

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-621

SECOND INJURY FUND

APPELLANT

V.

TROY DURHAM,
MC EXPRESS, INC., RETENTION
MANAGEMENT SERVICES, and
DEATH AND PERMANENT TOTAL
DISABILITY TRUST FUND

APPELLEES

Opinion Delivered DECEMBER 8, 2010

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F606037]

REVERSED AND REMANDED

RITA W. GRUBER, Judge

The Second Injury Fund appeals the March 23, 2010 decision of the Arkansas Workers' Compensation Commission addressing additional benefits for a compensable injury that Troy Durham suffered on May 17, 2006, while working as a long-distance truck driver for appellee MC Express, Inc. The injury occurred when he was unloading his truck and pushed the weight of his body against the pressure of the back doors, which were bulging because of a shifted load. In August 2009, after initial temporary-total disability benefits had been paid, a hearing was held before the administrative law judge to determine additional benefits.

The law judge found that Durham had proven by a preponderance of the credible evidence that he sustained as a result of his compensable injury impairment of seventeen

percent to the whole body, that he sustained a wage-loss disability of thirty-three percent, and that the two combined to result in permanent partial disability benefits of fifty percent to the body as a whole. Appellee Retention Management Services was held responsible for payment of Durham's permanent partial disability benefits beginning May 13, 2008, and continuing for 76.5 weeks, representing the permanent impairment of seventeen percent to the body as a whole. Appellant was held responsible for payment of permanent partial disability benefits for 148.5 weeks, representing the wage-loss disability. In a decision of March 23, 2010, the Commission affirmed and adopted the law judge's opinion.

The Second Injury Fund contends on appeal that the Commission erred in determining 1) that Durham was entitled to permanent anatomical impairment as a result of the injury; 2) that he was entitled to permanent partial disability benefits; and 3) that the Second Injury Fund was responsible for wage-loss disability.¹ We are unable to address the

¹The style of all briefs filed in this case shows the single appellant Second Injury Fund and appellees Troy Durham; MC Express, Inc.; Retention Management Services; and Death and Permanent Total Disability Trust Fund. These names comport with the parties shown on the Commission's opinion. Death and Permanent Total Disability Trust Fund deferred to the outcome of litigation before the law judge and has filed no brief in the present case.

The cover of one brief before us is labeled "appellee's brief" but identifies the attorney whose name appears on it as "attorney for appellant." Another brief, labeled "appellees' brief," bears an attorney's name but no designation of which party she represents. Her brief presents an argument by "cross/appellant/appellee . . . MC Express, Inc.," for reversal of the permanent-impairment and wage-loss awards, along with an alternative argument that the Second Injury Fund bears responsibility for them should they be affirmed.

The signature of the same attorney appears on two notices of appeal to this court, each identifying four parties as Respondent No. 1, No. 1, No. 2, and No. 3. One of the Respondents No. 1 is shown as Arkansas Trucking Association Self Insurers Fund rather than Retention Management Services, the carrier in the style of the Commission's opinion and on all the briefs before us. The two notices of appeal begin with the phrase, "Comes [sic] the Respondents, by and through their

merits of this appeal because the Commission's opinion contains conclusions without detailed facts upon which its findings are based. We remand to the Commission for sufficient findings.

The Commission is obliged to make findings and conclusions with sufficient detail and particularity to allow us to decide whether its decision is in accordance with the law. *Peters v. Doyle*, 2009 Ark. App. 722; *Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 48 S.W.3d 544 (2001); *Wright v. American Transp.*, 18 Ark. App. 18, 709 S.W.2d 107 (1986). The Commission's opinion must find as facts the basic component elements on which its conclusion is based. *Lowe v. Car Care Marketing*, 53 Ark. App. 100, 919 S.W.2d 520 (1996). While the Commission may adopt the findings of fact made by the administrative law judge, it is necessary under such circumstances that the administrative law judge has made sufficient findings. *Id.*

Here, we are unable to determine the basis of the Commission's opinion for any of the three issues on appeal. First, the Commission addressed the contention of MC Express, Inc., and its insurer, Retention Management Services, that all of Durham's permanent impairments were associated with preexisting degenerative problems and were unrelated to the May 2006 injury. The Commission wrote, "Rather than conduct a further analysis of the record in this cause, suffice it to say that respondents' assertions are simply not supported by either the

attorneys," but neither identifies the party/parties bringing the appeal. See Rule 3(e)(i) of Ark. R. App. P.—Civil (directing that a notice of appeal or cross-appeal shall specify the party or parties taking the appeal). We also note that appellant's brief refers to MC Express as cross-appellant, but the record before us contains no notice of cross-appeal to this court and no cross-appellant is shown in the style of the case.

medical evidence or the record as a whole.” The Commission noted that whether the overall impairments and disability were related to an acute injury or a degenerative condition was a question for the Commission; it then merely concluded, “Again, the record as a whole, including the medical evidence, supports the conclusion that the claimant sustained a seventeen percent . . . whole body impairment as the result of the May 17, 2006, injury.”

In addressing the extent of Durham’s permanent disability, the Commission noted that he was sixty years old and had a college education. The Commission continued:

As reflected above, the claimant has prior impairments, as well as significant impairments associated with the immediate claim. At the time of the within hearing, the claimant had been declared disabled by the Social Security Administration. Prior to that time, the claimant was receiving a disability check as the result of service-connected disabilities. Clearly, the claimant has sustained substantial wage-loss disability in excess of his impairment ratings.

This court is unable to determine from the Commission’s decision how or even if these prior disabilities were related to Mr. Durham’s work injury.

Finally, in addressing the section on Second Injury Fund Liability, the Commission stated that it “did not find [the Fund’s] arguments to be supported by either the facts or the law.” The Commission then stated:

First, clearly, the claimant has not fully recovered from his compensable injury. Further, it is undisputed that the claimant had significant pre-existing impairments and disabilities. The claimant underwent a cervical fusion in 1994 which resulted in a ten percent (10%) whole body impairment. The record also reflects that the claimant had pre-existing knee injuries, as well as a service-connected PTSD. Admittedly, the record reflects that the claimant returned to work performing physically demanding tasks for almost twelve years (12) prior to sustaining the May 17, 2006, injury. However, it cannot rationally be argued that the claimant’s current injury would have

resulted in the same degree of disability had he not already undergone a two-level cervical fusion.

We remind the Commission that it is obligated to make and enter findings of fact and rulings of law, and that it is appropriate to reverse and remand a case for specific findings when the Commission has not fulfilled this duty. *Excelsior Hotel v. Squires*, 83 Ark. App. 26, 115 S.W.3d 823 (2003); *Wright, supra*. A satisfactory, specific finding of fact is a straightforward statement that is stated with relevant detail. *Wright, supra*.

The excerpts we have reprinted from the Commission's opinion contain few straightforward statements of relevant detail and set forth inadequate findings and facts to enable us to review the basic components of the Commission's conclusions. *See Lowe, supra*.² The case is reversed and remanded, and the Commission is instructed to make adequate, *relevant* findings of fact sufficient to permit a meaningful judicial review.

Reversed and remanded.

PITTMAN and GLOVER, JJ., agree.

²We also observe that a lengthy opinion does not equate to an adequate one, and that cumbersome discussions not pertinent to the issues before the Commission can render a confusing decision. The majority opinion presented for our review is twenty-seven pages long.