

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F212074**

<b>MICHAEL D. WILSON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MOORE ROBINSON, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>EMPLOYERS INSURANCE COMPANY OF WAUSAU, INSURANCE CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JANUARY 28, 2004**

Hearing before Administrative Law Judge Dail Stiles on January 8, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

A hearing was held on January 8, 2004, to determine the claimant's entitlement to additional benefits.

It was stipulated that the claimant sustained a compensable injury arising out of and during the course and scope of his employment on October 11, 2002.

It was stipulated that the claimant's temporary total disability rate is \$268.00 weekly, and that temporary total disability benefits were paid from December 4, 2002 through March 4, 2003, at which time the claimant had reached the end of his healing period.

The claimant contends he is entitled to additional temporary total disability benefits commencing October 11, 2002 and continuing through December 3, 2002.

The respondents controvert the additional period of temporary total disability benefits contending that the claimant was using a physician or physicians

not approved by the respondent employer, and that there were no “off work slips” during the period in question to support a claim for benefits.

### **STATEMENT OF THE CASE**

On October 11, 2002, while the claimant was attempting to change a tire on a fork lift, the counter weight of the jack fell striking his left arm causing him to sustain a crushing type injury to his left arm.

The claimant was transported by ambulance to the emergency room at U.A.M.S. on October 11, 2002. The claimant continued treating with Dr. Randy Bindra, a physician at U.A.M.S., until the early part of December of 2002.

The claimant admitted that he received a letter from Kathy Ivy, who worked in payroll and was the benefits coordinator for the respondent employer, instructing him that he needed to seek his medical attention from Concentra, and he did indeed begin treating at Concentra on December 4, 2002.

It is agreed that the claimant’s healing period ended no later than March 4, 2003, and that the claimant sought other employment and was working at the time of hearing.

The respondents assert that between the claimant’s date of injury on October 11, 2002 and before he commenced treatment at Concentra on December 4, 2002, there were no off work slips indicating that the claimant could not work.

The claimant testified that the day after he was injured, he went back to the respondent’s store and spoke with Calvin Norton, the store manager. The claimant stated that he asked Norton if there was any work he could do, and that Norton responded, “No. You can’t do anything like that. Let me know when the doctors release you and you can’t return back to work until then. Until then, just take care of your hand, do you doctor bills, and get better.”

On October 18, 2002, in an outpatient note authored by Dr. Bindra, Dr. Bindra stated under the Assessment section of that note, "Severe crush injury left forearm and hand with a burst laceration to the left thenar eminence with loss of some thenar intrinsic muscles." Dr. Bindra went on in that outpatient note to state that he had explained to the claimant that he had a serious crush injury to his left forearm and hand, and that Dr. Bindra expected it would take three to four months to recover from that injury.

On December 4, 2002, the claimant saw Dr. John Adametz, Jr. at Concentra, and Dr. Adametz diagnosed the claimant as having a crush injury to the forearm and a crush injury of some fingers. He prescribed physical therapy for the claimant three times a week for two to three weeks and also placed the claimant under modified activity, which included no lifting over ten pounds, no pushing or pulling over ten pounds, avoid forced gripping or squeezing of the left hand, restrict use of the left hand and left arm, and wear a splint. Dr. Adametz also stated that the claimant would not be able to use impact or power tools with his left hand.

### **FINDINGS OF FACT**

1. The claimant is entitled to temporary total disability benefits from the date of his compensable injury, October 11, 2002, through December 3, 2002.
2. Respondents have controverted this additional period of temporary total disability benefits.

### **DISCUSSION**

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).

In the instant case, when the claimant first saw Dr. Adametz on December 4, 2002, Dr. Adametz was clear that the claimant would have to continue some treatment for his injury and placed restrictions on the claimant which would not have enabled him to work except in the most sedentary position for the respondent employer.

Although, the respondent employer may not have seen Dr. Bindra’s report of October 18, 2002, they could have accessed that report, and that report demonstrated that the claimant had sustained a rather serious crushing injury, and that it would take some time for him to recover from that injury.

While it is true that the respondents have the right to direct medical treatment at least initially for the claimant, they cannot deny appropriate benefits just because the claimant fails to comport with their directions and policy relative to that treatment.

The claimant in this case has met his burden of proving by a preponderance of the evidence that he is entitled to an additional period of temporary total disability benefits as outlined in the findings of fact above.

**AWARD**

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

Respondents are directed to continue to pay reasonable, necessary and related medical expenses in connection with the claimant's compensable injury of October 11, 2002.

Respondents are directed to pay the claimant's attorney, Mr. Gary Davis, the maximum attorney's fee on this award pursuant to Ark. Code Ann. §11-9-715.

IT IS SO ORDERED.

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DAIL STILES  
Administrative Law Judge