

Opinion Delivered April 18, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F701958]

REMANDED TO SUPPLEMENT THE
RECORD

WAYMOND M. BROWN, Judge

Appellant Earvin Davis, Jr., appeals from a decision by the Arkansas Workers' Compensation Commission (Commission), which reversed the administrative law judge (ALJ) and found that pursuant to Arkansas Code Annotated section 11-9-804,¹ appellant was not entitled to a lump-sum payment from the Second Injury Fund (SIF). Davis argues on appeal that the statute authorizes the Commission to award a lump-sum payment of his weekly installments for wage loss. Appellee SIF cross-appeals, contending that the Commission did not have the authority to award Davis's attorney a lump-sum attorney fee payable by the SIF pursuant to Arkansas Code Annotated section 11-9-716.² SIF further contends that this

¹(Repl. 2002).

²(Repl. 2002).



court's ruling in *Lewis v. Auto Parts & Tire Co., Inc.*,³ is erroneous and should be overruled. We do not reach the merits of this appeal at this time due to deficiencies in the record and addendum.

Arkansas Code Annotated section 11-9-711(b)(1)(A)⁴ provides that, after a notice of appeal is filed with the Commission, “the commission under its certificate *shall* send to the court *all* pertinent documents and papers, together with a transcript of evidence and the findings and orders, which shall become the record of the cause.” (Emphasis added.) There was no live testimony given in this case. The parties submitted briefs to the ALJ, as well as to the Commission. The record lodged with our court does not contain any of these briefs. Therefore, we remand this case to the Commission to supplement the record pursuant to Rule 6(e) of the Rules of Appellate Procedure—Civil, which provides in pertinent part:

If anything material to either party is omitted from the record by error or accident or is misstated therein, . . . the appellate court on motion, or on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted.

Because the briefs submitted in lieu of live testimony are not contained in the record, we remand for the record to be supplemented within thirty days from the entry of this order.

Ark. Sup. Ct. R. 4-2(a)(8)⁵ provides that the addendum shall contain any document or pleading in the record that is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal. Here, certain documents were blue-

³104 Ark. App. 230, 290 S.W.3d 37 (2008).

⁴(Supp. 2011).

⁵(2011).



booked into the record by the ALJ. Although those documents are contained in the record, they are not included in the addendum. Additionally, once the record is supplemented to include the missing briefs, they too, will need to be placed in the addendum.⁶

Appellant has seven days after the record is supplemented to file a supplemental addendum. Ark. Sup. Ct. R. 4-2(b)(4).⁷ We strongly encourage appellate counsel, prior to filing the supplemental addendum, to review our rules, as well as the record and addenda, to ensure that no additional deficiencies are present.

Remanded to supplement the record.

PITTMAN and ABRAMSON, JJ., agree.

Freeman Law Firm, PLC, by: *Mark J. Freeman*, for appellant.

David L. Pake, for appellee.

⁶The court notes that the record also contains the full transcript of an earlier hearing before the ALJ. If either party is relying on information from that hearing on appeal, material portions of that hearing should be abstracted and placed in the brief. See Ark. Sup. Ct. R. 4-2(a)(5) (2011).

⁷See *In re 4-2(b)(4) of the Rules of the Supreme Court and Court of Appeals*, 2011 Ark. 141.