

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304082

PAUL CUNNINGHAM,
EMPLOYEE

CLAIMANT

KEN'S TRUCK & REFRIGERATION
SERVICE, EMPLOYER

RESPONDENT

FARMERS INSURANCE EXCHANGE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 9, 2005

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

Claimant represented by the HONORABLE GARY UDOUJ, Attorney
at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD
WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of administrative law judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed March 16, 2004. The administrative law judge
found that the claimant proved he was entitled to additional
medical treatment, and that the claimant proved he was
entitled to temporary total disability compensation
beginning September 9, 2003 through a date yet to be
determined. After reviewing the entire record *de novo*, the

Full Commission affirms the opinion of the administrative law judge.

I. HISTORY

Paul Douglas Cunningham testified that he began working for Ken's Refrigeration in about March 1998. Mr. Cunningham cleaned refrigerated railroad cars for the respondent-employer, and the work involved frequent manual labor. The parties stipulated that the claimant sustained compensable injuries to his left shoulder and arm on April 15, 2003.

The claimant testified:

Q. Tell the Judge what happened in the accident.

A. We had gone down to do the job as regular....I turned around and walked back to my work truck. While walking back I felt something hit me in the back of the head and it caused me to go forward and roll and when I stopped rolling that's when the truck hit me. When it hit me the first time, or when it hit me initially, it drug me. How far, I don't know. But after it drug me he stopped and then I guess he didn't realize what the deal was or what was behind him so he gave it more gas and that's when he went up on top of me. And after he was on top of me he stopped again and that's when he got out of the truck and he walked to the back of the truck, and from what I understand, he saw my feet underneath one of the tires on the driver's side. That's when he got back in the truck and backed off me.

The claimant testified that following the accident "I hurt everywhere. I hurt on both sides. The main pain was

the whole left upper extremity part from the front to the back."

Dr. Ann K. Passmore, a cosmetic and reconstructive surgeon, informed Dr. James C. Wilson on April 16, 2003, "I had the pleasure of evaluating Mr. Cunningham in my office this afternoon. As you recall, you and I discussed him per phone conversation yesterday and he sustained severe injury to his left posterior upper arm in that there is a large abrasion wound which is very dirty....Because of the level of injury I think that it is wise to take him to the operating room and we will plan to do that tomorrow for irrigation and debridement and perhaps placement of OASIS which is a skin substraight (sic) manufactured from porcine derivative. That will help to granulate the area in and then either facilitate delayed closure by approximating the wound edges or even skin grafting."

On April 17, 2003, Dr. Passmore performed a "staged irrigation and debridement of left upper arm."

Dr. Wilson reported on April 17, 2003:

Mr. Cunningham returns, being sent down here from outpatient surgery by Dr. Passmore. I had seen him two days ago after he was knocked down and then run over at low speed by a Dodge pickup truck. He continues to have pain in his right arm

and in his right leg....He did have outpatient surgery today and is recovering from that and the anesthesia. He has a little pain in his anterior chest wall, but no significant chest pain or shortness of breath....

CT scan of the C-spine, T-spine and L-spine does not reveal signs of any bony or significant disc injury, except for a nondisplaced right transverse process fracture at T1.

Dr. Wilson assessed "1. Multiple contusions, abrasions, strain. 2. Nondisplaced right T1 transverse process fracture."

Dr. Passmore wrote to a case manager on April 18, 2003:

(1) Mr. Cunningham is status post crush injury to the left upper arm with a deep abrasion type wound which is for full thickness skin. The wound itself measures 10 centimeters by 6 centimeters on the posterolateral surface of his left upper arm. Because of the injury and being rolled over by a truck (3/4 ton truck I am told) while at work he has other injuries as well which have been worked up per the Emergency Room at St. Edward. His medical status is that he definitely has an open wound with this as a result of the injury in addition to his pain from the truck literally rolling up onto his body.

(2) It is difficult to estimate the date of maximum medical improvement (MMI) for this type of injury, however, wounds do not heal once definitive closure is made for a total of 12 months as defined by the Guides to Evaluation of Permanent Impairment 4th edition, American Medical Association. Mr. Cunningham will more than likely require 4 to 6 weeks from the standpoint of his arm before he is able to do even some limited duty at work with the use of only one

hand (no use of the left hand), however, I am not certain about the status of his orthopaedic standpoint which I am told that he has a fracture as diagnosed per the Emergency Room and he has follow up set with either orthopaedics or neurosurgery for this....

(3) His work status at the present time is that he is unable to work. This is because of frequent administration of narcotics for pain medication from the wound to his arm as well as the overall pain that he is experiencing from the truck rolling onto his body....

Dr. Robert B. Bebout examined the claimant on April 21, 2003 and reported, "He does have a fracture of the T12 transverse process on the right. It looks like a fracture of the manubrium on the left of the SC articulation without any displacement there of the sternoclavicular joint....All in all, I think he is quite lucky he has escaped with such essentially minor injuries that should heal up without any permanent impairment. He is going to be off work a substantial length of time to get over the fracture of the back and the manubrium and just all of the contusions and abrasions....He will remain off work until we see him back in the office another four weeks."

The claimant presented to Dr. Joseph W. Queeney on May 5, 2003:

The patient is a 32-year-old male who is referred by Dr. Ann Passmore for surgical evaluation of a T1 transverse process fracture. The patient was injured on or about 4/15/03. Apparently he was run over by a pickup. Apparently he was lying on his right side and the tire actually came up over his torso on the left side. The patient has complained of some medial scapular border pain since that time. He does not really describe any upper or lower extremity pain, paresthesias or paralysis. There is no radicular pain in the upper or lower extremities. He, in fact, states that the pain tends to be more concentrated on the **left** side of the medial scapular border....

I had the opportunity of reviewing a multitude of x-rays including plane x-rays of the cervical spine. These do not really show any evidence of fractures or dislocations. I reviewed a CT scan performed of the cervical spine at St. Edward Mercy Medical Center on 4/17/03. This does show a small transverse process fracture on the **right** at T1. I do not see any fracture of the rib in this location. I have also reviewed an MRI scan performed of the cervical spine as well as the MRI scan performed of the thoracic spine both performed on 5/1/03. I do not really see any evidence of herniated discs or significant nerve root compression. Again, there is a little bit of edema around the right transverse process at T1.

Dr. Queeney's impression was "1. Thoracic myofascial dysfunction. 2. Right T1 transverse process fracture."

Dr. Queeney recommended conservative treatment, and the claimant began a course of physical therapy. An x-ray of the claimant's right hand on May 12, 2003 revealed no significant abnormality.

Dr. Keith F. Holder stated on June 19, 2003, "The patient is here to check his left sternoclavicular joint where he received an injection two weeks ago. He is doing significantly better since the injection. The patient is requesting release to a different job. Apparently he obtained employment at a different company." Dr. Holder's impression was "Motor vehicle accident with sternoclavicular joint strain, thoracic myofascial dysfunction, and contusion of the right hand." Dr. Holder planned, "1. He may return to work without restrictions but as tolerated. 2. Follow-up here as needed."

Despite Dr. Holder's note that the claimant could return to work without restrictions, the claimant testified that "My understanding was no lifting over 30 pounds from chest to above." The claimant testified that he went to work stocking shelves at Wal-Mart on July 3, 2003. The claimant testified that he did not sustain an additional injury while working at Wal-Mart. However, "I had the pain in the same areas that I had before....It was all in the left upper extremity - in my shoulder, in the back part of the shoulder towards the neck (pointing on left shoulder), the front part of the shoulder towards the collarbone.

Somewhat in the right shoulder, not near as much as the left side, but - some in the left hip."

The claimant testified that he quit working at Wal-Mart after four to five weeks, "Because of the pain. It was hurting every day." The claimant testified that he left Wal-Mart on August 15, 2003 and went to work on August 19, 2003 at Reynolds' Guttering & Pest Control, installing guttering. The claimant testified that he did not sustain an additional injury in this employment.

The claimant testified that he quit working for Reynolds' Guttering on September 9, 2003. The claimant testified that he was hurting more than usual on that day, and that he informed his supervisor he was going to the hospital. The claimant sought emergency treatment on September 9, 2003:

Paul is a 33-year-old, who was in a work-related accident on 04/05/2003, when he sustained injuries to his sternum, clavicle, and possibly some upper ribs. He comes in tonight stating the pain is intractable and he has never been pain-free. When I touch him over his first rib area, he just cries out with pain. I did low-velocity, just muscle energy, osteopathic manipulative therapy and articulated his first rib on the left. He was tearful before doing the exam and become (sic) more tearful after the exam. However, after doing the first rib technique, he seemed to obtain some relief, but he then immediately started to

transfix his pain complaints to his left shoulder....He is definitely neurovascularly intact and I find no gross abnormalities. He has had multiple MRIs and CT scans, all with normal findings. He has seen chronic pain specialists. He has had steroid trigger point injections, all without relief. He states he is currently disabled. I told him that I was going to give him a steroid Dosepak, something for pain, an injection, let him go home, that we did not treat chronic pain in the emergency room, that he needed to establish with a personal physician and let them manage the case....

The dictating physician's diagnosis was "1. Left cervical radiculopathy. 2. Chronic pain syndrome. 3. Pain out of proportion to physical findings."

The claimant testified that he returned to Dr. Holder. Dr. Holder's impression on September 12, 2003 was "1. Right T1 process fracture. 2. Left sternoclavicular joint strain. 3. Left C7-T1 small left posterolateral disc protrusion/herniation." Dr. Holder stated that the claimant could return to restricted work.

The record contains a handwritten Fax Message to Dr. Holder from Sandy Anderson of Farmers, dated September 16, 2003:

We reviewed your notes on Mr. Cunningham from 9-12-03. Please advise if Mr. Cunningham's current problems are related to his April 15, 2003 injury or if his current problems are a result of current job duties. He was released without these problems

2 months ago. There may not have been a specific incident but could his job installing gutters contributed (sic) to these current complaints?

It was written on the Fax, apparently by Dr. Holder, "aggravation of previous injury April 15, 2003."

The impression from an electromyogram report dated September 19, 2003 was "This is a normal nerve conduction study of the left upper extremity and a normal EMG of the left upper extremity with specifically no evidence to suggest compressive neuropathy or radiculopathy."

Dr. Holder's impression on September 24, 2003 was "Right T1 process fracture, left nubral joint strain with a questionable fracture, left C7-T1 small left posterolateral disc protrusion." Dr. Holder planned "1. He may continue medications as prescribed before. 2. He is discharged from this clinic at this time."

Dr. Cygnet Schroeder corresponded with Dr. Passmore on November 7, 2003:

Many thanks for allowing me to participate in Mr. Cunningham's care. As you know, he is a 33 year-old right hand dominant patient who unfortunately was involved in an accident on April 15, 2003....

His course after the injury was fairly complicated. He was evaluated by numerous physicians; Dr. Holder, Dr. Queeney. He was seen in the emergency room by the emergency room

physician who did an osteopathic manipulation to try to relocate his first rib on the left side. He was referred for an EMG, however, in talking with the patient, it does not appear that this was a complete study nor was a radiculopathy ever evaluated. He has been off work for quite a while. He did attempt to do some kind of employment to help support his family, stocking shelves at Wal-Mart and he reported to be the heaviest thing he lifted was that of a liter bottle of pop....

On exam he has a marked amount of paraspinal spasm noted in the cervical region, left upper back with tenderness over the C7-T1 area. There is crepitus and clicking noted with shoulder movement though I am unable to tell exactly its origin. He has tenderness over the sternoclavicular joint. There is anterior chest wall tenderness with spasm....Right shoulder range of motion was limited with trapezius spasm noted on the right side as well.

Dr. Schroeder's impression was "1. Multiple trauma. 2. T1 spinous process fracture. 3. Residual edema. 4. Cervical radiculopathy. 5. Possible injury to the right shoulder. 6. Chest wall injury. 7. Multiple areas of myofascial pain."

Dr. Schroeder wrote to the claimant's attorney on December 9, 2003:

Per Mr. Cunningham's medical concerns, I have recommended several diagnostic tests. These include an MRI of the shoulder and anterior chest. This would relate to his prior injury, given the fact that basically a vehicle rolled over that aspect of his body and diagnostics have not been

completed. I also recommended an MRI of the brain to see if there is evidence of a brain injury. This is related to his primary accident.

The patient has had consistent complaints since his injury regarding his sternum and upper arm with his brachial plexus not being fully assessed after his injury. I would recommend a complete EMG and Nerve Conduction Studies rather than a partial study as well as possibly an MRI of the shoulder due to that. I have also recommended a psychiatry consultation for the presence to see if there is an issue of post-traumatic stress present after the truck running over him.

I do not feel that he has had a completed course of Physical Therapy. A Functional Capacity would be beneficial in determining the types of jobs he could pursue in the future.

A pre-hearing order was filed on December 29, 2003.

The claimant contended that he was entitled to additional medical treatment. The claimant contended that he was entitled to temporary partial disability from July 3, 2003 through September 9, 2003, and that he was entitled to temporary total disability beginning September 9, 2003.

The respondents contended that the claimant had been released to return to work without restriction on June 19, 2003, and that the claimant subsequently returned to work for two separate employers. The respondents contended that the claimant "requested a change of physician who has recommended additional medical treatment." The respondents

contended that "based upon a medical opinion by Dr. Holder, the claimant's current need for medical treatment is associated with an aggravation of his injury which equates to an independent intervening cause relieving the respondents of liability for further benefits. It is also respondents' position that the treatment recommended by Dr. Schroeder has not been shown to be related to the claimant's compensable injury as opposed to an aggravation thereof." The respondents contended that the claimant was not entitled to additional temporary disability.

Hearing before the Commission was held on February 9, 2004. The respondents' attorney stated at that time that the respondent-carrier had "accepted compensability of everything - the right hand, wrist, and chest and left foot....So our position regarding compensability is that we're accepting everything, but that additional medical treatment is not reasonable and necessary for any of these injuries....any medical treatment subsequent to June 9th of 2003 is not reasonable and necessary for the claimant's compensable injuries."

The claimant testified at hearing:

Q. What is it that you want?

A. I just want medical treatment. I just want to be as pain-free as possible and be able to live as normal a life as possible....

Q. And are you satisfied with Dr. Schroeder?

A. Yes, sir.

Q. Were you able to work - when you left September 9th from Reynolds, is it your understanding that you are not able to work any other jobs since that time?

A. Yes, sir.

Q. What is the basis for that understanding?

A. I attempted it twice and it didn't work.

The administrative law judge found that the claimant failed to prove he was entitled to temporary partial disability compensation; the claimant does not appeal this finding. The administrative law judge found that the claimant proved he was entitled to additional medical treatment. The administrative law judge found that the claimant proved that he was entitled to temporary total disability compensation from September 9, 2003 through a date yet to be determined. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Medical Treatment

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The claimant must prove by a preponderance of the evidence that he is entitled to additional medical treatment. What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, the Full Commission affirms the administrative law judge's finding that the claimant proved he was entitled to additional medical treatment. The parties stipulated that the claimant sustained compensable injuries to his left shoulder and arm on April 15, 2003. The respondents subsequently accepted compensability of injuries to the claimant's right hand, wrist, chest, and left foot. The claimant credibly testified that a truck rolled over his body at work. Dr. Passmore treated the claimant for a left-arm abrasion wound. In addition, post-injury diagnostic testing in April 2003 showed "a nondisplaced right transverse process fracture at T1." The record does not explicitly show that this compensable

condition has ever healed. The fracture was noted by Dr. Wilson, Dr. Bebout, Dr. Queeney, and Dr. Holder. Dr. Holder's impression in September 2003 was "Right T1 process fracture, left nubral joint strain with a questionable fracture, left C7-T1 small left posterolateral disc protrusion." The Commission therefore attaches minimal weight to the emergency room physician's statement in September 2003, to wit, "He has had multiple MRIs and CT scans, all with normal findings."

Through a referral from treating physician Dr. Passmore, the claimant began treating with Dr. Schroeder in November 2003. Dr. Schroeder noted "a marked amount of paraspinal spasm" around the claimant's cervical region, along with spasm in the claimant's anterior chest wall. The Commission again notes that the respondents expressly accepted compensability of a chest injury. Dr. Schroeder recommended additional diagnostic testing and a completed course of physical therapy. The Full Commission finds that the claimant proved by a preponderance of the evidence that he was entitled to the recommended treatment from Dr. Schroeder. The Full Commission also finds that the claimant's need for additional treatment was not the result

of any sort of aggravation or new injury occurring while the claimant was working at Wal-Mart or Reynolds' Guttering. The decision of the administrative law judge is affirmed.

B. Temporary Disability

"Disability" means incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury. Ark. Code Ann. §11-9-102(8). Temporary disability is determined by the extent to which a compensable injury has affected the claimant's ability to earn a livelihood based on medical evidence, age, education, experience, and other matters reasonably expected to affect the claimant's earning power. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981), citing Rooney & Travelers Insurance Co. v. Charles, 262 Ark. 695, 560 S.W.2d 797 (1978). Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. Breshears, supra. "Healing period" means that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12).

In the present matter, the Full Commission affirms the administrative law judge's finding that the claimant proved

he was entitled to temporary total disability compensation from September 9, 2003 through a date yet to be determined. The claimant sustained several compensable injuries as a result of the April 15, 2003 accident, including a right transverse process fracture at T1. As the Commission has pointed out earlier, the evidence of record does not show that the claimant's fracture has healed. The Commission recognizes that the claimant worked for two separate employers in July and August 2003. Nevertheless, the claimant credibly testified that he continued to suffer from chronic pain as a result of his compensable injuries. There is no evidence to show that the claimant aggravated his compensable condition in July and August 2003.

The claimant left his last employment on September 9, 2003 and sought emergency medical treatment on that date. The claimant informed the emergency physician that he was unable to work. The claimant began treating with Dr. Schroeder on November 7, 2003. Dr. Schroeder's impression was "1. Multiple trauma. 2. T1 spinous process fracture. 3. Residual edema. 4. Cervical radiculopathy. 5. Possible injury to the right shoulder. 6. Chest wall injury. 7. Multiple areas of myofascial pain." Dr.

Schroeder opined that the claimant needed additional diagnostic testing and additional medical treatment. An employee's healing period has not ended so long as treatment is administered for healing and alleviation of the condition and continues until the employee is as far restored as the permanent character of the injury will permit. Milligan v. West Tree Serv., 57 Ark. App. 14, 946 S.W.2d 697 (1997).

Dr. Schroeder's examination and reports indicated that the claimant remained within his healing period. Dr. Schroeder wrote, "I also think that he is not ready to return to work at this point and possibly needs more formal assessment with this such as an FCE ." Dr. Schroeder's report indicates that the claimant was incapacitated to earn wages as a result of his compensable injury.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved he was entitled to additional medical treatment. We find that the claimant proved he was entitled to temporary total disability compensation beginning September 9, 2003 until a date yet to be determined. The Full Commission therefore affirms the opinion of the administrative law judge. The claimant's attorney is entitled to fees for legal services

pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

_____IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion affirming the findings of the Administrative Law Judge in this claim.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben

Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553).

Here, the respondents agreed to the compensability of the claimant's injuries sustained from his April, 2003 accident. Subsequently, the claimant received all necessary and appropriate medical treatment for the injuries he sustained as a result of his accident. Included in the medical treatment received by the claimant were numerous diagnostic studies and examinations conducted by various specialists. Based upon objective medical findings, a conservative course of treatment was recommended for the claimant's injuries, and good results were reportedly achieved.

It was estimated that it would take a full year for the claimant to completely recover from his injuries. Not surprisingly, therefore, the claimant

continued to report pain, mostly in his left upper extremity, throughout the course of his treatment. Yet, objective medical testing continued to show normal results. Moreover, as recently as September of 2003, Dr. Herndon opined that the claimant's pain was "out of proportion" with his physical findings. Although Dr. testing, the claimant's diagnosis has remained consistent throughout the course of his treatment. Therefore, the claimant has failed to prove that he is entitled to additional medical treatment.

In addition, the claimant has failed to prove that he is entitled to temporary total disability benefits. Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. K II Constr. Co. v. Crabtree, 78 Ark. App. 222, 79 S.W.3d 414 (2002). When an injured employee is totally incapacitated from earning wages and remains in his healing period, he is entitled to temporary total disability. Id. The healing period is statutorily defined as that period for healing of an injury resulting from an accident. Dallas County Hosp. V. Daniels, 74 Ark. App. 177, 47 S.W.3d 283

(2001). The question of when the healing period has ended is a factual determination for the Commission.

The claimant testified that he began working as a stockman for Wal-Mart in July of 2003. According to the claimant, this work involved lifting and moving boxes of bleach and soda weighing approximately 12 to 15 pounds per box. The claimant denies having injured himself while employed with Wal-Mart. The claimant contends that he continued to experience pain in his upper left extremity during his employment with Wal-Mart, although he admits that he did not seek medical treatment for his pain during that time. Furthermore, the claimant did not have his pain medications refilled during the time that he worked for Wal-Mart. The claimant testified that he quit Wal-Mart after approximately five weeks of employment in order to find "something easier - - lighter work." Subsequently, the claimant began installing gutters for Reynold's Guttering and Pest Control. His work there involved climbing a ladder, holding materials in place for nailing, and lifting gutter materials weighing approximately 10 pounds. The claimant denies having

injured himself while working in this capacity. The claimant worked for Reynolds until September 9, 2003. The claimant has not worked since September 9, stating, "I attempted it twice and it didn't work."

As previously stated, doctors have predicted that it will take one year for the claimant to fully recover from his injuries of April, 2003. Therefore, it is reasonable to assume that the claimant may still be within his healing period. The claimant has failed, however, to prove a total incapacity to earn wages during this period of time. The claimant was released to return to work with restrictions in early June of 2003, and by mid-June he was released to work without restrictions. The claimant did, in fact, work thereafter for two different employers. Furthermore, objective medical testing spanning a six month period of time after the claimant's injury consistently failed to present an apparent medical reason as to why the claimant cannot currently return to some type of employment. Dr. Schroeder has recommended that several of these objective medical tests be repeated. However, those objective medical tests performed prior to the

claimant seeing Dr. Schroeder indicate, as Dr. Herndon stated in his ER report, that the claimant's pain is "out of proportion" with his physical findings.

Therefore, I find that the claimant has failed to prove that he is totally incapacitated from earning wages, and temporary total disability benefits should be denied.

Based upon the above and foregoing, I respectfully dissent from the majority opinion in this claim.

KAREN H. MCKINNEY, Commissioner