

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F213879**

**GLENN A FAYE TURNER,  
EMPLOYEE**

**CLAIMANT**

**COORSTEK, INC.,  
EMPLOYER**

**RESPONDENT**

**ROYAL INDEMNITY COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JULY 25, 2003**

Hearing conducted April 29, 2003, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. J. Gary Davis, Attorney at Law, Little Rock, Arkansas, appearing for the claimant, and

Ms. Amy S. Huffman, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over the claimant's request for additional temporary total disability benefits as a result of an admittedly compensable injury to her left shoulder.

She contends that she should be awarded additional temporary total disability benefits from November 6, 2002, until a date to be determined, as well as an attorney's fee for controversion. Other possible issues were reserved.

The respondents contended that the claimant suffered a whole body injury and is not entitled to temporary total disability benefits because she was not totally incapacitated for a time sufficient to receive benefits. Specifically, they contended that she was not incapacitated prior to the surgery of December 6, 2002, and that following the surgery she was released to light duty employment within about five days and such employment was available. They further contended that the claimant's employment was terminated for cause November 6, 2002.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant suffered a compensable injury July 26, 2002; her average weekly wage was \$563.00; and, as a result of the compensable injury, the claimant underwent surgery on her left shoulder December 6, 2002, which was accepted as compensable by the respondents.

3. The preponderance of the evidence shows that the claimant is not entitled to benefits for temporary total disability from November 6, 2002, until a date to be determined, because during that time she was not totally incapacitated to earn wages for a period sufficient to entitle her to such benefits.

**DISCUSSION**

The claimant, 62 years of age at the time of the hearing, suffered multiple injuries July 26, 2002, when she tripped and fell while mopping and cleaning around the machines she operated at the employer's facility where it manufactures ceramic seals for use in vehicles and washing machines.

The medical record indicates that the claimant began treatment on July 29, 2002, with the company physician, Dr. Barry D. Baskin, as well as her family physician, Dr. Evelyn Cathcart. Their notes indicate that the initial focus was not her shoulder, but the possibility of injury to her left

elbow, her buttocks, and her head and neck, especially since she had undergone an anterior cervical fusion at two levels in September, 2000. However, on July 29, 2002, Dr. Cathcart did note a little bit of tenderness over both shoulders but overall good range of motion there and in the claimant's neck. Both doctors prescribed medication.

Later, on September 6, 2002, Dr. Cathcart wrote in greater detail concerning the claimant's shoulder pain and tenderness and stated that the shoulder pain really started with her fall back in the end of July but that her elbow was bothering her so much she did not realize anything else was hurt. Dr. Cathcart further commented that a chest x-ray had revealed "AC separation of left shoulder." On September 10, 2002, Dr. Baskin saw the claimant and wrote that she had left shoulder pain and left ischial pain. He opined that it was appropriate for the claimant to resume regular duty; did not schedule a return appointment; and noted that there was no disability or impairment from the injury. At that time, he had not x-rayed the claimant and was unaware of the x-rays taken by Dr. Cathcart.

The claimant's testimony indicated that she felt her shoulder injury was being overlooked by Dr. Baskin who only saw her about three times, treated her with medication, and did not have her x-rayed or recommend physical therapy. When Dr. Baskin saw the claimant September 30, she showed him her x-rays and he wrote that they showed no obvious shoulder separation. At that time, he released the claimant from his care due to what he described as the "adversarial" relationship he felt the claimant had established with him.

The claimant's testimony was that her continuing pain and discomfort caused her to take time off from work, sometimes for a day or two and sometimes for two weeks. She stated that she called the company and told them she was not coming in, but she did not get off-work slips from her

physicians. The record further shows that on November 6, 2002, her employment was terminated for excessive absenteeism under the employer's point system.

On October 17, 2002, the claimant was seen by orthopedic surgeon Dr. Kenneth M. Rosenzweig who thought she had a shoulder injury, based on clinical complaints and physical findings of a possible anterior labral tear. He recommended an MRI to further assess the shoulder anatomy and, on November 7, 2002, wrote that the MRI shows what appears to be a near complete rotator cuff tear.

On December 6, 2002, Dr. Charles Pierce, Jr., performed surgery and, thereafter, on December 11, 2002, opined that the claimant was doing well and could return to work to perform right arm duty only.

An employee who has suffered a compensable whole body injury, such as a shoulder injury, is entitled to benefits for temporary total disability while totally incapacitated to earn wages during the healing period. Arkansas Highway & Transportation Dept. v. Breshears, 272 Ark. 242 (1981). However, such compensation is not allowed for the first seven days' disability, unless disability extends for a period of two weeks, whereupon compensation shall be allowed beginning the first day of disability, excluding the day of injury. Ark. Code Ann. §11-9-501(a).

Here, the claimant has requested benefits from the time of the termination of her employment, through the period of her surgery in December, 2002, and continuing until a date to be determined. However, the record fails to show that she was totally incapacitated because of her injury to earn wages at the time of the termination of her employment in November. Although she was totally incapacitated from the time of her surgery December 6, 2002, until December 11, when she was permitted to return to perform right arm duty only, this does not exceed the seven day

waiting period described in Ark. Code Ann. §11-9-501. The record shows that after the surgery the claimant did not believe she could work and did not actively attempt to return to the workforce in the capacity permitted by her treating physician. Thus, although she may have continued in a healing period, the preponderance of the evidence does not show the total incapacity necessary for entitlement to temporary total disability benefits.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully denied and dismissed.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge