

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211534

GAIL BATES,
EMPLOYEE

CLAIMANT

WESTAFF USA, INC.,
EMPLOYER

RESPONDENT

TRAVELERS INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 17, 2003

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant appeared PRO SE.

Respondents represented by HONORABLE PHILLIP CUFFMAN,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed June 2, 2003. The
Administrative Law Judge found that claimant met her burden
of proving by a preponderance of the evidence that she
sustained a compensable injury and is entitled to one week
of temporary total disability benefits at the rate of
\$160.00

We have carefully conducted a de novo review of the
entire record herein, and it is our opinion that the

Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

_____ I must respectfully concur in part and dissent in part from the principal opinion, which affirms and adopts the decision of the Administrative Law Judge. Specifically, I concur with the principal opinion's affirming the Administrative Law Judge's award of reasonably necessary medical expenses as well as temporary total disability

benefits for one week. However, my review of the evidence in the record indicates that claimant is entitled to temporary total disability benefits from October 4, 2002 to a date yet to be determined.

The Administrative Law Judge conducted a hearing on this claim on May 15, 2003. After conducting the brief hearing, the Administrative Law Judge announced his ruling at the end of the hearing. He concluded that the claimant proved a compensable injury, and that she was entitled to related medical, as well as one week of temporary total disability benefits. He stated that prior to the issuance of his opinion, he would wait and see if the respondents would consent to his ruling. Subsequently, the Administrative Law Judge entered an order dated June 2, 2003. In that order, the Administrative Law Judge indicated that the respondents had agreed to accept the Administrative Law Judge's "provisional ruling." The Administrative Law Judge further ordered the respondents to pay claimant temporary total disability benefits at the rate of \$160.00 for one week, as well as any reasonable, necessary and related medical expenses. The claimant had requested related medical and temporary total disability benefits from October 4, 2002 to a date yet to be determined.

The Administrative Law Judge's opinion contains no explanation as to why he only awarded the claimant one week of temporary total disability. However, the hearing transcript contains the following colloquy:

JUDGE STILES: And based on her testimony and your cross-examination about this subsequent car accident a couple of weeks later, I would award her one week of temporary total disability benefits and the medical benefits and that's it.

And then, Ms. Bates, if Mr. Cuffman's folks will pay that, and he will notify me of that, then I will enter an Order, which you may appeal from if you so desire.

But what I would be faced with when I review all this is not long after you had this incident, you had the car accident. So for me to figure out what would have been preventing you from working right there during that time, it sounds to me that your thumb probably got well enough after a week or so that if you hadn't had the car accident, you could have worked. You could have gone out there to Westaff and worked, right?

T. at 16-17.

The preceding colloquy reveals that the Administrative Law Judge applied the wrong legal standard to determine when the claimant's entitlement to temporary total disability benefits ended. The claimant's hand injury is a scheduled injury, and the Administrative Law judge seemingly

applied the standard for un-scheduled injuries. Case law is clear that for scheduled injuries, the claimant is entitled to temporary total disability benefits until the healing period ends or she returns to work, whichever occurs first. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Therefore, whether the claimant was ever rendered incapacitated from earning wages due to her compensable injury is irrelevant. So long as the claimant has not "returned to work" and her healing period has not ended, her entitlement to temporary total disability benefits continues.

As to whether the claimant has "returned to work," I acknowledge that according to the claimant's testimony, she attempted to return to work at the same job site the following Monday. However, claimant also testified that she was told that she had been terminated. I do not find that this unsuccessful attempt to return to work by the claimant amounts to a "return to work" for purposes of applying the standard set forth by the Court of Appeals in Armstrong. An unsuccessful attempt to return to work by the claimant does not amount to a "return to work" pursuant to A.C.A. § 11-9-521(a). Farmers Cooperative v. Biles, 77 Ark. App. 1, 69 S.W.3d 899 (2002); Stone v. Aztec Paving & Heavy

Construction, Full Commission Opinion of October 18, 2002 (E807346).

As to whether the claimant's healing period for her hand injury had ended, I find that the claimant's hearing testimony indicates that her healing period continued as of the date of the hearing. I note the following testimony:

Q: I think you mentioned going to the doctor in the months since then primarily for the automobile accident. And as I recall, I asked you if you had ever had your thumb looked at. During that time did he look at your thumb, other than yesterday?

A: Yeah, when I first went to the doctor, I had him check my finger. And he was telling me all the time that, you know, there was a nerve that's messed up in my finger, and he said there ain't nothing he can give me for it, it's just a time frame where it will have to go away, for my hand to get back straighten.

I have a statement from him if you need it.

T. at 14. After giving the preceding testimony, the claimant was not allowed any further opportunity by the Administrative Law Judge to testify as to whether her healing period had ended, or to offer any medical reports into evidence. Nevertheless, this testimony was not in any

way rebutted by the respondents; thus, there is no legitimate basis in the record for concluding that it is not credible.

For these reasons, I respectfully concur in part and dissent in part.

SHELBY W. TURNER, Commissioner