

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204024/F304303

DEANNA PALMER	CLAIMANT
TYSON POULTRY, INC.	NO. 1 RESPONDENT
TYNET CORPORATION INSURANCE CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	NO. 3 RESPONDENT

OPINION FILED FEBRUARY 10, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by KEITH WREN, Attorney, Little Rock, Arkansas.

Respondents No. 1 represented by MELISSA LEE, Attorney, Springdale, Arkansas.

Respondent No. 2 represented by DAVID PAKE, Attorney, Little Rock, Arkansas.

Respondent No. 3 represented by JUDY RUDD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 3, 2006, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 13, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. On April 5, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her knee on April 5, 2002.

4. The claimant sustained a compensable injury to her back and right shoulder on March 14, 2003.

5. Medical expenses have been paid to date except for some medication and an additional TENS unit.

6. All parties agree that Respondents No. 1 accepted 7 percent to the back, 9 percent to the right lower extremity and 6 percent to the right shoulder.

7. The claimant's healing period ended for all injuries by April 16, 2004.

8. The claimant is entitled to a weekly compensation rate of \$255.00 for temporary total disability and \$191.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Temporary total disability from September 25, 2003, to January 13, 2004.

2. Additional medical to include a TENS unit and medication.

3. Permanent and total disability or wage loss over her impairment.

4. Second Injury Fund liability and Trust Fund liability.

5. Attorney's fees.

In regard to the foregoing issues the claimant contends that on April 5, 2002, the claimant sustained a compensable injury to her knees from a fall at work. On March 14, 2003, claimant sustained compensable injuries to her right shoulder and lower back when she fell at work. On April 6, 2004, claimant was assigned a 7 percent PPI to the BAW by Dr. Michael Morse for her lower back injury. On April 16, 2004, Dr. Joseph Ricciardi assigned claimant a 9 percent PPI to the right lower extremity for her knee injury and 6 percent PPI to the BAW for her right shoulder injury. All of the ratings have been accepted and are being paid. During the time that the claimant was in the healing period and unable to return to work, her TTD benefits were cutoff in September of 2003 and were not reinstated until January of 2004. Claimant contends that she is entitled to TTD benefits for this time period. The claimant was prescribed a second TENS unit for her right knee on July 28, 2004, but that prescription has been denied. In addition, respondents have refused to pay for claimant's prescription stomach medication, Prevacid. This medication was prescribed to counteract the side affects of medication she had been prescribed for her work injuries and, therefore, should have been paid for by the respondents.

In regard to the foregoing issues Respondents No. 1 contend that they have accepted the right shoulder, right knee, and back injury claim as compensable, that all appropriate medical benefits have been paid to date. The respondents contend that the claimant was paid a total of \$10,199.91 in temporary total disability benefits for the periods of March 17, 2003, to September 24, 2003,

and from January 14, 2004, to April 20, 2004, when her authorized treating physicians had the claimant off work. The respondents contend that light duty was available for the claimant during the period of September 25, 2003, thru January 13, 2004. The claimant did not return to light duty at that time because she had voluntarily left the respondents employ on April 28, 2003. The respondents contend that the claimant is not entitled to a second TENS unit because she currently has a TENS unit that is equipped with four leads which enable her to attach the unit to her back and to her knee. The respondents contend that the claimant is not receiving Prevacid for any work-related injury or as a result of any work-related injury. No treating physician has prescribed current prescriptions of Prevacid to the respondents' knowledge. The respondents have accepted the 7 percent BAW rating for her back by Dr. Morse, the 9 percent right lower extremity rating by Dr. Joseph Ricciardi, and the 6 percent BAW rating for her right shoulder. The respondents have paid \$9,168.00 in permanent partial disability payments to date. The respondents contend that the claimant is not entitled to permanent and total disability nor any additional amount of benefits for wage loss. The respondents contend that the Second Injury Fund should be joined due to the claimant's previous injuries and that the Death and Permanent Total Disability Trust Fund should be joined due to the claimant alleging that she is permanently and totally disabled. The respondents reserve the right to supplement the contentions upon the completion of pre-trial discovery.

In regard to the foregoing issues Respondent No. 1. contends that it cannot state any contentions relative to its liability until such time as discovery has been completed.

In regard to the foregoing issues Respondent No. 2 contends that pursuant to Ark. Code Ann. §11-9-525(b)(1), Second Injury Fund liability must be determined prior to consideration of the Death and Permanent Total Disability Trust Fund liability. If the Second Injury Fund is found to not have liability and the claimant is found to be permanently and totally disabled, the Trust Fund stands ready to commence weekly benefits in compliance with Ark. Code Ann. §11-9-502. Therefore, the Trust Fund has not controverted the claimant's entitlement to benefits. Respondents No. 1 must first pay permanent partial disability in the form of the anatomical ratings for the claimant's compensable injury before payment of permanent total disability benefits. Additionally, Respondents No. 1 are not entitled to credit against its \$75,000.00 maximum for payment of the claimant's permanent partial anatomical ratings for the compensable injury. The Death and Permanent Total Disability Trust Fund will state its contentions upon completion of discovery.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1. Respondents No. 1 submitted medical information marked Respondents No. 1's Exhibit No. 1, non medical information marked Respondents No. 1's Exhibit No. 2 and the deposition of the claimant marked Respondents No. 1's Exhibit No. 3. Respondent No.

2 submitted medical reports marked Respondent No. 2's Exhibit No. 1 and the claimant's answers to interrogatories which are marked Respondent No. 2's Exhibit No. 2. All the exhibits were admitted without objection except that the claimant objected to the claimant's deposition being admitted. After discussion, the deposition was admitted over the claimant's objections.

DISCUSSION

The claimant testified that she first began working for the respondent in July or August of 1997. The claimant testified that she was in packing and grading explaining that this was a very physical type job in that it required lifting up to thirty or forty pound boxes, sorting, packaging bags of chicken weighing two to five pounds each into a box. The claimant testified that she was on her feet approximately 98 percent of her working shift. The claimant testified that her job required a considerable amount of bending at the waist as well as kneeling and lifting.

The claimant testified and it has been stipulated that on April 5, 2002, she sustained a compensable injury when she tripped over some hydraulic hoses and injured her knees. The claimant testified that she was taken to the nurse's station and her right knee had already begun to swell and her left knee was skinned up. The claimant testified that she went back and finished her shift even though it was very painful. The claimant testified that she missed approximately one week of work as a result of this fall. The claimant testified that when she did return to work it was at a sitting down job but then was eventually returned to full duties.

The claimant testified that in March 2003 she was working full duty although she was in a lot of pain.

The claimant testified that it has also been stipulated by the respondents that she sustained a second compensable injury on March 14, 2003. The claimant testified that she was coming down some stairs and even though she was holding on to both sides of the railing she slipped. The claimant stated that she came down on her spine on the steps and that she pulled her right arm in the socket trying to hold on to the railing as she bounced down the metal edge steps. The claimant remembers that when she came to the bottom she fell forward on her knees. The claimant agreed that she injured her back in this incident as well as her right shoulder. The claimant testified that as a result of this accident she had surgery by Dr. Ricciardi on her rotator cuff. The claimant was asked if she had surgery on her back and the claimant responded, "No." The claimant testified that she did receive temporary total disability until September 24, 2003. The claimant testified that she attempted to return to work on light duty but was told by the respondent to go home. The claimant testified that she had surgery on her knee on January 14, 2004, and did receive temporary total disability after this surgery. The claimant testified that before her knee surgery, she did attempt to go back to work and did go to the respondent's business to inquire if there was a job which she would be able to do and it was at this time that the respondent told her to go home. The claimant testified that she still has problems with her right knee in that she has pain as well as

bursitis. The claimant testified that her lower back is very sore and that she takes Neurotin as well as Darvocet every day for pain. The claimant testified that it is difficult for her to sit for long periods of time nor can she stand or travel for any length of time because it makes her back sore. The claimant explained that she takes Neurotin and Darvocet for her back, shoulder and knee problems. The claimant testified that these medications have side effects which make her dizzy and groggy and it affects her ability to respond as fast as she once did. The claimant testified that she has to take medication for her stomach noting that the pain medicine makes her sick to her stomach, she has stomach pain and diarrhea. The claimant testified that she takes Prevacid for her stomach every day and that she purchases this medication herself. The claimant testified that the respondent initially paid for her stomach medication but at some point they refused to pay for the stomach meds. The claimant testified that she also uses a TENS unit twenty four hours a day for the pain in her back. The claimant testified that she has been prescribed a TENS unit to address the pain in her right knee and leg. The claimant testified that the respondent has refused to provide a TENS unit for her right leg. The claimant testified that she did not take Neurotin or Darvocet or use a TENS unit before her accidents. The claimant testified that she does have a tremor in her right arm which she associates with nerve damage due to her back problems. The claimant was asked what she considered to be her capabilities and the claimant responded that she could probably stand for about ten

or fifteen minutes and sit for about ten minutes without having pain. The claimant testified that she did not know if she could continually lift anything of much weight due to the pain in her back as well as in her right shoulder. The claimant was asked if she could bend over and pick something up off the floor and the claimant responded that she probably could bend over to pick it up but it would be painful to stand back up. The claimant testified that squatting is out of the question.

The claimant testified that about thirty years ago she had an anterior neck fusion between the third, fourth and fifth vertebrae following a car accident. The claimant testified that this still does not give her any problems and she was able to return to whatever type work she wanted to after this surgery.

On cross examination, the claimant agreed that in 1997 when she went to work for the respondent on her application she did make them aware of her car accident and subsequent neck surgery. The claimant testified that she believes that her last day of work for the respondent was March 14, 2003. The claimant was asked if she told anyone at the respondent's business that she was quitting or that she was considering retirement and the claimant responded that considering her age she considered it to be her last job but that she does not recall mentioning it to anyone. The claimant agreed that she began drawing social security in January 2002 in the amount of \$428.00 per month but is currently drawing \$534.00 per month. The claimant testified that although there has been some mixup as to her medical coverage through Medicaid, she currently is

paying from one to three dollars on her medications due to her income.

On cross examination by Respondent No. 2, the claimant testified that at the time of her motor vehicle accident she was working with her husband in a business called Palmer Construction. The claimant explained that she not only did bookkeeping for the construction company but she also helped out doing carpentry work, painting and was a hod carrier all of which were very physical jobs. The claimant testified that when she went to work for the respondent she was able to do all of the work required of her and that her neck surgery did not hinder her in any way. The claimant was asked if she was having any problems currently with her neck and she answered, "No." The claimant testified that to her knowledge she has not received an impairment rating for her neck. The claimant testified that when she injured her knee in April 2002 it is her understanding that she had a non displaced fracture on the top of her tibia. The claimant agreed that Dr. Ledbetter treated her for her tibia problem and that he had given her a zero percent rating for this problem. The claimant also agreed that before her fall in March 2003 she was essentially pain free and did not have any physical problems keeping her from working. The claimant testified that when she fell down the stairs in March 2003 she fell down between ten and thirteen steps and injured multiple parts on her body. The claimant agreed that at the time of her March 2003 fall she hurt her right shoulder, low back and thoracic spine as well as both knees. The claimant testified that she had

scratches and bruises on several areas of her body. The claimant testified that she primarily had problems with her right knee although she injured both but the right knee was so painful it overshadowed her left. The claimant testified that Dr. Ricciardi did recommend an MRI for her left knee but that the respondents would not authorize it. The claimant agreed that Dr. Ricciardi repaired the meniscus of her right knee. The claimant also agreed that she did not have any meniscus problems before she fell in 2003. The claimant testified that before her fall in 2003 she was unaware that she had any arthritis in her back. The claimant agreed that the impairment rating for her back, right shoulder and right lower extremity are all a result of her March 2003 fall. The claimant testified that she began receiving social security benefits before her March 2003 fall. The claimant testified that her social security benefits were not reduced because she was working full time at Tyson. The claimant testified that it was her plan to continue working at least another five to ten years before retiring.

The claimant testified in her deposition that she was sixty-eight years old and is currently divorced but living in the same house with her ex-husband. The claimant testified that she began working for the respondent on July 28, 1997, as a packer. The claimant explained that her job primarily was placing bags of chicken into boxes and putting them back on a conveyor belt.

The claimant agreed that from 1960 to 1997 she was self employed with Palmer Construction which was a business she and her

ex-husband ran. The claimant testified that she did the bookkeeping, some of the manual labor as well as some of the selling of the houses which they built. The claimant testified that she has had a real estate licence but currently does not have a licence. The claimant testified that the type of manual labor which she did for Palmer Construction included painting, carpentry work, hod carrying and doing ceramic tile. The claimant testified that she did not have any injuries while working for Palmer Construction. The claimant testified that she has worked as a kitchen supervisor and cook for Ramada Inn and she worked as a snack shop manager for the Passion Play. The claimant testified that she had a part time/full time business called Uncle Virgil's Barbeque for about one year. The claimant testified that she has a high school education but no further training.

The claimant testified that she still is experiencing some bit of pain in her right knee and that she has pain in her left knee sometimes. The claimant testified that she takes Neurotin, Darvocet, Diovan for high blood pressure, Prevocet and Prevacid for her stomach due to the pills which she takes. The claimant testified that she also takes a hormone pill as well as a pill for her arteries. The claimant testified that she takes Lexapro for depression.

The claimant was asked what her employment status was with the respondent. The claimant testified that, "I quit because this second injury. I just could not work, I was in so much pain." The claimant testified that the respondent did offer her light duty and

that she tried it but the head nurse told her to go home. The claimant testified that she wears a TENS unit with four pads on her back all the time which helps relieve some of her pain. The claimant agreed that it was sometime in March or April 2003 that she quit working for the respondent. The claimant testified that it was sometime in the fall 2003 after she had finished her physical therapy that she tried to go back to work for the respondent. The claimant testified that she began receiving social security when she was sixty-five and agreed that she had already been receiving social security before her second accident. The claimant testified that she is on Medicare and Medicaid. The claimant testified that she has a tremor in both of her upper extremities and even in her feet some but it is mainly on the right because she is right-hand dominant. The claimant testified that this tremor is caused by nerve damage in her back resulting from her last injury. The claimant was asked if she is using her TENS unit on her knee and this claimant responded, "No, I was not allowed to have one by the respondent."

On cross examination by the Second Injury Fund, the claimant agreed that she has had two surgeries subsequent to her March 14, 2003, fall. The claimant agreed that she has had surgery on her right shoulder and on her right knee. The claimant testified that the tremors which she is experiencing began after her March 14, 2003, fall. The claimant testified that she has no other outside income other than her social security check. The claimant testified that the Neurotin which she takes causes her depression

and that the Darvocet she takes upsets her stomach. The claimant testified that the Neurotin also causes her to feel like she is in slow motion and that everyone else is going fast.

Frederick Becker testified on behalf of the respondents stating that he had been employed by the respondent for eleven years. Mr. Becker testified that he is the plant personnel manager and recalls meeting the claimant. This witness testified that he has reviewed the claimant's personnel records in preparation for his testimony. This witness identified a document from Respondent No. 1's Exhibit No. 2, Page 8, as a separation notification form. This witness testified that according to this form the claimant left the employment with the respondent due to retirement on April 28, 2003. Mr. Becker testified that the claimant was eligible for rehire by the respondent. Mr. Becker explained the formula the respondent uses that would qualify an employee to be separated as a retiree. Mr. Becker testified that his records do not reflect anything concerning a 401K for the claimant noting that this type of information would not be appropriate for a personnel file. Mr. Becker testified that if the claimant wished to be rehired by the respondent she would need to come in and fill out an application at which time the respondent would make a good faith effort to find a position that would not violate her permanent restrictions. Mr. Becker testified that they have no application on file from the claimant subsequent to the date of her retirement.

On cross examination, Mr. Becker testified that a separation notification form is filled out by a team member's supervisor and

then sent to the personnel office. This witness testified that this form is not a joint effort between the team member and anyone in the personnel office. Mr. Becker testified that according to the claimant's personnel file she had no discipline problems or attendance problems.

On cross examination by Respondent No. 2, Mr. Becker agreed that according to the respondents' formula the claimant would be eligible to draw retirement through her 401K. This witness testified that he had no way of knowing if the claimant is presently drawing retirement from the respondent. Mr. Becker testified that whether a claimant can draw retirement through the respondent is based upon whether or not they participated in the 401K plan. Mr. Becker testified that he did not know whether the claimant participated in a 401K plan. Mr. Becker agreed that if the claimant did not participate in a 401K plan she would not be entitled to any type of retirement from the respondent. Mr. Becker testified that based on the number of years the claimant has worked as well as her age, if she had been participating in a 401K plan through the respondent she would be receiving retirement benefits. Mr. Becker testified that if the claimant did not have a 401K plan, he did not see any benefit financially for her to retire from the respondent's business.

On redirect examination by Respondents No. 1, Mr. Becker testified that he was not aware of any medical benefits due or available to a retiree from the respondent.

Cindy Boyd testified that she was employed by the respondent and had been working for them for five and a half years as the complex nurse manager. Ms. Boyd was asked what the claimant's restrictions were during the period of September 25, 2003, to January 13, 2004. Ms. Boyd responded that the claimant had been returned to work with modified duties of no repetitive use of the right upper extremity, no lifting or carrying more than five pounds, no bending or stooping, must have time off three times a week for therapy and must be able to get up from the chair and move about every fifteen minutes. This witness testified that these restrictions were given to the claimant from Dr. Ricciardi. This witness testified that during the period of time stated above there was a light duty position available in rework which would meet these restrictions. Ms. Boyd testified that to her knowledge the reason the claimant was not placed in a light duty position was because she had resigned or retired.

On cross examination by the claimant's attorney, Ms. Boyd testified that the nurse's notes do set forth that the claimant did come to the plant in September 2003. Ms. Boyd was shown page 50 of the claimant's medical exhibit and agreed that this form was from Dr. Ricciardi and indicated that the claimant could not return to work. Ms. Boyd agreed after looking at the document that the date of the note was October 9, 2003.

On rebuttal the claimant testified that she never asked to retire from the respondent's business. The claimant testified that she did not participate in the respondent's 401K program. The

claimant stated again that she had no 401K nor did she resign. The claimant stated that she could not come to work and she explained that and stayed home.

The medical records set forth the treatment which this claimant received for her compensable injuries. An MRI of the claimant's right shoulder performed on May 7, 2003, revealed a full thickness tear of the supraspinatus tendon with no significant musculotendinous retraction identified. The claimant underwent an MRI of her lumbar spine on June 5, 2003, which identified at L2/3, L3/4, L4/5 and L5/S1 small broad-based disc bulges that mildly flattened the ventral aspect of the thecal sac with no spinal channel stenosis nor nerve root impingement. This test further noted that there are mild degenerative disc changes at L2/3 and L3/4 and moderately degenerative disc changes at L4/5 and L5/S1. This test also set forth that there was 3 MM of degenerative spondylolisthesis of the L4 on L5 and mild to moderate neuroforaminal narrowing at L4-5 and L5-S1 but no evidence of nerve root impingement within the neuroforamina. An MRI of the claimant's cervical spine made on June 5, 2003, showed evidence of prior fusion of the C4 through C6 vertebrae and that the alignment is normal. This test also showed that at C6/7 she had moderate disc bulge that moderately flattens the ventral aspect of the thecal sac and abuts the ventral aspect of the spinal cord with no spinal cord stenosis and no spinal cord edema. Also at C3/4 the claimant had a small disc bulge that moderately flattens the ventral aspect of the thecal sac with no spinal cord stenosis nor

impingement on the spinal cord and there are mild degenerative changes at this level. Dr. Joseph Ricciardi operated on the claimant to repair a torn right rotator cuff on June 18, 2003. Following the claimant's shoulder surgery she underwent physical therapy. D. Ricciardi writes on June 22, 2003, that the claimant is having complaints of persistent knee pain subsequent to her fall noting that her knee has never been completely evaluated. The claimant underwent an MRI of her thoracic spine on August 21, 2003, which revealed mildly increased thoracic kyphosis and moderate to marked degenerative disc disease in the mid thoracic vertebrae. On August 26, 2003, Dr. Ricciardi writes that the claimant continues to complain of right knee pain. The claimant related a history to Dr. Ricciardi that on April 4, 2003, she fell and injured her right knee but was returned to work. The claimant reports that ultimately a bone scan was obtained and revealed that she had been walking on a tibial plateau fracture. The claimant reports that her knee was reinjured on March 14, 2004, and that she has had complaints of peripatellar pain at this time. An MRI was recommended. On September 4, 2003, the claimant had an MRI of her right knee which showed an oblique tear of the anterior horn of the medial meniscus, meniscal degeneration of the posterior aspect of the left medial meniscus with no evidence of a tear, moderate chondromalacia patella and a small right knee effusion. On September 9, 2003, Dr. Ricciardi writes that the claimant is a candidate for knee surgery and the risks were discussed with the claimant. The claimant was returned to work with restrictions of

no repetitive use of the right upper extremity and she should have no lifting or carrying more than five pounds and no bending or stooping. It is further noted that she should have time off three times a week for therapy and must be able to get up from a chair and move about every fifteen minutes. On October 2, 2003, Dr. Michael Morse took the claimant off work until further notice. Dr. Ricciardi writes on October 9, 2003, that he has reviewed the claimant's MRI of her right knee which revealed a complex tear of the medial meniscus. Dr. Ricciardi writes that they are considering scheduling surgery and recommended that she undergo a bone scan as recommended by the neurologist. Dr. Ricciardi further notes that the claimant has been given a no return to work note by her neurologist. Dr. Michael Morse writes on October 22, 2003, that he has reviewed her bone scan which showed some degenerative and preoperative changes as well as changes related to her kyphosis but that there is no specific pathology which will help direct her treatment. Dr. Morse notes that the claimant is going to have arthroscopic surgery of her right knee and notes that she has some restrictions set forth by Dr. Ricciardi, her orthopedist, which he would agree with. Dr. Morse writes that the claimant can return to work on October 27, 2003, noting that she needs a cushion for her chair. Dr. Michael Morse writes on December 1, 2003, that he has seen the claimant for her spine pain noting that the Ibuprofen is upsetting her stomach so he switched her to Bextra. Dr. Morse notes that the claimant has a TENS unit which is helpful for her back pain. Dr. Morse recommended that the claimant can continue

her physical therapy and prescribed medications. Dr. Ricciardi writes on December 19, 2003, that the claimant is still having persistent right knee symptoms and surgery for her right knee was scheduled for January 14, 2004. Dr. Ricciardi writes that the claimant also states that her left knee is still bothering her and she would like to have it evaluated. Dr. Ricciardi writes that the claimant has tried to return to work with a light duty status but was sent home by the office nurse according to the claimant. On January 14, 2004, the claimant underwent a surgical procedure on her right knee to repair a torn right medial meniscus. Following the claimant's surgery she was followed by Dr. Ricciardi and continued to be seen by Dr. Morse for her back. On April 6, 2004, Dr. Morse writes that the claimant has reached MMI and assessed her with a 7 percent whole body impairment to her back. Dr. Alice Martinson evaluated the claimant on April 15, 2004, and assessed impairment ratings for her right lower extremity as well as her right upper extremity. All these impairment ratings have been accepted and paid by the respondent. Dr. Ricciardi saw the claimant on July 22, 2004, noting that she is still having persistent right knee pain. The doctor notes that the claimant was inquiring as to getting a second TENS unit to be used on her right knee. The claimant reports that although the TENS unit which she uses on her back has four leads, when she puts two on her knee it takes power away from her back and she does not get good pain control. On July 28, 2004, Dr. Ricciardi, after some

investigation, prescribed a four-lead TENS unit for the claimant to be used on her right knee.

After a complete review of this record, I find that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injuries to include the acquisition of a second TENS unit for her knee as recommended by Dr. Ricciardi on July 28, 2004. These additional meds should also include the claimant's prescription stomach medications which she has to take due to the side affects of her pain and anti-inflammatory medications. The claimant has also proven by a preponderance of the evidence that she is entitled to additional temporary total disability from October 7, 2003, until October 27, 2003. Dr. Michael Morse in a note dated October 7, 2003, took the claimant off work and on a similar note dated October 22, 2003, he returned the claimant to work on October 27, 2003. On November 18, 2003, Dr. Ricciardi also returned the claimant to work at modified duties and set forth restrictions. The claimant, in her deposition, set forth that she quit because of the injury she sustained on March 14, 2003. The claimant stated that she could not work because she was in so much pain and did agree that the respondent did offer her light duty and that she had tried it but that the head nurse told her to go home. The claimant, in her rebuttable testimony, stated that she could not come to work and that she explained that to the respondent and stayed home.

I also find based on the record, that the claimant has failed to prove by a preponderance of the evidence that she is permanently and totally disabled. I do find that the claimant is entitled to wage loss over her impairment ratings in the amount of 13 percent to the body as a whole. This assessment of wage loss is based on the claimant's age, education, transferrable job skills and physical restrictions and limitations. I find that there is no Second Injury Fund liability in this case. Although the claimant has testified and the records set forth that she did undergo a cervical fusion thirty or more years earlier, the claimant's testimony has been consistent that she experienced no limitation or problems from this cervical injury and that all of her problems relating to her inability to work are related to her March 14, 2003, injury. Therefore, Respondents No. 1 shall pay wage loss to this claimant in the amount of 13 percent to the body as a whole.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On April 5, 2002, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her knee on April 5, 2002.
4. The claimant sustained a compensable injury to her back and right shoulder on March 14, 2003.
5. Medical expenses have been paid to date except for some medication and an additional TENS unit.

6. All parties agree that Respondents No. 1 accepted 7 percent to the back, 9 percent to the right lower extremity and 6 percent to the right shoulder.

7. The claimant's healing period ended for all injuries by April 16, 2004.

8. The claimant is entitled to a weekly compensation rate of \$255.00 for temporary total disability and \$191.00 for permanent partial disability.

9. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injuries to include the payment of her stomach medications as well as a second TENS unit for her right knee. This additional medical treatment shall be paid by Respondents No. 1. See discussion above.

10. The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from October 7, 2003, through October 27, 2003. See discussion above.

11. The claimant has failed to prove by a preponderance of the evidence that she is permanently and totally disabled.

12. The claimant has proven by a preponderance of the evidence that she is entitled to wage loss in the amount of 13 percent to the body as a whole to be paid by Respondents No. 1. See discussion above.

13. There is no Second Injury Fund liability found in this matter. See discussion above.

14. The respondents have controverted this claimant's entitlement to additional benefits.

15. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injuries to include the payment of her stomach medications as well as a second TENS unit for her right knee. This additional medical treatment will be paid by Respondents No. 1.

The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from October 7, 2003, through October 27, 2003, to be paid by Respondents No. 1.

The claimant is not permanently and totally disabled but is entitled to wage loss in the amount of 13 percent to the body as a whole to be paid by Respondents No. 1.

There is no Second Injury Fund liability found in this matter.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE