

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213879

GLENNA FAYE TURNER,
EMPLOYEE

CLAIMANT

COORSTEK, INC.,
EMPLOYER

RESPONDENT

ROYAL INDEMNITY COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 11, 2004

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

Claimant represented by HONORABLE J. GARY DAVIS, Attorney at
Law, Little Rock, Arkansas.

Respondents represented by HONORABLE AMY S. HUFFMAN,
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 July 25, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant suffered a compensable injury July 26, 2002; her average weekly wage was \$563.00; and, as a result of

the compensable injury, the claimant underwent surgery on her left shoulder December 6, 2002, which was accepted as compensable by the respondents.

3. The preponderance of the evidence shows that the claimant is not entitled to benefits for temporary total disability from November 6, 2002, until a date to be determined, because during that time she was not totally incapacitated to earn wages for a period sufficient to entitle her to such benefits.

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

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the majority and find that Claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits.

Claimant sustained an admittedly compensable injury on July 26, 2002. The record establishes that Claimant had worked for Respondent for six years as a machine operator, which required the use of both arms. Claimant continued to receive medical treatment in the months following her injury, but pain in her left shoulder persisted. In the months following the injury, Claimant also frequently missed work due to the continued pain she experienced in her left shoulder. On October 17, 2002, Claimant was examined by Dr. Rozenweig, an orthopaedist, who recommend that Claimant undergo an MRI of her shoulder. The MRI, was taken on November 7, 2002, and revealed that the rotator cuff in Claimant's left shoulder was torn. Claimant underwent surgery on December 6, 2002, to repair the rotator cuff. She was released to right arm duty only on December 11, 2002. The last medical record in evidence is dated March 11, 2003, and states that Claimant had not yet reached maximum medical improvement.

As recognized by the court in Sanyo Manufacturing Corp. v. Leisure, 12 Ark. App. 274, 281-82 (1984), Claimant may establish a total incapacity to earn wages where, as is

the case here, there is insufficient evidence to show that Claimant was able to earn wages during her healing period. The record reflects that Claimant, who was 62 years old at the time of the hearing, had never done one handed work, but instead had worked in various jobs throughout her lifetime as a manual laborer in positions that required the use of both arms. For these reasons, I find that Claimant is entitled to temporary total disability benefits.

Further, I find that respondent did not terminate Claimant for good cause. Claimant was terminated for excessive absenteeism on November 6, 2002, the day before the scheduled MRI. The record reveals that Claimant incurred a majority of these absentee hours due to left shoulder pain that she continued to experience in the months following her compensable injury and that Respondents knew that she continued to seek treatment for left shoulder pain. At the time of Claimant's termination, she had accrued 89.3 absentee hours. Only 18 of these hours were accrued prior to her compensable injury. Based upon these facts, I further find that Claimant was not terminated for good cause.

Accordingly, the opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner