

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F306740/F300486

MICHAEL MUGLEY		CLAIMANT
QUALITY FOODS		RESPONDENT
CNA INSURANCE INSURANCE CARRIER	NO. 1	RESPONDENT
ROYAL & SUNALLIANCE, INSURANCE CARRIER	NO. 2	RESPONDENT

OPINION FILED MARCH 31, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by MARK VELASQUEZ, Attorney, Fayetteville, Arkansas.

Respondent #1 represented by LEE MULDROW, Attorney, Little Rock, Arkansas.

Respondent #2 represented by RANDY MURPHY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claims on February 9, 2004, in Springdale, Arkansas. A pre-hearing order was previously entered in these claims on January 5, 2004. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. At the hearing and by agreement of the parties, the issue of the claimant's entitlement to temporary partial disability benefits for was added. The issue of the claimant's entitlement to temporary total disability benefits was modified to reflect that he was seeking temporary total disability benefits for the periods of June 28, 2003 through July 15, 2003, and August 28, 2003 through October 7, 2003. As a result of the temporary partial disability issue, the stipulations concerning the compensation rates were expanded to reflect a stipulation that the claimant's average weekly wage, at the time of his injury was \$607.50. A copy of the pre-hearing order with these various amendments noted thereon was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. For the period of June 11, 2002 through June 10, 2003, the relationship of employee-employer-carrier existed between the claimant, Quality Foods, and CNA Insurance Company.
2. On December 26, 2002, weekly compensation rates were \$405.00 for total disability and \$304.00 for permanent partial disability, based upon an average weekly wage of \$607.50.
3. On December 26, 2002, the claimant sustained a compensable injury to his right shoulder.
4. Respondent CNA paid all appropriate benefits through June 3, 2003, both in the form of medical benefits and temporary total disability benefits.
5. For the period of June 11, 2003 through the present, the relationship of employee-employer-carrier existed between the claimant, Quality Foods, and Royal & SunAlliance Insurance Company.
6. On June 20, 2003, the appropriate weekly compensation rates were \$405.00 for total disability and \$304.00 for permanent partial disability, based upon an average weekly wage of \$607.50.
7. Although Royal & SunAlliance initially paid some temporary total disability benefits and medical expenses, they now controvert the claim in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to his right shoulder on or about June 20, 2003.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability from June 28, 2003 through July 15, 2003, and from August 28, 2003 through October 7, 2003, temporary partial disability benefits from

July 16, 2003 through August 27, 2003 and from October 8, 2003 through a date yet to be determined.

3. Whether either or both of the respondent carriers are liable for the above benefits.
4. Appropriate attorney's fees.

In regard to these issues, the claimant contends:

"Claimant initially injured his right rotator cuff on December 26, 2002. The injury was accepted as compensable and the claim number and insurance company paying compensation benefits for that loss was : 3H 812895-L3

RISCO/CNA  
P. O. Box 305220  
Nashville, TN 37230-5220  
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615-886-3060-fax

The claimant was returned to work fully (sic) duty on March 8, 2003. On June 3, 2003, he reached maximum medical improvement and he was released without an impairment rating June 3, 2003.

On June 20, 2003, the claimant suffered a new injury when he was taking a load of groceries on a dolly up the stairs and his shoulder "popped."

In regard to these issues, the respondent carrier #1, CNA Insurance Company, contends:

"Respondent No. 1 contends that CNA Insurance was not on the risk on June 20, 2003; that claimant's injury on that date was either a new injury or an aggravation."

In regard to these issues, the respondent carrier #2 Royal & SunAlliance Insurance Company, contends:

"Respondents contend that claimant did not sustain an injury within the course and scope of his employment (while it provided the employer with workers' compensation insurance)."

## DISCUSSION

\_\_\_\_\_The medical evidence presented establishes that the claimant's admittedly compensable right shoulder injury on December 26, 2002, was initially diagnosed as a strain with some degree of separation of the right shoulder joint, a partial tear of the coracohumeral ligament, a contusion of the acromion, and bursitis of the subacromial capsule. Together, these various injuries were diagnosed by Dr. Mark Powell (an orthopaedic surgeon and the claimant's primary treating physician) as right shoulder impingement syndrome with bursitis. Dr. Powell elected to treat these injuries conservatively. This treatment took the form of oral medications, injections into the shoulder, physical therapy, and restricted use of this shoulder. The medical evidence and the claimant's testimony show that these treatment modalities were successful in improving the claimant's symptoms. By April 8, 2003, these symptoms had sufficiently improved for Dr. Powell to allow the claimant to return to regular duty for the respondent. At that time, the claimant actually returned to his preinjury position with the respondent.

On June 3, 2003, the claimant returned to Dr. Powell for follow up of his initial admittedly compensable right shoulder injury. At that time, Dr. Powell noted that the claimant continued to experience only occasional chronic minor symptoms with his shoulder, and that, otherwise, his shoulder was relatively stable. In this office notation, Dr. Powell expressed the opinion that the claimant had reached MMI (maximum medical improvement) from his compensable right shoulder injury of December 26, 2002. However, it is also apparent from this report that it was not his opinion that the claimant's compensable injury had entirely resolved or that the claimant had returned to his preinjury state. He expressly noted that the claimant might still require surgery to correct the damage to his right shoulder at sometime in the future, and he instructed the claimant to return to him on an as needed basis (PRN).

The claimant testified that he continued to perform his regular employment duties

with only minor discomfort, until June 20, 2003. As part of his assigned employment duties on that date, he was pulling a dolly that was loaded with approximately 350 pounds of “product” up a series of stairs. When he gave the dolly a jerk in order to pull it up a stair, he felt a “pop” in this right shoulder and experienced a sudden and immediate onset of severe difficulties, with his shoulder, which included a “burning sensation”. He promptly reported this new incident and was sent back to Dr. Powell by the respondent.

I find the claimant’s testimony concerning the foregoing matters to be credible and to represent an accurate depiction of his symptoms and difficulties in the events surrounding this change in the magnitude and degree of these symptoms. In determining the claimant’s credibility, I have relied not only on the claimant’s demeanor at the hearing. I have also considered obvious motivation to continue in his employment. I have further considered that his testimony, in regard to these matters, coincide with the histories and observations contained in the medical evidence.

When the claimant was seen on June 30, 2003, Dr. Powell recorded a history of the onset of increased symptoms that occurred contemporaneously with a specific employment related incident on June 20, 2003. He further noted increased symptomology on his physical examination. This included positive results on various impingement tests, which had been negative prior to June 20, 2003. A second MRI was performed at Dr. Powell’s request, on July 10, 2003. This objective study showed abnormalities indicative of mild tendonitis or tendonosis with narrowing of the subachromial fat. The latter finding would be indicative of the reappearance of some degree of impingement syndrome. Dr. Powell again diagnosed the claimant’s difficulties as being in the form of a right shoulder strain, an impingement syndrome, and bursitis. He again provided the claimant with essentially the same conservative treatment modalities, which had proven beneficial for the claimant’s initial compensable injury of December 26, 2002. The subsequent records of Dr. Powell and the testimony of the claimant both indicate that these prescribed

conservative treatment modalities (oral medication, direct injections into the shoulder, physical therapy, and rest of the shoulder) were again successful in substantially reducing the magnitude of the claimant's symptoms. On October 7, 2003, Dr. Powell again released the claimant to resume his regular employment duties, but scheduled him for follow up in two months. The claimant testified that he was unable to keep this follow up visit, due to a lack of finances and the respondents' refusal to accept liability for the expense of these services.

I find that the reports and records of Dr. Powell are sufficient to "establish" the actual existence of a "new" physical injury to the claimant's right shoulder, after June 20, 2003. I further find that the second MRI study (performed on July 10, 2003), revealed sufficient "objective findings" to support Dr. Powell's diagnosis of a "new" injury. Thus, the requirements of Ark. Code Ann. §11-9-102(4)(D) have been met.

I find that the claimant's credible testimony is sufficient to establish the required employment related "specific incident" on June 20, 2003, and to prove the existence of a close temporal relationship between this employment related "specific incident" and the medically established "new" injury to his right shoulder. Clearly, the June 20, 2003 incident, as described by the claimant could have logically produced the subsequently diagnosed "new" injury to his right shoulder. Finally, there is no evidence of any other logical cause for this "new" injury and the sudden onset of increased symptoms in his right shoulder. It is the obvious opinion of Dr. Powell that the significant increase in symptoms to the claimant's right shoulder was, in fact, due to a "new" injury, rather than a natural progression or spontaneous reoccurrence of his prior compensable injury and this expert medical opinion is supported by the other evidence presented.

Thus, the greater weight of the credible evidence establishes the first three definitional elements necessary to prove a "new" compensable injury, as contained in Ark. Code Ann. §11-9-102(4)(A)(i). Specifically, the occurrence of a "new" physical injury that

arose out of and was in the course of the claimant's employment, that was caused by a specific incident, and that is identifiable by time and place of occurrence.

The abnormalities noted in the July 10, 2003 MRI study are sufficient to prove that this "new" injury produced additional actual internal physical harm to this portion of the claimant's body. This conclusion is further bolstered by the testimony of the claimant and the records of Dr. Powell, which both reveal a tremendous increase in the claimant's symptomology involving his right shoulder that occurred contemporaneously with or shortly after the employment related incident on June 20, 2003. Thus, the evidence presented satisfies the fourth definitional element for a "new" compensable injury within the meaning of Ark. Code Ann. §11-9-102(4)(A)(i).

Finally, I find that the substantial increase in the claimant's symptomology, caused by the "new" injury on June 20, 2003, reasonably required additional medical services and resulted in a distinct period of temporary disability. It was obviously the expert medical opinion of Dr. Powell that it was the increase in the claimant's symptomology after June 20, 2003, that required the round of medical treatment that commenced on June 30, 2003. As evidenced by his reports, it was also his expert medical opinion that this increase in symptomology once again necessitated that the claimant temporarily abstain from any form of regular gainful employment. Thus, the substantial increase in the claimant's right shoulder symptoms, need for treatment of these increased symptoms, and temporary abstinence from employment as a result of these increased symptoms were all the result of a "new" injury that occurred on June 20, 2003. Thus, the greater weight of the credible evidence satisfies the fifth and final requirement of Ark. Code Ann. §11-9-102(4)(A)(i) for establishing a "new" compensable injury on June 20, 2003.

Clearly, the claimant's "new" compensable injury was most likely in the form of an aggravation of the pre-existing physical damage to his right shoulder that was caused by his initial compensable injury of December 26, 2002. However, under Arkansas law, an

aggravation of such a pre-existing condition can still represent a new and separate “compensable injury”, within the meaning of the Act. It is my opinion that in the present case, the greater weight of the credible evidence presented proves all of these necessary requirements for establishing such a new and distinct “compensable injury”.

Next, is the issue of the claimant’s entitlement to the payment of expenses incurred for additional medical services rendered him for his right shoulder difficulties by and at the direction of Dr. Mark Powell, after June 20, 2003. In order to be entitled to the payment of these medical expenses, the evidence must show that the services for which these charges were incurred represent “reasonably necessary medical services” for a compensable injury, Ark. Code Ann. §11-9-508. Medical services are “reasonably necessary”, when they are necessitated by or connected with a compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

The evidence presented reveals that all of the medical services provided the claimant by and at the direction of Dr. Powell from June 20, 2003 through the date of hearing, were necessitated by and connected to the claimant’s “new” compensable injury of June 20, 2003. All of the medical services provided the claimant by Dr. Powell, during this time, were necessitated by and directed toward the significant increase in his right shoulder symptoms and difficulties which began with the incident on June 20, 2003. These services had two major purposes. The first of these purposes was to accurately determine the etiology of the claimant’s dramatic and significant increase in symptoms and difficulties involving his right shoulder. The second of these purposes was to provide the necessary treatment to return to the level of these level of these symptoms and difficulties to the stable or chronic state that had been achieved, prior to June 20, 2003. As I have previously found that this increase in symptoms and difficulties with the claimant’s right shoulder was the result of a “new” compensable injury on June 20, 2003, the medical

services rendered him for these increased difficulties would also be necessitated by and related to this “new” compensable injury.

The greater weight of the credible evidence presented further proves that these medical services actually accomplished their intended purposes. The evaluations and testing, which were intended to determine the cause of the significant increase in the claimant’s right shoulder symptoms and difficulties, established that this increase in symptomology was due to a new injury to the claimant’s right shoulder (albeit possibly in the form of an aggravation of a pre-existing condition).

The active treatment provided the claimant by and at the direction of Dr. Powell also accomplished its intended purpose of reducing the claimant’s increase in symptoms and, as much as possible, returned his right shoulder to its previous (albeit chronic) stable state.

Therefore, I find that the medical services provided the claimant for his right shoulder difficulties by and at the direction of Dr. Powell, between June 20, 2003 and the date of hearing constitute “reasonably necessary medical services” for the claimant’s “new” compensable injury of June 20, 2003. Thus, respondent carrier #2, Royal and Sun Alliance, is liable for the expense of these services. This liability is limited by the medical fee schedule established by this Commission.

In order to be entitled to the additional temporary total disability benefits that he now seeks, the claimant must first prove that he continued within his healing period from the effects of the compensable injury. He must further prove that he was rendered totally disabled from performing all forms of regular gainful employment, for which he was otherwise qualified, as a result of the compensable injury.

In order to be entitled to temporary partial disability benefits that he now seeks, the claimant must first prove that he continued within his healing period from the effects of a compensable injury. He must further prove that he also experienced a reduction in wages as a result of the effects of this injury.

The duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment, in regard to the resolution or improvement of the actual physical damage caused by the compensable injury. Once this underlying physical damage has resolved or has at least stabilized, a level where no further improvement can be reasonably expected, then the healing period has ended.

In the present case, the evidence presented proves that the claimant's healing period from his initial compensable injury of December 26, 2002, ended on or about June 3, 2003. On that date, Dr. Powell opined that the claimant had reached maximum medical improvement from the effects of his compensable injury and discharged him from further care. Although it is clear that it is also Dr. Powell's expert opinion that the claimant had not returned to his preinjury state (he indicates that the physical damage done by this injury may ultimately require surgery) it is equally apparent that it was his opinion that the remaining physical damage that resulted from this initial compensable injury had for the time being stabilized at a level where further treatment was not medically necessary.

The greater weight of the credible evidence presented proves that the claimant entered a "new" healing period from the effects of his "new" compensable injury on June 20, 2003 and continued through at least two months following October 7, 2003. The medical evidence shows that the claimant was under active medical treatment by Dr. Powell for the effects of his "new" compensable injury from June 30, 2003 through October 7, 2003. Although Dr. Powell did again return the claimant to regular employment on October 7, 2003, he does not release him from further treatment. Instead, he expressly directs the claimant to return in two months. Finally, Dr. Powell notes that if the claimant's condition is stable, at the time of this scheduled follow up visit, then a functional capacity assessment will be performed and a determination made in regard to the existence or

extent of any remaining permanent impairment. Thus, it would appear from this report that it was Dr. Powell's expert medical opinion that the claimant's healing period from the effects of his "new" compensable injury would not end prior to December 7, 2003. I find Dr. Powell's expert opinion to be persuasive.

The claimant testified that immediately following his new injury on June 20, 2003, he was medically restricted to performing employment that only required the use of his left upper extremity. He further testified that the respondent provided him with such work through June 25, 2003. However, on June 26, 2003, the respondent refused to recognize this restriction and returned him to regular duty, where he continued through June 27, 2003. The office notation of Dr. Powell, dated June 30, 2003, also recites similar events. Thus, on that date, he announced that he was "taking (the claimant) off work until further notice." His reports indicate that his reason for this action was his expert medical opinion that it was absolutely necessary that any use of the claimant's right upper extremity should be avoided in order to facilitate the healing of the claimant's new compensable injury. Clearly, such a course of conduct would appear to be reasonable.

On July 15, 2003, Dr. Powell allowed the claimant to return to work, but only in a one handed position. At that time, the respondent again made employment available to the claimant that was within this restriction. However, the evidence presented shows that the respondent once again required the claimant to perform employment activities that violated this restriction. As a result, Dr. Powell restricted the claimant from performing any employment activities on August 26, 2003. He continued this restriction from that date through the date of his release of the claimant to return to regular employment on October 7, 2003.

The claimant testified that after two days of performing regular employment, beginning on October 8, 2003, he did not feel that he could do the heavy lifting, pushing, and pulling, required of a delivery driver. Therefore, he elected to change his employment

position to that of a shuttle driver. In his position as a shuttle driver, he was able to use his right arm and shoulder in a less strenuous manner.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence actual total disability due to the effects of his new compensable injury for the periods of June 28, 2003 through July 15, 2003, and from August 28, 2003 through October 7, 2003. This satisfies the second element necessary to his entitlement to temporary total disability benefits during these periods.

The evidence presented (Claimant's Exhibit No. 1) show that during the period of July 16, 2003 through August 27, 2003, the claimant received wages for his light duty work that totaled \$1,556.52. Thus, for this six week period, his average gross weekly wage was only \$259.42. This would be a reduction of \$348.08 from his average weekly wage at the time of his new compensable injury on June 20, 2003. The respondents have presented no records to refute the payroll records contained in Claimant's Exhibit No. 1.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that he experienced an actual reduction in his wages during the period of July 16, 2003 through August 27, 2003. Further, it is my opinion that he has proven by the greater weight of the credible evidence that this temporary reduction in his wages was the result of the disabling effects of his new compensable injury on June 20, 2003. Further, he has proven that this reduction averaged \$348.08 per week. Thus, he has established all of the elements necessary for his entitlement to weekly temporary partial disability benefits during this period in the amount of \$232.00 (i.e. 2/3 of \$348.08).

The payroll records, reflecting the claimant's gross weekly wages after October 7, 2003, were admitted by agreement subsequent to the hearing as Claimant's Exhibit No. 2. These records show that after October 7, 2003, the claimant received on four separate

occasions a gross weekly wage of less than \$607.50 (his average weekly wage at the time of his new compensable injury). One of these weeks would have been the week of the claimant's return to regular employment on October 8, 2003. October 8, 2003 falls on a Wednesday, which could explain a reduction in the claimant's wages during this first pay period. The second of these weeks occurred during the second period following the claimant's return to employment. During this pay period, the claimant earned only \$3.66 less than his average weekly wage at the time of his new or most recent compensable injury. The third of these weeks was the week of the pay period ending December 5, 2003. During this pay period, the claimant earned a weekly wage that was \$60.78 less than his average weekly wage at the time of his new or most recent compensable injury. The fourth of these pay periods appears to be the pay period which included the Christmas holiday. During this pay period the claimant earned \$117.90 less than his average weekly wage at the time of his new or most recent compensable injury. For the remaining 14 pay periods from October 8, 2003 through the pay period preceding February 13, 2004, the claimant earned wages in excess of his average weekly wage at the time of his new or most recent compensable injury. In fact, during the 18 week period beginning October 8, 2003, and continuing through the pay period ending February 13, 2004, the claimant earned an average weekly wage of \$686.96.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove by the greater weight of the credible evidence that, after October 7, 2003, he experienced any actual reduction in his average weekly wage, as a result of the temporary disabling effects of his new or more recent compensable injury. Thus, he has failed to prove the second element necessary for his entitlement to temporary partial disability benefits on and after October 8, 2003.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of these

claims.

2. On December 26, 2002, the relationship of employee–employer-carrier existed between the claimant, Quality Foods, and CNA Insurance Company. On December 26, 2002, the claimant earned an average weekly wage of \$607.50, which would entitle him to weekly compensation benefits of \$405.00 for total disability and \$304.00 for permanent partial disability.
3. On December 26, 2002, the claimant sustained a compensable injury to his right shoulder.
4. Respondent Carrier CNA Insurance Company has paid all appropriate medical expenses and temporary total disability benefits attributable to this compensable injury accruing to date.
5. On June 20, 2003, the relationship of employee-employer-carrier existed between the claimant, Quality Foods, and Royal & SunAlliance.
6. On June 20, 2003, the claimant earned an average weekly wage of \$607.50, which would entitle him to weekly benefits for total disability in the amount of \$405.00 and weekly benefits for permanent partial disability in the amount of \$304.00.
7. On June 20, 2003, the claimant sustained a “new” compensable injury to his right shoulder. Specifically, on that date, he sustained a physical injury to his right shoulder that arose out of and occurred in the course of his employment with Quality Foods, that was caused by a specific incident, that is identifiable by time and place of occurrence, that caused internal physical harm to his body, and that required medical services and resulted in disability. The actual existence of this “new” physical injury is established by medical evidence, which is supported by objective findings.
8. The medical services provided to the claimant for his right shoulder

difficulties by and at the direction of Dr. Mark Powell, beginning on June 30, 2003 and continuing through at least the date of hearing, represent “reasonably necessary medical services” for the claimant’s most recent compensable injury of June 20, 2003. Specifically, the greater weight of the evidence shows that these medical services were solely necessitated by the compensable injury of June 20, 2003 and that these services actually accomplished the purposes or goals for which they were intended. Pursuant to Ark. Code Ann. §11-9-508, the expense of these services is solely the liability of the respondent Royal & SunAlliance. This liability is subject to the medical fee schedule established by this Commission.

9. The claimant was rendered temporarily totally disabled solely by his most recent compensable injury of June 20, 2003 for the periods beginning June 28, 2003 through July 15, 2003 and beginning August 28, 2003 through October 7, 2003. Specifically, during these periods the claimant continued within his healing period from the effects of his compensable injury of June 20, 2003 and was totally disabled from performing all forms of regular gainful employment as a result of the disabling effects of this compensable injury.
10. The claimant was rendered temporarily partially disabled by his compensable injury of June 20, 2003 for the period of July 16, 2003 through August 27, 2003. Specifically, during this period he continued within his healing period from the effects of this compensable injury and had experienced a reduction in his earnings as a result of the temporarily disabling effects of this compensable injury.
11. The appropriate amount of weekly compensation for temporary partial disability benefits during the foregoing period is \$232.00.
12. The claimant has failed to prove by the greater weight of the credible

evidence that he was rendered temporarily partially disabled on and after October 8, 2003. Specifically, he has failed to prove that on and after that date he has experienced any actual reduction in his earning capacity as a result of the temporarily disabling effects of either of his compensable injuries.

13. Respondent Carrier CNA Insurance Company, has controverted the claimant's entitlement to any medical expenses or temporary total disability benefits accruing after June 3, 2003.
14. Respondent Carrier Royal & SunAlliance, has controverted the claimant's entitlement to any and all benefits.
15. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted weekly indemnity benefits herein awarded from Royal & SunAlliance.

#### ORDER

The respondent carrier Royal & SunAlliance shall pay to the claimant temporary total disability benefits for the periods of June 28, 2003 through July 15, 2003 and from August 28, 2003 through October 7, 2003. Respondent Royal & SunAlliance shall also pay to the claimant temporary partial disability benefits, at the weekly rate of \$232.00 for the period of July 16, 2003 through August 27, 2003.

The respondent carrier Royal & SunAlliance shall also be liable for the expense of medical services provided to the claimant for his right shoulder difficulties by and at the direction of Dr. Mark Powell from June 30, 2003 through at least the date of hearing. This liability shall be subject to the medical fee schedule established by this Commission.

The respondent carrier Royal & SunAlliance shall pay to the claimant's attorney the maximum statutory attorney's fee on the controverted weekly indemnify benefits herein awarded to the claimant for temporary total and temporary partial disability. One-half of

this fee is the obligation of this respondent in addition to such benefits. The remaining one-half of this fee is to be withheld by this respondent from such benefits.

For the reasons heretofore set forth in this Opinion, the claimant's request for temporary partial disability benefits accruing on and after October 8, 2003, must be and hereby is denied and dismissed.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge