

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303178

BETTY S. YOUNG, EMPLOYEE	CLAIMANT
BOARSHEAD PROVISIONS COMPANY, EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED APRIL 16, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on January 23, 2004, at Forrest City, St. Francis County, Arkansas.

Claimant represented by the HONORABLE GEORGE BAILEY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to additional workers' compensation benefits.

On December 2, 2003, a pre-hearing conference was conducted in this claim from which a pre-hearing order of the same date was filed. The pre-hearing order reflects the stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The pre-hearing order is herein designated a part of the record as Commission's Exhibit No. 1.

The testimony of Betty S. Young, the claimant, Linda Long, Geraldine Sain, and William "Andy" Dennis, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Betty S. Young, the claimant, with a date of birth of August 15, 1960, has a seventh grade education. The claimant commenced her employment with respondent on October 15, 2001 in the sanitation department of same.

From the time she commenced her employment with respondent until her March 18, 2003 injury, the claimant worked the third shift, which commenced at 10:00 p.m. and concluded at 6:00 a.m. Claimant received third shift differential pay in addition to her base pay and overtime. Further, the evidence in the record reflects that the claimant received incentive pay or a bonus if she worked every night during the pay period. The claimant's base pay was \$9.25 per hour. (T. 29) Contained in the record is an earning statement of the claimant covering the pay period March 16, 2003. (CX1, p. 45) As a consequence of the afore, the claimant asserts that her average weekly wage during her employment with respondent prior to the March 18, 2003 injury, was \$740.00 per week, while respondents maintain that the claimant's average weekly wage was \$548.00 per week which generates a temporary total disability compensation rate of \$366.00. The testimony reflects that the claimant was compensated at the rate of \$322.50 per week for temporary total disability during her temporary total disability period from March 19, 2003. (CX4)

On March 18, 2003, the claimant suffered an injury within the course and scope of her employment with respondent. In describing the mechanics of the accident, the claimant's testimony reflects:

Well, I was going to go – we was going to undo – we work in the browning – they call it the 'browning room.' And I was going to undo the machine – you know, we got these little cups on the side of the browner. I did this side, and then I

walked around over to this side to – you know, and I – you know where the CIP unit is leaned over at.

* * *

I leaned over to undo the little chain cup, and the thing came undone and flopped me in the face – the hose.

* * *

It knocked me up against the wall, got all in my face and knocked my hat and goggles, off my head. (T. 24-25)

The testimony of the claimant reflects the substance in the hose was a caustic chemical.

Claimant testified regarding the impact of the chemical solution to her face:

It was burning. And I just went to screaming because I – I – had opened my eye a little bit to see where I was at. I was holding my head because I knew I had to try to put the water – put my eyes under water my face. And I went to screaming and (inaudible) heard me and she came over and led me to the water. (T. 26)

Claimant received initial medical treatment relative to her injuries at Baptist Hospital in Forrest City, Arkansas. Thereafter, she was transferred to the MED, Regional Medical Center at Memphis. The testimony of the claimant reflects that her injuries sustained in the March 18, 2003 accident include burns to her eyes, eyelid, face and nose. In describing the medical treatment rendered to her during the March 18, 2003 visit to the emergency room at the MED, the claimant's testimony reflects:

They had put some drops in my eye – well, first, they scrubbed my face. They took me up to the burn center and scrubbed my face for about four hours. They had already been putting some drops in

my eyes. (T. 27)

Claimant was not admitted to the hospital during the March 18, 2003, visit because there were no rooms available. However, she was given a return appointment for the following day. The claimant returned to the MED on March 19, 2003 and was admitted for treatment of her injuries. (CX1, p. 5) On March 25, 2003, the claimant was discharged from the hospital. As of the date of the hearing in this claim, claimant had not been released from the care of her physicians relative to the injuries sustained on March 18, 2003. The claimant acknowledged that limited or restricted duty releases were generated by her treating physicians relative to her work activity in April 2003.

Claimant maintains that at the time of her discharge from the hospital she was directed by her treating physicians to protect her eyes at all times when she went out and to not get anything in her eyes. Further, the claimant maintains that she was informed by her doctor that she could return to work, however, she should not be around chemicals, fumes or dust, and that she should wear protective eye wear. Claimant was restricted by her treating physicians to work in a clean environment. Further claimant asserts that she was instructed by her treating physicians that while discharging employment duties should her eyes begin to bother her she should cease such activity. The claimant treated with Dr. Joe Rowland at the Med for her work-related injury. (CX1, p. 15)

As previously noted, the claimant was admitted to the MED for treatment relative to her compensable injury from March 19, 2003 through March 25, 2003. Prior to the claimant's discharge from the MED on March 25, 2003, Martha Besinger, a managed care specialist with respondent-carrier, contacted her regarding possible treatment by an eye specialist in Kentucky.

Subsequent to the claimant's discharge Ms. Besinger continued to follow-up during scheduled appointments and to relay the results of her contact to Ms. Linda Long, the health service nurse for respondent-employer. (RX1, p. 14-16) The claimant's testimony reflects that on or about April 15, 2003, she received a call from Ms. Long, and was asked to come out to the plant for a meeting regarding her job duty restrictions.

The testimony of the claimant reflects her impression that respondents, both the carrier and employer, were more concerned with getting her back to work than the possible impact the work environment would have on her eyes. The claimant asserts that she was fearful that returning to the employment of respondent would result in further injury or damage to her eyes. When claimant met with supervisory personnel of respondent on or about April 15, 2003, she remained under the active medical treatment of Dr. Rowland relative to her compensable injury. Further claimant testified that she had off-work slips from Dr. Rowland directing her to remain off work until May 2003.

The claimant maintains that when she discussed conflicting limited duty releases from Dr. Rowland with Ms. Long in mid-April 2003 she was informed that she had to be seen by a respondents' designated physician. The evidence in the record reflects that the claimant contacted Dr. Rowland following the mid-April 2003 meeting with supervisory personnel of respondent, and, as a consequence of same, his medical authorization for the claimant to return to work was withdrawn pending the claimant's evaluation by Dr. Cathleen Schanzer on April 30, 2003. (RX1, pp. 16; 25-29).

The testimony in the record reflects that the first job identified for the claimant relative to her return to limited duty work was an oil browning floor person position. (CX1, p. 46)(RX1, p.

22) Ms. Long testified that the oil browning floor person position did not require the wearing of safety goggles, however, it was her plan to modify the position:

I was going to modify it for her to have some goggles because I did not want her out in the plant without any goggles.

* * *

Well, I – at first that product did not have slices on it. They later changed the recipe and after it was oil browned, there was a spicing machine in there. And there was a lot of dust and I chose not to put her there. (T. 123)

Following the April 30, 2003, evaluation by Dr. Schanzer, the claimant was released to return to work with the restrictions that such work be in a clean environment, that she needed to be careful not to get anything in her eyes, and to use eye drops every one to two hours. (RX1, p.

27) The claimant was seen in follow-up by Dr. Rowland on May 2, 2003, and was also issued a certificate to return to work on May 2, 2003, with the limitations of working in a clean environment, be careful to avoid getting anything in her eyes, using artificial tears or drops every one to two hours, and wearing eye shields. (RX1, p. 29)

Following receipt the above-cited releases, Ms. Long testified that supervisory personnel of respondent agreed that it would be better to offer the claimant a job in the cafeteria rather than the oil browning position previously identified. On April 30, 2003, a letter was forwarded to the claimant by Ms. Long noting the results of the April 30, 2003, evaluation and release by Dr. Schanzer, and the availability of the job within the restrictions. (RX1, p. 30) Ms. Long testified regarding the events of May 1, 2003:

Received a voice mail and fax from Martha that

Betty was supposed to return to work today. And it was just another one that Dr. Rowland had signed off on it. I spoke with Brian Lennox, who was the manager in charge of the sanitation. And I spoke with him regarding her restrictions and that I was going to change the job that we had originally planned, which was the oil browning. And that I, you know, was going to change it. (T. 133)

The job identified by respondent for the claimant, pursuant to the restricted duty releases of Dr. Schanzer and Dr. Rowland, was in the cafeteria. Ms. Long testified regarding the duties of the claimant in the restricted duty job:

She was to wipe tables, pick up trash off the floor, place it in the can. She was not to empty the trash cans. She was to fill toilet tissue in the bathroom. (T. 134)

The specific restricted job duties to which the claimant was assigned, sanitation/housekeeping, reflects:

Must have safety glasses on at all times. Will be able to apply eye drops as often as needed and as ordered by doctor. Wipe tables with clean water and bleach. Pick paper up off floor. Will not be responsible for emptying trash. Will be responsible for keeping bathrooms picked up and tissue and paper towels stocked. (RX1, p. 35)

Ms. Long also testified regarding the issue of the tinted safety glasses which were provided to the claimant at the time she reported for work on May 5, 2003:

Well, on the fifth when Betty had come in, she was wearing sun glasses because bright lights bothered her eyes. So I had ordered a pair of safety glasses, tinted, so that it would help block out the bright light in the cafeteria. And the day that she came in on the fifth, we went over her restrictions and what she was and was not supposed to do. And that if

she had any problems, to please let me know. And that if anybody told her to do something she wasn't supposed to do, to immediately tell Geraldine and then Geraldine would let me know.

And I had goggles there that day and safety glasses. And I asked her which had that she preferred to wear, and she chose the safety glasses. (T. 134-135)

Ms. Long added that if the claimant desired to change from the safety glasses to the goggles she could have done so.

When claimant returned to work for the respondents on May 5, 2003, she was on the first shift sanitation. The claimant asserts that on the morning that she arrived for work, May 5, 2003, she went to the office of Ms. Long:

She told me to have a seat and she had called somebody and told him to bring me some – they was waiting on the glasses for me to use before I went to work.

* * *

And If I'm not mistaken, it was Mr. Andy brought them in there.

* * *

She put them on my face and told me do not take them off. (T. 51)

Regarding the glasses, the claimant's Exhibit No. 5, the claimant testified:

To me, it looked like a pair of sunglasses that was yellow-tinted, you know. Just – I just wore them like I was told. (T. 50)

The claimant asserts that as she later discharged her assigned job duties the glasses would slide down and she would push them back up.

During the May 5, 2003, meeting in which the claimant was provided the safety glasses she testified regarding her assigned job duties:

Clean the cafeteria, the tables, the microwaves, the chairs, the little long table and the bathrooms and the locker rooms. (T. 44)

Claimant denies that either Ms. Long or Mr. William “ Andy” Dennis provided specific instructions regarding her assigned job duties, but rather she was told by Mr. Dennis that Ms. Geraldine Sain, the lead person, would be out that morning and would provide her with instructions on her assigned job duties.

Later, the claimant asserts that Ms. Sain did come out and she in turn followed Ms. Sain to the cleaning room where a cart was prepared with everything already on it. The claimant’s testimony reflects that during the course of her contact with Ms. Sain there was no indication that Ms. Sain was aware of her medical restrictions.

The testimony of the claimant reflects that Ms. Geraldine Sain, lead person to whom she was directed by Mr. Dennis, already had a cleaning cart prepared. The claimant asserts that the cart was loaded with supplies and materials to include paper towels, toilet paper, Comet, and mop and a bucket. Claimant maintains that she followed Ms. Sain’s and was shown what her assigned job tasks were. The claimant asserts that she was directed to clean the bathroom and in doing so, testified:

I had to put Comet all in the bathroom sinks and in the commodes and take a brush and bend over and clean them. And take a rag – I had an extra rag on the cart to wipe down the commodes – the sides and the sinks. (T. 49)

Claimant asserts that the afore caused her eyes to burn, as did the cleaning solution used to clean

the tables in the cafeteria and the microwave which had a smell of bleach. Finally, the claimant maintains that she had difficulty keeping the tinted glasses, which were provided by respondent, on her face while performing assigned job duties:

Bending over, mopping, or when I had to go outside to clean up the smoking area. You know, I would turn my head so ashes wouldn't blow in my eyes.
(T. 53)

The claimant's testimony reflects that she swept up the smoke area twice a day, pursuant to the direction of Ms. Sain. Further, claimant's testimony reflects that she cleaned the bathrooms two to three times per day, except for mopping, which was done once in the morning.

The claimant's testimony reflects that the yellow tint in the safety glasses which were provided to her by Ms. Long caused her eyes to hurt more because it intensified the brightness of the light in the cafeteria. Claimant asserts that she did not feel that she had an option to request any other eye wear than that which had been provided. Claimant maintains that she attempted to broach the subject with Ms. Long was unsuccessful:

Yes, sir. Because it was brighter – brighter than a normal light. When you would put them on, it would be bright. I tried to tell Ms. Linda that one day when she approached me.

* * *

She had to go for a meeting that morning she had walked to – up to me and asked me was anybody bothering me. And I told her, no, ma'am. And I was going to tell her about the glasses but she had a meeting to go to and she said she would talk to me later. (T. 58)

The claimant asserts that her eyes continued to burn subsequent to the March 18, 2003

injury. Further, the claimant maintains that while assigned to light duty work and discharging same in the employment of respondent in early May 2003, her eyes burned more while she was at work than when she was at home.

The testimony of the claimant reflects that she worked three and one-half days while assigned to light duty for respondent in May 2003, and that her eyes got progressively worse after each day at work. The claimant last discharged employment duties for respondent on May 8, 2003. Regarding her last day at work, the testimony of the claimant reflects:

I went in that morning at 6:00, clocked in, got my cart like I always do, put my stuff on the cart. Went to the bathroom and had to put my net on, and – to start cleaning. And I got my little tear drops out to put in my eye. And when I raised my glasses up, my eye was swole, which it was already hurting anyway – this side of my face.

* * *

I was pushing the cart back around to where I was supposed to leave it and Geraldine told me – said she when I turned around and looked at her, she asked me what was wrong, she told me never mind because she could see through the glasses. I told her my eye was hurting. She said, I see it's swole. She told me leave that stuff alone right there and wait on Ms. Linda. (T. 67)

Claimant testified that she first noticed the swelling in her eye at approximately 6:30 a.m. on May 8, 2003. Ms. Long arrived for work at approximately 7:00 a.m. The testimony of the claimant reflects, with respect to her encounter with Ms. Long on the morning of May 8, 2003:

. . .She – wanted me I was standing there when she walked in the door and she said Hi. And she went in the other office and she said she'd be there in a minute. A few minutes later she came out and we

went into her office.

* * *

I had a seat. She asked me what was wrong. I told her my eye was swollen up and I lifted my glasses up to look. She said it was a little swollen. And I told her it was hurting and it was swolled and I was going home. She told me to just go on and clock in. I told her I'd done been there and had clocked in at 6:00.

And she told me would I have a seat, that – first she said that she would call Martha and I asked her for what. And she said to tell her maybe. And then she said, no. She would call the doctor herself. And I asked her why. And she said to see what they could do for me. I said I was going home. I was scared. My eye done swole up and had done been hurting. I was scared to death. I was even scared to go back out there. (T. 68-69)

The claimant asserts that after telling Ms. Long that she was going home, Ms. Long responded, “do what you got to do.” At that point, the claimant asserts that Ms. Sain walked in:

I looked at Ms. Geraldine and told her that I wouldn't be back until my eye got well – well enough to see what I can do. (T. 69)

The claimant denies that she had any intention of quitting her employment with respondent when she left on May 8, 2003. The claimant's testimony reflects:

My eye is raw. It's real raw underneath where it got burned. And when I was at work I couldn't touch them and I could barely see what I was doing. I went to Ms. Long's office the second or third morning. She had someone in there and I got some Tylenol it was hurting so bad. I wanted to talk to her, but she was busy.

* * *

No, sir. Nobody ever asked me about my eye or how I felt or how I was doing. They just wanted me to work. (T. 70)

The medical in the record reflects that the claimant was first seen by a physician relative to her eye following her May 8, 2003, departure from the premises of respondent-employer on May 15, 2003. Thereafter, the claimant has been seen consistently monthly by her treating physicians. The testimony of the claimant, as well as the medical in the record, reflects possible treatment relative to the claimant's eye in the form of a corneal transplant. The claimant testified that she has not been released by her treating physician relative to her March 18, 2003, eye injury.

Claimant asserts that she is not physically capable of returning to the employment of respondent and performing her regular job duties in the sanitation department in housekeeping because of the use of chemicals in the workplace. Claimant asserts that she would work for respondent if there was someplace where she could work in a clean environment that would not bother her eye. The claimant's testimony reflects that given the condition of her eye on May 8, 2003, she was not aware of any job at the facility of respondent-employer that she could perform.

Respondents present the testimony of Linda Long, the health service nurse of respondent-employer who is also a licensed practical nurse. Ms. Long's testimony reflects that the respondent employs approximately 500 to 550 employees. Regarding her job duties, Ms. Long's testimony reflects:

I oversee the OSHA log. I help get the people back to work. I can make sure they keep their appointments. If they need tests, I'll see that the tests are administered and get the results from the medical providers and fax them all to the adjustor.

Ms. Long testified that when there is extensive contact with an employee regarding a work injury notes relative to contact with the employee are committed to a computer at the time of the occurrence:

A lot of times – when I make contact with the employee, I try to make a note of it – of what was said and done and if there were any appointments made, things like that. Just a general knowledge for me.

* * *

Yes, sir. If it's a more extensive claim, I put it in the computer. If it's just like a cut or laceration, I'll just make a hand note in the file and keep it. (T. 116)

Ms. Long testified that the first release issued for the claimant to return to work subsequent to the March 18, 2003, accident was one dated April 11, 2003. The April 11, 2003, restricted duty release was authored by Dr. Darren Bell and provided, with respect to claimant's work activity, "nothing that would require a good binocular vision, must wear protective goggles around chemicals, no exposure to chemical fumes". (RX.1, p. 19) Ms. Long maintains that after obtaining the release she started to search for a position that the claimant could do within the restrictions. The testimony of Ms. Long reflects that her goal was to try to keep the claimant earning the money she was making at the time of the accident and that the means to achieving same was to return the employee to work within the restrictions. Ms. Long noted that she makes accommodations for medical restrictions relative to the injured employees and that to date she has always been able to successfully accommodate medical restrictions for injured employees of respondent. (T. 120)

Ms. Long testified regarding the April 15, 2003, meeting that was had with the claimant regarding her return to light duty work pursuant to the April 11, 2003, limited duty release of Dr.

Bell:

Mary and Betty came into the office so we could talk about job restrictions and putting her back to work. And myself was there. Al Elberson, safety manager, Brian Lennox, who was the manager of sanitation. Karen Legenbill was supposed to be there. She was the human resource manager. She had a previous engagement and was unable to attend. Betty and Mary were – pretty much talked about, you know, her fear about coming back to work. And I assured her that we would take every precaution to take care of her, that I did not want her re-injured and that my goal was to get her well and get her back to work. (T. 123-124)

Ms. Long disputed the claimant's assertion regarding her sensitivity to the claimant's concerns relative to her eye and returning to work:

It was not true. We talked on that day for an hour about her being scared and her returning to work and about her fears. And I told her that I would make sure that she was protected and if there was anything she felt like she couldn't do for her to come to me and we could talk about it, modify it, whatever we needed to do. (T. 124)

The testimony in the record reflects that Ms. Long informed the claimant that whatever restrictions the doctor placed on her relative to her eye the respondent would accommodate them and modify a job to fit the restrictions. When questions are raised concerning claimant's transportation to work due to a change in her shift, Ms. Long testified:

I told her we'd work around her. We'd do whatever we had to do to get her there – change her hours, I would hire a medical taxi to take her back and forth,

become very lenient with her hours. (T. 125)

The testimony in the record reflects that pursuant to the direction of respondent the claimant was seen by Dr. Cathleen Schanzer on April 30, 2003, and released to return to work on May 1, 2003. Two (2) releases were authored by Dr. Schanzer on April 30, 2003. (RX1, p 26-27) Following the April 30, 2003, visit to Dr. Schanzer, the claimant was seen by Dr. Rowland, who authored a release for the claimant to return to work on May 2, 2003, with the same or similar restrictions on her employment activity as was placed on the claimant by Dr. Schanzer. (RX1, p. 29)

Claimant did not report for work on May 1, 2003. Claimant called the human resource department of respondent to report that she would not be in for work, however, did not give a reason. Ms. Long's testimony reflects that employees may call in and report they are not going to be in for work and that they do not have to give a reason. When the afore occurs the employee is given an occurrence for each instance. Employees are allowed ten (10) occurrences within a thirty (30) day period before being terminated.

On May 5, 2003, the claimant reported for work on the first shift pursuant to the restricted duty releases authored by Dr. Schanzer and Dr. Rowland. Ms. Long's testimony reflects:

And the day that she came in on the fifth, we went over her restrictions and what she was and was not supposed to do. And that if she had any problems, to please let me know. And that if anybody told her to do something she wasn't supposed to do, to immediately tell Geraldine and then Geraldine would let me know. (T. 134)

Ms. Long noted that during the May 5, 2003, meeting with the claimant which occurred at approximately 8:00 a.m., Mr. Andy Dennis was also present. Regarding the meeting, Ms. Long

testified:

No, sir. I sat down with her – she came in at 8:00. Everybody's shift had already started. We sat there and talked about what she could and couldn't do. She signed the restriction consult. So that Andy and myself so that everybody knew what she was not supposed to do or was supposed to do. (T. 136-137)

The record reflects the presence of a Restricted Duty Consultation dated May 5, 2003, which provides that the claimant was to work in a clean environment, keep her eyes covered, and to use drops as needed. The document reflects Dr. Rowland as the claimant's physician and that the restrictions were given by the physician. With respect to the claimant's job duties, the document reflects that the claimant was always to use safety glasses cleaning the cafeteria and cleaning bathrooms. Finally, the document reflects the signature of the claimant, Linda Long, and Andy Dennis. (RX1, p. 32)

The testimony of Ms. Long reflects that to her knowledge the claimant was not supposed to do any sweeping or mopping. Further, Ms. Long's testimony reflects there was no bleach in the environment in which the claimant worked. Ms. Long acknowledged that the job description provided to the claimant noted that she was to wipe the tables with clear water and bleach.

(CX1, p. 48). Ms. Long testified:

We had originally felt there was bleach used, but it's not. It's lemon quad. It's a lemon dishwashing liquid. (T. 137)

Ms. Long conceded that respondent had bleach in the chemical room and that it is used throughout the plant and in the laundry room. Ms. Long testified that between May 5 and May 8, 2003, she saw the claimant five or six times at work; she would ask her about her condition and

if she was having any problems; and that there was no indication from the claimant that she was having any problem with her eyes until the morning of May 8, 2003.

Ms. Long testified, with respect to her contact with the claimant on May 8, 2003:

She came in and told me that her eye was hurting. And I told her to have a seat. I was taking off my coat and hanging it up. I told her to have a seat. And she said her eye was hurting, it had been hurting really bad and felt swollen. I took her glasses off and it was red. It even looked redder than it had been before. (T. 139-140)

Ms. Long testified that the claimant had denied that she had gotten anything in the eye:

Well, she said she woke up with it like that, and she stated she thought it was from working.

* * *

And she was scared that her eye was getting worse. So I told her to go home and see the – for her to try to call Dr. Rowland and Martha and see about what Dr. Rowland wanted to do for her – see her that day, or, you know, as soon as possible was what I wanted.

* * *

Yes, sir. I told her to call him and that I was going to call him. Told her to call him and tell him her eye was red and that she thought it was swollen. And I told her to also try to call. (T. 140)

The claimant was seen by Dr. Malecha on May 15, 2003, and the same restrictions on her employment activities were kept in place. The office notes of Ms. Long reflects that she talked with the claimant on May 9, 2003:

11:15 a.m. called Betty's house to see how she was doing and to see why she had not come to work or

called. Stated the doctor did not call her back yesterday. But her eye was still hurting. I told her to call and make an appointment today or as soon as possible. Call me back and let me know what was going on. She said she would call and then call me back. She asked about her check that she was to get next week. I told her I did not know when checks would be in but that I would call and check on it for her. (RX1, p. 16-17)

On May 21, 2003, Ms. Long mailed a letter to the claimant which reflected:

You have been released to return to work under light duty restrictions. When you return to work on May 5, 2003, I inform you of your job duties under your restrictions. Your restrictions are: clean environment, careful not to get anything in the eyes, use drops every 1 to 2 hours as needed. I also inform you that if you have any difficulties performing your light duty job to let me know. At your follow-up appointment on May 15, 2003, Dr. Malecha informed you that you could continue your light duty status. We have met these restrictions and we are still able to provide you with a light duty job.

Please be advised that you are receiving occurrences when you call in. We are concerned about your health, so if you have any concern about your duties, please come in, so that we can discuss them, work together to resolve any issues that you may have. (RX1, p. 133)

The testimony of Ms. Long reflects that on May 23, 2003, she received a call from the claimant as a result of the May 21, 2003 letter:

She told me she'd received the letter and she told me she wasn't coming back to work. She says she couldn't see and hung up. (T. 143)

The office note of Ms. Long relative to her May 23, 2003 telephone conversation with the

claimant varies slightly from her testimony:

9:45 a.m. Betty Young called received the letter that I mailed. Stated that she was not returning to work til she could see. Then hung up on me. (RX1, p. 17)

The testimony of Ms. Long reflects that subsequent to her May 23, 2003, conversation with the claimant, as a result of her usual procedure of stopping by human service department of respondent when she arrived at work, she noted that on numerous occasions the claimant did not call-in or show up for work. The afore was recorded in the office notes of Ms. Long. Ms. Long testified that customarily after two(2) no call-ins/ no shows by an employee the same served as a basis of termination of the employment. The testimony of Ms. Long reflects that the reason for the leniency in the claimant's instance was that she was trying to get the claimant to come back to work and be as helpful as she could.

Ms. Long noted that if she had been informed by the claimant that she was using Comet in cleaning the bathrooms and that the same was giving her problems, she would have chastised the individual who gave the Comet to the claimant and would have instructed the claimant to stay away from the use of the Comet. Ms. Long noted that she did not have an opportunity to modify the claimant's job further to eliminate either the use of Comet or any other activities that the claimant asserted adversely affected her eye due to claimant's refusal to return to work. In a letter dated June 16, 2003, the claimant was advised that her employment with respondent would be terminated as of June 23, 2003, pursuant to the attendance policy of the respondent if she did not return to work. (RX1, p. 41)

Mr. William "Andy" Dennis, the sanitation first shift supervisor for respondent-

employer, testified that during the May 5, 2003, meeting with the claimant and Ms. Long, the claimant's work restrictions were discussed and the claimant was offered a choice between safety goggles and some safety glasses, and that the claimant chose the tinted safety glasses.

(CX5) When questioned why the safety glasses furnished the claimant were tinted as opposed to being clear Mr. Dennis' response is somewhat illogical in light of the fact that tinted safety glasses furnished the claimant tended to intensify or make brighter the lighting within the claimant's work area:

Because the regular safety glasses are clear because we be out there foaming out there with the chemicals and stuff. But hers was – since she had the injury to her eye, we didn't want to – she said her eyes were hurting and didn't want no bright light to get to her eye. (T. 169)

Mr. Dennis testified regarding his recollection of the claimant's restrictions as of the May 5, 2003, meeting:

Her restrictions was no sweeping, no mopping, the only thing she was supposed to do was to wipe the tables up and pick up trash. No lifting. The only thing she could pick up was the paper and stuff on the floor.

* * *

In the breakroom and bathroom, she could pick some paper up off the floor. (T. 170)

Mr. Dennis asserted that if the claimant did in fact perform some sweeping or mopping while assigned to restricted duty, she did so of her own volition.

Contrary to the testimony of Mr. Dennis, there is no credible evidence in this record to reflect that the claimant was told not to sweep or mop by supervisory personnel of respondent in

the discharge of her assigned restricted duty on May 5, 2003. In this regard, the evidence discloses that the job description, signed off on by Dr. Rowland, in the sanitation/housekeeping did not specifically prohibit sweeping or mopping. (CX 1, p48) Further, the May 5, 2003, restricted duty consultation which was signed by the claimant, Ms. Long, and Mr. Dennis does not reflect the prohibition of sweeping and moping as a part of the claimant's restricted job duties. (CX 1, p47). Mr. Dennis' testimony reflects that the claimant's only duties with respect to the bathroom, while assigned to restricted duty, were to pick up the paper, and put in some paper towels or toilet paper.

Mr. Dennis testified regarding the actions taken by respondents in order to accommodate the claimant with respect to restricted to job duty:

. . . We - - when she came, we went over the limit to move people around so she could have that light duty in the break room. Because we have like a rotation or something. We had a lady working in the break room that had been there a long time, and we moved her out and put her back on the line just so she could come there and have that light duty.

* * *

That was the easiest job in there. I had people in my department getting mad at me because of that we had her doing. She could sit down when she wanted. She could do anything she wanted. The only thing we told her was don't sweep or do nothing. (T. 172)

The testimony of Mr. Dennis reflects that he had his lead person, Ms. Geraldine Sain, to monitor the claimant and make sure that she was okay. Mr. Dennis asserts that during the course of a typical shift he saw the claimant four or five times and that he would ask her how she was

feeling. Mr. Dennis maintains that the claimant never complained to him about any problems or request new modifications on her job duties. Mr. Dennis testified regarding his reliance upon Ms. Sain in carrying out his directions:

When I'm not around, Geraldine is my eyes. When I'm not present, I tell everybody who work for me that she's me when I'm not there. She's my eyes when I'm on the floor. I can't be in one spot all the time. I be everywhere. (T. 174)

When questioned whether it was possible that Ms. Sain could have had the claimant doing something to keep her busy, contrary to the restricted duty release, that he would not have been aware of, Mr. Dennis testified:

No. Because I put Geraldine job on the line. I said, if I catch her doing something besides what I told her to do with them tables, I was going to bet her. Because it was under restrictions. She had paperwork from the doctors and everything when her restrictions was. And I'm not going to lose my job because of somebody else. If I'm going to bet filed, I'm going to get fired for myself. (T.175-176)

Ms. Geraldine Sain, the person in day sanitization, testified that she had been employed by respondent for six years, and that the claimant work under her supervision for approximately four days in May 2003. Ms. Sain testified regarding the claimant's restricted job duty:

Well, just - - basically, she just cleaned the tables off and probably some wiping. She wasn't required to do too much. She could sit down when she got ready. She - - she - - that's all she'd to do. (T. 178)

With respect to the bathroom, Ms. Sain's testimony reflects that in addition to picking up paper off of the floor, claimant also cleaned the bowls. Ms. Sain testified that the claimant was not expected to do any sweeping or moping. Ms. Sain denies that she directed the claimant to go

outside and sweep:

No, I did not. If she swept outside - - because I told her she could take her break when she got ready and she would just say, I'm going to take me a cigarette break. I said, fine. She smokes so she'd go outside and she'll smoke. But she'd say, I needed to keep busy. She was always saying she wanted to stay busy because she don't like to not - - you know, not just do nothing.

But if she was sweeping outside, she didn't have to.
(T.180)

Ms. Sain testified that Comet was used to clean the bowls in the bathrooms, however the bowls were only cleaned once during the day, in the morning.

Ms. Sain regularly put the eye drops in the claimant's eye while the claimant performed light duty work. Ms. Sain's testimony reflects, with respect to the number of times she assisted the claimant in putting eye drops in her eye:

When she asked me. I'm not going to say a number. But whenever she asked me, I would put her drops in her eye. (T. 185)

Ms. Sain describes the claimant's eye as being a "funny color". On May 8, 2003, Ms. Sain testified that the claimant was complaining about her eye bothering her. As a consequence of the afore, the claimant was referred to Ms. Long. Ms. Sain noted that on May 8, the claimant's eye was leaking. Ms. Sain testified:

Well, she - - at first, she didn't, you know, I guess complain about it too much. She said, but it hurts sometime. (T.186)

Ms. Sain testified that at the time she was told to show the claimant to her work area she

was not provided a copy of the claimant's medical restrictions, however, she was told by Ms. Long what the claimant's duties were:

You will be cleaning tables off just with her hands,
no lifting, and wasn't supposed to be moping either
- - I don't think sweeping or moping. (T. 187)

Ms. Sain testified that she was not told by Ms. Long that the claimant was not to clean the bowls in the bathroom, and that the claimant relayed she could do so. (T188-189). Ms. Sain testified, with respect to the expansion of the claimant's job duties:

Well, not only. I just figured if she could clean the
tables off, she could wipe the sink out. (T.190)

The testimony of the claimant reflects that following the May 1, 2003, visit to Dr. Rowland and MED in Memphis, she next received medical treatment relative to her compensable injury on May 15, 2003. Claimant received medical mileage for visits to the doctors for treatment relative to her compensable injury beginning March 18, 2003, through May 2, 2003. Respondent prepared the document and submitted the medical mileage to the carrier for reimbursement of the claimant. Subsequent to May 15, 2003, each of the physician seen by the claimant relative to her compensable injury was an authorized treatment physicians that claimant has previously seen for the injury. Nevertheless, respondents did not pay medical mileage to the claimant for the visits. There is not a dispute that respondent was aware of each of the claimant's visits for medical treatment subsequent to May 15, 2003. In an October 14, 2003, correspondence to the attorney for respondent, claimant's attorney, in forwarding copies of claimant's medical reports also requested medical mileage reimbursement. (CX 1, p43)

After a thorough consideration of all of the evidence in this record, to include testimony

of the witnesses, a review of medical reports and application of the appropriate statutory provision, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 18, 2003, the relationship of employee-employer-carrier existed among the parties.
3. On March 18, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$440.00/\$330.00 for temporary total/permanent partial disability benefits.
4. On March 18, 2003, the claimant sustained an injury arising out of and in the course of her employment.
5. The claimant was temporally totally disable for the periods beginning March 19, 2003 through May 4, 2003, and May 8, 2003, continuing through the end of her healing period a date to be determined.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of March 18, 2003.
7. The respondents have controverted the payment of temporary indemnity benefits to the claimant subsequent to May 4, 2003; the payment of medical related mileage subsequent to May 2, 2003; and the difference between the claimant's appropriate compensation benefits rate and the rate actually paid the claimant for temporary total disability benefits.

CONCLUSIONS

On March 18, 2003, claimant suffered an injury within the course and scope of her

employment with respondent in the form of chemical burns to her face, eyes, and neck. Claimant was off work following her March 18, 2003, compensable injury until May 5, 2003, at which time she performed restricted job duties in her employment with respondent. Claimant performed assigned light duties or restricted job duties in the employment of respondent for three days and approximately three hours. On June 23, 2003, respondent terminated the claimant's employment.

Claimant asserts that as a results of her compensable accident on March 18, 2003, which resulted in alkaline burns to the corneal of the left eye, she is entitled to the payment of temporary total disability benefits from the date she last received such payment until she reach the end of her healing period, a date to be determined. Additionally, claimant asserts entitlement to temporary partial disability benefits to cover the time frame when she returned to the employment of respondent from May 5, 2003 through May 8, 2003. Additionally, claimant asserts entitlement to benefits under Ark. Code Ann §11-9-505(a)(1) based upon the termination of her employment by respondent. Claimant maintains that respondents have controverted the payment of the afore benefits as well as medical mileage and that her average weekly wage was far in excess of that asserted by respondent. Further, claimant noted that respondents failed to pay even the erroneous compensation benefit rate for temporary total disability benefits which they maintained that the claimant was entitled, but instead at a rate less than same. Claimant asserts that respondents have controverted all of the afore benefits.

Respondents assert that the claimant has been paid appropriate workers' compensation benefits in this claim. Respondents deny that the claimant is entitled to further temporary total disability benefits, temporary partial disability benefits, or 505 (a) benefits. Respondents maintained that if claimant was paid at a temporary total disability benefits rate less than that

accepted by respondents, the same was in error and not a controversion of benefits. Respondents deny that they have controverted claimant's entitlement to medical mileage but maintain that claimant has failed to submit a claim for mileage on an appropriate form.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The compensability of the claimant's injury is not disputed. On March 18, 2003, while discharging employment duties for respondent claimant suffered chemical burn injuries to her face and eyes. The claim was accepted as compensable by respondents and appropriate medical benefits provided to and on behalf of claimant. While some of claimant's injuries resolved, she continued to experience complaints and to receive treatment relative to her left eye. Indeed, the medical in the record reflects that the claimant, though released by treating physicians to return to restricted or light duty work, has not reached the end of her healing period relative to her left eye injury.

It is undisputed that claimant was off work following her March 18, 2003, compensable injury until May 5, 2003. The claimant's average weekly wage was \$548.00 which would generate a weekly compensation benefit rate of \$366.00. The credible evidence in the record reflects that claimant received two checks from respondents in the amount of \$645.00 during two weeks period. The testimony of the claimant reflects:

Yes, sir. And the last one I got was \$330 or \$333.
And they sent me \$172 on some adjustment or
something like that. (T.33)

The evidence clearly reflects that respondents paid the claimant indemnity benefits at a weekly

compensation benefit rate of \$322.50. (CX 4)

Claimant maintains that in computing her average weekly wage respondents did not take into account her regular over-time, shift differential pay, and incentive pay. When the afore factors are considered the evidence preponderates that the more accurate reflection of the claimant's average weekly wage during her employment with respondents is as reflected in the statement of weekly wages and the Earning Statement generated by respondents. (CX 1, p44-45). The Earning Statement contained in the record reflects the claimant's earning from the period ending March 16, 2003. Claimant's pay day for the afore period was March 21, 2003. Claimant sustained her compensable injury in the employment of respondent on March 18, 2003. An analysis of the Earning Statement reflects that as of March 16, 2003, claimant's gross earning for the year 2003 was \$7,395.12. The afore represents approximately ten weeks of the claimant's earnings as of two days prior to her compensable injury, or an average weekly wage of \$739.51.

Ark. Code Ann. §11-9-518 provides, in pertinent part:

(a)(1) Compensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of the accident and in no case shall be computed on less than a full-time workweek in the employment.

(2) Where the injured employee was working on a piece basis, the average weekly wage shall be determined by dividing the earnings of the employee by the number of hours required to earn the wages during the period not to exceed fifty-two (52) weeks preceding the week in which the accident occurred and by multiplying this hourly wage by the number of hours in a full-time workweek in the employment.

(b) Overtime earnings are to be added to the regular

weekly wages and shall be computed by dividing the overtime earning by the number of weekly worked by the employee in the same employment under the contract of hire in force at the time of the accident, not to exceed a period of fifty-two (52) weeks preceding the accident.

(c) If, because of exceptional circumstance, the average weekly wage cannot be fairly and justly determined by the above formulas, the commission may determine the average weekly wage by a method that is just and fair to all parties concerned.

In the instant claim, the evidence reflects that the contract for hire in force at the time of the claimant's accident included a base pay, shift differential, incentive pay, and overtime. Claimant was working on a piece basis at the time of her employment of with respondent. The evidence in this record reflects accurate earnings relative to the claimant's wages pursuant to the contract of hire in place at the time claimant sustained her compensable injuries. Claimant's average weekly wage was \$739.51. Sixty-six and two-third percent to the claimant's average weekly wage yields the amount of \$493.25. The maximum weekly compensation allowable for temporary total disability benefits for an injury occurring in January 2003, was \$440.00.

The evidence preponderates that the claimant earned wages sufficient to entitle her to weekly compensation benefits relative to her March 18, 2003, compensable injury at the maximum applicable rate. Respondents have controverted the difference between the claimant's appropriate compensation benefit rate for temporary total disability benefits at the maximum applicable rate and the actual rate paid the claimant.

As a result of the March 18, 2003, accident, claimant suffered injuries to her face and eyes from chemical burns. While claimant's right eye complaint or injury resolved the same has

not been the case with respect to her left eye injury. Pursuant to Ark. Code Ann. §11-9-521, claimant's compensable injuries are characterized as scheduled injuries. It is undisputed that claimant has been release on occasions to returned to restricted duties in the employment of respondent. The evidence preponderates that the claimant has not reached maximum medical improvement relative to her compensable injury nor has she been released from active medical treatment relative to her compensable left eye injury. Respondents' assertion that the claimant was released to appropriate work within her restrictions by her treating physician and that the same was provided to her such that she would not be entitled to the payment of temporary total disability benefits subsequent to the light duty release(s), is not persuasive.

In Wheeler Construction Company v. Armstrong, 73 Ark. App. 246 (2001) the Arkansas Court of Appeals specifically ruled:

In light of Ark. Code Ann. §11-9-704(c)(3) and §35 of Act 796, we must construe Ark. Code Ann. §11-9-521(a) using the plain meaning of the language that the general assembly employed. The statute expressly provides for scheduled injuries the injured employee is to receive compensation for temporary total or temporary partial disability during the healing period or until the employee returns to work, which ever occurs first. Conspicuously, absent from the statute is any indication that the injured employee show in incapacity to earn wages as a requirement earn wages as a requirement to receiving temporary benefits. This absence is key to any construction of the provision. We hold that the plain meaning of the language employed indicate that an employee who has suffered an scheduled injury is to receive temporary total or temporary partial disability benefits during his healing period or until he returns to work regardless of whether he has demonstrated that he is actually incapacitated from

earning wages.

See Armstrong, 73 Ark. App. at 151.

Due to the nature of claimant's injuries restrictions were placed on her employment activities, included; wearing the safety eye wear, working in a clean environment, nothing that would require good by binocular vision, no exposure to chemical fumes, and no use of bleach. When the claimant return to the employment of respondent on May 5, 2003, she remain within her healing period and under active medical treatment relative to her compensable injury, to include her left eye injury.

The evidence in the record reflects that prior to the claimant's May 1, 2003, release to limited duty by Dr. Schanzer respondent had identified a modified position for the claimant in the oil browning room. The position was not offered to claimant because of the spices in the products. Later, after claimant was evaluated by Dr. Schanzer and Dr. Rowland, a position identified, which entailed cleaning the cafeteria and bathrooms. Claimant was assigned the afore position. While there is credible evidence to reflect that bleach was not use to clean the tables in cafeteria, but instead a different product called lemon quat, the job description clearly provided for the claimant to clean the tables using bleach. The medical restrictions on the claimant's employment activities include a prohibition from chemical fumes and bleach. The evidence does reflect that claimant was required to clean the bowls and urinals in the bathrooms as a part of her light duty assignment and that she used Comet in the cleaning. Comet contains bleach.

Claimant performed the restricted light duty job of cleaning the cafeteria and the bathrooms from May 5, 2003, through May 7, 2003. Claimant also worked approximately two

hours on May 8, 2003. The credible evidence reflects that the claimant expressed concern regarding the safety of her eyes when she returned to the employment of respondent pursuant to the restricted duty release. The evidence discloses that while performing the restricted job duties for respondent claimant adhered to the restrictions of her treating physicians and also the application of the eye drops in her eyes during requisite time periods. On the morning of May 8, 2003, claimant registered complaints regarding her eyes, and specifically the left eye which she attribute to her employment activities with respondent. The evidence clearly reflects that throughout the time that the claimant performed limited duty activities in the employment of respondent she was in fact exposed to chemical fumes in the work place. Each morning while cleaning the bathroom at work claimant used Comet, which also contain bleach.

The testimony of Ms. Geraldine Sain, the lead person who oversaw the claimant's assignment while performing light duty work, and that of Ms. Linda Long, the health nurse, reflect that claimant relayed complaints regarding her left eye on May 8, 2003. Claimant attributed the increase in her symptoms in her left eye to her employment activities with respondent.

The evidence preponderates that the claimant remains within her healing period subsequent to March 18, 2003, to include that period subsequent to May 5, 2003. Respondents have controverted the claimant's entitlement to temporary total disability benefits subsequent to the last payment of same. The evidence preponderates that exclusive of the periods of May 5, 2003, May 6, 2003, May 7, 2003, and approximately two hours on May 8, 2003, claimant has remained with her healing period as a result of the scheduled injury and not engaged in gainful employment or work. Correspondingly, the claimant is entitled to the payment of temporary total

disability benefits exclusive of the afore period from March 19, 2003 through the end of her healing period, a date yet to be determined.

Claimant sought and obtained medical treatment subsequent to May 2, 2003, relative to her compensable injury. The evidence reflects that claimant's authorized physicians were known to respondents, in that they were the same physicians and medical providers the claimant had seen throughout the period relative to her compensable injury. There is evidence to reflect that respondents paid for the cost of claimant's medical treatment by authorized physician subsequent to May 2, 2003. The fact that respondent paid for the medical treatment evidences the fact that they received corroborating documentation, medical reports, substantiating the fact that the claimant had indeed been seen by the provider on the dates asserted. Nevertheless, respondents refused to pay claimant medical mileage associated with her visits for medical treatment subsequent to May 2, 2003.

Respondents' assertion that the claimant need only submit mileage statement on a form in order for reimbursement is not persuasive. The evidence in the record clearly reflects that respondents were aware of the claimant's address at the time of her injury. Further, the medical providers that rendered treatment to the claimant were all located in either Memphis, TN or Southaven, MS., the identities of which were known to respondents. Further, as previously noted, respondents paid the medical providers for treatment rendered to the claimant and such payment is customarily conditioned upon receipt of supportive documentation, specifically medical report evidencing the treatment. Respondents had the means to compute claimant's mileage once the demand was made nevertheless failed to do so. Respondents have controverted claimant's entitlement to medical mileage subsequent to May 2, 2003.

Finally, claimant asserts entitlement to workers' compensation benefits pursuant to Ark. Code Ann. §11-9-506 (a). It is undisputed that claimant last discharged employment duties for respondent on May 8, 2003. While respondents assert they had positions available for the claimant within the restrictions of the medical releases from her treating physicians, the evidence clearly reflect that the same was not entirely the case. Claimant expressed concerns regarding her eye and notified respondent at the time she left on May 8, 2003, that she would not be returning until her eye was healed.

The evidence in the record reflects that respondents were kept apprised of the claimant's condition relative to her eye, by way of the medical reports generated by claimant's treating physicians subsequent to May 8, 2003. Claimant candidly acknowledged that she was not aware of any position in the employment of respondent that she could perform in light of the status of her compensable eye injury.

Ark. Code Ann. §11-9-505(a)(1) provides:

Any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, where suitable employment is available within the employee's physical and mental limitation, upon order of the Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between benefits received and the average weekly wages lost during the said refusal, for a period not to exceed one(1) year.

In Torrey v. City of Fort Smith, 55 Ark. App. 226, 934 S.W.2d 237 (1996) the Arkansas Court of Appeals announced a four-part test that must be met before Section 505 applies:

(1) The employee must prove by a preponderance to the evidence that he sustained a compensable

injury;

(2) Suitable employment which is within the claimant's physical and mental limitations is available with the employer;

(3) The employer has refused to return the employee to work;

(4) The employer's refusal to return the claimant to work is without reasonable cause.

In the instant claim, the compensability of the claimant's compensable injury is not disputed. With respect to the second part of the test, testimony of Ms. Linda Long, the health services nurse and an LPN for respondent, provided testimony to reflect that she was in a position to modify any job to accommodate the claimant's medical restrictions. Consequently, while the claimant is not in a position to identify a specific job that she could perform at the employment of respondent, respondent-employer, through its representative, asserts that a position for the claimant was available relative to the physical restriction imposed by claimant's treating physicians. Accordingly, the second part of the test has been met.

In the instant claim, the evidence clearly reflects efforts made by respondents to contact the claimant subsequent to May 8, 2003. Since claimant failed to avail herself for a position with respondent which could be modified to accommodate her medical restrictions, the third and fourth parts of the Torrey test have not been met by the claimant. Claimant's claim for 505 (a) benefits is respectfully denied.

AWARD

Respondents are hereby ordered and directed to pay to the claimant temporary total disability benefits at a weekly compensation benefit rate of \$440.00, for the period covering

March 19, 2003 and continuing through the end of the claimant's healing period, a date yet to be determined, exclusive to the period May 5, 2003, through May 7, 2003. Respondents may claim credit for sums toward the discharge of aforementioned obligation. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injury of March 18, 2003.

Maximum attorney fees are herein awarded to the claimant's attorney the Honorable Gregory Bailey, on the controverted portion of this Award, pursuant to Ark. Code Ann. §11-9-715 (a)(B)(Repl. 2002).

This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge