

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212623

SELETIA LEWIS, EMPLOYEE

CLAIMANT

WSD TURNER, EMPLOYER

RESPONDENT

FIRSTCOMP INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 16, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 25, 2003, at El Dorado, Union County, Arkansas.

Claimant represented by the HONORABLE RALPH C. GOZA, Attorney at Law, Camden Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine claimant's entitlement to additional workers' compensation benefits.

On April 29, 2003, a hearing conference was conducted in this claim from which a prehearing order of April 30, 2003, was filed. The prehearing order reflects the stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as Commission's Exhibit #1. Additionally, the parties stipulated the claimant's compensation benefit rate as \$185.00, for temporary total disability benefits and \$154.00, for permanent partial disability benefits.

The testimony of Seletia Lewis, the claimant, along with the June 16, 2003, deposition of Dr. Bruce Safman, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Seletia Lewis, the claimant, with a date of birth of June 21, 1965, commenced her employment with respondent on October 12, 2002. Respondent terminated the claimant's employment on December 18, 2002, when she presented a limited duty restriction from her treating physician relative to an October 24, 2002, compensable injury.

Claimant's testimony reflects that respondent manufactured folders and files for doctor's offices. The describing the specifics of her job duties on October 24, 2002, claimant testified:

I put the pleats in the folders, and then I ran them through a pleader, and then boxed them up and got them ready for shipping. (T. 10)

Claimant's testimony reflects that prior to October 24, 2002, she had never had any problems with her back. There is no evidence in the record to reflect that claimant sought or obtained treatment relative to her back prior to October 24, 2002.

In performing her assigned job duties in the employment of respondent, in addition to boxing the folders, claimant was also required to tape the boxes once they were filled and placed them on a pallet. In discharging her employment duties on October 2, 2002, claimant testified that she suffered an injury to back:

I was taping up boxes - - actually, making boxes, using the tape gun and taping them up. And I was bent over, and I had already taped probably eight to ten boxes, and when I tried to stand up, I could not straighten up. (T. 11)

Claimant's testimony reflects that the next task that she performed after she had difficulty straighten up was a sit-down job:

Well, the next job we had to do was to sit-down job. We had to sit down and - - it was an order we had to bet o ut quick, so we sat down and we did that order

and - - which I was sitting then, so - - but as long as I had to stand up, I couldn't stand up; and, like twisting and turning and moving, I couldn't do that. (T. 11-12)

The testimony of the claimant reflects that she reported the injury to her boss, Eddie Turner. The injury occurred on Thursday, October 24, 2002, and claimant acknowledged that she worked the following day, Friday, October 25, 2002:

Yeah, I did work Friday. I thought that, you know, it might get better, and it didn't get better. (T.12)

Claimant noted that on Friday, October 25, 2002, she was working with another employee who was during most of the pleating.

On Monday, October 28, 2002, claimant sought medical treatment relative to her October 24, 2002, compensable injury under the care of her family physician, Dr. Rollin A. Wycoff. Claimant's testimony reflects that respondent was aware that she was going to the doctor on Monday, October 28, 2002.

Claimant's testimony reflects that she was seen by Dr. Wycoff on approximately eight different occasions for treatment relative to her back prior to being referred by same to Dr. Wayne Bruffett, a Little Rock orthopedic physician. Claimant noted that under the care and treatment of Dr. Wycoff she was taken off work, prescribed medication, and underwent diagnostic studies, to include an MRI. In addition to the MRI, claimant also underwent a x-ray relative to her low back under the care and treatment of Dr. Wycoff and was prescribed physical therapy.

On December 18, 2002, claimant was evaluated by Dr. Wayne Bruffett from complaints relative to her October 24, 2002, compensable injury. Claimant's testimony reflects that she was seen by Dr. Bruffett on only one occasion and that he issued a light duty restrictions relative to her

employment activity as a result of the evaluation. Further, claimant was referred by Dr. Bruffett to Dr. Bruce Safman, a Little Rock physiatrist for further treatment relative to her October 24, 2002, compensable injury.

Claimant's testimony reflects that when she presented the light duty release of Dr. Bruffett to her employer her employment was terminated. Specifically, the testimony of the claimant reflects:

I showed him my work restrictions, and he said that he didn't have nothing for me, that he would have to lay me off, and then he said, "No, I'll just have to fire you, because I don't have nothing for you." (T.14)

The testimony of the claimant reflects that at the time of the presentation of the December 18, 2002, limited duty release to her employer, Eddie Long, she had on her person a tape recorder and recorded the conversation.

The evidence in the record reflects that the claimant was seen by Dr. Bruce Safman, on December 19, 2002, relative to the above-cited referral of Dr. Wayne Bruffett. Claimant continued to treat with Dr. Safman through June 14, 2003, during which time she underwent a trigger point injection and was provided prescriptions for medication. the testimony of Dr. Safman reflects that once claimant did not have fund to pay for prescription medication samples were provided. Medication prescribed by Dr. Safman relative to his treatment regarding the claimant's October 24, 2002, included anti-inflammatory medication as well as pain medication. The testimony of the claimant further reflects that Dr. Safman left in place the same restrictions on her employment activity as had been issued by Dr. Bruffett.

Claimant's testimony reflects that she has not worked since she last discharged employment duties for respondent. Further, claimant acknowledged that she has not sought employment since her

employment was terminated by respondent. Claimant noted that she continued to experience residuals from her October 24, 2002, injury:

In my lower back on the left side, and then it, you know, will shoot down my leg and my leg will go to sleep, but it's on the left side in my lower back.
(T.17)

Claimant's testimony reflects that the pain that she experience is so bad that some days she does not get out of bed. Further, claimant's testimony reflects that in an effort to obtain relief from her low back pain, she uses a heating pad, Tylenol 3, and Ultracet. In addition to the restrictions placed upon her employment activities by Dr. Bruffett and Dr. Safman, to include no lifting, pushing, pulling greater than twenty pounds, no repetitive bending, twisting or stooping, claimant also notes that she unable to stand for any substantial period of time. While the standing limitation is not included in the written restrictions of either Dr. Bruffett or Dr. Safman, relative to the claimant, Dr. Safman did testify during the course of his deposition that people with back injuries experience difficulty standing. (RX. 1)

Claimant was initially seen by Dr. Rollin A. Wycoff, on October 28, 2002, relative to her October 24, 2002, compensable injury. After noting the history of the October 24, 2002, compensable injury Dr. Wycoff also reported that the claimant's past medical history was negative for any previous back injury, or history of chronic back pain. The October 28, 2002, report of Dr. Wycoff further reflects, with respect to his examination of the claimant:

On exam today she is alert, in no acute distress. She does have some paraspinal muscle spasm in the lower lumbar region on both sides, as well as some straightening of her natural lordosis. She has an equivocal straight leg raise bilaterally. It does not produce radiating pain down into her leg, but does

exacerbate her existing back pain. . . . (CX 1, p1)

Dr. Wycoff's impression of the claimant's complaint was that of lumbar strain with significant pain at the time. In addition to directing the claimant to remain off work until she was next seen, Dr. Wycoff also put the claimant on muscle relaxants and Tylenol with Codeine. Claimant was next seen by Dr. Wycoff on November 5, 2002. During the afore visit Dr. Wycoff noted that the claimant continued to have some paraspinal muscle spasm in the lower lumbar region on both sides as well as some tenderness in the area of the sacroiliac joint. The November 5, 2002, report of Dr. Wycoff, relative to the claimant, concludes:

My recommendations are that we get her into physical therapy for evaluation and treatment as well as obtaining an MRI of the low back to rule out significant disc disease. She could probably go back to work at light duty with a ten pound lifting restriction as well as no repetitive bending or stooping and actually sitting work would probably be better for her if possible. Patient is quite motivated to return to work. (CX 1, p4)

Claimant was again seen by Dr. Wycoff on November 12, 2002, at which time he noted that she continued to have some mild paraspinal muscle spasms. The November 12, 2002, report of Dr. Wycoff further noted that an MRI had been scheduled for November 14, 2002, and in the interim the claimant would continue physical therapy. The November 12, 2002, report concludes:

We tried to get her back to work with some work restrictions at last appointment and her employer stated that they could not let her work if she had those restrictions. (CX 1, p5)

On November 14, 2002, claimant underwent an MRI of her lumbar spine in Camden. The November 14, 2002, radiology report, relative to the MRI concludes:

CONCLUSION: At the level of L5-S1 there is evidence of disc degeneration with a small broad-based central and left sided disc herniation as described above. (CX 1, p6)

A November 26, 2002, report of Dr. Wycott, relative to the claimant, reflects that the claimant was seen on said date. Following his examination of the claimant, which was unchanged from the previous evaluation, Dr. Wycott concluded his November 26, 2002, report:

Given that she has had minimal improvement with conservative therapy, I have talked to workers comp about getting a second opinion. She has an appointment set up with Dr. Wayne Bruffett on December 18th and she will follow up with him at that time. I have refilled her Tylenol #3 with Codeine. I gave her 90 pills which should last her until the appointment. She is to call and let us know if there is any changes in her status. (CX. 1, p9)

On December 18, 2002, claimant was seen by Dr. Wayne Bruffett. Dr. Bruffett's report reflects relative to his evaluation of the claimant on said date:

. . . Probably 95% of her pain or greater is down at the lumbosacral area. She describes it as extremely severe. It is sharp, stabbing, throbbing, aching, and burning. It is constant, and she says it can awaken her from sleep. She does not feel that she is getting any better, and her symptoms are worse with any type of activity. They are relieved to some degree by rest. She also takes Tylenol No. 3.

* * *

RADIOGRAPH REPORT:

X-rays that she brought with her show no evidence of spondylolysis or spondylolisthesis. Her MRI scan reveals some disc desiccation at L5-S1. She also has a bulging disc at this level that is worse on the left side. She also reports that her pain is worse on the left. (CX. 1, p11)

Dr. Bruffett's impression of the claimant's complaint was that of bulging disc at L5-S1 and lumbar strain. The December 18, 2002, report of Dr. Bruffett concludes, relative to the claimant:

PLAN:

I reviewed the imaging studies with Ms. Lewis, and I have reassured her that she does not have a surgical problem. I think it would be helpful for her to see Dr. Bruce Safman for further non-surgical care. However, I am a bit pessimistic about her responses to treatment because this problem has been present now for eight weeks and she has really had minimal improvement. I think she needs a trail of some more specific non-surgical treatments, but if these do not prove helpful, then she may just need to find an occupation that is more suitable for her back. I am going to release her with some restrictions of no lifting or pushing or pulling greater than 20 pounds and no repeated bending, twisting or stooping. Hopefully her employer will have some type of light duty sedentary work that she can continue. We will have her see Dr. Bruce Safman, and she is going to come back and see me as needed. I have advised her that this problem may not go away quickly, and I think if she is going to take medications for this they need to be a non-narcotic form. I am going to give her some samples and a prescription for some anti-inflammatory medication because I think this would be a healthier choice for her. (CX 1,12)

On December 19, 2002, claimant was initially evaluated by Dr. Bruce Safman. Following his physical examination of the claimant, Dr. Safman's impression of the claimant's complaint was that of lumbosacral/sacroiliac strain and enthesopathy of the left hip. Dr. Safman injected the trigger points of the left quadratus lumborum, abductor and rectus femoris tendons of the left hip. Claimant was also furnished with some lidoderm patches and other medication. The December 19, 2002, report of Dr. Safman concludes:

I will keep her on the same work restrictions. I

learned from her case manager that she had been terminated from her job and thus does not have a job to return to. I will reassess her in couple of weeks in my Magnolia clinic and will modify her medications if necessary. (CX 1, p14)

Claimant was seen by Dr. Safman on a monthly basis following the December 19, 2002, initial visit, and receive treatment relative to the compensable injury. A May 10, 2002, report of Dr. Safman reflects, in part:

S: Ms. Lewis reports that her Worker's Comp benefits have been terminated. She relates that Worker's Comp is not paying for her medications. Thus she did not get her medications. She has been terminated for her job. The patient reported that her employer terminated her rather than permit her to work at modified duty. . .She did not get her medications, thus I am at a loss to determine whether or not they have been beneficial. The patient reports that she has had some Celebrex at home and some analgesic medication at home that she has been utilizing as needed.

* * *

Her MRI did show a disc bulge which is brushing against the left SI nerve root, but this would not produce parenthesis of her entire left lower extremity.

PLAN: I provided her with samples of Neurontin and Mobic to try. She does have commercial health insurance. I have asked her to get her prescription filled on her commercial insurance so that I can determine whether or not they would be any benefit to her. I have not received notification that her benefits have been terminated, as far as medical care goes. I will reassess her in another month. (CX. 1, p19)

Claimant's testimony reflects that she was unable to file her claim for medical benefits on her group or commercial insurance. Further, the testimony of the claimant reflects that she was bill

by Morrison Pharmacy, in Camden, Arkansas because respondents refused to pay for medication prescribed for her by Dr. Safman. (CX 1, p20). Additionally, the evidence in the record reflect that respondents failed to pay for the cost of claimant's visit or treatment under the care of Dr. Safman. (CX 1, 21). Finally, the evidence in the record reflects that claimant was last seen by Dr. Safman on June 14, 2003. Dr. Safman, during is June 16, 2003, deposition, noted that he did not scheduled a return appointment for the claimant to be seen following the visit. Dr. Safman's testimony further reflects that because the claimant did not have access to the medications prescribed to address her symptoms growing out of the October 24, 2002, compensable injury, he was unable to determine whether or not the same would have been beneficial to her. (RX 1)

From all of the evidence, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 24, 2002, the relationship of employee-employer-carrier existed among the parties.
3. On October 24, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$185.00/\$154.00 for TTD/PPD benefits.
4. On October 24, 2002, the claimant sustained an injury arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the periods beginning October 28, 2002 through June 14, 2003, and continuing through the end of her healing period, a date yet to be determined.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of

the injury of October 24, 2002.

7. The respondents have controverted the payment of benefits in this claim subsequent to December 18, 2002.

CONCLUSIONS

Claimant was employed by respondent from October 12, 2002 through December 18, 2002. Respondent terminated the claimant's employment with same on December 18, 2002. On October 24, 2002, claimant suffered an injury to her low back within the course and scope of her employment with respondent. Claimant sought and obtained medical treatment relative to the October 24, 2002, compensable injury on October 28, 2002. Respondents paid temporary total disability benefits to the claimant through December 18, 2002. Claimant asserts entitlement to additional workers' compensation benefits relative to her October 24, 2002, compensable injury, to include medical and indemnity workers' compensation benefits subsequent to December 18, 2002. Respondents take the position that further medical treatment is not reasonable and necessary and the claimant is not entitled to additional temporary total disability.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits subsequent to the effective date of the afore provision. There is not a dispute regarding the compensability of the claimant's October 24, 2002, injury in the employment of respondent.

On October 24, 2002, claimant suffered an injury to her low back within the course and scope of her employment of respondent. The medical in the record reflect that at the time claimant was seen for treatment relative to the compensable injury on October 28, 2002, the physical examination disclosed the present of objective medical evidence of injury, muscle spasms, in claimant's lumbar

area. Diagnostic studies were obtained subsequent to the October 24, 2002, injury to include a November 14, 2002, MRI disclosed the presence of objective medical evidence and injury.

There is no evidence in the record to reflect that the claimant experience complaints relative to her low back prior to October 24, 2002. Further, the record is devoid of any evidence that the claimant suffered an injury to her low back prior to October 24, 2002.

An employer must promptly provide for an injury worker such medical treatment as maybe reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508 (a)(Repl. 2002). The claimant must prove a preponderance of the evidence that medical treatment is necessary in connection with her compensable injury. Norma Beatty v. Ben Pearson, Workers' Compensation Commission D612219 (February 17, 1989).

In the instant claim, as previously noted, there is no evidence the record that claimant had complaints relative to her low back prior to her compensable injury in the employment of respondent on October 24, 2002. Treatment received by the claimant subsequent to her compensable injury has consisted of conservative modalities to include restrictions on claimant's employment activities, medication, physical therapy, and trigger point injections. Initial treatment rendered to the claimant relative to the claimant to the October 24, 2002, compensable injury was had under the care of her family physician, Dr. Rollin Wycoff.

The medical in the record reflects that claimant has been under medical restrictions relative to her employment activity since initiating treatment under the care of Dr. Wycoff on October 28, 2002. Further, the evidence preponderates that when furnished the limited duty release, respondent refused to return the claimant to limited duty work.

On December 18, 2002, claimant was evaluated by Dr. Wayne Bruffett, a Little Rock

orthopedic physician, relative to her October 24, 2002, compensable injury. After concluding that the claimant did not have a surgical problem, Dr. Bruffett referred the claimant to a physiatrist or pain management physician, Dr. Bruce Safman. The unconverted evidence in the record reflects that when presented with the limited duty restrictions as authored by Dr. Bruffett, respondent-employer terminated the claimant's employment. Claimant furnished testimony regarding sit down jobs in the employment of respondent which she was able to do following her October 24, 2002, compensable injury, on both October 24, 2002, and October 25, 2002. The evidence establishes a prima facie case for a claim for benefits pursuant to Ark. Code Ann. §11-9-505 (a).

In the instant claim claimant initiated treatment under the care of Dr. Bruce Safman, on December 19, 2002, the date following evaluation by Dr. Bruffett and the termination of her employment by respondent. Claimant was referred to Dr. Safman by Dr. Bruffett, in the treatment of her October 24, 2002. The evidence in the record reflects that Dr. Safman's treatment of claimant's compensable injury has been hampered by the fact that respondents controverted the payment of medical benefits relative to the claim. Specifically, Dr. Safman has testified that he is unable to say that the claimant has reached maximum medical improvement because claimant was unable to treat with the medication he prescribed relative to her compensable injury. Claimant inability to treat with the medication was by virtue of the fact that respondent refused to pay for the cost of the medication. Dr. Safman did furnish samples to the claimant while supplies was available. Dr. Safman testified that he maintained the claimant on the restrictions as imposed by Dr. Bruffett throughout his treatment of her.

Claimant was last seen by Dr. Safman on June 14, 2003. Dr. Safman testified, relative to his last evaluation of the claimant:

I saw her this Saturday, and again - - I don't have notes - - nothing has changed. She didn't have any ability to obtain medications, and I related to her that there was no reason for me to pursue seeing her, that she didn't have the ability to try medications. I didn't have an adequate supply of samples, and I really had nothing additional to offer her. (RX 1, p26).

At another point Dr. Safman testified:

I've done all that I can. There may have been one or two other medications I would have like to have tried, just to satisfy myself that I've done everything that I know of to try and help her with her pain. (RX 1, p29)

Dr. Safman testified regarding his treatment measures relative to the claimant:

Well, what we were during it implementing some things some measures that work for chronic pain. Pain is subjective. She had had treatment that was focused on treatment of acute pain. I was implementing some of the measures for chronic pain, as the measures for acute pain were not successful. So as far as treatment of acute pain goes, I would say, yes, we were fairly close to having treated her with many of the modalities that we used. There are some modalities that are used to treat chronic pain that are some times effective when pain has persisted for more that three to six months, and these would be the only other measures that I would think that would have been worthwhile trying, and those are the measures that I subsequently implemented. (RX 1, P20-21)

At another juncture, Dr. Safman testified regarding the benefits of the chronic pain medication:

We assumed that implementing the measures to treat acute pain were not successful and were not going to be successful, so basically what I then do is use some of the medications sometimes successful with chronic pain. If they don't work, then basically I've done all that I can for that person. (RX 1, p22)

The evidence in the record preponderates that the claimant continues to require medical

treatment relative to her October 24, 2002, compensable injury in the employment of respondent. Respondents controverted claimant's entitlement to further medical treatment relative to her compensable injury. The evidence disclose that respondents terminated claimant's medical treatment under the care of Dr. Safman through their refusal to pay for the cost of medication prescribed by Dr. Safman relative to the claimant's compensable injury. Indeed, Dr. Safman furnished samples to the claimant as long as the supplies lasted, in his ongoing effort to treat the claimant's compensable injury.

