

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210760

ALESSANDRO D. UDELL, EMPLOYEE	CLAIMANT
HEALTH CARE MANAGEMENT, INC., EMPLOYER	RESPONDENT
ARKANSAS PROPERTY & CASUALTY GUARANTY FUND, INSURANCE CARRIER and CROCKETT & COMPANY, TPA	RESPONDENT

OPINION FILED SEPTEMBER 21, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on August 19, 2004, at Marion, Crittenden County, Arkansas.

Claimant represented by Mr. Joe M. Rogers, Attorney-at-Law, West Memphis, Arkansas.

Respondents represented by Mr. D. Bryce Finley, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted August 19, 2004, to determine whether the claimant is entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on June 23, 2004, and a Prehearing Order was filed on June 24, 2004. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed at all relevant

times, including May 1, 2002; that the claimant sustained a compensable injury to his right upper extremity on said date; that he earned sufficient wages to entitle him to compensation rates of \$165.00 per week for temporary total disability and \$154.00 per week for permanent partial disability; and that the respondents had controverted claimant's entitlement to additional temporary total disability.

By agreement of the parties, the sole issue presented for determination concerned claimant's entitlement to additional temporary total disability, if any.

Claimant contended, in summary, that he sustained a compensable injury as the result of a specific incident identifiable in time and place of occurrence on May 1, 2002; that he was entitled to temporary total disability benefits for the period beginning May 2, 2002, and continuing through December 5, 2002, less credit for any temporary total disability previously paid; and that a controverted attorney's fee should attach to any additional disability awarded.

The respondents contended that the claimant had received all appropriate benefits to which he was entitled, while maintaining that the claimant was offered suitable work within his physical restrictions which the claimant refused, and that the claimant was subsequently terminated for cause.

The claimant testified in his own behalf. Joann Jordan and Kelvin Hazel were called as witnesses for the respondents. The record is composed solely of the transcript of the August 19, 2004, hearing containing numerous exhibits.

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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that he was entitled to temporary total disability benefits through December 5, 2002.
4. The claimant's healing period ended December 5, 2002.
5. A child support lien has been filed in this claim by the Crittenden County Office of Child Support Enforcement. Pursuant to Ark. Code Ann. §11-9-110(d), respondents are to withhold up to twenty-five percent (25%) of the accrued benefit hereinafter awarded to satisfy child support obligations which are currently in arrears.
6. Issues not addressed herein are specifically reserved.

DISCUSSION

\_\_\_\_\_The relevant facts in this case are undisputed. Claimant, Alessandro

Deshawn Udell, is thirty (30) years old. At the time of the within hearing, the claimant was working for a different employer, AME Service, performing minor maintenance. The claimant stated that he had worked for AME Service for approximately nine (9) months. The claimant was formerly employed by respondent, Health Care Management, Inc. He worked for the respondent beginning in February, 2002, through on or about May 8, 2002. The claimant's primary job duty involved running an electric buffer, specifically, stripping, waxing, and buffing floors. The claimant sustained an admitted, compensable injury on May 1, 2002, to his right upper extremity. The claimant timely reported his injury to his immediate supervisor, Joann Jordan, at which time he was sent to the company doctor, Dr. Floyd R. Shrader, in West Memphis, Arkansas. The claimant was initially examined and treated by Dr. Shrader on May 2, 2002. Dr. Shrader released the claimant to light-duty work on May 7, 2002, specifically, limiting his work to the use of the left arm only, and placing the right arm in a sling. Despite the restrictions placed on the claimant, his supervisor returned him to his regular job duties which the claimant reportedly, and understandably could not perform with one arm. After a failed course of conservative treatment, Dr. Shrader, subsequently, referred the claimant to Dr. Guy L'Heureux. Dr. L'Heureux, likewise, treated the claimant conservatively. Apparently, because he could not definitively diagnose the claimant's injury,

claimant was next referred by Dr. L'Heureux to Dr. R. J. Cole, an orthopedic specialist with the Orthopedic Clinic in Memphis, Tennessee. The claimant was first evaluated by Dr. Cole on July 15, 2002, at which time he was again released to restricted work activities which, clearly, the employer was unwilling or unable to accommodate. (Cl. Ex. A, p.19)

Dr. Cole determined that the claimant had sustained an injury to the ulnar nerve of the right elbow. The claimant ultimately underwent surgical repair of the right ulnar nerve. Following an extensive course of physical therapy, the claimant was ultimately released to full-duty work on December 5, 2002. It must be noted that although Dr. Cole assessed permanent impairment using the 5<sup>th</sup> Edition of the AMA Guidelines, the sole issue presented for determination concerned claimant's entitlement to temporary total disability. (Resp. Ex. A, p.20)

Respondents' primary defense is that the claimant was offered suitable work within his physical restrictions, which they maintained the claimant unreasonably refused and that the claimant was subsequently terminated for cause.

Joann Jordan was called as a witness by the respondents. Ms. Jordan is the manager of housekeeping and laundry supervisor. In addition, she was the claimant's immediate supervisor. I did not find Ms. Jordan to be a credible

witness. She stated that after the claimant returned to work on May 8, 2002, she offered him light-duty in housekeeping, while, at the same time conceding that a number of the job duties could not be performed using one arm. She acknowledged that she asked the claimant to attempt to buff floors using one hand which, incredibly, she maintained could be performed one handed. (Tr.33-34, 42)

As previously noted, the hospital administrator issued a letter addressed to whom it may concern advising that the claimant could not work until he was released to perform more than restricted work. There is no credible evidence that the claimant refused suitable employment. Further, concerning the claimant's alleged termination or resignation, this apparently occurred after the claimant's healing period ended, and is not relevant to the claim for additional temporary total disability benefits.

It is undisputed that the claimant sustained a scheduled injury within the meaning of the workers' compensation laws. Because the claimant's injury is a scheduled injury, he is entitled to temporary total disability benefits as long as he remains within his healing period or has not returned to work, whichever occurs first. *Wheeler Construction Co., vs. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001); *Farmers' Cooperative vs. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002).

The medical evidence clearly reflects that the claimant's healing period ended on December 5, 2002. The claimant did not return to gainful employment until after that date. The claimant has proven, by a preponderance of the credible evidence, that he is entitled to the temporary total disability claimed.

#### AWARD

Respondent, Crockett & Company, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$165.00 per week for the period beginning May 2, 2002, and continuing through December 5, 2002.

All benefits having accrued, respondents are to pay same in lump sum and without discount; however, respondents may claim credit for any days that the claimant worked, as well as any temporary total disability previously paid.

Respondents are to withhold child support obligations, not to exceed twenty-five percent (25%) of the benefits awarded, up to the amount necessary to satisfy any arrearage in child support obligations filed by the Crittenden County Office of Child Support Enforcement.

Additionally, claimant's attorney, Mr. Joe M. Rogers, is hereby awarded the maximum statutory attorney's fee on the benefits awarded herein, one-half ( $\frac{1}{2}$ ) to be paid by the respondents, and one-half ( $\frac{1}{2}$ ) to be withheld from claimant's benefits pursuant to A.C.A. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge