

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F210237

CARRIE RAPER, EMPLOYEE	CLAIMANT
DREW MEMORIAL HOSPITAL, EMPLOYER	RESPONDENT
RECIPROCAL OF AMERICA/ ARKANSAS PROPERTY & CASUALTY GUARANTY FUND, INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 16, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on September 17, 2004, in Monticello, Drew County, Arkansas.

Claimant represented by Mr. Robert L. Depper, Jr., Attorney at Law, El Dorado, Arkansas.

Respondents represented by Ms. Melissa Ross, Attorney at Law, Little Rock, Arkansas.

A hearing was held on September 17, 2004, to determine claimant's entitlement to additional temporary total disability indemnity benefits.

The parties stipulated to the existence of the employee-employer relationship on September 5, 2002, when claimant sustained a compensable neck injury coupled with psychological trauma. The parties further stipulated that at the time of injury, claimant was earning a sufficient weekly wage to entitle her to weekly indemnity benefits of \$276.00 for temporary total disability and \$207.00 for permanent partial disability benefits.

Claimant contends that she is entitled to continued temporary total disability indemnity benefits from February 5, 2004, through a date yet to be determined. Claimant reserves the issue of permanent disability.

Respondents contend that they accepted the claim as compensable and paid for psychological treatment for the statutory twenty-six week period, as well as medical benefits and temporary total disability indemnity benefits through February 4, 2004, at which time claimant's compensation was suspended due to her noncompliance with treatment ordered. Respondents thereafter, in late March of 2004, resumed all medical benefits in regard to claimant's neck injury and continue to pay same. Respondents contend, however, that the medical documentation does not support entitlement to additional indemnity benefits after February 4, 2004.

STATEMENT OF THE CASE

Claimant was the victim of an assault while working for the respondent employer on September 5, 2002.

Claimant is a licensed practical nurse (LPN). Claimant testified that on the night of September 5, 2002, she was working alone in the obstetrics wing of respondent employer, in the nursery. Claimant had begun her shift at 7:00 p.m., and shortly after 10:00 p.m. she had begun charting, when she heard someone coming through the double doors of the nursery. She thought at first that it was another nurse, but it was an unidentified man who began screaming and ranting to claimant, saying he needed to "talk to Lisa.." She asked him if she could help him with something, and told him there were three "Lisas" who worked there; she did not know to whom he was referring.

The unidentified man then began striking claimant about her face and head and choking her, attempting to strangle her with a stethoscope. She testified that the next thing she remembered, she woke up and was locked in a bathroom located about thirty feet down the wing from the nursery. She testified that she was naked from the waist

down, her hair was messed up, and her face was covered with blood. At first, she was unsure of exactly what had happened and was afraid to leave the bathroom for fear that her assailant was still around.

Finally, she decided that she must seek help, left the bathroom, and attempted to walk to find help. She fell and began calling out for help. Another nurse saw her and helped her to the emergency room. Claimant admitted that she told hospital personnel that evening that she had not been raped because she was so terrified and just “wanted to go home.” However, she testified that some months later, she admitted in therapy and to her husband that she had, in fact, been raped.

Claimant has since been evaluated and treated by a number of physicians and psychologists for her indisputable cervical spine injuries resulting from the assault, as well as the post-traumatic stress disorder with which she has been diagnosed. Testimony from both she and her husband, as well as the medical records reflect that she has chronic neck pain, has been suicidal at times, desperately afraid to leave her house, certainly unable to cope, and unable to function in the same, normal capacities she was prior to her attack.

Respondents paid for claimant’s medical care and psychological treatment, as well as temporary total disability indemnity benefits through February 4, 2004. However, at that time, all compensation to claimant was suspended by respondents for claimant’s purported “non-compliance with treatment ordered.” Claimant’s husband testified that after compensation was ceased in February 2004, claimant spiraled into an even more severe depression, worrying how their family would survive financially and be able to afford treatment for her.

Eventually, claimant and her husband were able to negotiate a payment plan with claimant's psychologist in order for claimant to resume therapy. Further, respondents reinstated medical benefits, but medical only - not temporary total indemnity benefits. Claimant seeks the reinstatement of temporary total disability benefits. Respondents insist that the medical documentation does not support entitlement to additional indemnity benefits after February 4, 2004.

FINDINGS OF FACT

1. On September 5, 2002, claimant earned wages sufficient to entitle her to weekly indemnity benefits of \$276.00/\$207.00 for temporary total/permanent partial disability benefits.
2. Claimant was acting within the course and scope of her employment at the time of the September 5, 2002, assault that caused injuries to claimant's neck.
3. Claimant is entitled to treatment, both past and future, for complaints associated with her September 5, 2002, injury to her neck.
4. Claimant is entitled to reinstatement of temporary total disability indemnity benefits commencing February 5, 2004, and continuing through the end of her healing period, a date yet to be determined.
5. The issue of permanent disability is reserved.
6. Respondents have controverted claimant's entitlement to any additional indemnity benefits.

DISCUSSION

The Arkansas Supreme Court has held that an injured employee is entitled to temporary total disability compensation during the period of time that he is within his healing period and totally incapacitated to earn wages. *Arkansas State Highway &*

Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The “healing period” is defined as the period necessary for the healing of an injury resulting from an accident. Ark. Code Ann. § 11-9-102(13)(Supp. 1997). The healing period continues until the employee is as far restored as the permanent character of his injury will permit. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998).

Arkansas Code Annotated § 11-9-501, regarding limitations on compensation, states in pertinent part:

(c)(1) Upon request of the respondent or carrier, the commission shall review the claim and determine the necessity for additional temporary total benefits after forty (40) weeks or after any thirteen-week interval thereafter *and may, if warranted by the preponderance of the evidence on the basis of the record as a whole, extend the period of payment for temporary total disability.*

(2) Any weekly benefit payments made after the commission has terminated temporary total benefits shall be classified as warranted by the facts in the case and as otherwise provided for in this chapter.

[Emphasis added.]

In this case, respondents suspended payment of temporary total disability indemnity benefits, effective February 5, 2004, for claimant’s purported “non-compliance with treatment ordered.” From the records, it appears that the non-compliance referred to is claimant’s declination of Dr. Pennington’s offers for inpatient therapy due to her increased dependency upon pain medication, as well as claimant’s failure to keep one appointment with Dr. Pennington and the rescheduling of an MRI with Dr. Cathey.

After being notified that her compensation was suspended due to the “non-compliance,” claimant apparently acquiesced to following her doctors’ orders, and respondents resumed payment of treatment. However, payment of temporary total disability benefits did not resume. Notably, nothing in regard to the status of claimant’s ability to work had changed from the time respondents were paying indemnity benefits until they ceased all compensation and after they resumed payment of medical benefits. Respondents simply chose not to continue the payment of temporary total disability benefits.

Certainly, under Ark. Code Ann. § 11-9-113, a claimant is limited to twenty-six weeks of disability for a claim of mental injury; however, in this case, claimant suffered *both* physical and psychological injuries, as a victim of a crime of violence. Claimant’s continuing neck pain and problems are well-documented, as well as her severe anxiety and acute depression. Based upon the testimony of claimant, her husband, and the medical records, it is far from surprising that she would decline inpatient treatment, as she was frightened of even leaving her home.

Dr. Kerry Pennington is claimant’s primary care physician and has treated the claimant from the outset of her injuries. He continued to find in his reports through as late as May 17, 2004, that claimant was *not* to the point of maximum medical benefit. He opined that he felt she should continue some chronic pain management, as well as psychiatric follow-up. He stated, “I do feel that there is still significant room for improvement in her medical condition.”

Dr. M. Carl Covey, claimant’s treating physician for her neck injuries, noted as late as July 14, 2004: “This patient is under my care until further notice.” In addition, Dr. John Rago, claimant’s treating psychologist, noted May 26, 2004, that

claimant had been in his care since November 25, 2002, and “continues to be seen for anxiety and depression.” Obviously, none of the treating physicians in this case believe claimant has reached maximum medical improvement in order to release her from care, whether it be for her physical *or* her psychological injuries. Notwithstanding, as noted above, a claimant is limited to twenty-six weeks of disability for a claim of mental injury. *See* Ark. Code Ann. § 11-9-113.

It is this examiner’s opinion, however, that in regard to claimant’s neck injury, the preponderance of the evidence on the basis of the record as a whole warrants claimant’s entitlement to a reinstatement of temporary total disability benefits commencing February 5, 2004, and continuing until she reaches the end of her healing period, a date yet to be determined.

AWARD

Respondents are directed to pay the claimant benefits in accordance with the findings of fact above.

Respondents are directed to pay the claimant’s attorney, Mr. Robert L. Depper, Jr., the maximum attorney’s fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge