

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F306726

**LORRIE A. BRUBAKER,
EMPLOYEE**

CLAIMANT

**PULASKI COUNTY
SPECIAL SCHOOL DISTRICT,
SELF-INSURED EMPLOYER**

RESPONDENT

**RISK MANAGEMENT RESOURCES,
BENEFITS ADMINISTRATOR**

RESPONDENT

OPINION FILED APRIL 22, 2004

Hearing conducted April 20, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Ms. Emily Paul, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the request of the claimant, a substitute school bus driver, for additional temporary total disability benefits during the summer school vacation months.

The claimant contended that she should be awarded additional benefits for temporary total disability following her admittedly compensable injury during a period that she was released to light duty employment but no such employment was provided by the employer, from June 6, 2003, until August 18, 2003. She further contended that her average weekly wage was \$364.00 and that the respondents have underpaid temporary total disability benefits as a result of underestimating her average weekly wage. However, after taking testimony and discussing the issue further, the claimant agreed to accept that her average weekly wage was \$248.71, as contended by the respondents. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant was not entitled to the requested temporary total disability benefits. Specifically, they contended that they were under no obligation to provide light duty employment because the period of the claimant's employment, pursuant to her contract of hire, ended on about the date of her injury. They further contended that the claimant was free to seek employment elsewhere at least during the summer vacation. They also contended that a reduction in force notice had been given the claimant May 5, 2003, indicating that the contract would not be renewed for the following school year, so that the claimant should have understood that no additional work would be forthcoming from this employer. They contended that the claimant was not advised otherwise until notice was given July 7, 2003, that the school district then intended to offer her employment at the beginning of the school year, August 18, 2003.

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 shoulder injury on or about June 4, 2003; her average weekly wage was \$248.71; and the respondents accepted the claim as compensable and initiated payment of benefits.
3. The preponderance of the evidence fails to show that the claimant is entitled to additional temporary total disability benefits from the period following her injury until she returned to light duty employment August 18, 2003.

DISCUSSION

On Wednesday, June 4, 2003, the claimant injured her right shoulder during her employment as a substitute bus driver by repeatedly trying to close a malfunctioning door on the bus she was driving at the end of the school year. The injury occurred as a result of her jerking on the door on every stop which began to cause her pain. She mentioned her problem to the dispatcher at the end of the route. The next day, she told her supervisor, Ms. Bulan Garvan, and Ms. Garvan arranged for her to see the doctor on Friday.

The claimant testified that she told the doctor what had happened and was given medication and advised not to use her arm. She testified that she did not return to work that Monday because school was out. She also stated that she had applied for other employment and was unable to report to work there because of her physical condition.

The claimant continued to see her physician, Dr. Alan Johnston of Jacksonville, who prescribed physical therapy, which the claimant said made her condition worse, injection therapy, and medication. After an MRI scan on July 3, 2003, the claimant was sent to Dr. Earl Peebles and eventually to Dr. Stephan A. Hudson who performed arthroscopic surgery October 1, 2003. His post operative diagnosis was right shoulder pain impingement, with a small partial thickness tear of the supraspinatus tendon. The medical record for July and August, 2003, indicates that the claimant was permitted to work with limitations. The record does not contain medical records for June, 2003.

The claimant's testimony and the testimony of the respondent's witness, Ms. Bulan Garvan, the claimant's supervisor, shows that the claimant was not employed by the respondent employer during the summer weeks prior to August 18, 2003. The record also shows that when the claimant entered into an additional contract of hire in August, 2003, she was provided appropriate light duty

work, primarily as a dispatcher. Even without the employer deciding in May, 2003, that the claimant's contract would not be renewed, there is no indication that the parties expected that the claimant would perform employment services or be paid for her time after the school year ended in June, 2003, until the new year began later in August. Indeed, the claimant had expected to work elsewhere and had, in the past, spent the summer vacation employed for other employers. The medical record does not indicate that the claimant was totally incapacitated to earn wages even though she was in a healing period during the summer of 2003. Because she was not totally incapacitated and was not an employee during the period in question, there is no legal basis for awarding temporary total disability benefits requested by the claimant.

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

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge