

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308089/F207379

BECKY MULDOON

CLAIMANT

TYSON POULTRY, INC.

RESPONDENT

TYNET CORPORATION, INC.
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 25, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondent represented by MELISSA LEE, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 19, 2006, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 31, 2006. 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. The prior opinions are res judicata and the law of this case.

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

1. Additional temporary total disability from March 15, 2006, to May 16, 2006.
2. 505(a) benefits after May 16, 2006.
3. Attorney's fees.

In regard to the foregoing issues the claimant contends that she is entitled to temporary total disability benefits from March 15, 2006, until May 16, 2006. The claimant contends that she is entitled to benefit pursuant to §11-9-505(a) from May 17, 2006, until a date yet to be determined, not to exceed the length of time allowable by the statute. The claimant contends that the respondent/employer had the ability to

provide work within the claimant's medical restriction but refused to do so without good cause. The claimant contends that her attorney is entitled to an appropriate attorney's fee.

In regard to the foregoing issues the respondents contend that the claim has been accepted as compensable and all appropriate benefits have been paid. That the claimant is not entitled to temporary total disability benefits from March 15, 2006, through May 16, 2006, as she was not taken off work for any work-related injury and that work within her restrictions was available during this period of time but for her justifiable termination for violation of the respondent's attendance policy. That the claimant is not entitled to Ark. Code Ann. §11-9-505(a) benefits as work within the claimant's restrictions was and is available but for the claimant's justifiable termination for violation of the respondent's attendance policy. The respondents reserve the right to amend the above contentions upon completion upon completion of pre-trial 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. The respondents submitted medical records marked Respondents' Exhibit No. 1, non medical exhibits marked Respondents' Exhibit No. 2 and the deposition of the claimant marked Respondents' Exhibit No. 3. All these documents were admitted without objection.

DISCUSSION

It has previously been stipulated by the parties that the claimant sustained a compensable injury to her right knee on January 11, 2002, and on May 1, 2003. In an opinion dated March 10, 2004, it was found that the claimant was entitled to additional medical treatment in the form of surgery which had been recommended by Dr. Martimbeau.

The claimant testified that following her surgery on her right knee, she was given a sit down only restriction by Dr. Martimbeau. The claimant testified that the respondent did provide work within these restrictions. The claimant testified that the respondent terminated her on March 15, 2006. The claimant explained that she had gone into work on a Friday morning in March and when she got there her boss, Darrell Watts, took her to see Eddie Lindsey who informed her that she was being placed on suspension due to her points. The claimant testified that she was told to come back in at 8:00 on Wednesday, March 15, 2006, and meet with Mr. Lindsey and Betty Killough. The claimant testified that when she came in on Wednesday, March 15, 2006, she was shown her attendance records. The claimant testified that she told Mr. Lindsey and Ms. Killough that she had doctor's notes for the time missed but she was told that she had too many points and at that time she was terminated. The claimant testified that she asked Darrell Watts if he knew how many points she had and he said no he had no idea and then he apologized to her. The claimant agreed that during the month of February 2006 she missed several days from work when her knee was swollen and that her doctor had given her a note taking her off work. The claimant identified a note from Dr. Martimbeau's office indicating that she was to be off work from February 9, 2006, until February 28, 2006, due to her inability to get an appointment since he was out of town. The claimant testified that during this period of time her knee had become very swollen and she was trying to advance an appointment with her doctor, but was unable to do so. The claimant testified that she hand delivered this note to Jesse Key who handles workers' comp insurance for the respondent. The claimant testified that she gave this note to Ms. Key either on February 28 or February 29, 2006. The claimant testified that on Tuesday prior to the Friday that she was suspended, she had gone into Jesse Keys' office, and Ms. Keys told her that she had 7.5 points, therefore she was not concerned. The claimant testified that the only notification that she had of being over her points

was when she was suspended on March 10, 2006. The claimant testified that her work schedule was four ten hour days and that she worked Monday through Thursday. The claimant testified that it was her understanding of the respondent's policy that consecutive days missed up to three days were counted as one absence and that individual absences were counted on a daily basis. The claimant agreed that she had received an attendance notice on July 26, 2005, because of some absences which had accumulated by that date. The claimant testified that the next and only other notification she had received was on March 10, 2006, when she met with Mr. Lindsey and Mr. Watts. The claimant agreed that she refused to sign this particular attendance notification. The claimant agreed that she had only received two attendance notices before she was fired by the respondent.

On cross examination, the claimant testified that she thinks that when she got home after working on the February 8, 2006, her knee was swollen double and she had extreme heat in it. The claimant testified that she did not work on February 9 but does remember that when she got home on February 8 from work she contacted her workers' comp case worker to try and get an appointment with Dr. Martimbeau to see about her knee. The claimant testified that she already had an appointment scheduled with Dr. Martimbeau for February 28 but she was in hopes of getting in to see him earlier. The claimant testified that all of her appointments with Dr. Martimbeau are made through the nurse's station and her case worker, and that she had asked that her appointments be moved up so she could see the doctor earlier. The claimant testified that she recalls that on February 8 she had called Dr. Martimbeau's office to get a refill on her pain medication and also to see if he was going to be in so she could see him. The claimant testified that she though she last saw Dr. Martimbeau on July 25, 2005. The claimant was then shown a medical record from Dr. Martimbeau's indicating that she was seen on January 24, 2006. The claimant testified that she does not recall Dr. Martimbeau giving

her the instructions to alternate standing and sitting for short periods of time. The claimant testified that she had been on leave of absence from August 2005 through January 2006 due to a stress fracture in her left foot. The claimant testified that she returned to work for the respondent on January 9, 2006, at a sit down job on the line stamping boxes. The claimant testified that after she returned to work for the respondent there was a period of time that she felt as though her work was unsafe. The claimant testified that she was given a chair that was very high which she would have to jump down about six inches to the floor. The claimant testified that the floor was very greasy and when her feet would hit the floor they would slide. The claimant testified that she has applied for work since she was terminated indicating that she had applied at Baldor, Kelly Temporary Services, and had a potential to go to work for Hanes. The claimant testified that she also has an interview set up for Friday following this hearing and that she had the intension to also apply at Nite Lite Outdoors. The claimant testified that she had talked to the people at unemployment about applying but learned that it would not be worth her time to do so. The claimant testified that she has not applied for social security disability. The claimant again testified that she had only received two attendance notifications, and she further testified that it was her impression that the respondent's attendance policy had changed while she was on leave of absence between August 2005 and January 2006. The claimant was asked if she ever looked at the bulletin board in the break room, and she said no not usually. The claimant testified that during the period of time she was off due to her knee between February 9 and February 28 she called in everyday to the respondent. The claimant testified that when she called in sometimes she would get to talk to the nurse or sometimes she would get the answering machine. The claimant testified that she would call in about an hour before she was suppose to report to work because this is what she was instructed to do when she was hired back in 1996. The claimant testified that she

had been told by Barbara that if she was going to be off a few days just to let them know, and she would not have to call in everyday. The claimant testified that Mary Koch told her the same thing. The claimant testified that when she signed the attendance notification on July 26, 2005, she understood what her points were for and she thought that she understood the attendance policy. The claimant testified that she gave the note from Dr. Martimbeau's office dated February 27, 2006, to Jessica Key. The claimant testified that she last saw Dr. Martimbeau on May 16, 2006, or in June 2006, and has not seen him since. The claimant testified that she is still under permanent restrictions of sit down work only.

On redirect examination, the claimant testified that from the date of her termination on March 15, 2006, until she was released on maximum medical improvement on May 16, 2006, she did not work anywhere. The claimant testified that if she had not been terminated by the respondent she would have continued to work for them at the job that was made available for her. The claimant again testified that between February 9, 2006, and February 28, 2006, she called into the respondent everyday as to why she was absent. The claimant then testified that not calling in or not showing up for work can cause termination after three days according to the respondent's policy.

Betty Jane Killough testified that she has been working for the respondent since 1981. Ms. Killough testified that she currently is the complex human resource manager and has been in this position for over four years. This witness testified that the last time the respondent's attendance policy was changed was on June 27, 2003. Ms. Killough testified that individuals throughout the plant are advised through their supervisors at the safety meetings as to policy changes. Ms. Killough confirmed that Respondent's Exhibit No. 2 pages 1 through 3 were in fact the respondent's current attendance policy, and had been since June 2003. This witness testified that the attendance policy is also

posted in the break room at the respondent's plant. Ms. Killough testified that the claimant was terminated due to unacceptable attendance indicating that she had acquired seventeen points and that normally a person would have to accrue only fourteen points to be subject to termination. Ms. Killough testified that an individual can receive three points for missing an entire day without properly notifying the respondent. This witness testified that an employee can get one point for missing an entire day with proper notification which was made within thirty minutes before their start time. Ms. Killough testified that if an individual has an excused absence due to some sort of medical problem they would get zero points assessed for the day missed. Ms. Killough testified that if they missed longer than three days they would have to get documentation from a health care provider and at five days they would have to go on leave of absence. Ms. Killough was asked about the claimant's attendance record indicating that she was assessed half a point for February 9, 2006. This witness explained that a half a point would be assessed if someone called in late, but not two hours late or arriving to work before two hours in your shift. Ms. Killough also agreed that if the claimant had left early on the 9th of February she also would have been assessed half a point.

On cross examination, Ms. Killough testified that the consecutive days missed had to be consecutive work days. Ms. Killough testified that after the three consecutive work days missed for which one point can be assessed, the next two days require medical documentation that would excuse you or put you on leave of absence. Ms. Killough testified that the claimant was not placed on leave of absence because they had not received documentation to put her into that status. This witness testified that each day that the claimant called in that she would not be able to come into work she would have been told that she needed to get an off work slip. Ms. Killough agreed that according to their records the claimant did call in everyday for the period between February 9,

2006, and February 28, 2006. Ms. Killough testified that an employee would get an attendance notification after they had received three points, a second notification after they had reached six points, and a final notification when they had reached ten points. Ms. Killough testified that points were counted for a one year period of time and that the maximum number of points a person can acquire is fourteen. Ms. Killough testified that the claimant was given her first attendance notification on July 26, 2005, and that because she was not present at the time she acquired six points, the respondent was unable to give her an attendance notification, therefore her final attendance notification was given to her on March 10, 2006. Ms. Killough testified that although the respondent has the claimant's address, she was not sent her second notification because their policy does not require it. Ms. Killough was asked the question about the claimant calling in everyday, and nobody bothering to tell her that she was in danger of violating the respondent's attendance policy. Ms. Killough responded, "I cannot answer that; I did not speak with her everyday." Ms. Killough agreed that the claimant has been treated for her knee for at least a two year period of time. This witness testified that she was unaware that the doctors had given the claimant a permanent impairment and had placed her with permanent restrictions because of her knee condition. This witness testified that she could not say that the claimant had a chronic condition due to her knee but she did know that she was on light duty. Ms. Killough testified that the claimant had FMLA leave available to her at the time she was terminated, and to her knowledge no one ever advised her that she was eligible for FMLA leave. Ms. Killough testified that if the claimant had a chronic health condition at the time she was missing days in February under the Respondent's policy, she would have been eligible for FMLA leave if she had requested it. Ms. Killough was shown Claimant's Exhibit No. 1, page 7, and without being asked she responded, "I have never seen this." Ms. Killough agreed

that if the claimant had been missing work because of her job related injury, she would not have been accumulating points.

On redirect and re-cross examination, the dates and points of the claimant during her employment with the respondent was discussed at length and Ms. Killough could not explain why her records are different from Respondents' Exhibit No. 1, page 10. When asked which one of the documents was correct the witness responded that she could not tell why they are different. On cross examination, Ms. Killough was asked if the respondent would have continued to provide work within the claimant's medial restrictions if she had not been terminated for absences. This witness responded, "Yes." Ms. Killough testified that the claimant would have worked under these conditions until she was returned to full duty or it was determined that she was an ADA situation where permanent accommodations needed to be made. On re-cross examination, Ms. Killough testified that if a person had been off work from February 7 until February 28 they would have to provide some kind of doctor's slip before the respondent would allow that person to return to work. Ms. Killough testified that she had never seen the note taking the claimant off work from February 9, 2006, before this hearing or before it was faxed to her a week before the hearing. This witness testified that she was present at the meeting with the claimant when she was terminated on March 15, 2006, and at that time the claimant did not indicate that she had medical documentation to justify her absences.

Mary Koch testified that she had been a nurse manager for the respondent for approximately thirteen years. Ms. Koch testified that she is familiar with the claimant and had reviewed the claimant's medical records as well as her call in logs in preparation for her testimony at this hearing. Ms. Koch testified that the claimant's last job was working in the pack up department stamping boxes with different codes. This witness testified that this job would allow the claimant to sit or stand as needed. Ms.

Koch was asked to examine the claimant's medical records as well as the records which she had in her nurse's notes and was asked if there was any difference. Ms. Koch testified that there is one record missing from the respondents' file that is included in the claimant's file. Ms. Koch testified that the medical record in the claimant's file which is not in the respondents' file is a note from Dr. Martimbeau's nurse that took the claimant off work from February 9 through February 27, 2006. Ms Koch testified that she does not remember ever receiving a note from Dr. Martimbeau's office taking the claimant off work from February 9 through February 27 nor does she recall having received a note from anyone else in the plant concerning the claimant. Ms. Koch testified that she has attempted to get a copy of this note from Dr. Martimbeau's office but without success. Ms. Koch testified that the medical note from Dr. Martimbeau dated February 27, 2006, does not indicate that the claimant was off work at any time during the month of February. Ms. Koch was asked about call ins when a person is not going to report to work. This witness testified that if a person calls in and reports that they are sick, not work related, the nurse or person taking the call is not permitted to ask questions. However, this witness testified that if a person calls in to report an illness due to work, the nurse is allowed to question the medical. Ms. Koch testified that the claimant has a case manager assigned to her and has had this case manager since February 2005. This witness testified that the case manager would set up the appointments as well as attend the doctor's appointments with the claimant. Ms. Koch testified that the claimant's file does not reflect the case manager requesting an appointment with Dr. Martimbeau anytime after February 9, 2006, but did note that the claimant had an appointment already scheduled with the doctor on February 27, 2006. Ms. Koch testified that this February appointment was set at the claimant's last appointment with Dr. Martimbeau on January 24, 2006. Ms. Koch testified that the

claimant had asked to see the doctor earlier on January 16 but the doctor was unable to see her earlier than the January 24 appointed time.

On cross examination, Ms. Koch testified that when she contacted Dr. Martimbeau's office to try and get a copy of the off work slip, the doctor's office told her that they did not have one in their file. Ms. Koch testified that the claimant came back into the plant on the February 27, 2006, and presented a referral note to Barbara Moore who stamped it at the nurse's station. Ms. Koch was asked if the claimant had been very good about bringing doctor's notes in when she was off to see the doctor and this witness responded, "Yes."

Ms. Darrell Watts testified that he had been employed by the respondent for sixteen years and that for the past eleven years he has been a production supervisor. Mr. Watts testified that he was the claimant's supervisor for approximately a year, and a half prior to her termination. Mr. Watts testified that the claimant last worked at a job which was sit down only stamping boxes as they went through a scale and tape machine. Mr. Watts testified that this job is still available at the respondent's plant. Mr. Watts testified that the respondents amended their attendance policy in July 2003, and that this new policy change was made known to the different employees through the safety meetings. Mr. Watts testified that at that time the claimant was not working in his department. Mr. Watts testified that the attendance policy is posted in the break room, and is available for any individual to review. Mr. Watts testified that in order to adjust the attendance notification reports he would have to go to HR and have one of the clerks make the change in the system. Mr. Watts testified that if there is not a clerk available in HR it could be up to the next day before the change is entered. Mr. Watts testified that he was present at the meeting when the claimant was terminated and he does not remember her offering any medical documentation to support her absences.

On cross examination, Mr. Watts testified that when the claimant missed work in February he assumed that she was on leave of absence because she had been on leave of absence before. Mr. Watts testified that whichever nurse is on duty would normally contact him and notify him that the claimant was not going to be at work, but this did not happen every day. Mr. Watts testified that he just knew that the claimant was ill, and not at work. This witness was asked how he was notified that she was ill, and he responded through the nurse's station at health center. Mr. Watts indicated that he was surprised when the claimant got suspended because he expected her to have a medical note. Mr. Watts testified that he could recall one time when the claimant left work early because of her knee. Mr. Watts testified that the only input that he had into the claimant's termination was that he provided his daily attendance records on the claimant. Mr. Watts was asked if he was surprised that the claimant was terminated, and he responded, "Yes."

On rebuttal, the claimant testified that on February 28, 2006, she delivered to the respondent the paperwork from Dr. Martimbeau's office taking her off work. The claimant further testified that on March 10 when she was suspended, she thought that she had already provided all of the medical information which the respondent would need in support for her reason for being off work. On cross examination, the claimant testified that at the meeting on March 10 she told the supervisors that she had already turned in everything that she had like all the other times she had turned in the paperwork when she returned from the doctor. On questions from the Court the claimant testified that she gave the original of the note to the respondent and kept a copy noting that she always has the respondent make a copy of what she turns in. Mr. Darrell Watts was called on surrebuttal, and testified that a few minutes before the meeting on March 10 the claimant indicated to him that she had brought in medical notes. Mr. Watts was asked if at the suspension the claimant had been given an

opportunity to present additional documentation for her absences. Mr. Watts testified that the claimant indicated that she had already turned everything in that she had.

The medical records set forth at this hearing indicate that on November 30, 2004, the claimant was being followed and rechecked for her traumatic arthritic right knee by Dr. Claude Martimbeau. This referral and treatment authorization sets forth that the claimant should do sit down, no stairs, forty hours a week only work, and return to work on December 1, 2004. The claimant again was referred to the doctor on December 7, 2004, for recheck of her right knee. On January 18, 2005, the claimant was seen by Dr. Martimbeau, and after examination, he recommended that she have a Patellofemoral joint resurfacing. Dr. Martimbeau writes on February 8, 2005, that the claimant should remain off work until she is approved for surgery on her right knee. On June 14, 2005, Dr. Martimbeau writes that the claimant is now three months post surgery and is pain free with no specific problems in relationship to her right knee. The doctor notes that she has reached maximum medical improvement, can return to work with no restrictions, and assessed her with an impairment rating of 18% to the right lower extremity. Dr. Martimbeau writes on July 25, 2005, that he is seeing the claimant, who is complaining of right knee pain, noting that she re-injured her right knee about a week ago when she was at work and twisted her knee. After examination and x-rays, the claimant was diagnosed with a strain injury to her right knee, and the doctor recommended that she work sitting down intermittently, and do no kneeling or squatting for the next few weeks. Dr. Claude Martimbeau writes on August 16, 2005, that the claimant has had some pain with the sensation of popping in her right knee with no specific new injury and she also had the sensation swelling. After examination, Dr. Martimbeau assessed the claimant with having mild impingement and mild synovitis of the right knee and recommended a cortisone injection which the claimant refused, so he gave her Lodine. Dr. Martimbeau recommended that she use crutches and sit down

while at work. On the referral slip from Dr. Martimbeau it is indicated that the claimant is unable to return to work from August 16 to September 5, 2005, at which time she had a return appointment. The claimant was seen by the doctor on September 6, 2005, and again was instructed to use crutches and to do sit down work only. Dr. Martimbeau saw the claimant on September 22, 2005, and again on October 25, 2005. On the October date, Dr. Martimbeau gave the claimant an injection of Cortisone into her right knee and recommended that she work with the same restrictions. On December 20, 2005, Dr. Martimbeau writes that the claimant is still having a sensation of crepitus at times, with some pain when she walks and moves her knee. The doctor notes that the injection of Cortisone, which the claimant received two months ago, did not help. The examination by Dr. Martimbeau revealed that the claimant showed some minimal residual swelling of the soft tissue with the feeling of mild crepitus in flexion and extension. Dr. Martimbeau writes that the claimant has reached maximum medical improvement and no specific treatment was offered. Dr. Martimbeau writes on January 24, 2006, that the claimant reports pain and popping in her right knee after sitting down, walking. Or standing for a while. After examination, and review of the claimant's x-rays, the claimant was diagnosed with status post right knee pain with residual synovitis and impingement. Dr. Martimbeau recommended that the claimant wear a knee brace and that she alternate her work by standing and sitting. The claimant was referred to the doctor on February 27, 2006, for treatment for her right knee pain. The doctor notes that she had permanent restrictions of sitting down work only and may return to this modified duty on February 28, 2006. There is a note from Dr. Martimbeau's office indicating that the claimant was seen in the doctor's office on February 27, 2006, and may return to work on February 28, 2006. This note further sets forth that the claimant was off work since February 9, 2006, because she was unable to get an appointment with the doctor because he was out of town. Dr. John Dunham writes on March 7, 2006, that

the claimant should be excused at work on March 6, 2006. On March 28, 2006, Dr. Martimbeau writes that the claimant is no longer working, having been fired, but that she continues to have pain over her right knee. After examination, the doctor repeated an injection of Cortisone and noted that she is taking Celebrex and he recommended physical therapy. The referral and treatment authorizations set forth that the claimant was undergoing physical therapy on April 19, April 24, April 25, and April 26, 2006, for her compensable injury. The claimant was seen by Dr. Martimbeau on May 16, 2006, for right knee pain where it is noted that she is not working, but may return to modified duty with sit down work only. Dr. Martimbeau writes in an office note on May 16, 2006, that the claimant has been in physical therapy which she indicates is helping strengthen her knee. Dr. Martimbeau notes that the claimant reports having some pain over the lateral aspect of her knee with the sensation of crepitus. After examination, Dr. Martimbeau notes that the claimant seems to have improved with physical therapy and recommends that she continue her therapy with no other specific treatment recommended. Dr. Martimbeau writes that as of this date, May 16, 2006, the claimant has reached maximum medical improvement. The claimant continued her physical therapy beginning on May 22, 2006, and attended ten sessions of physical therapy ending on June 20, 2006.

After a complete review of this case, I find that the claimant has proved by a preponderance of the evidence that she is entitled to temporary total disability from March 15, 2006 until May 16, 2006. Arkansas Law provides that for scheduled permanent injury, the injured party is to receive compensation for temporary total during the healing period or until the employee returns to work, whichever occurs first. See Ark. Code §11-9-521 (a). Also see *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S. W. 3rd 822 (2001). The claimant in this matter has a permanent impairment to her right knee which is a scheduled injury. The record also reflects that

the claimant was within another one of her healing periods as evidenced by Dr. Martimbeau writing on May 16, 2006, that the claimant had reached maximum medical improvement.

The bulk of the testimony in this record dealt with the claimant's termination based upon her acquisition of points due to absences from work. There is a note from Dr. Martimbeau's office in the record indicating that the claimant was to be off work from February 9, 2006 to February 28, 2006, when she could be seen by the doctor. The respondent indicated that they did not have this note in their file, but in examination of the various witnesses who have access to the personnel files of the claimant, it became apparent that the accuracy of the respondent's records were in question. The respondent has testified that, but for their termination of the claimant, work was available for her and she would still be working. I find, therefore, that the claimant has proven that she is entitled to §11-9-505 (a) benefits. Ark. Ann. §11-9-505 (a)(1) sets forth:

“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 the benefits received and the average weekly wages lost during the period of such refusal, for a period not exceeding one year.”

The respondent has testified that there is work available within the claimant's limitation, and would be employed except for her termination. Since my view is that the termination was not justified, the respondent should be responsible for benefits as set forth in Ark. Code Ann. §11-9-505(a) from May 16, 2006, which was the end of her healing period. (See *Torrey v. City of Fort Smith*, 55 Ark. App. 226, 934 S. W. 2nd 234 (1996)). The respondent shall therefore pay benefits to this claimant according to Ark. Code Ann. §11-9-505 (a) subsequent to May 16, 2006.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The prior opinions are res judicata and the law of has jurisdiction of this claim.
3. The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from March 15, 2006 to May 16, 2006. See Discussion above.
4. The claimant has proven by a preponderance of the evidence that she is entitled to Ark. Code Ann. §11-9-505 (a) benefits to be paid by the respondent subsequent to May 16, 2006. See Discussion above. Also, see *Torrey v. City of Fort Smith*, 55 Ark. App. 226, 934 S. W. 2nd 237 (1996).
5. The respondent has controverted this claimant's entitlement to additional temporary total disability as well as §11-9-505 benefits.
6. 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 temporary total disability from March 15, 2006 to May 16, 2006.

The claimant has proven by a preponderance of the evidence that the respondent should pay to her benefits according to Ark. Code Ann. §11-9-505 (a), subsequent to May 16, 2006.

The respondent 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