

Cite as 2009 Ark. App. 630

ARKANSAS COURT OF APPEALSDIVISION II
No. CA 09-210

GRADY MARTIN, JR.

APPELLANT

V.

JENSEN CONSTRUCTION CO., ST.
PAUL MERCURY INSURANCE CO.,
and DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND

APPELLEES

Opinion Delivered September 30, 2009APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION, [NO. F102830]SUPPLEMENTATION OF THE RECORD
AND REBRIEFING ORDERED**M. MICHAEL KINARD, Judge**

Grady Martin, Jr., appeals from the January 6, 2009 opinion of the Arkansas Workers' Compensation Commission, which affirmed and adopted the decision of the administrative law judge (ALJ). Thus, the Commission found that the medical treatment related to Martin's cervical spine contained in the record was reasonable, necessary, and related to his compensable neck injuries; that Martin failed to prove by a preponderance of the evidence that he is permanently and totally disabled; that Martin failed to prove by a preponderance of the evidence that he is entitled to additional wage-loss disability beyond that previously awarded; that Martin is entitled to an additional two-percent whole body anatomical impairment rating due to his third cervical surgery performed in February 2006; and that Martin failed to prove by a preponderance of the evidence that statutory penalties should be imposed against the appellee-employer. On appeal, Martin argues that substantial evidence

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does not support the Commission's findings as to permanent and total disability or as to wage-loss disability.

Appellant's compensable neck injuries occurred in September 1999, and an ALJ opinion was filed in this case in October 2003. Both parties appealed to the full Commission, which rendered an opinion on March 15, 2005. After the 2005 opinion of the Commission, appellant sought additional benefits for his injuries. The July 14, 2008 opinion of the ALJ, which was affirmed and adopted by the Commission, relies upon the March 2005 opinion's "detailed account of the [appellant's] educational history, work history, and medical treatments related to [appellant's] compensable neck injury" and incorporates the March 2005 opinion. However, the Commission's March 2005 opinion is not included in the record or in the addendum. An ALJ's opinion in case number E812872—an entirely unrelated matter—is included in the record. We conclude that the 2005 opinion of the Commission in this case, which is material to our review, was omitted from the record by error or accident. Typically, the absence of a complete record on appeal requires us to summarily affirm. *Larry v. Grady Sch. Dist.*, 82 Ark. App. 185, 188, 119 S.W.3d 528, 531 (2003). However, Rule 6(e) of the Arkansas Rules of Appellate Procedure allows this court to order supplementation of the record when it is clear that something is missing as a result of error or accident by the court reporter or circuit clerk. *Id.* Here, the clerk of the Commission appears to have mistakenly included an unrelated opinion and omitted a material opinion. Therefore, we order supplementation of the record pursuant to Rule 6(e) and rebriefing.

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Supplementation of the record and rebriefing ordered.

PITTMAN and BROWN, JJ., agree.