

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E901881

PAULA MCKINNEY, EMPLOYEE	CLAIMANT
PLASTICS RESEARCH & DEVELOPMENT, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED JULY 7, 2003

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

Claimant represented by HONORABLE STEPHEN SHARUM, Attorney at Law, Fort Smith, Arkansas.

Respondent represented by HONORABLE ROBERT MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed and Remanded

OPINION AND ORDER

The respondent appeals a decision by the Administrative Law Judge finding that the claimant remained within her healing period; therefore, she was not entitled to any permanent benefits over and above her impairment rating. Additionally, the Administrative Law Judge awarded additional temporary total disability benefits beginning July 25, 2001, through a date yet to be determined. Based upon our de novo review of the record, we find that the decision of the Administrative Law Judge should be reversed. We find that the claimant's healing period ended on November 29, 2000.

This case has a long and varied history at the Commission. This is the third time that this case has been before the Full Commission. In an opinion dated September 14, 2000, the Full Commission found that the claimant's healing period ended November 29, 2000. That decision is now *res judicata*.

The claimant sustained a compensable arm injury on February 13, 1998. The claimant has undergone several medical procedures and has received medical treatment. The claimant was assigned a permanent impairment rating of 16% to the right upper extremity or 10% to the body as a whole by Dr. Sites, the claimant's treating physician. Dr. Sites assigned this permanent impairment rating on May 10, 2000. The respondents accepted the permanent impairment rating and paid benefits.

The claimant contended that she was entitled to additional permanent partial disability benefits in excess of those paid for the impairment rating. The claimant testified that she had applied for Social Security benefits and that her claim was pending. The claimant also testified that she wanted to return to work but was not sure what she could do. The claimant's testimony reflected that she desired to return to work and that her condition had improved from the previous year. However, the Administrative Law Judge found that the issue for

determination was not ripe and instead awarded additional temporary total disability benefits for this claimant, although the claimant's injury occurred over four years ago.

The respondents contend that the claimant has been awarded impairment ratings and that the award of additional temporary total disability benefits by the Administrative Law Judge is contrary to the evidence, both the medical evidence and the claimant's own testimony. The respondents contended that the claimant's healing period has ended and the extent of disability, if any, is the issue to be addressed.

In a letter dated September 6, 2001, after an examination on August 20, 2001, Dr. Sites reiterated that the claimant's permanent impairment rating continued to be 16% to the right upper extremity. At that time, he stated, "I see no reason to change that today." With respect to the Attending Physician's Statement of Disability filed by State Farm Insurance, the only other options on the question which asks the extent of the claimant's disability states: . . . when do you think the patient will be able to resume any work? There are three possible answers: (1) Approximate date, (2) Indefinite, and (3) Never. The treating physician chose "Indefinite". He also checked that the claimant was a candidate for a rehabilitation program. Dr. Sites would not have given the claimant a permanent impairment rating if the

claimant had not reached maximum medical improvement. Although Dr. Fisher stated at some point in his letter that the claimant's condition had not become stable, Dr. Sites stated that the claimant's condition was stable in May of 2000, when he assigned the permanent impairment rating.

It is admirable that the claimant has regained some use of her arm. However, the permanent impairment rating was accepted and paid by the respondents at some time after it was assessed in May of 2000. The letter from Dr. Fisher was not dated until May 7, 2002.

Therefore, after we consider all the evidence, we find that the claimant's healing period ended on November 29, 2000. Since the claimant has failed to prove by a preponderance of the evidence that she remains within her healing period, she is not entitled to any additional temporary total disability benefits. This claim is hereby remanded to the Administrative Law Judge for a determination of whether or not the claimant is entitled to any additional permanent benefits in excess of her permanent impairment rating.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

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I must respectfully dissent from the majority opinion to reverse and remand the Administrative Law Judge's June 12, 2002 decision. I would affirm and adopt the Administrative Law Judge's decision.

The majority opinion reverses the finding that claimant remains in her healing period and thus entitled to additional temporary total disability benefits. It instead holds that claimant's healing period ended in May of 2000 and remands to determine entitlement to permanent impairment benefits exceeding the 10% whole-body permanent impairment rating previously awarded and paid.

The Administrative Law Judge opined claimant's current condition to be unstable, requiring further treatment based on Dr. Fisher's expert medical opinion.

Dr. Fisher, claimant's treating physician, informed State Farm Insurance Agency by letter in January of 2002 that claimant was off work indefinitely. He additionally noted on March 7, 2002 that while claimant's prognosis is good, she continues to need physical therapy and other treatments.

The Administrative Law Judge therefore concluded that claimant remained in her healing period, totally

incapacitated from earning wages, and opined that further treatment would improve her condition.

The majority opinion disagrees, citing Dr. Sites' assigned impairment rating in August of 2001 (five months prior to Dr. Fisher's January of 2002 correspondence) as evidence that claimant's healing period was ended by the date of Dr. Fisher's May of 2002 assessment that claimant remained in her healing period, unable to work. The majority opinion states, "Dr. Sites would not have given the claimant a permanent impairment rating if the claimant had not reached maximum medical improvement."

I do not, however, find this argument persuasive given the fact that claimant's treating physician deemed otherwise. The Commission, as fact-finder, is empowered to review the evidence, *de novo*, adjudicate all relevant issues, including the stability of claimant's condition. Contrary to the majority opinion, I find that the evidence preponderates in claimant's favor; specifically, I find that claimant remains in her healing period totally incapacitated to earn wages at this time, but that further treatment can improve her condition.

Since I would affirm and adopt the Administrative Law Judge's decision, I must respectfully dissent from this reversal and remand.