

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F302559**

**CHARLENE DAVIS**

**CLAIMANT**

**HOT SPRING MEDICAL CENTER**

**RESPONDENT EMPLOYER**

**RECIPROCAL OF AMERICA**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED AUGUST 18, 2004**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE C. BURT NEWELL, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE JOHN D. WEBSTER, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing on July 30, 2004, in Hot Springs, Arkansas. A prehearing conference was held on April 28, 2004 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable injury on February 27, 2003.
2. The compensation rates are \$328/246.
3. The respondents accepted the claim as compensable and paid benefits through October 21, 2003.

The claimant contends that she remains temporarily and totally disabled and that she is entitled to indemnity benefits from the date of controversion to the present and continuing until she reaches maximum medical improvement and that she is entitled to continued reasonable and necessary medical care and attorney's fees.

The respondents contend that all temporary total disability benefits to which the claimant is entitled have been paid. The respondents contend medical has not been controverted.

Issues to be litigated:

1. Temporary total disability benefits from October 22, 2003, to a date to be determined.
2. Attorney's fee.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

1. There was a compensable injury on February 27, 2003.
2. The compensation rates are \$328/246.
3. The respondents accepted the claim as compensable and paid benefits through October 21, 2003.

4. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages from October 22, 2003, through the present.

### **DISCUSSION**

The claimant, 57 years of age, worked as an LPN for the respondent since 1979, working 12-hour shifts. The claimant's duties involved giving medication, helping feed patients, turning and lifting patients. The claimant estimated that she would lift a patient about 8 times per day on a 12-hour shift. The claimant was lifting a patient on February 27, 2003, when she experienced back pain. The claimant had no previous back injuries nor had she been treated previously for back pain. The claimant testified that she now has pain in her low back and hip down to her knees that is dull and aches. Sitting or standing in one place for a period of time increases the pain. The claimant last worked on July 3, 2003.

The claimant currently takes Vicaprofen, ibuprofen, muscle relaxers and Celebrex. The claimant last saw Dr. Larry Brashears in Malvern about one month before the hearing. The claimant testified that she experienced no back problems until she lifted the patient on February 27, 2003, and is only able to do about one-third of her household chores that she did before the injury. The claimant now draws social security disability benefits amounting to \$1,049 per month.

According to the claimant, she was released to return to work in a light-duty capacity and she was told by her supervisor, Rhonda Bennett, that the employer did not have light-duty work. The claimant testified that she attempted her normal work duties from April 22 to July 3, but was unable to continue. The claimant testified that she must

sit, stand and lay down throughout the day. She typically lies down about three times during the day. The claimant testified that she saw Dr. Sundeep Lal at the recommendation of Dr. Philip Johnson. She saw Dr. Lal for one visit on September 29, 2003, and he recommended she could return to work light duty with no lifting over 40 pounds. According to the claimant, she told the doctor that she did not think she could do that and the doctor told her "he had people he had to answer to." T., p. 37, line 8. According to the claimant, her visit with Dr. Lal lasted about 20 minutes. The claimant testified the only doctor she has seen over three times is her family doctor, Dr. Brashears. An impairment rating has not been assigned by any of the doctors.

In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. If the underlying condition causing the disability has become stable and if nothing further in the way of treatment will improve the condition, the healing period has ended. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

In the present case, the work status report introduced into evidence from Dr. Johnson following a September 25, 2003, appointment indicates the claimant should remain off work for four additional weeks. A second opinion followed an evaluation by Dr. Sundeep Lal on September 29, 2003 and he opined the claimant should resume light duties and participate in physical therapy. The claimant saw Dr. Andy Prychodko on March 22, 2004 and he mentioned in his report that the claimant had been released

to light duty and he did not make an affirmative recommendation for light-duty work or to remain off duty. Dr. Prychodko's report indicated that he recommended a consult with a physical therapist. There is no medical report in evidence to indicate if that therapy visit did happen. While there is no indication that the claimant has reached the end of her healing period, the claimant has been released to light duty. The claimant did ask her employer for light-duty work but none was available and she has not sought employment elsewhere in a light-duty capacity. The claimant was not aware of a job where she could stand, sit and lie down as needed and felt as though she was unable to work. Since the claimant has not attempted employment with the respondent since being released to light duty nor sought other light-duty work, I find that she has failed to prove by a preponderance of the evidence that she is totally unable to work.

#### **ORDER**

The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages from October 22, 2003, through the present. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL**  
**ADMINISTRATIVE LAW JUDGE**