

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F700362**

**BLAIR LOVEWELL, EMPLOYEE**

**CLAIMANT**

**COOPER TIRE & RUBBER COMPANY,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**CROCKETT ADJUSTMENT, INC.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED APRIL 16, 2008**

Matter submitted before Administrative Law Judge S. Dale Douthit on January 25, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Paul Miller, Attorney at Law, Texarkana, Texas.

The respondents were represented by Mr. William G. Bullock, Attorney at Law, Texarkana, Texas.

**STATEMENT OF THE CASE**

This claim has been submitted for a decision on stipulations and legal briefs pursuant to the agreement of the parties. A prehearing conference was conducted on October 25, 2007, and a Prehearing Order was filed that same day. A copy of the Prehearing Order is being admitted as Commission Exhibit "1" and will be blue-backed herein. Also blue-backed and included as a part of the record as Commission Exhibits "2", "3", and "4", was the Agreed Joint Stipulation of Facts, Claimant's Brief, and Respondent's Brief, respectively.

At the prehearing conference on October 25, 2007, the parties agreed the sole issue to be presented is whether the claimant is entitled to additional temporary total

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disability benefits from May 26, 2007, through July 26, 2007, plus attorney's fees. At the prehearing conference, the parties agreed that the claim would be submitted for adjudication upon agreed Joint Stipulations and Briefs. The parties' Joint Stipulations are set out below:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed on October 13, 2006, and at all other relevant times.
- 3) The claimant sustained a compensable right shoulder injury on October 13, 2006.
- 4) The claimant sustained a 4% whole body impairment as a result of his compensable injury, which has been accepted by respondents.
- 5) On or about October 13, 2006, while working for respondent, claimant filled out an employee report of injury or illness form stating that he had experienced a popping sensation in his right shoulder while lifting a tire from a rack.
- 6) Respondent accepted the claim and has paid for all the claimant's medical treatments.
- 7) On or about April 16, 2007, claimant began missing time from work in connection with the right shoulder arthroscopic anterior labral repair and anterior SLAP repair procedure performed by his surgeon, Dr. Charles Pearce.
- 8) Respondent accepted the surgery and paid appropriate benefits arising from the surgery, and began paying the claimant TTD benefits.

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- 9) Claimant's physician returned claimant to light duty eligible status on or about May 29, 2007. Limitations were as stated in the attached Exhibit, "Stip. A", attached hereto, which included a maximum lift of 10 pounds up to the waist only.
- 10) Claimant was paid TTD by respondent through the period between April 16, 2007 (surgery date) and claimant's return to light duty eligible status on or about May 29, 2007.
- 11) Beginning on or about May 27, 2007, and continuing through September 24, 2007, claimant was one of many workers laid off due to plant-wide economic layoff/reduction in force.
- 12) Claimant's authorized treating physician, Dr. Pearce, declared claimant to be at maximum medical improvement and released claimant to return to work at regular duty effective July 30, 2007. At this time, the treating physician issued the 4% whole body impairment as a result of the compensable injury which was accepted by respondent.

At the prehearing conference on October 25, 2007, a briefing schedule was established. Each party was to submit legal briefs, advancing their respective arguments on or before January 11, 2008, at which time the claim would be submitted on the record. However, at the request of both parties, the deadline to submit briefs was extended to January 25, 2008.

Based upon the record, specifically the stipulations agreed to by the parties, together with their legal arguments, I hereby make the following findings of fact and conclusions of law pursuant to A.C.A. § 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 failed to prove by a preponderance of the evidence that he was totally incapacitated from earning wages during the period between May 26, 2007, and July 26, 2007.
- 4) Therefore, the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits for the period between May 26, 2007, and July 26, 2007.

**DISCUSSION**

The relevant facts in this case are undisputed. The claimant sustained a compensable right shoulder injury on October 13, 2006, and as a result sustained a 4% whole body impairment. Claimant underwent arthroscopic surgery from Dr. Pearce, and was paid temporary total disability benefits by the respondents throughout the period between claimant's surgery date (April 16, 2007) and the claimant's return to light duty eligible status on May 29, 2007.

On May 29, 2007, claimant's authorized treating physician, Dr. Pearce, returned the claimant to light duty eligible status with a maximum lift restriction of 10 pounds up to the waist only. Claimant returned to Dr. Pearce subsequent to May 29, 2007; and, on July 30, 2007, Dr. Pearce declared the claimant to be at maximum

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medical improvement and released the claimant to work at regular duty. At that time, Dr. Pearce issued a 4% whole body impairment to the claimant as a result of his compensable injury.

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). In the present matter, the parties stipulated that the claimant sustained a compensable shoulder injury, and that the claimant did not reach maximum medical improvement from the compensable shoulder injury until July 30, 2007. However, the record is equally clear that the claimant's treating physician, Dr. Pearce, returned the claimant back to work on light duty effective May 29, 2007. The record shows that the claimant was not totally incapacitated from earning wages after May 29, 2007, due to the claimant's return to light duty status. The record shows the claimant along with many other respondent-workers was laid off approximately two days before Dr. Pearce's May 29, 2007, return to light duty work. Clearly, the claimant has failed to meet the two-prong test to receive temporary total disability benefits as outlined in Ark. State Hwy. Dept. v. Breshears.

Nothing in the record shows that the claimant attempted to seek other similar employment within Dr. Pearce's restrictions after May 29, 2007. Nothing in the

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record suggests that the claimant disagreed with Dr. Pearce's return to work on May 29, 2007, as there was no evidence presented that the claimant requested a change of physician. Instead the claimant continued to treat with Dr. Pearce through July 30, 2007, when Dr. Pearce released the claimant to full duty. I find that the claimant's authorized treating physician, Dr. Pearce, released the claimant to return to work on May 29, 2007, with light duty restrictions and therefore shows that the claimant did not suffer a total incapacity to earn wages between May 29, 2007, and July 30, 2007. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to the additional temporary total disability benefits requested herein.

**ORDER**

Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits. Therefore, respectively, this claim is denied and dismissed.

**IT IS SO ORDERED.**

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**S. DALE DOUTHIT**  
**Administrative Law Judge**

SDD/pjb