

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211692

MARIETHA MCGARITY,
EMPLOYEE

CLAIMANT

HEALTHSOUTH REHABILITATION HOSPITAL,
EMPLOYER

RESPONDENT

PACIFIC EMPLOYERS INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 16, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, at Jonesboro, Craighead County, Arkansas.

The claimant was represented by HONORABLE EMILY PAUL, Attorney at Law, North Little Rock, Arkansas.

The respondents were represented by HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

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

On February 10, 2004, a pre-hearing conference was conducted in this claim from which a Pre-hearing Order the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of hearing, and the parties' respective contentions relative to the issues. The Pre-hearing Order is herein designated a part Workers' Compensation Commission's Exhibit No. 1.

The testimony of Marietha McGarity the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Marieta McGarity, the claimant, with a date of birth of December 4, 1961, has been employed by respondent since January 30, 1989. The claimant has a Bachelor's degree and is certified as a Rehabilitation Nurse.

The claimant acknowledged that she first had back problems in 1997 at which time she underwent an MRI. Claimant acknowledged that in 1999 that she was prescribed Skelaxin by Dr. Brock F. Harris. A June 2, 1999, office note of Dr. Harris reflects, in pertinent part:

We will provide her with Skelaxin for chronic musculoskeletal discomfort that she has from time to time when she does lifting at her job. Return for repeat evaluation. (RX 1,p.6)

Claimant has been an RN for 22 years, has worked in Jonesboro for 16 to 17 years, and has been employed by respondent-employer for 15 years. In describing her job duties with respondent, the testimony of the claimant reflects that she is an RN, a charge nurse, and a supervisor. Claimant does direct patient care as well as the supervisor job on the night shift.

On August 8, 2001, claimant suffered an injury to her low back within the course and scope of her employment with respondent. In describing the mechanics of the August 8, 2001 accident, claimant's testimony reflects:

Yes. I filled out an incident report because - - and I believe I was getting a patient. I had gone to a patient's room. They had called and they wanted to get out of bed, and I was attempting to help get the patient up. I put the call light on because I wasn't sure how much help the patient needed - - they weren't able to communicate to me, I don't - - I think, the way I remember it. And when I try to get them up, I believe I felt pain at that time, and I didn't continue to get them up beyond just sitting on the side of the bed. I believe that I went to help get them up, and when I went to pull them up, they pulled me back. (T. 9)

Claimant completed the incident report and the injury was accepted as compensable by respondent.

Claimant is uncertain whether she missed any time from work initially following the August 8, 2001 injury, however added that at most it was one to two days. Claimant received treatment under the care of Dr. Terence P. Braden, III, D.O., respondents' designated medical provider. Claimant offered that under the care and treatment of Dr. Braden rehabilitation and physical therapy was tried, and medication was provided. In terms of the symptoms

experienced at the time she received treatment under the care of Dr. Braden relative to the August 8, 2001 injury, claimant testified:

At that time I was having difficulty, if I remember right - - it's been a while - - standing up right, you know, pain in the lower back, and it's progressed, it seems like the pain starting going, you know, more and more down my leg. (T. 10)

In addition to physical therapy, claimant acknowledged that Dr. Braden recommended epidural steroid injections in the treatment of her injury. Claimant explained that she declined the injections based upon her contact with other individuals who had undergone similar procedures. Claimant testified that it was her impression that the steroid would cause her bones to deteriorate.

The claimant was ultimately referred by Dr. Braden to Dr. Gary Kellett, a Memphis neurosurgeon, for treatment relative to her August 8, 2001 injury. On October 15, 2002, the claimant underwent surgery under the care of Dr. Kellett for a herniated disc at L5. (CX1, p. 1-2) Claimant's testimony reflects that following the surgery she continue to experience symptoms attributable to the August 8, 2001, injury:

After surgery, I continue to hurt and I had a lot of pain, and they all said it

was normal; that was just part of it.
It was just a lot of swelling.

They gave me - - I would call them
several times and they would, no,
recommend me, you know, try this or
that. And I continue to hurt and I
would see him [Dr. Kellett], and he
would just say, you know, that's normal;
that's the way, you know, it's going to
be for a while, and it'll get better. (T.
11-12)

Claimant concedes that the pain in her back got better
however, she maintains that the pain in her leg never got
any better. Claimant was off work for a total of eight
weeks following her surgery of October 15, 2002.

Claimant was seen by Dr. Kellett on December 5, 2002,
however, denies that her pain had completely gone away at
the time of the visit. In December 2002, claimant was
released by Dr. Kellett to return to work, effective
December 9, 2002. Claimant's testimony reflects that when
she did return to the employment or respondent she continue
to experience symptoms of low back and leg pain. Claimant
contacted Dr. Kellett's office following her return to work
to relay the continued complaints of symptoms attributable
to the August 8, 2001.

The testimony of the claimant reflects that in January
2003, she suffered a fall at work attributable to the August

8, 2001 injury. Claimant denies that the 2003 fall aggravated her August 8, 2001, injury. Claimant explained that neither the symptoms or the pain experienced on and after the January 2003 fall was any different than that experienced before the fall. Claimant's testimony reflects:

No. The only thing the fall did was scare me for a moment.(T. 17)

Claimant did not miss any time from work as a result of the January 2003 fall.

At the time claimant was next seen by Dr. Kellett on March 4, 2003, she did relayed that she had suffered the fall at work:

I mentioned it to him when I saw him, because I was concerned that I had, like, weakness, in the ankle and on that foot, and that's when he said just be more careful. But he didn't say that he felt like the fall was causing my problem - -(T. 18)

Claimant underwent an MRI relative to her low back on March 12, 2003, pursuant to the direction of Dr. Kellett. Further, claimant's testimony reflects that based on her continued complaints attributable to her low back and leg, Dr. Kellett recommended Prednisone. The evidence in the record reflects a prescription for the Prednisone was called in by Dr. Kellett's office on April 1, 2003.(CX1, p.7)

Claimant's testimony reflects that she continued to experience symptoms and complaints attributable to the August 8, 2001, injury following her last visit with Dr. Kellett on March 4, 2003. As previously noted, on March 12, 2003, pursuant to the direction of Dr. Kellett, claimant had undergone an MRI of her lumbar spine. A April 1, 2003, entry in the records of Dr. Kellett, noted that the claimant was made aware of the results of the MRI and that Dr. Kellett recommended Prednisone, which had been called in to the pharmacy. Claimant credibly testified regarding the afore:

I saw him again even after the last - - the date that he - - you know, that he said that I could go back to work, because I called and said I was still hurting, and he gave me a Prednisone dose pack again. And I had been off work for three days and he said I could go back to work. And he said it would just, you know, take time. He said, be more careful, just be careful, and that was it. You know, I told him I was still hurting.(T. 14)

On this April 12, 2003, Dr. Kellett was killed in a light aircraft accident. Claimant noted that after April 1, 2003, she had contacted Dr. Kellett's office again and that a recommendation had been made regarding a epidural steroid

injection. Claimant was considering undergoing the epidural steroid injection by Dr. Kellett at the time of his death.

Following the death of Dr. Kellett, the claimant contacted the Human Resource Manager of respondent-employer, Donna Bloodworth, about seeing another physician relative to her compensable injury. Claimant was later informed by Ms. Bloodworth that the carrier had denied her request. Claimant later submitted a request for a change of treating physician to the Commission and the same was controverted or denied by respondent.

The evidence disclose that the claimant has seen Dr. Randall Carlton, a Jonesboro General Practitioner, with whom she had established a family doctor-patient relationship during the time that she was receiving treatment under the care of Dr. Kellett for her compensable injury. After access to sanctioned medical treatment was denied by respondent, claimant sought and obtained treatment under the care of her family physician, Dr. Carlton, for her complaints attributable to the August 8, 2001, compensable injury.

On July 16, 2003, claimant was seen by Dr. Randall Carlton for complaints attributable to the August 8, 2001, compensable injury. While under Dr. Carlton's care and

treatment, claimant was prescribed medication and underwent additional diagnostic studies.(CX1, p. 9-10) Dr. Carlton also referred the claimant to Dr. Sunil Gera, a Jonesboro Pain Management Specialist. Under Dr. Gera's care and treatment claimant underwent an epidural steroid injection relative to her lumbar spine. The testimony of the claimant reflects that the first injection by Dr. Gera resulted in a complete alleviation of her back and leg pain for a period of several days. The subsequent injections were not as effective.

While the claimant received treatment under the care of Dr. Carlton and Dr. Gera, she continued to discharge her employment duties with respondent. The claimant did miss some days from work attributable to the injury.

On December 15, 2003, claimant's testimony reflects that her symptoms and complaints became so severe that she could no longer continue discharging employment duties. On December 21, 2003, claimant was admitted to St. Bernard Medical Center where she underwent a Lumbar Myelogram and Post Myelographic CT. During her admission claimant was seen by Dr. Robert E. Abraham, a Jonesboro Neurosurgeon, pursuant to a request from Dr. Carlton.(RX1, p. 79-87)

Following the discharge, claimant was again seen by Dr. Abraham on December 29, 2003. (RX1, p. 88)

On January 6, 2004, claimant was seen by Dr. Carlton, and relayed her desire to return to work. Per her request, claimant was released to return to work with restrictions. Additionally, Dr. Carlton arranged for the claimant to be seen by Dr. Steven L. Cathey, a North Little Rock Neurosurgeon, for a second opinion. (RX1, p. 89)

The claimant presented the limited duty release of Dr. Carlton to appropriate supervisor personnel respondent. Claimant was not allowed to return to work because of the restrictions set forth and the limited duty release.

On February 3, 2004, claimant was evaluated by Dr. Steven L. Cathey, North Little Rock Neurosurgeon, pursuant to the referral of Dr. Carlton, following which the claimant was started on a trial of Celebrex. Claimant was returned to the care of Dr. Carlton following the February 3, 2004, evaluation of Dr. Cathey.

The testimony of the claimant reflects that she returned to the employment respondent on February 17, 2004. The evidence in the record reflects that claimant's medical treatment under the care of Dr. Carlton and referrals therefrom were filed on her group health insurance. While

the group healthcare carrier paid some of the bills of the medical providers, the claimant has been responsible for the payment of the deductible. The claimant asserts that respondents are liable for the cost of her treatment under the care of Dr. Carlton as well as the referrals from Dr. Carlton, in that all the treatment was relative to her August 8, 2001 compensable injury. Further, claimant asserts entitlement to temporary total disability benefits from December 15, 2003 to February 16, 2004.

After thorough consideration of all the evidence in this record, to include the testimony of the witnesses, review of the medical reports, and application of appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 8, 2001, and at all times pertinent thereafter, the relationship of employee-employer-carrier existed among the parties.
3. On August 8, 2001, the claimant earned significant wages to entitle her to weekly compensation

benefits of \$410.00/308.00 for temporary total/permanent partial disability benefits.

4. On August 8, 2001, the claimant sustained an injury arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the period beginning December 15, 2003 and continuing through February 16, 2004.
6. Medical treatment rendered to the claimant under the care of Dr. Randall Carlton, as well as referrals therefore, was reasonably necessary and related to her compensable injury of August 8, 2001.
7. The respondent shall pay all reasonable hospital and medical expense arising out of the injury of August 8, 2001.
8. The respondents have controverted the payment of medical benefits subsequent to April 12, 2003, and the payment of temporary total disability benefits for the period of December 15, 2003 through February 16, 2004.

CONCLUSIONS

The compensability of the claimant's August 8, 2001, injury in the employment respondent is not disputed. Claimant asserts that as a result of the August 8, 2001, injury, she is entitled to the payment of additional workers' compensation benefits in the form of temporary total disability benefits from December 15, 2003, through February 16, 2004, as well as the payment of medical benefits incurred under the care and treatment of Dr. Randall Carlton and referrals therefrom. Respondents deny that claimant is entitled to additional workers' compensation benefits, and maintain that further medical treatment is not reasonably necessary or causally related to the claimant's work related injuries.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The claimant is a registered nurse who has been employed by respondent since January 30, 1989. As previously noted, the compensability of the claimant's August 8, 2001, injury is not disputed. Claimant suffered

an injury to her low back while assisting a patient within the course and scope of her employment with respondent.

Claimant received medical treatment relative to the August 8, 2001, injury, initially under the care of Dr. Terence P. Braden, III, an Osteopathic physician. On September 4, 2001, claimant underwent an MRI of the lumbar spine which disclosed degenerative disc disease at L5 with bulging of the disc which did not appear to cause significant canal stenosis or nerve root compression. (RX1, p. 19) A October 23, 2001, office note of Dr. Braden, relative to the claimant, confirmed that the claimant did not wish any injection into her spine or into the soft tissue area in terms of treatment of her complaints growing out of the August 8, 2001, compensable injury. (RX1, p. 22)

A February 20, 2002, initial evaluation of the claimant by Dr. Randall Carlton confirms the testimony of the claimant that she was seeing Dr. Carlton at the time of her treatment and the care of Dr. Braden relative to her compensable injury. The February 20, 2002 report reflects:

HISTORY OF PRESENT INJURY: Ms. McGarity presents today wanting to get established and also to check some moles and actually have them removed. Additionally she reports she has some back pain sciatic in nature. She has been seen by Terence Braden at Health

South Rehab Hospital where she works as a nurse. She reports occasionally when she walks she drags the great toe on her left foot. . MRI report today does show she that has some mild stenosis at L5-S1 and mild HNP but there is no nerve compromise at this point.(RX1, p. 26)

A July 16, 2002, office note Dr. Braden noted that the claimant had failed conservative measures of outpatient rehabilitative endeavors. The report further reflected that the claimant did not wish to have any spinal injections. Finally, the report noted that the claimant was asking for a referral to Dr. Gary L. Kellett who had done surgery on the Director of Human Resources at HealthSouth Rehabilitation Hospital.(RX1, p.28)

On September 3, 2002, claimant was evaluated by Dr. Gary L. Kellett, Memphis Neurosurgeon, pursuant to referral of Dr. Braden, relative to the August 8, 2001, compensable injury.(RX1, p. 30-34) Following his September 3, 2002, evaluation of the claimant, Dr. Kellett clinical note concluded:

IN SUMMARY: The patient's symptomatology and examination findings would suggest she is having mostly mechanical pain but may be developing mild radiculopathy, a little more so on the left. In view of this, I'm recommended that this point we go ahead with a myelogram to look this over carefully. If, indeed, there is a significant lesion at that level, it is

still likely that conservative care would be the appropriate treatment. I will notify her with the results of the study and my recommendation. (RX1, p. 34)

On September 11, 2002, claimant underwent the lumbar myelogram under the direction of Dr. Kellett. Claimant also underwent a CT of the lumbar spine at the time of the myelogram. Later claimant underwent further diagnostic studies, to include an MRI of her lumbar spine on September 24, 2002, under the direction of Dr. Kellett. (RX1, p. 35-43) The studies disclosed the presence of a herniated disc at L5, central to the right, which Dr. Kellett suspected which creating nerve root compression on the left. (RX1, p. 44)

On October 15, 2002, claimant underwent surgery under the care of Dr. Kellett for a diagnosed herniated disc at L5. (RX1, p. 51-52) The medical evidence reflects the claimant was seen in follow-up by Dr. Kellett on October 31, 2002, and December 5, 2002.

The claimant credibly testified that at the time of her December 5, 2002, followup visit with Dr. Kellett her leg pain and symptoms continued. Indeed, a November 21, 2002, office note of Dr. Randall Carlton relative to a visit by the claimant of the same date is corroborative of the claimant's assertion:

. . . .She is five weeks status post mini discectomy by Dr. Kellett in Memphis and she has a followup with him on 12/5. She has been having a lot of pain after the surgery, specifically pain in her right leg laterally down in her foot. I think this may be causing part of her problems with her not sleeping well at night and perhaps even that the night sweats confounding the issue in the past two weeks she has also been on oral steroids which certainly could make this problem worse. Now, this problem does proceed steroids then it may well resolve somewhat after discontinuation of the steroids. She is having a lot of pain and I think that Neurotin is a consideration and would like for her to discuss that with Dr. Kellett. . . (RX1, p. 54)

Approximately two weeks following the November 21, 2002, visit of the claimant to Dr. Carlton, she was seen by Dr. Kellett on December 5, 2002. Incredibly, Dr. Kellett's report reflects that the claimant was doing well and that her pain was completely gone. The credible evidence in the record, which includes the testimony of the claimant and November 21, 2002, office note of Dr. Carlton cast grave doubt on the accuracy of the statement contained in Dr. Kellett's report.

The December 5, 2002, clinic note of Dr. Kellett further reflects:

EXAMINATION: On examination, the patient has a little weakness of the left ankle.

The wound is well healed. She is able to walk well on the heels and toes. Straight leg raising produces no pain.

DISCUSSION: I have advised her at this point that she can continue with her exercises and can not return to work this coming Monday, 9 December, 2002. No further neurosurgical treatment is necessary. I have given her a statement to be at light duty for the first month at work which should include no lifting greater than 30 pounds and no constant bending. She will not need to return unless problems arise. Her maximum medical improvement date will be 9 January, 2003 when she returns to full duty. Her PPI rating for the body as a whole according to the AMA Guidelines(5th ED.) will be eight percent(8%).(RX1, p. 55)

The evidence reflects that respondent had a policy of no restricted duty. The claimant did not return to the employment of the respondent in January 2004 because of the policy regarding light duty work. Accordingly, since the December 5, 2002, release of Dr. Kellett did not release the claimant to full duty until January 9, 2003, she did not return to employment with the respondent until said date.

The evidence discloses that once claimant returned to her regular employee duties with respondent in January 2003, she suffered a fall at work while discharging employment duties. Claimant continued to experience pain and complaints relative to her hip and low extremities following

the October 15, 2002, surgery by Dr. Kellett as well as subsequent to her final visit with him in December 2002. On December 19, 2002, Dr. Carlton assessed the claimant's complaint as chronic pain. (RX1, p. 58-59)

The record reflects a March 4, 2003, visit by the claimant to Dr. Kellett, which is at odds with the December 19, 2002, office note of Dr. Carlton, relative to claimant's complaint of pain. Dr. Kellett's office note reports that the claimant had reached what she felt was a full recovery until approximately four weeks prior to the visit when she suffered a fall and has since noticed an increase in pain in her back and left leg. The March 4, 2003 clinic note of Dr. Kellett concluded:

DISCUSSION: I have advised her at this point that she may have recurrent disc material but I think it could likely be scar tissue. For this reason, I'm scheduling her for an MRI, with and without gadolinium. I have given her a prescription for Lortab and will notify her with the result. If she does have some scar tissue, she may benefit from some steroids by mouth. I will give her a statement that she can return to work tomorrow. She has been off work for the last three days and that would seem reasonable under the circumstances. (RX1, p. 61)

On March 12, 2003, claimant underwent the MRI per the direction of Dr. Kellett. Dr. Kellett's secretary was Gail

Meeks Woods. (RX1, p. 37) The evidence discloses a April 1, 2003, entry in the medical records of the claimant which reflects that the claimant was made aware of the results of the MRI which disclose no surgical lesion and that Dr. Kellett recommended a Decadron protocol which was called in. (RX1, p. 65)

On April 12, 2003, Dr. Kellett was killed in a light aircraft accident. Claimant's effort to continue sanctioned medical treatment relative to her August 8, 2001, compensable injury was controverted by respondent.

Discussion was had with Dr. Kellett's office regarding epidural steroid injection and the treatment of claimant's compensable injury following the April 1, 2003, Decadron protocol. Claimant was considering the recommendation at the time of Dr. Kellett's death.

In a September 24, 2003, letter to the claimant, respondent carrier acknowledged receipt of the September 17, 2003, request for a change of treating physician.

Respondent concluded the September 24, 2003 letter:

Your pain appears to be related to a subsequent fall sometime in February 2003 and not related to the original workers' compensation claim. Your request for a change of physician is denied. (CX1, p. 13)

The evidence clearly reflects that the claimant's 2003 fall occurred while performing employment activity. Further, claimant did not suffer an increase in symptoms or complaints as a result of the 2003 fall at work. The claimant continued the discharge employment.

In a subsequent response to the change of treating physician request, respondents in a October 2, 2003, correspondence to the Workers' Compensation Commission concluded:

It has been nine months since the January fall. Dr. Kellett felt a round of steroids and three days off work was a reasonable recovery period. ESIS Insurance does not feel any further treatment would be causally related to either the August 8, 2001 injury or the January 7, 2003 fall. No further treatment will be authorized. . .(RX1, p. 14)

The evidence reflects that claimant had established an physician-patient relationship with Dr. Randall Carlton prior to the April 2003 death of Dr. Kellett. Active medical treatment was being provided to the claimant by Dr. Kellett relative to the August 8, 2001, compensable injury, at the time of Dr. Karrett's death. The credible evidence reflects that Dr. Kellett had made a recommendation regarding the epidural steroid injection to address the

claimant's complaints attributable to the August 8, 2001, injury and that claimant was considering undergoing the procedure. The epidural steroid injection had previously been recommended by Dr. Terence Braden in treatment of the claimant's complaint prior to his referral of the claimant to Dr. Kellett.

Arkansas Code Annotated § 11-9-508(a) requires employers to provide such medical services as maybe reasonably necessary connection with the employee's injury. Cox v. Klipsch & Associates, 71 Ark. App. 433, 30S.W.3d 746(2000). In the instant claim, the evidence preponderance that claimant has continued to require medical treatment relevant to her August 8, 2001, compensable injury since the occurrence of same. Further, claimant continued to receive active medical treatment under the care of Dr. Kellett through the time of his death.

Once Dr. Kellett was no longer available claimant sought authorization from respondent for access to another treating physician relative to her compensable injury. Respondents decline to authorize medical treatment. At the point respondents declined to authorize further medical treatment claimant did not have a treating physician relative to her compensable injury. Claimant's options were

either to return to Dr. Braden for treatment or to her family physician for treatment relative to her compensable injury. Claimant chose to obtain treatment under the care of her family physician, Dr. Randall Carlton. Since claimant had been getting treatment under the care of her family physician for other health problems at the time she was receiving treatment under the care of Dr. Kellett relative to her compensable injury her decision to obtain treatment under the care of her family physician relative to her compensable injury is completely logical.

The evidence preponderates that the treatment rendered to the claimant by Dr. Randall Carlton on and after July 16, 2003, was reasonable, necessary, and related to claimant's compensable injury of August 8, 2001. Further, the referral of the claimant at the direction of Dr. Carlton to other medical providers, to include Dr. Gera, Dr. Abraham, St. Bernard Medical Center, and Dr. Cathey, was reasonable, necessary and related medical treatment. Respondents are liable for the cost of claimant's treatment under the care of Dr. Carlton as well as the referrals therefrom. Respondents have controverted claimant's entitlement to medical benefits effective July 16, 2003.

The evidence preponderates that the claimant was off work effective December 15, 2003, through February 16, 2004. During the report period, the claimant was totally incapacitated from engaging in gainful employment as a result of her compensable injury. At minimum the January 2003, fall suffered by the claimant represented a recurrence of the August 8, 2001, compensable injury which resulted in the period of total incapacitation. A careful review of the evidence in the record calls into question whether the claimant had in fact reached maximum medical improvement relative to her compensable injury on January 9, 2003, or at any other time as a result of the August 8, 2001, compensable injury.

At the outset it should be noted that objective medical findings are not required to find that the claimant's healing period continues. Chamber Door Industry, Inc. v. Graham, 59 Ark. App. 224, 956S.W.2d 196(1997). The evidence of Court of Appeals stated in High Capacity Products v. Moore, 61 Ark. App. 1, 962S.W.2d 831(1998), that while a claimant remains off work and sought continued medical treatment for a compensable injury there was no need for any of the subsequent treating physicians to opine that he should be off work. The healing period is defined as in

that period for the healing of an injury resulting from an accident. Ark. Code Ann. § 11-9-102(12). So long as the underlying condition causing the disability has not become stable and if something further in the way of treatment will improve the condition than the healing period has not ended. Nix v. Wilson World, 46 Ark. App. 303, 879S.W. 457(1994). Whether an employee's healing period has ended is a factual determination. Correspondingly the duration of an employee's total incapacity to earn wages within his healing period is likewise a purely factual determination. Ketcher Roofing Company v. Charles, Inc., 50 Ark. App. 63, 901S.W.2d 25(1995).

The evidence reflects that the claimant was off work from December 15, 2003, through February 16, 2004. Further, the evidence reflects the afore period of off work was one authorized by the claimant's treating physician and relate to the claimant's August 8, 2001, compensable injury. The claimant was totally incapacitated from engaging gainful employment during the afore period, during which time she received active medical treatment relative to her compensable injury. Claimant has sustained her burden of proof by a preponderance of the evidence that she was totally incapacitated from engaging in gainful employment

and within her healing period relative to the August 8, 2001, compensable injury during the period December 15, 2003 through February 16, 2004. Respondents have controverted the claimant's entitlement to the afore temporary total disability benefits.

AWARD

The respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$410.00, for the period December 15, 2003, through February 16, 2004, as a result of the claimant's compensable injury of August 8, 2001. Said sums accrued should be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses growing out of the claimant's compensable injury of August 8, 2001. The medical treatment rendered to the claimant under the care of Dr. Randall Carlton as well as referrals therefrom, as of July 16, 2003, was reasonable, necessary, and related to the claimant's compensable injury on August 8, 2001. Respondents are liable for the payment of said medical benefits. Further, Dr. Randall Carlton is

herein designated the claimant's authorized treating physician relative to her compensable injury August 8, 2001.

Respondents are further ordered and directed to reimburse the claimant and any other carrier for sums expended for medical treatment relative to the claimant's August 8, 2001, compensable injury.

Maximum attorney fees herein awarded to the claimant's attorney, the Honorable Emily Paul, 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 BLOOD
Administrative Law Judge