

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509040

TERESA A. THOMPSON, EMPLOYEE	CLAIMANT
ROBERT BOSCH TOOL CORPORATION, EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED DECEMBER 13, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on November 3, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. John C. Barttelt, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. David Landis, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted November 3, 2006, to determine whether the claimant sustained a compensable right shoulder injury arising out of and during the course of her employment with Robert Bosch Tool Corporation.

A prehearing telephone conference was conducted in this claim on August 30, 2006, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" without objection.

It was stipulated that the employee/employer/carrier relationship existed at all relevant times through June 10, 2005; that the claimant's average weekly wage

was \$383.20, entitling her to compensation rates of \$255.00 per week for temporary total disability and \$192.00 per week for permanent partial disability; that respondents accepted and paid benefits related to a right carpal tunnel injury, including medical expenses through on or about September 26, 2005, as well as some temporary total disability; and that respondents had controverted compensability of the claimant's right shoulder complaints.

By agreement of the parties, the primary issue presented for determination concerned compensability of a right shoulder injury. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that she sustained a gradual onset, right shoulder injury which arose out of and during the course of her employment with Robert Bosch Tool Corporation, culminating in her disability on or about June 10, 2005; that she was entitled to temporary total disability benefits for the period beginning June 10, 2005, and continuing through October 10, 2005, less credit for any disability benefits paid for the admitted carpal tunnel syndrome; that she was entitled to temporary partial disability benefits for the period beginning October 10, 2005, and continuing through March 30, 2006; as well as additional temporary total disability benefits beginning April 1, 2006, and continuing through an undetermined date, maintaining that her healing period had not ended; that respondents should be held responsible for all outstanding medical expenses related to treatment of the right shoulder injury, together with continued reasonably necessary medical

treatment; and that a controverted attorney's fee should attach to any benefits awarded. The claimant reserved the issue of permanent disability, if applicable.

The respondents contended that the claimant did not sustain a right shoulder injury arising out of and during the course of her employment.

The claimant was the only lay witness to testify in this matter. The record is composed of the transcript of the November 3, 2006, hearing containing thirty-seven (37) pages of medical records which were introduced as "Joint Exhibit C," together with the claimant's discovery deposition and the evidentiary deposition of Dr. Henry Stroope, which were introduced as "Joint Exhibit A" and "Joint Exhibit B," respectively, and retained in the Commission file in bound form.

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 claimant and to observe her 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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the evidence, that she sustained a gradual onset, right shoulder injury which arose out of and during

the course of her employment with Robert Bosch Tool Corporation, specifically, the same rapid repetitive work activities which caused the claimant's admitted right carpal tunnel injury and which has been confirmed by medical evidence supported by objective findings.

4. The healing period for the claimant's right carpal tunnel injury ended September 26, 2005. Respondents have paid appropriate temporary total disability, to date, related to the right carpal tunnel injury.
5. The claimant has proven, by a preponderance of the evidence, that she is entitled to temporary total disability benefits for the right shoulder injury beginning March 30, 2006, and continuing through, at least, the date of the within hearing and until an undetermined date when her healing period can be determined.
6. The claimant's healing period for the right shoulder injury had not ended as of November 3, 2006.
7. The claimant has failed to prove, by a preponderance of the evidence, that she is entitled to either additional temporary total disability or temporary partial disability benefits before March 30, 2006.
8. Respondents are responsible for all outstanding medical expenses related to the diagnosis and treatment of the claimant's right shoulder injury, and respondents remain responsible for continued, reasonably necessary medical related to the treatment of claimant's right shoulder injury.

9. All additional issues not addressed herein, including, but not limited to claimant's entitlement to permanent impairment benefits, if any, related to the admitted right carpal tunnel injury, are specifically reserved.

### DISCUSSION

In the present claim, the claimant does not contend that she sustained an injury as the result of a specific incident identifiable by time and place of occurrence. Rather, the claimant maintains that she sustained a gradual onset, right shoulder injury as the result of repetitive work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, she fails to establish compensability of the claim, and compensation must be denied. *Lay v. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

The claimant, Teresa A. Thompson, began working for Robert Bosh Tool

Corporation, a/k/a Skil Tool Company, beginning in 1996. The claimant worked for the employer until the plant shut down on or about June 10, 2005. During the entire period of claimant's employment, she worked on an assembly line. During the first eight (8) years of the claimant's employment, she worked on the Skil jigsaw line. Although the claimant's description of her work activities was difficult to conceptualize, it is undisputed that her work activities were extremely hand intensive. The claimant also described that part of the assembly work required her to frequently reach up and pull down an air-driven screwdriver. The claimant would then hold the tool to be assembled with her left hand while applying multiple screws using the screwdriver in her right hand. After the Skil jigsaw line shut down, the claimant was moved to the Bosch jigsaw. After that line shut down, the claimant began working on the belt sander line. She stated that although the belt sander was a heavier part, she was still required to use the overhead pneumatic screwdriver to place the screws into the belt sander. The claimant testified that during the Spring of 2005, she noticed that her hands began developing numbness which would radiate into her arms. She first reported her physical problems to Glenda Staton in the Human Resource Department in April, 2005, at which time she was referred to the Pocahontas Family Medical Center where she was examined by Dr. Tracy Buxton, part of the Corning Health Care, Inc. which was the company doctors. The record reflects that the claimant was first examined and treated on April 6, 2005. (Tr.15-22)(Jt. Ex. A, p.1)

As reflected by the stipulations, respondents accepted and paid various benefits related to a right carpal tunnel injury. The primary issue presented for determination concerned whether, in addition to the right carpal tunnel injury, the claimant sustained a gradual onset right shoulder injury. Respondents do not dispute that the claimant's shoulder injury was established by medical evidence supported by objective findings. Further, respondents acknowledge that the claimant's job duties involved rapid repetitive motion. Rather, respondents simply maintain that the injury or malady did not arise out of and during the course of claimant's employment, but resulted from a different number of sources, which either pre-existed the employment or occurred subsequent to the termination of employment which ended on June 10, 2005, when the plant shut down. (Tr.61-62)

The record reflects that the claimant continued working at all times until the plant shut down on June 10, 2005. Before that date, Dr. Buxton referred the claimant to Dr. Terence Braden, D.O., for further evaluation on April 22, 2005. Dr. Braden ordered nerve conduction studies on May 3, 2005, while noting that the claimant had developed bilateral hand paresthesias from the hand into the elbow. The claimant was subsequently referred to Dr. James L. Schrantz, an orthopedic surgeon in Jonesboro, Arkansas. The claimant was first seen by Dr. Schrantz on June 29, 2005. As previously pointed out, the plant shut down on June 10, 2005, prior to the claimant's evaluation by Dr. Schrantz. The record reflects that the claimant received unemployment compensation following the plant shut down. The

claimant was diagnosed as having both carpal tunnel syndrome on the right, as well as lateral epicondylitis in the elbows. The claimant continued to receive conservative treatment from Dr. Schrantz until August 11, 2005, at which time the claimant underwent a carpal tunnel release on the right. Respondents accepted and paid all medical related to the carpal tunnel release. In addition, respondents initiated, and paid, temporary total disability benefits following the surgery on August 11, 2005, and continuing through September 26, 2005, at which point Dr. Schrantz released the claimant to return to work. (Jt. Ex. A, p.16)

The claimant testified that the right carpal tunnel release relieved the problems in her right hand. She stated that her left upper extremity problems improved without requiring surgery. However, the claimant maintained that both before and after the right carpal tunnel release, she continued to experience physical problems involving her right upper extremity and right shoulder. Although respondents maintain that the claimant's shoulder problems were the result of either a pre-existing condition or a subsequent, independent intervening cause, such as the claimant's employment at the Jonesboro Country Club, a review of the medical evidence, set out further below, does not support respondents' assertion.

Following the claimant's release by Dr. Schrantz for the right carpal tunnel injury on September 26, 2005, she went to work for the Jonesboro Country Club. The claimant began working at the Jonesboro Country Club in October, 2005. At the time the claimant applied for employment, she disclosed experiencing problems

with her right arm, specifically, the inability to raise her arm above her head. The claimant was hired as a part-time employee for the Country Club, working two (2) to three (3) days per week. No evidence was offered concerning the claimant's hourly wages. Further, there is no credible evidence that the claimant was unable to work full-time, but, rather, only that she was hired to work part-time. The claimant continued working at the Jonesboro Country Club from October, 2005, until on or about March 31, 2006, at which time she voluntarily terminated her employment because of increased problems involving the right shoulder. The claimant testified that after going to work at the Country Club, she returned to Dr. Schrantz in December, 2005, at which time Dr. Schrantz referred her to Dr. Henry Stroope, an orthopedic surgeon in Jonesboro, Arkansas, for treatment of the shoulder. The claimant stated that she contacted Kathy Sandeville, a representative for the respondent-insurance carrier, for approval of the treatment by Dr. Stroope, but that the insurance carrier refused to authorize any additional treatment because the claimant had worked for a different employer. As reflected by the stipulations, respondents controverted compensability of the shoulder injury in its entirety. (Tr.38-40)(Comm. Ex. 1)

#### COMPENSABILITY

Respondents acknowledge that the claimant sustained a gradual onset, right carpal tunnel injury arising out of and during the course of her employment. The primary dispute was whether, in addition to the right carpal tunnel injury, the

claimant also sustained a gradual onset right shoulder injury. Although respondents further acknowledge that the claimant's right shoulder injury has been confirmed by the medical evidence supported by objective findings, respondents maintained that the injury may have come from a number of different sources, that pre-existed her employment with the employer, or which occurred subsequent to her employment and the claimant cannot prove that the injury arose out of and during the course of her employment. On cross-examination, respondents pointed out that the medical evidence does not reflect a history of a work-related shoulder injury, contemporaneous with the filing of the claim. In response, the claimant stated that she voiced complaints of shoulder problems to both her employer and the medical providers. The claimant acknowledged that the initial treatment related to problems with her hands, primarily on the right. I feel compelled to point out that, although the claimant reported a work-related injury in early April, 2005, for which she was provided medical treatment by the employer beginning on April 6, 2005, she continued working until the plant shut down on June 10, 2005, reflecting a strong work ethic. It was only after the claimant was laid off and began receiving unemployment compensation that she was referred to a specialist for diagnosis and treatment of her injuries. Although the claimant ultimately underwent surgical release of the right carpal tunnel on August 11, 2005, the record clearly reflects that the medical providers had confirmed physical problems involving the claimant's upper extremities in addition to the carpal tunnel syndrome. A review of the medical

evidence is warranted.

The claimant was first seen on April 6, 2005, by the company doctors. The initial diagnosis was wrist tendinitis. The claimant was prescribed medication and wrist splints and returned to work with restrictions of lifting no more than ten (10) pounds and no repetitive hand motion. The claimant continued working. She returned to the company doctors on April 22, 2005, at which time her medications were changed and she was referred to Dr. Terence Braden for further evaluation, including EMG studies. Dr. Braden concluded that the EMG studies failed to indicate any evidence of neuropathy, plexopathy, myopathy, or radiculopathy in the claimant's bilateral upper extremities, and the claimant was permitted to continue working. The claimant returned to the company doctors who continued to treat the claimant with medications and wrist splints while noting that the claimant was not wearing her splints. After the plant shut-down, the claimant returned to the company doctor with continued complaints, including complaints of elbow pain. The claimant was then referred to an orthopedic surgeon for further evaluation. (Jt. Ex. C, pp.1-6)

The claimant was first examined by Dr. James L. Schrantz on June 29, 2005.

His initial report is set out, in part, below:

Teresa was seen in our clinic 6-29-05 for the difficulty with her arm. She worked at Robert Bosch Tool Company. The plant has closed, but she was having difficulty with her arm before the assembly line closed. She has been treated for a tendinitis in the elbows and has had nerve conductions by Dr. Braden that are interpreted as normal. She has taken Arthrotec which has not helped. Clinically she does

have a carpal tunnel syndrome on the right with a positive Phalen's in 12 seconds and a positive direct pressure in 9 seconds. I don't get a good Tinel's sign. I think that her pattern fits a median nerve and is unequivocal that she does have moderate carpal tunnel syndrome. She has tried a brace, but the brace fit poorly and has actually aggravated the carpal tunnel syndrome. We will try to get a new brace for her today to see if this will treat both conditions. She has already used Arthrotec without success. At the present time we are going to try her on Dexamethasone in a penetrating get for the lateral epicondylitis and see if that will do the job. We will also add in vitamin B6 which is debatable in its benefit for carpal tunnel syndrome, but it is worth a try. We will plan on rechecking here [sic] in three weeks to see if she is making any improvement with both the rest of being off work and these medications. If not, then we will talk about injecting her elbow and considering carpal tunnel release on her. (Jt. Ex. C, p.7)

The claimant returned to Dr. Schrantz on July 20, 2005. It is apparent from Dr. Schrantz's report on said date that, in addition to the claimant's carpal tunnel injury, that he was also treating her for both her elbow, as well as complaints of shoulder problems because the report indicates that he prescribed exercise for the shoulder complaints. The report is set out in its entirety below:

7-20-05 Ms. Thompson is seen today with no change in her carpal tunnel with splint, vitamin B6. At this time I feel that we should go ahead and do a CT release. This will be scheduled at her convenience. At that point she is going to have six weeks of rest on her arm and that should go ahead and take care of her lateral epicondylitis. We will start her on an overhead pulley exercise for her shoulder. She is tender off the tip of the acromion and into the biceps tendon. I am going to put her on a Medrol Dosepak and see if that will help both shoulder and elbow. We will consider injections if she doesn't make improvement with this and the forced rest. (Jt. Ex. C, p.9)

The claimant returned to Dr. Schrantz on August 8, 2005. At that time, the workers' compensation insurance carrier approved the claimant undergoing a

surgical release of the right carpal tunnel. The surgery was performed on August 11, 2005. The claimant then returned to Dr. Schrantz on August 22, 2005. Although the purpose of the visit was a follow-up to the carpal tunnel release, Dr. Schrantz did note that the claimant continued to have pain in the right shoulder which he diagnosed as a subacromial bursitis. Dr. Schrantz pointed out that the overhead pulley exercises did not improve the shoulder pain. He offered the claimant an injection in the shoulder which she wanted to avoid if possible. The claimant next returned to Dr. Schrantz on September 19, 2005. Dr. Schrantz noted that the left carpal tunnel had completely resolved and that the right carpal tunnel had improved. He pointed out that the claimant's primary problem remained the subacromial bursitis on the right. On September 19, Dr. Schrantz injected the right shoulder with 40 milligrams of Depo-Medrol and 10 cc of Xylocaine which stopped the vast majority of the claimant's pain. Dr. Schrantz issued a release permitting the claimant to return to work on September 26, 2005. (Jt. Ex. C, pp.11-16)

Following the claimant's release by Dr. Schrantz, the claimant applied for, and returned to work for a different employer. The record reflects that the claimant notified her new employer that her physical condition prevented her from heavy lifting, along with any task that involved raising her arm above her head. (Jt. Ex. C, p.26)

Despite respondents' inference during cross-examination that the claimant's right shoulder problems may have been caused by her employment at the

Jonesboro Country Club, it is clear that the claimant's symptoms first manifested themselves after the claimant reported a work-related injury at Bosch. The claimant returned to Dr. Schrantz with continued complaints of right shoulder problems, at which time Dr. Schrantz referred the claimant to Dr. Henry Stroope, another orthopedic surgeon, for evaluation and treatment. Dr. Schrantz's December 12, 2005, report addressed to Dr. Stroope states, in part:

Teresa Thompson has been followed in our clinic for shoulder pain with the diagnosis of subacromial bursitis and a carpal tunnel syndrome on the right. We were seeing what portions of her shoulder pain would resolve as we corrected the carpal tunnel, and she is now postop on that, and the shoulder is still touchy. Her shoulder improved at the injection that I gave at my last clinic, but it is now back to hurting significantly.

At this point, x-rays were obtained showing narrowing of the humeral acromial distance. I spoke with you on 12/12/2005, concerning this, and we will schedule a MRI on her shoulder and then an appointment with you for diagnosis of rotator cuff tear of the right shoulder that has been the etiology of the shoulder portion of her pain during this period of time. (Jt. Ex. C, p.17)

The claimant then contacted Kathy Sandeville with the insurance carrier to confirm that they would pay for the follow-up treatment recommended by Dr. Schrantz. Respondents refused to pay the treatment because the claimant had gone to work for different employer. Respondents subsequently controverted compensability of the right shoulder in its entirety.

The claimant continued working at the Jonesboro Country Club from October, 2005, until on or about March 31, 2006. The claimant eventually saw Dr. Stroope at her own expense on March 16, 2006. Dr. Stroope subsequently took the

claimant off work on March 30, 2006. Following further examinations and additional diagnostic studies, including an MRI, as well as an arthrogram of the right shoulder, Dr. Stroope recommended surgery. Dr. Stroope diagnosed a partial tear of the right rotator cuff. The claimant has not returned to work since March 31, 2006. At the hearing, she stated that she wished to under the recommended surgery.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

A claimant is not required to establish the causal connection between a work-related incident and an injury by either expert medical opinion or objective medical evidence. See, *Wal-Mart Stores, Inc. v. Van Wagner*, 337 Ark. 443, 990 S.W.2d

522 (1999). In fact, the Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962); *Harris Cattle Company v. Parker*, 256 Ark. 166, 506 S.W.2d 118 (1974). However, if the disability does not manifest itself until months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and disability, the issue becomes a question of fact for the Commission's determination. *Kivett v. Redmond Co.*, 234 Ark. 855, 355 S.W.2d 172 (1962); *Wentz v. Servicemaster*, 75 Ark. App. 296, 57 S.W.3d 753 (2001).

In the instant case, the claimant's injury did not occur as the result of a specific incident, but, rather, was the result of a gradual onset, work-related injury. The claimant's credible testimony, together with the medical evidence, establishes the casual connection. *Kerby v. Yarbough Brothers Gin Co.*, 248 Ark. 1096, 455 S.W.2d 912 (1970); *Exxon Corp. v. Flemming*, 53 Ark. 798, 489 S.W.2d 766 (1973).

I recognize that respondents have offered a September 1, 2006, report from Dr. Earl Peebles which disagreed with the conclusions of Dr. Stroope concerning the nature and extent, as well as the causal connection of the claimant's injury to her employment at the Bosch plant. I did not find Dr. Peebles' report to be

persuasive.

First, it must be noted that Dr. Peeples never examined the claimant. His opinion was based upon records and the claimant's discovery deposition which was provided to him by respondents. Dr. Peeples' conclusion that the record does not support consistent complaints of shoulder symptoms to the initial treating physician, Dr. Schrantz, is simply inconsistent with the medical record as a whole. As previously noted, the claimant was not referred to Dr. Schrantz until following her lay-off on June 10, 2005. However, the record clearly reflects that the claimant made complaints of shoulder problems prior to undergoing a carpal tunnel release on the right. Dr. Peeples does not dispute that the claimant has a shoulder problem, but his finding that the abnormalities in the claimant's shoulder did not manifest themselves until after her employment at the Country Club is erroneous and has no basis in fact. The dispute concerning the diagnosis of the injury and the conflicting opinions between Dr. Peeples and Dr. Stroope may be genuine, but, a preponderance of the credible evidence supports the conclusion that the injury is directly and causally related to claimant's repeated work activities at Bosch.

The evidentiary deposition of Dr. Henry Stroope was taken on September 22, 2006, and introduced as "Joint Exhibit B." Rather than conduct an exhaustive analysis of Dr. Stroope's deposition, suffice it to say that his diagnosis of the claimant's injury was that she had a rotator cuff tear of the right shoulder which required surgery. Dr. Stroope was also of the opinion that the injury was directly

and causally related to the claimant's job duties at Bosch. (Jt. Ex. B, pp.24, 34)

I found the claimant to be a most credible witness. The medical evidence reflects that the claimant's shoulder symptoms manifested themselves during the time that the claimant reported a work-related injury to her employer for which she was provided medical treatment. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has proven, by a preponderance of the credible evidence, that, in addition to her carpal tunnel injury, she also sustained a gradual onset, right shoulder injury as the result of repetitive work activities arising out of and during the course of her employment with Bosch Tool Corporation.

TEMPORARY TOTAL  
AND/OR  
TEMPORARY PARTIAL DISABILITY BENEFITS

Temporary total disability is determined by the extent to which a compensable injury has affected a claimant's ability to earn a livelihood. It is that period in which an employee is within the healing period and totally incapacitated to earn wages. *Arkansas State Highway Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *J.A. Riggs Tractor Co. v. Etzlkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990); *Stafford v. Arkmo Lumber Co.*, 54 Ark. App. 286, 925 S.W.2d 170 (1996). The healing period is that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12) (Repl. 2002). The healing period continues until the employee is as far restored as the permanent character of the

injury will permit, and if the underlying condition causing the disability has become stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996); *Carroll General Hospital v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The persistence of pain may not of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized. *Mad Butcher v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

"Disability" means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury. The Commission may consider the claimant's physical capabilities and evaluate her ability to engage in any gainful employment. The claimant bears the burden of proving both that she remains within her healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. *see, Palazolo v. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994).

This claim is complicated because it involves two (2) separate injuries. Respondents accepted and paid medical for the claimant's carpal tunnel injury, as well as temporary total disability benefits following the claimant's carpal tunnel surgery in August, 2005, and continuing until she was released by Dr. Schrantz on or about September 26, 2005. The record further reflects that following the plant's close on June 10, 2005, the claimant received unemployment compensation for an undetermined period of time which appears to be from the date of her termination of

employment on June 10, 2005, and continuing until undergoing surgery, at which point the claimant was no longer ready, willing, and able to work. Recipients of unemployment benefits are not eligible for disability benefits. Ark. Code Ann. §11-9-506 (Repl. 2002) provides:

(a) Any other provisions of this chapter to the contrary notwithstanding, no compensation in any amount for temporary total, temporary partial, or permanent total disability shall be payable to an injured employee with respect to any week for which the injured employee receives unemployment insurance benefits under the Arkansas Employment Security Law, §11-10-101, *et seq.*, or the unemployment insurance law of any other state.

(b) Provided, however, if a claim for temporary total disability is controverted and later determined to be compensable, temporary total disability shall be payable to an injured employee with respect to any week for which the injured employee receives unemployment benefits but only to the extent that the temporary total disability otherwise payable exceeds the unemployment benefits.

The claimant contends that she is entitled to temporary total disability benefits for the period beginning June 10, 2005, and continuing through October 10, 2005, (the date she went to work for the Jonesboro Country Club), less credit for any disability benefits paid for the carpal tunnel syndrome; that she is entitled to temporary partial disability benefits for the period beginning October 10, 2005, and continuing through March 10, 2006; as well as temporary total disability benefits beginning April 1, 2006, and continuing through an undetermined date, while maintaining that her healing period had not ended.

Respondents recognized, and accepted claimant's right carpal tunnel injury and surgery. In addition to being entitled to a credit for any disability benefits paid for

the right carpal tunnel injury, respondents are also entitled to a credit for the period beginning June 10, 2005, when the claimant received unemployment compensation for the admitted injury. The claimant did not make a claim for either temporary total disability or temporary partial disability for the controverted right shoulder injury until after March 30, 2006, when Dr. Stroope took the claimant off work. Thereafter, the claimant requested temporary partial disability benefits for the period beginning October 10, 2005, at which time she went to work for a different employer, and continuing through March 30, 2006, when Dr. Stroope took her off work totally until released from his care. Dr. Stroope subsequently recommended surgery which has never been performed. Accordingly, the claimant requested temporary total disability benefits beginning April 1, 2006, and continuing until such time that the surgery can be accomplished and the healing period determined.

Ark. Code Ann. §11-9-520 (Repl. 2002) provides:

In case of temporary partial disability resulting in the decrease of the injured employee's average weekly wage, there shall be paid to the employee sixty-six and two-thirds percent (66 2/3%) of the difference between the employee's average weekly wage prior to the accident and his or her wage-earning capacity after the injury. (Emphasis supplied)

The claimant bears the burden of proving her entitlement to various workers' compensation benefits. The record reflects that the claimant continued working for the employer herein following the admitted portion of her claim and continuing through June 10, 2005. Thereafter, the claimant received unemployment compensation until undergoing surgery on or about August 11, 2005. The claimant

was paid appropriate temporary total disability following the carpal tunnel release. Dr. Schrantz then permitted the claimant to return to work on September 26, 2005, following which the claimant went to work for a different employer where she continued working until on or about March 30, 2006. Admittedly, the claimant only returned to work part-time; however, there is no evidence that the claimant was unable to work on a full-time basis. Rather, the evidence reflects that the claimant applied for a part-time job. Further, no testimony was offered concerning the claimant's hourly rate. The claimant has the burden of proving that she is entitled to temporary partial disability. The claimant has failed to prove entitlement to any additional indemnity benefits before April 1, 2006. The claimant has proven, by a preponderance of the evidence, that she is entitled to temporary total disability benefits from the date Dr. Stroope took her off work, and continuing through an undetermined date. Dr. Stroope has recommended surgery. Respondents have controverted the compensability of the shoulder injury and delayed treatment reasonably necessary to correct the problem. The claimant's healing period had not ended as of the date of the hearing. Further, a preponderance of the evidence proves that the right shoulder injury is the major cause of claimant's disability and need for treatment. In view of the foregoing, I hereby make the following:

AWARD

Respondent, St. Paul Travelers Insurance Company, is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of

\$255.00 per week beginning April 1, 2006, and continuing through at least November 3, 2006, and until such date that the claimant's healing period can be determined.

Respondents are further directed and ordered to pay all outstanding medical expenses related to the diagnosis and treatment of claimant's right shoulder injury, and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, claimant's attorney, Mr. John C. Bartelt, is hereby awarded the maximum statutory attorney's fee on this entire Award pursuant to, and limited by, Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge