

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214295

DON R. WILSON,
EMPLOYEE

CLAIMANT

CONAGRA INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JANUARY 21, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE, MARK CHURCHWELL at Conway, Faulkner County, Arkansas.

The claimant was represented by MR. THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

The respondents were represented by MR. BILL H. WALMSLEY, Attorney at Law, Batesville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on November 12, 2003 in Conway, Arkansas. A prehearing order was entered in this case on October 7, 2003. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing.

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

1. The employee-employer-carrier relationship existed on the date of injury, November 13, 2002, and at all pertinent times.

2. There was incurred a compensable injury to the low back by specific incident on that date.

3. The respondent has accepted the claim and paid certain benefits.

4. The parties will stipulate to appropriate compensation rates prior to the start of the hearing. Prior to the start of the hearing, the parties stipulated that the claimant's compensation rates are \$289 per week for temporary total disability and \$216 per week for permanent partial disability.

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

1. TTD from 12/8/2002 to a date yet to be determined.
2. Controversion and attorney's fees.
3. The claimant reserves all other issues at this time.

DISCUSSION

An employee is entitled to temporary total disability compensation for an unscheduled injury during the period within the healing period in which he suffers a total incapacity to earn wages. Arkansas State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d

392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

In the present case, the preponderance of the credible evidence in the record establishes that the claimant remained within the healing period for his November 13, 2002 injury at the time of the November 12, 2003 hearing on this claim. Specifically, I note that Dr. Jim Moore, the esteemed Little Rock neurosurgeon, has provided the claimant a course of medical treatment including medication, a TENS unit, and steroid injection diagnostic and therapeutic treatment. Dr. Moore made clear his opinion on July 16, 2003 that the claimant had not yet at that time reached maximum medical improvement. In his last office note in the record, dated October 28, 2003, Dr. Moore chose to continue the claimant's medication and use of an RS device. Dr. Moore also indicated that he may want to repeat the claimant's steroid injections one final time. The claimant explained at the hearing held on November 12, 2003 that his next scheduled appointment with Dr. Moore is scheduled for December 2, 2003. Dr. Moore's working diagnosis based on

his September 3, 2003 report is post-traumatic sacroiliac sprain-strain, and Dr. Moore indicated at that time that he is hopeful that ultimately the claimant's symptoms will subside. Because Dr. Moore has maintained the claimant on a course of continued medical treatment as of the date of the hearing which appears to be intended to improve or hopefully eliminate completely the claimant's low back symptoms, I find the preponderance of the evidence establishes that the claimant remained within a healing period for his work-related low back injury at the time of the hearing on November 12, 2003.

I also find that a preponderance of the credible evidence establishes that the claimant has been totally incapacitated from working since December 8, 2002 and continuing at least through the date of the hearing held on November 12, 2003. In reaching this conclusion, I note that Dr. Reddy, the company doctor, initially released the claimant for a temporary period of light duty work, suggesting that the claimant was expected to have a complete recovery from his injury and no continuing work restrictions shortly after the injury occurred. Unfortunately, the claimant's symptoms did not resolve, as Dr. Reddy had hoped and expected, and Dr. Starnes subsequently placed the

claimant in off work status. Dr. Starnes began placing the claimant in off work status on December 4, 2002, and does not appear to have released the claimant to return to work until approximately July 7, 2003. Thereafter, Dr. Moore, the neurosurgical specialist who has taken over the claimant's case, concluded that the claimant should have remained in off work status from the time of his February 5, 2003 evaluation until his July 16, 2003 evaluation of the claimant. Because of the extremely high esteem in which I regard Dr. Moore's medical opinions, I accord Dr. Starnes' July 7, 2003 release to return to work essentially no weight. While Dr. Moore indicated in his October 28, 2003 report that he wants the claimant to increase his activities to tolerance, at no point has Dr. Moore indicated since the time of his July 16, 2003 report that the claimant's condition has sufficiently changed so that he can tolerate a return to work. Absent any credible evidence indicating that the claimant has experienced a change in physical condition since July 16, 2003 which would permit his return to work, and based on the medical opinions in the record indicated above to which I accord great weight, I find that the claimant has established by a preponderance of the credible evidence that he has remained incapacitated from

working, as well as in his healing period, from December 8, 2002 through the date of the November 12, 2003 hearing and continuing to a date yet to be determined.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The employee-employer-carrier relationship existed on the date of injury, November 13, 2002, and at all pertinent times.

3. There was incurred a compensable injury to the low back by specific incident on that date.

4. The respondent has accepted the claim and paid certain benefits.

5. The claimant's appropriate compensation rates are \$289 per week for temporary total disability and \$216 per week for permanent partial disability.

6. The claimant has proven by a preponderance of the evidence that he is entitled to an award of temporary total disability compensation beginning December 8, 2002, through the date of the hearing held on November 12, 2003, and continuing to a date yet to be determined.

7. The respondents conceded in their answers to prehearing questionnaire that they have controverted the TTD currently at issue. The claimant's attorney is entitled to a controverted attorney's fee on the temporary total disability benefits awarded herein.

AWARD

The respondents are directed to pay temporary total disability benefits in accordance with the findings of fact set forth herein, subject to the child support obligations brought to the respondents' attorney's attention by the claimant's attorney during the course of the hearing held on November 12, 2003.

The claimant's attorney is entitled to a 25% attorney's fee on the temporary total disability benefits awarded herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715; and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge