

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F408338**

**NATASHA BAKER-KAUFFMAN**

**CLAIMANT**

**CITY OF LITTLE ROCK  
(SELF-INSURED)**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED NOVEMBER 14, 2005**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE STEVEN R. MCNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on September 7, 2005. A prehearing conference was held on July 19, 2005 and a prehearing order was filed on July 20, 2005. The prehearing order was marked as Commission Exhibit No. 1 and introduced into evidence without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable July 5, 2004, right shoulder injury.
2. The claim was accepted and medical and some temporary total disability benefits were paid.
3. The compensation rates are \$385/289.
4. Respondents have accepted a 4% body as a whole rating.

The claimant contends she is entitled to temporary partial disability benefits from

August 15, 2004 through August 20, 2004, and from September 13, 2004 through March 16, 2005, as well as attorney's fees. All other matters are reserved.

Respondents contend the claimant is not entitled to temporary partial disability benefits. Respondents contend the claimant resigned from her employment with the respondent on August 10, 2004 and began school in September 2004 and began working part-time. Respondents contend the claimant was offered employment within her restrictions; however, the claimant declined the offer.

The issues to be litigated are entitlement to temporary partial disability benefits and attorney's fees.

From a review of the record as a whole, to include medical reports, documents, briefs 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. There was a compensable July 5, 2004, right shoulder injury.
2. The claim was accepted and medical and some temporary total disability benefits were paid.
3. The compensation rates are \$385/289.
4. Respondents have accepted a 4% body as a whole rating.
5. The claimant has failed to prove by a preponderance of the evidence that she

is entitled to temporary partial disability benefits.

## **DISCUSSION**

The claimant, 24 years old, began her employment with the respondent employer in May 2004 and she started the police academy with a base salary of \$30,000 a year. On July 5, 2004, the claimant was participating in a bench press when she sustained a right shoulder injury. The claim was accepted as compensable and medical treatment was provided the claimant.

According to the claimant, she tendered her resignation on August 10, 2004 and she explained why:

In the academy you can only miss 80 hours of academic or physical classes. And, because I could not fulfill the physical part of the class, I ended up missing 78 hours. And we were going to the gun range that day, and that's 4 hours. So, even though I was there, I still got counted out because I had to sit out. So, if they were doing running for 2 hours and I had to sit on the side lines, I got counted off for those 2 hours because I could not participate. And I ended up building 78 hours. Then the day I resigned, when I wrote this letter, we were going to the firing range. I could not participate in that, and that was 4 hours. (T., p. 12, lines 18-25; p. 13, lines 1-7.)

According to the claimant, she was not offered any left handed duty jobs before August 10, 2004. After that date, the claimant received a letter from the claims adjuster advising that she could apply and take a test for a 911 call taker position. According to the claimant, it was simply an offer to put in an application for a test, not an actual offer of a job.

Under cross examination, the claimant confirmed that she had not applied for any jobs with the City of Little Rock nor had she applied for reinstatement into rookie

school. The claimant confirmed that she was going to cosmetology school 40 hours per week starting in September 2004 and she worked part-time at Payless, making \$6.50 per hour. The claimant confirmed that Dr. Charles Pearce released her on October 6, 2004, and she returned to regular activity and did not return to the doctor until February 2005. The claimant confirmed that after her March 16, 2005, surgery, she drew temporary total disability for a while and was released to light duty but she did not return to work but did return to school. The claimant withdrew her letter of resignation in March 2005.

According to the claimant, between October 2004 and March 2005, she continued to have a burning feeling and could not lift or work over her head even though Dr. Pearce had not given her any restrictions. The claimant confirmed that no offer of employment was made to her by the employer.

Jill Johnson, claim specialist for Risk Management Resources, testified that she had two conversations with the claimant about employment.

I actually had two conversations with her. The first one was the day I sent this letter. I told her I would be sending this application, or this information on the 911 call taker; that was within her restrictions; and that she should apply for the job if she wanted to work for the City of Little Rock. And then the next recruit school she would be eligible and she could do that. So this was kind of just a temporary job until she could go to the next rookie school. (T., p. 29, lines 17-24.)

\* \* \* \*

The second conversation I had with her was on September 20<sup>th</sup>, and she told me in that conversation that she had already received a PELL grant and that she'd gotten my letter but that she wasn't interested in that because she had received a PELL grant and was going back to school. I told her that was great; that I was excited for her. (T., p. 30, lines 15-20.)

The claimant was released without restrictions by Dr. Pearce on October 5, 2004 and temporary total disability benefits were continued through that date. According to Ms. Johnson, she did not hear from the claimant again until February 11, 2005, when she advised she was having problems again and needed to return to the doctor. The claimant had shoulder surgery on March 16, 2005 and was released by Dr. Pearce on March 24, 2005, to light duty and was finally released to full duty in July 2005. A 4% permanent impairment rating was accepted and is being paid. Ms. Johnson verified that she does not have authority to hire for the City of Little Rock.

Mike Knott, safety/loss control specialist for the City of Little Rock, testified that the claimant had already resigned on August 10, 2004 and that is the reason she was offered the opportunity to apply for another job.

The claimant requests temporary disability benefits from August 15, 2004 through August 20, 2004 and from September 13, 2004 through March 10, 2005. Ark. Code Ann. §11-9-520 provides that temporary partial disability is 66-2/3% of the difference between the employee's average weekly wage prior to the accident and her wage earning capacity after the accident. The term temporary partial disability refers to the phase of permanent partial disability where the employee, although able to work at some gainful occupation, is still suffering from the effects of the injury, which effects may reasonably be anticipated to disappear within the time fixed for compensation. *Anchor Const. Co. v. Rice*, 252 Ark. 460, 479 S.W.2d 573 (1972).

Respondents contend that temporary total disability benefits were paid to the claimant following the injury through her release by Dr. Charles Pearce on October 5, 2004. Disability benefits ceased at that time. Dr. Pearce's October 5, 2004, report

reveals that he released the claimant with no restrictions and assigned a 0% permanent impairment. No follow-up appointments were made. The claimant did not return to the doctor until February 17 of 2005, with complaints of recurrent pain in her right shoulder.

It is undisputed that the claimant tendered her resignation from her employer on August 10, 2004, and then made a request on March 25, 2005, to withdraw her resignation. It is also undisputed that the claimant enrolled in cosmetology school in September 2004 for 40 hours per week and worked part-time in the evenings at Payless Shoes. Even after the claimant had tendered her resignation, an offer of consideration for a 911 job with the city was made to the claimant in September 2004 and the claimant declined consideration, since she had already made plans to go to school.

After considering all the credible evidence, I find the claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary partial disability benefits for the time periods identified. The claimant was released to full duty work as of October 5, 2004. She resigned from her employment with the respondent employer and pursued cosmetology school full-time. The claimant clearly made no attempts to continue her employment with the respondent employer after tendering her resignation. While an offer of employment was not actually made the claimant for the 911 call taker position, the notification that a position was available for consideration was made. The claimant indicated she was not interested and had made plans to enter cosmetology school.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary partial disability benefits. The claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**