

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F402649**

**TIMOTHY J. SULLIVAN**

**CLAIMANT**

**SISSON CONSTRUCTION**

**RESPONDENT EMPLOYER**

**COMMERCE & INDUSTRY INSURANCE CO.**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED JANUARY 4, 2005**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JOHN P. TALBOT, Attorney at Law, Pine Bluff, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing on November 10, 2004, in Little Rock, Arkansas. A prehearing conference was held on October 12, 2004 and a prehearing order was filed on October 13, 2004. The prehearing order was introduced as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. There was a compensable injury on June 18, 2003.
2. The compensation rate is \$221.

The claimant contends he is entitled to temporary total disability benefits from November 14, 2003 through May 13, 2004. Further, the claimant would like the respondents to arrange the appointment with Dr. Ruth Thomas for the change of physician.

The respondents contend that all appropriate temporary total disability payments have been made, as the claimant was released to light-duty work in mid-November 2003, and light-duty work was available and the claimant did not accept such. Temporary total disability benefits were last paid on November 13, 2003. The respondents agreed to arrange the appointment with Dr. Ruth Thomas.

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. There was a compensable injury on June 18, 2003.
2. The compensation rate is \$221.
3. The claimant has proven by a preponderance of the evidence that he remained in his healing period and had not returned to work from November 14, 2003 through May 12, 2004.

**DISCUSSION**

The claimant, 22 years old, was hooking up some rigging when a steel beam fell and crushed his left foot. The claimant treated with Dr. Ahmed Khan and the Dr. John Thrash. The claimant testified that he was eventually released to light duty and he went to his employer and spoke with Mr. Robert about returning to work and nothing was

available. The claimant verified that his job with the respondent employer required lifting in excess of 20 pounds, the use of a shovel and pushing and pulling heavy loads. The claimant testified that between November 2003 and May 2004, he was only able to stand for 30 minutes at a time. The claimant also verified he had not seen the November 10, 2003, release from Dr. Thrash. The claimant verified that after finding no work available in November 2003, from his present employer, he did work two days for Dub Clenney Construction doing welding and earned about \$250. The claimant testified that he kept having sharp pains and burning in his foot and could not continue working.

Robert Sisson, owner of his welding business, testified that the claimant was a millwright/welder and he installed machinery in factories. Mr. Sisson testified that light-duty work was available in November 2003, such as working in the fab shop and cleaning the shop. Mr. Sisson testified the claimant did not request light-duty work in November 2003, but did request light-duty work in May 2004 and none was available. Mr. Sisson testified his wife spoke with the claimant in November 2003. Mr. Sisson testified that light-duty work is available most of the time except not in May 2004.

Mr. Sisson verified he did not send a letter to the claimant or make any contact with the claimant advising that light duty was available.

The claimant contends he was still in his healing period and had not returned to work from November 14, 2003 through May 12, 2004.

The claimant sustained a scheduled injury to his left foot. The claimant is, therefore, entitled to temporary total disability compensation while he/she is within his/her healing period and has not returned to work. See, Ark. Code Ann. §11-9-521(a)

(Supp. 1999); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

I find the claimant has proven by a preponderance of the evidence that he remained in his healing period and had not returned to work from November 14, 2003 through May 12, 2004. The claimant has a scheduled injury and testified he tried to work but was unable to do so. The medical report on August 4, 2003, reflects the claimant's foot was swollen and x-rays revealed a comminuted fracture at the base of the third metatarsal. By March 26, 2004, Dr. Thrash was still diagnosing the claimant with a non-union of the third metatarsal fracture. The claimant was finally released and assigned an impairment rating on May 12, 2004. On April 5, 2004, Dr. Thrash opined that the claimant had remained temporarily totally disabled during his treatment. I found the claimant to be a credible witness and the medical evidence supported his testimony.

#### **ORDER**

The claimant has proven by a preponderance of the evidence that he remained in his healing period and had not returned to work from November 14, 2003 through May 12, 2004.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**