Respondent last paid temporary total disability benefits to the claimant on or about December 18, 2002. Claimant has operated under medical restrictions since initiating treatment relative to her October 24, 2002, compensable injury under the care of Dr. Rollin Wycoff on October 28, 2002. Respondent was furnished with the limited duty or light duty release by the claimant and informed claimant that work was not available for her. Temporary total disability benefits were paid to the claimant during the time she was treated and seen by Dr. Wycoff and place under physical restriction relative to her compensable injury by same. Claimant presented a similar restricted duty release to respondent-employer following her evaluation by Dr. Wayne Bruffett, her employment was terminated by respondent. The evidence clearly reflects that claimant was referred by Dr. Bruffett to Dr. Bruce Safman for further treatment relative to her compensable injury following her December 18, 2002, evaluation. Claimant was seen by Dr. Safman on December 19, 2002, and physical restrictions place on the claimant's employment activities by Dr. Bruffett were left in place by Dr. Safman.

During the course of his June 16, 2003, deposition, Dr. Safman was questioned on several occasions whether the claimant had reached maximum medical improvement. Dr. Safman was

specifically questioned as to the claimant's status on March 13, 2003:

No, I had just started her on the Zonegran, the first of the medications. I then prescribed Neurontin for her, and she reports that - - we would titrate the medication to higher and higher doses, and we go up to about 15, 1800 milligrams before we state that it wasn't successful. The titration was complicated by the fact that she no longer had funds nor funding to buy the Neurontin, so that process was halted. (RX 1, p24)

The healing period is that period for healing of an injury which continues until the claimant is as far restored as the permanent character of the injury will permit. Arkansas Highway & Transportation Department v. Breshears, 272 Ark. 244, 613 S. W. 2d 392 (1981). If the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve the condition, the healing period has ended. If further treatment modalities can be rendered and the underlying condition causing the disability has not become stable then the healing period has not ended. Temporary total disability is that period within the healing period in which the claimant suffers a total incapacitate to earn wages.

In the instant claim, the evidence preponderates that claimant was within her healing period on December 18, 2002, when respondent terminated her employment. See, Superior Industries, vs. Thomaston, 72 Ark. App. 7,32 S.W.3d 52 (2000). The medical restrictions place upon the claimant on December 18, 2002, by Dr. Wayne Bruffett, were similar to those restrictions in place by the claimant's treating physician, Dr. Rollin Wycoff, and had been so since claimant initiated treatment under the care of same on October 28, 2002, relative to the compensable injury. Claimant has continued to operate under the same restrictions place on her by Dr. Bruffett, since she has been under the care and treatment of Dr. Safman. Claimant has sustained her burden of proof by a

preponderance of the credible evidence that she remain totally incapacitated from engaging in gainful employment and within her healing period subsequent to December 18, 2002. Respondents have controverted the claimant's entitlement to temporary total disability benefits subsequent to December 18, 2002.

AWARD

Respondents are hereby ordered and directed to pay to the claimant temporary total disability benefits at a weekly compensation benefit rate of \$185.00, for the period covering October 28, 2002 and continuing through the end of her healing period, a date yet to be determined. Said sums accrued shall be paid in lump without discount. Respondents may claim credit for sum heretofore paid toward the discharge of the aforementioned obligation.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injury of October 24, 2002..

Maximum attorney fees are herein awarded to the claimant's attorney the Honorable Ralph C. Goza, on the controverted portion of this Award, pursuant to Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge