

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313628

SHEILA LAMB,
EMPLOYEE

CLAIMANT

MURPHY OIL COMPANY,
EMPLOYER

RESPONDENT

LIBERTY MUTUAL INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 2, 2004

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

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

Respondents represented by the HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of administrative law judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed June 17, 2004. The administrative law judge
found, among other things, that the claimant proved she was
entitled to temporary total disability compensation
"beginning January 12, 2004 and continuing through a date
yet to be determined." After reviewing the entire record *de*
novo, the Full Commission reverses the administrative law
judge's award of additional temporary total disability

compensation. We find that the claimant did not prove she was entitled to temporary total disability after January 12, 2004.

I. HISTORY

Sheila Ann Lamb, age 30, had been employed with Murphy Oil Company. Ms. Lamb described her duties as "I was a cashier; did stocking of soft drinks, cigarettes, emptied trash; filled those little things of - that you wash your windows with; and cleaned the bathrooms."

The parties stipulated that the claimant sustained a compensable injury to her shoulder on December 23, 2003. The claimant testified that she could not remember the injury. An emergency department record on December 23, 2003 indicated that the claimant complained of head pain, neck pain, and shoulder pain. The impression from a CT of the brain without contrast on December 23, 2003 was "normal non contrast CT head." The impression from a CT of the cervical spine without contrast was "1. Bilateral right greater than left maxillary sinus disease. 2. No evidence of bony fracture, dislocation or subluxation of the cervical spine."

The claimant saw Dr. Ralph Ingram on December 24, 2003:

Last night a metal door hit her in the back of her head and shoulder. It knocked her unconscious and she fell to the floor and not sure whether the

shoulder injury came from the fall to the floor or the door hit her. She has soreness in the occipital area of her head and in the posterior aspect of her right shoulder....

There is some palpable tenderness over the occipital scalp and two areas, one where she states the door hit her and one where she thinks her head hit the floor. I can see no discoloration and can feel only slight swelling....

There is obvious swelling and slight discoloration right posterior shoulder area, would be the superior medial aspect of the scapula....

Dr. Ingram assessed "1. Concussion with contusion to occipital scalp. 2. Contusion right posterior shoulder. 3. Cervical spine strain." Dr. Ingram planned conservative treatment and noted, "X-rays of the right shoulder and scapula were obtained and I can see no obvious abnormalities. However, the radiology report will be reviewed." The impression from an x-ray of the right shoulder on December 24, 2003 was "No osseous abnormality."

Dr. Ingram examined the claimant on December 30, 2003 and assessed "1. Post concussion headache. 2. Contusion right posterior shoulder. 3. Cervical spine strain." Dr. Ingram noted, "Patient will continue at rest and her medical leave is extended for two weeks."

The claimant consulted with a neurologist, Dr. William L. Griggs, on January 12, 2004. Dr. Griggs arranged

additional diagnostic testing. The impression from an electroencephalogram on January 12, 2004 was "Normal EEG in wake state." The diagnosis from a Brain Stem Auditory Evoked Response on January 12, 2004 was "Normal bilateral brain stem auditory evoked response. 1. Central auditory pathways are normal. 2. There is no evidence of a brain stem or cerebellar pontline angle lesion." Dr. Griggs wrote on January 12, 2004, "I am not certain what the prognosis is in this woman. I do not find anything organically wrong with her. She certainly may have some aches and pains as a result of the injury she had, but I have a feeling there is a psychiatric component to this. If she can be pushed along and resume full activities, wonderful. If not, I think she may need psychiatric consultation. I will see her in about three months and see how she is doing."

Dr. Griggs also wrote on January 12, 2004:

Shelia (sic) Lamb is a lady a door fell on her head and shoulder, December 23 2003. She has been having considerable pain since that time. Her neurological exam is normal. Her Brainstem Evoked Response, EEG, Nerve Conduction Study and EMG in the right upper extremity are normal. She also had normal CT scans of the head and neck. I believe this woman had a post concussion syndrome with headaches and dizziness. She can return to work with limited duties in which she does not have to lift over 25 pounds regularly and in which she can sit most of the day whether (sic) than being on her feet. She needs to work her way through the

soreness and then she will eventually return to full activity without limitations....She is release (sic) to go to work tomorrow.

On January 14, 2004, Dr. Ingram assessed "1. Post concussion headache, no improvement. 2. Contusion right posterior shoulder, improved. 3. Cervical spine strain, no improvement. 4. Depression." Dr. Ingram planned, "Extend her medical leave for 2 weeks." On January 28, 2004, Dr. Ingram again extended the claimant's medical leave for 2 weeks."

Dr. Ingram noted on February 11, 2004:

Sheila is a 29-year-old female in for follow-up today for postconcussion headaches. She was to be evaluated by Dr. Tremwel on the 9th day of this month, which was Monday. However, she tells me that her appt. was canceled by her Workman's Comp Insurance carrier because she had already been seen by Dr. Grigg's. So she has not gotten the second neurological opinion that she was seeking....

Dr. Ingram extended the claimant's "medical leave" for another two weeks and assessed "1. Post concussion headaches. 2. Depression." The record indicates that Dr. Ingram stated on February 11, 2004 that the claimant could return to work on February 25, 2004.

A pre-hearing order was filed with the Commission on March 24, 2004. The claimant contended that she was entitled to medical treatment "as a result of the

compensable injury sustained to her head on December 23, 2003." The claimant contended that Dr. Ingram had referred her to Dr. Tremwel, but that the respondents "have refused medical treatment and have terminated temporary total disability benefits. The claimant is entitled to temporary total disability benefits from the date of termination of benefits to a date yet to be determined....The claimant is further entitled to medical expenses and treatment at the direction of Dr. Ralph Ingram."

The respondents contended that the claimant had "no objective findings of a neck or head injury. She had some objective findings regarding a minor shoulder injury but all of the tests have been normal. She was treated and released on January 12, 2004 to return to full duties. She is not entitled to additional temporary total disability and further treatment is not reasonable or necessary."

The parties agreed to litigate the following issues:

- (1) Compensability of injuries to neck and head on December 23, 2003;
- (2) Reasonably necessary medical treatment; and
- (3) Temporary total disability compensation from January 12, 2004 through a date yet to be determined.

Hearing before the Commission was held on May 17, 2004.

The claimant testified:

Q. You were released to go to light duty by Dr. Griggs and were you able to do the light-duty kind of work?

A. No. The said they wouldn't let - Murphy's said that they couldn't allow me to sit like Dr. Griggs wanted me to because you've got to get - you have to move around, you know. I mean, everything is not just right where you can sit, like at a desk.

Q. You were going to be expected to continue to lift and to supply the - stock the bins? That's part of the job, correct?

A. Yes.

Q. And physically are you able to do that?

A. No....

Q. Sheila, since your treatment with Dr. Griggs, has your condition gotten better or worse?

A. Worse....

The respondents' attorney cross-examined the claimant:

Q. Now, tell me what you injured in this accident?

A. I injured my head, and my neck and shoulder was sore. They were hurt, I mean, but my neck and shoulder don't bother me anymore. It's just my head.

Q. So as of today your shoulder and neck don't keep you from working at all?

A. Right.

Q. But your head does?

A. Yes.

Q. And it's because of headaches?

A. Severe headaches.

The administrative law judge (ALJ) found that the claimant failed to prove that she suffered a compensable injury to her cervical spine as a result of the December 23, 2003 incident. The ALJ also found, "Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her head as a result of the incident which occurred on December 23, 2003." The ALJ found that the respondents were liable for reasonably necessary medical treatment provided in connection with the compensable head injury. The ALJ found that the claimant proved she was entitled to temporary total disability compensation "beginning January 12, 2004 and continuing through a date yet to be determined."

The respondents appeal to the Full Commission and state, "Specifically, the Administrative Law Judge erred when he awarded temporary total disability."

II. ADJUDICATION

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. Carroll Gen. Hosp. v. Green, 54 Ark. App. 102, 923 S.W.2d 878 (1996). Ark. Code Ann. §11-9-

102(12) defines "healing period" as "that period for healing of an injury resulting from an accident." The healing period continues until the employee is as far restored as the permanent character of her injury will permit, and if the underlying condition causing the disability has become stable and if nothing 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).

The respondents in the present matter do not appeal the administrative law judge's award of reasonably necessary medical treatment provided in connection with the claimant's compensable head injury. The respondents instead submit, "the finding that the claimant is entitled to temporary total disability after January 12, 2004 is in error." The Full Commission finds that the claimant did not prove she was entitled to additional temporary total disability compensation after January 12, 2004.

The parties stipulated that the claimant sustained a compensable injury to her shoulder on December 23, 2003. The initial emergency record indicated that the claimant complained of head pain, neck pain, and shoulder pain. A CT of the brain on December 23, 2003 was normal. Dr. Ingram examined the claimant's scalp on December 24, 2003 and

noted, "I can see no discoloration and can feel only slight swelling." Dr. Ingram assessed "concussion with contusion to occipital scalp." There were no reports of swelling in the claimant's scalp after December 24, 2003. Dr. Griggs, a neurologist, began testing the claimant in January 2004. An EEG was normal, as was a brain stem auditory evoked response test. Dr. Griggs stated, "I do not find anything organically wrong with her." Dr. Griggs released the claimant to work on January 12, 2004.

The Full Commission finds that the claimant reached the end of her healing period no later than January 12, 2004. We recognize that Dr. Ingram did not return the claimant to work until February 25, 2004. However, the Full Commission attaches more weight to the opinion of Dr. Griggs, the treating neurologist, who returned the claimant to work on January 12, 2004. Dr. Griggs' findings also indicate that the claimant had reached the end of her healing period for the compensable injury no later than January 12, 2004. An employee is not entitled to temporary total disability after the end of her healing period. Trader v. Single Source Transportation, Workers' Compensation Commission E507484 (Feb. 12, 1999). We also note the claimant's testimony that she continues to suffer from headaches, but 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, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The Full Commission in the present matter finds that the claimant's condition resulting from her compensable injury had stabilized no later than January 12, 2004.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she was entitled to additional temporary total disability compensation after January 12, 2004. We therefore reverse the administrative law judge's finding that the claimant proved she was entitled to temporary total disability beginning January 12, 2004 and continuing through a date yet to be determined. This claim is denied and dismissed.

_____ IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the majority reversing the Administrative Law Judge's

award of benefits for temporary total disability from January 12, 2004 to a date yet to be determined.

Initially, I think it is important to understand the serious nature of the admittedly compensable injury sustained by claimant on December 23, 2003. Claimant was a cashier at one of the employer's gas stations located on a Wal-Mart parking lot. Claimant was stocking soft drinks in a storage bin when the door of the bin struck her in the head. Randy Barentine, a customer, heard the "loud thud" of the door striking claimant and looked up to observe the remainder of claimant's accident. Barentine explained his observations in the following manner:

...Literally she was in the air going backwards, so I saw her head hit the concrete and it slightly come (sic) up off the concrete 3 or 4 inches or so and she went back down to the concrete. In less than five seconds, I realized this young lady is not going to -- she's not moving. So I just dropped the windshield cleaning wand and ran over to her, I mean, to see what I could do to help her, and this lady was unconscious, was unresponsive....

Claimant was taken by ambulance to the emergency room of a local hospital. Hospital personnel

documented complaints of pain in claimant's head, neck, and shoulder. Claimant's primary treating physician has been Dr. Ralph Ingram, who diagnosed a concussion with contusion to the occipital scalp, a contusion to the right shoulder, and a cervical strain. The present issue concerns benefits related to the injury to claimant's head and scalp area, where Dr. Ingram documented swelling. Fortunately, the diagnostic tests that were chosen to be administered came back within normal limits. However, claimant eventually began to experience excruciating headaches and impairments to her cognitive functioning. Therein lies the difficulty with this issue. The majority has chosen to arbitrarily disregard the evidence, particularly the most credible testimony of claimant and her witnesses, concerning these symptoms.

Respondent apparently suspended the payment of compensation benefits on January 12, 2004 based on a report by Dr. Griggs, a neurologist. However, Dr. Griggs did not question claimant's head injury or her need for additional treatment for the symptoms caused by this head injury. Further, the Arkansas courts have upheld awards of benefits for headaches (Green Bay

Packing v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 695 (1999)) and cognitive dysfunctions (Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 118, 975 S.W.2d 857 (1998)).

This case boils down to a determination regarding credibility of the evidence. The Administrative Law Judge, who had the opportunity to observe the witnesses, found that their testimony was highly credible. There is certainly no reason to disbelieve this evidence.

The greater weight of the evidence indicates that prior to the compensable injury, claimant never experienced any headaches like the ones she has now. These headaches cause dizziness, blurred vision, and nausea. Claimant literally has to stay in a dark environment to attain any measure of relief. Claimant experiences this pain on almost a daily basis. Additionally, for the first time, claimant is forgetful, confused, and has blacked out on several occasions. She can no longer deal with money issues such as making change or handling a checkbook. She now requires assistance with household chores and taking care of her small child.

The majority has found that claimant is not entitled to any benefits for temporary total disability subsequent to Dr. Griggs' evaluation on January 12, 2004. However, as noted above, Dr. Griggs did not state that claimant's healing period had ended, and his release to return to work had specific limitations. The undisputed evidence is that when claimant approached the employer, the employer refused to allow her to return to work allegedly because there were no jobs within these particular limitations. Temporary total disability benefits can be awarded when claimant has been released to light-duty work and the employer has no such work available. Arkansas State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981); Sanya Mfg. Corp. v. Leisure, 12 Ark. App. 274, 675 S.W.2d 841 (1984).

Further, claimant continued to see her treating physician subsequent to the neurological evaluation performed by Dr. Griggs. Dr. Ingram's practice is to extend claimant's medical leave for two weeks until the next scheduled appointment, and the evidence of record indicates that he continued this practice until approximately the end of February 2004. I point out that the record does not contain a report

from Dr. Ingram stating that claimant's healing period has ended or that she is not in need of additional treatment for the work-related injury. Additionally, claimant testified that Dr. Ingram has not released her to return to any work. Moreover, claimant and her witnesses provided credible testimony that claimant does not have the ability or capacity to work at this time.

Based on the greater weight of the credible evidence and an impartial review of the record, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to benefits for temporary total disability from January 12, 2004 to an uncertain future date. Accordingly, the opinion of the Administrative Law Judge should be affirmed. Therefore, I must respectfully dissent.

SHELBY W. TURNER, Commissioner