

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F301686 and F404780

KAREN HATCHER, EMPLOYEE	CLAIMANT
COLUMBIA FORREST PRODUCTS, EMPLOYER	RESPONDENT NO. 1
GALLAGHER BASSETT, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
STAFFMARK, EMPLOYER	RESPONDENT NO. 2
ATLANTIC MUTUAL INSURANCE CO., INSURANCE CARRIER	RESPONDENT NO. 2

OPINION FILED SEPTEMBER 14, 2005

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

Claimant represented by the HONORABLE JOHN BARTTELT,
Attorney at Law, Jonesboro, Arkansas.

Respondents No. 1 represented by the HONORABLE WILLIAM
C. FRYE, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE MICHAEL
E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of the administrative law judge: Affirmed as
modified.

OPINION AND ORDER

Respondent No. 1 and Respondent No. 2 appeal an
administrative law judge's opinion filed December 6,
2004. The administrative law judge found that on or
about August 12, 2002, the claimant sustained an injury

to her right wrist arising out of and in the course of her employment (while working for Respondent No. 2/Staffmark); and on or about June 15, 2003, the claimant sustained an injury to her left wrist arising out of and in the course of her employment (while working for Respondent No. 1/Columbia Forrest Products). The administrative law judge found that Respondent No. 2 shall pay all reasonable hospital and medical expenses arising out of the claimant's August 12, 2002, right carpal tunnel syndrome injury; and Respondent No. 1 shall pay all reasonable hospital and medical expenses arising out of the claimant's June 15, 2003, left carpal tunnel syndrome. The administrative law judge found that the claimant was temporarily totally disabled as a result of her bilateral carpal tunnel syndrome from January 16, 2004 through March 29, 2004, and continuing through the end of her healing period, exclusive of the approximate one (1) week she worked subsequent to March 29, 2004. The administrative law judge ordered and directed Respondent No. 2 to pay the claimant temporary total disability benefits at the appropriate benefit rate (\$187.00 per week) commencing January 16, 2004 through March 29, 2004, and continuing through the end of her healing period relative to her right carpal

tunnel syndrome of August 12, 2002, exclusive of the one week she worked subsequent to March 29, 2004. The administrative law judge ordered and directed Respondent No. 1 to pay the claimant temporary total disability benefits at the weekly compensation benefit rate of \$254.00 as a result of the claimant's June 15, 2003, left carpal tunnel syndrome injury suffered in the employment of same for a period beginning January 16, 2004, and continuing through the end of her healing period, exclusive of the one week worked by the claimant subsequent to March 29, 2004.

After reviewing the entire record *de novo*, the Full Commission affirms as modified the opinion of the administrative law judge. The Full Commission finds that the claimant proved that on or about August 12, 2002, she sustained an injury to her right wrist arising out of and in the course of her employment while working for Respondent No. 2; and she proved that on or about June 15, 2003, she sustained an injury to her left wrist arising out of and in the course of her employment while working for Respondent No. 1. We find that Respondents No. 1 and 2 shall pay all reasonable hospital and medical expenses arising out of the injuries of August 12, 2002, and June 15, 2003. We find that the claimant

proved she was temporarily totally disabled as a result of her bilateral carpal tunnel syndrome from January 16, 2004, and continuing through April 29, 2004, exclusive of the approximate one (1) week she worked subsequent to March 29, 2004. We find that Respondent No. 2 is liable for temporary total disability for the aforementioned period at the rate of \$187.00 per week due to injuries arising out of the claimant's right carpal syndrome of August 12, 2002. We find that Respondent No. 1 is liable for temporary total disability for the aforementioned period at the weekly compensation benefit rate of \$254.00 as a result of the claimant's June 15, 2003, left carpal syndrome injury. Although the claimant is awarded temporary total disability compensation from both Respondents No. 1 and 2, we find that Ark. Code Ann. § 11-9-501 is applicable to these claims. As a result, we find that we are compelled under Ark. Code Ann. § 11-9-501 and with guidance from § 11-9-411 to reduce in an amount equal to, dollar-for-dollar, the amount of benefits the claimant has been awarded for the same period of disability. Therefore, we find that Respondent No. 1 is entitled to an offset for benefits paid by Respondent No. 2. As such, we find that there is an offset resulting in a decrease to

\$67.00 in her temporary total disability rate from Respondent No. 1.

I. History

The claimant, age 45, began working for Respondent No 2./ Staffmark (a temporary help agency), on July 12, 2002. At that time, Staffmark assigned the claimant to work at Columbia Forrest Products performing pre-lay job duties. The claimant worked as a temporary employee for Staffmark at Columbia Forrest Products until October 25, 2002. On October 28, 2002, the claimant was hired by Respondent No. 1/Columbia Forrest Products, as a full-time employee.

According to the claimant, as part of her pre-lay job duties, she was required to inspect sheets of veneer for moisture, rips and tears. Specifically, a forklift driver would bring the sheets of veneer to the claimant and put them on a pallet that had rollers. Upon receipt of the veneers, the claimant would inspect each sheet, flip it and put it on to another pallet, as she had a quota of approximately 1,300 sheets per night. The claimant is right-hand dominant. The claimant's job was hands intensive work, which required heavy lifting.

Approximately one month after the claimant began working for Respondent No. 2, she started experiencing

problems with her right hand, in the form of pain and what she described as it going to "sleep" and "dead" on her at night. The claimant's pain and related symptoms continued to worsen, but she continued working. The claimant reported problems with her right hand on a Form N sometime around January 3, 2003, with an injury date of August 12, 2002. Although the claimant filed this claim, neither respondent offered her medical treatment.

After becoming a full-time employee for Respondent No. 1 in October of 2002, the claimant was assigned to work performing "mudding" job duties, wherein she was required to use a putty knife to make the necessary corrections to the sheets of veneer that were cracked or damaged. She was also required to use her left hand to guide the sheets of veneer down the conveyor line. According to the claimant, she began to experience pain in her left hand in February of 2003 due to her work activities, and her symptoms continued to worsen. Specifically, according to the claimant, when she returned to work on June 15, 2003, her left hand gave her "fits." However, the claimant did not report her injury until September 8, 2003, as she feared that she would not receive a gain share check (which is bonus pay that is based on a four-part gain share that includes,

productivity, shop rate, and a family of measures relating to quality and safety) provided by Respondent No. 1 if she reported an injury.

A review of the medical evidence of record shows that on July 1, 2003, the claimant was seen by Dr. Julie Dow for complaints of anxiety and right arm/wrist pain. The claimant gave a history of having been told by emergency room personnel several years ago that she had carpal tunnel syndrome (in the right wrist), for which she was given steroid shots and a wrist splint. The claimant further reported that this had worked well, but lately this had not helped, as she had been awakened in the middle of the night due to pain and related symptoms. Specifically, the claimant reported improvement in her pain after being off work for a week. In addition to this, the claimant reported problems with both hands hurting, and she stated that it was usually the right hand that really bothered her, which radiated up into her shoulder. Dr. Dow started the claimant on the splints and prescribed Naproxen, and discussed other options, which included surgery and recovery time.

On August 11, 2003, the claimant saw Dr. Dow for follow-up care of her wrist and other unrelated complaints, which included sinus and anxiety problems.

At that time, the claimant reported that she had been taking it easy with her wrists, which had resulted in marked improvement. Dr. Dow assessed the claimant with "carpal tunnel syndrome, improved." The claimant was seen by Dr. Dow for follow-up care on November 18, 2003 for complaints of carpal tunnel syndrome. Specifically, the claimant reported left hand numbness and some decreased grip. Dr. Dow assessed the claimant with "carpal tunnel syndrome, unchanged," for which she ordered a left arm wrist splint.

On January 13, 2004, the claimant was seen by Dr. Dow due to complaints of carpal tunnel syndrome, and unrelated testing, which was for hepatitis C. The claimant reported that her hands had worsened. As a result, Dr. Dow assessed the claimant with "carpal tunnel syndrome, deteriorated."

The claimant was next seen for follow-up with Dr. Dow on January 27, 2004 due to complaints of hand pain and other symptoms unrelated to her workers' compensation claim. Dr. Dow assessed the claimant with "carpal tunnel syndrome, unchanged," for which she continued the claimant on the splints and ordered NCV testings.

On January 30, 2004, the claimant underwent nerve conduction studies of both upper extremities. This study revealed "abnormal nerve conduction studies of both upper extremities." Specifically, the following conclusion was rendered:

1. Very severe carpal tunnel syndrome of the left upper extremity.
2. Severe carpal tunnel syndrome of the right upper extremity.
3. No other evidence of entrapment neuropathy or polyneuropathy was seen by nerve conduction testing of the upper extremities. Specifically, no clear evidence of ulnar entrapment was noted.

Dr. Dow referred the claimant to Dr. John F. Ball for evaluation and consultation due to complaints involving both hands and forearms. Dr. Ball's assessment was "bilateral carpal tunnel syndrome," for which he recommended bilateral carpal tunnel releases. The claimant chose to proceed with bilateral carpal tunnel releases to be done at the same setting with Dr. Ball. Therefore, on March 2, 2004, Dr. Ball performed bilateral carpal tunnel releases to claimant's wrists due to "advanced carpal tunnel syndrome in both wrists."

On March 29, 2004, the claimant was seen by Dr. Ball for follow-up care of her bilateral carpal tunnel releases. Although the claimant felt her sensation was good, she reported that she was still unable to open

jars. Dr. Ball advised that this was not unusual at this point and that strength is the last thing to come back from these sort of conditions. Dr. Ball offered the claimant therapy, but she refused it due to concerns about not being able to afford it and wanting to do it on her own. Dr. Dow recommended that the claimant continue to use the splints and released her to return to gainful employment at that time, with a plan to recheck her in one month.

Both Respondent No. 1 and Respondent No. 2 have denied the compensability of the claimant's bilateral carpal tunnel syndrome injuries. Therefore, the claimant has brought this claim asserting her rights to compensation and benefits for injuries to her left and right wrists.

A hearing was held in this matter on September 17, 2004. At the hearing, the claimant gave testimony. The claimant testified that the general state of her health was good when she began her employment on July 12, 2002. However, the claimant testified that the problems with her right hand began approximately one month after she started her employment with Respondent No. 2; therefore she put down an injury date of August 12, 2002 for her right hand injury. The claimant testified that she had

surgery on both hands with Dr. Ball, who released her to return to work on March 29, 2004. According to the claimant, since this time she has attempted to return to work at Wolverine (for a week), but was been unable to do so, as she was unable to perform lifting job duties. However, the claimant testified that her hands are getting better although she does not have the strength that she had. The claimant admits to having prior problems with her right hand while working for a company called Vinco (phonetic). According to the claimant while working for Vinco, she used a screw gun, which caused her hand to "go to sleep" at night. As a result, the claimant sought treatment from the emergency room a couple of times and was given some steroids and an arm band. The claimant further testified that Vinco paid for these visits. Moreover, the claimant essentially testified that after this, she did not have any further problems or any pain with her right hand, nor did she file any other workers' compensation claim with Vinco or get any benefits.

After working for Vinco, the claimant went to work for Delta Wood. According to the claimant, while working for Delta Wood, she did not experience any pain in her right hand. Specifically, the claimant testified

that from 1997 (after the brief treatment there at the emergency room) until 2002, she did not have any pain again in her right hand. In addition to this, the claimant also testified that she had not experienced any pain or injuries to her left hand, nor had she undergone treatment to her left hand. The claimant testified that she believes that the problems she has had with her hands have resulted from her work duties at Columbia. The claimant admitted to not reporting problems with her left hand in a timely fashion for fear of losing the gain share check.

According to the claimant, Danny Smith told her she was discharged from Columbia (on September 13, 2003) due to her failure to report her injury when she felt the pain. After leaving Columbia, the claimant went to work for Wolverine (a shoe factory) and worked there from October 28, 2003 until January 16, 2004. The claimant essentially testified that she quit her work at Wolverine because she could not do it anymore due to her hands.

Douglas Allen Heath, an employee of Columbia Forrest Product, gave testimony during the hearing. Mr. Heath testified that he is the line one department head and hardwood department head. Mr. Heath basically

agreed with the claimant's description of her work while performing pre-lay and putty job duties. Although Mr. Heath could not recall the exact date, he testified that the claimant first reported to him sometime in January 2003 that she was having problems with her right hand. Specifically, Mr. Heath testified that the claimant told him that her hand was bothering her at night while she slept (hurting and going to sleep). Mr. Heath further testified that the claimant did not report problems concerning her left hand to him because she had changed over to another supervisor.

On cross examination, Mr. Heath admitted that under their gain share policy, it penalizes employees for reporting an injury even though they are maintaining safe practices at the time, such as in this case. Mr. Heath further admitted that the claimant was required to move approximately 1,250 sheets of veneer in an eight-hour period, which was her daily quota.

Prior to the hearing, a Prehearing Conference was held in this case on July 24, 2004, and as a result, a Prehearing Order was entered in the claim on that same date. The following stipulations were offered and accepted:

- 1). The Arkansas Workers' Compensation claim.
- 2). The existence of the employment relationship between the claimant and Respondent No. 1 in April of 2003 and at all pertinent times hereto.

The parties agreed to litigate the following issues:

- 1). The compensability of claimant's left and right wrists complaints.
- 2). Temporary total disability benefits.
- 3). Medicals.
- 4). Controverted attorney's fees.

The claimant contended that she suffered compensable injuries, carpal tunnel, and she is entitled to certain workers' compensation benefits.

Respondent No. 1 contended that the claimant apparently had carpal tunnel syndrome prior to her employment with either respondent. She worked for Staffmark until 10-25-02. She did not give notice of an injury while employed by Staffmark and did not miss any time from work. She has no objective findings of an injury until after her employment with Respondent 2. The condition is not related to the claimant's employment and if it is, it is due to the employment with Respondent 2.

Respondent No. 2 contended that the claimant's right arm problems are not related to her employment with the respondent/employer. As far as the left arm, the respondent did not receive notice of any compensable left arm injury until after her termination. Also, the respondents contended that the claimant's left arm problems are not related to her employment.

After a hearing before the Commission, the administrative law judge found that on or about August 12, 2002, the claimant sustained an injury to her right wrist arising out of and in the course of her employment (while working for Respondent No. 2/Staffmark); and on or about June 15, 2003, the claimant sustained an injury to her left wrist arising out of and in the course of her employment (while working for Respondent No. 1/Columbia Forrest Products). The administrative law judge found that Respondent No. 2 shall pay all reasonable hospital and medical expenses arising out of the claimant's August 12, 2002, right carpal tunnel syndrome injury; and Respondent No. 1 shall pay all reasonable hospital and medical expenses arising out of the claimant's June 15, 2003, left carpal tunnel syndrome. The administrative law judge found that the claimant was temporarily totally disabled as a result of

her bilateral carpal tunnel syndrome from January 16, 2004 through March 29, 2004, and continuing through the end of her healing period, exclusive of the approximate one (1) week she worked subsequent to March 29, 2004. The administrative law judge ordered and directed Respondent No. 2 to pay the claimant temporary total disability benefits at the appropriate benefit rate (\$187.00 per week) commencing January 16, 2004 through March 29, 2004, and continuing through the end of her healing period relative to her right carpal tunnel syndrome of August 12, 2002, exclusive of the one week she worked subsequent to March 29, 2004. The administrative law judge ordered and directed Respondent No. 1 to pay the claimant temporary total disability benefits at the weekly compensation benefit rate of \$254.00 as a result of the claimant's June 15, 2003, left carpal tunnel syndrome injury suffered in the employment of same for a period beginning January 16, 2004, and continuing through the end of her healing period, exclusive of the one week worked by the claimant subsequent to March 29, 2004.

II. Adjudication

The first two issues of consideration pertain to the compensability of the claimant's bilateral carpal

tunnel syndrome injuries. The instant claimant has been diagnosed with bilateral carpal tunnel syndrome; therefore, the claimant need not demonstrate that her job duties involved rapid repetitive motion as an element for either claim. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998). However, the claimant must still establish that her bilateral carpal tunnel syndrome injuries arose out of and in the course of her employment, that the work-related injury is the major cause of her disability or need for medical treatment, and the claimant must establish these compensable injuries with objective medical findings. Id.

In the present matter, the administrative law judge found that on or about August 12, 2002, the claimant suffered a compensable injury to her right wrist while working for Respondent No. 2; and that on or about June 15, 2003, she suffered a compensable injury to her left wrist while working for Respondent No. 1. The Full Commission affirms these findings. Specifically, we find that the claimant presented sufficient evidence to establish each element for a compensable injury to her left and right wrists, which arose out of and in the course of her employment with the respective respondent,

and that each injury was the major cause of the disability or need for medical treatment. Moreover, we find that the administrative law judge's findings are consistent with the rulings in Pina v. Wal-Mart Stores, Inc., ___ Ark. App. ___, ___ S.W.3d ___ (May 11, 2005), and Patricia Collette v. Cottage Café, Inc., Full Commission Opinion filed May 13, 2005 (F400944), because as in the aforementioned cases, the claimant's injury became apparent in each instance while working for the respective respondent.

Having found that the claimant suffered compensable injuries to her left and right wrists, the Full Commission finds that the claimant proved that all of the medical treatment of record was reasonably necessary in connection with her compensable injuries, pursuant to Ark. Code Ann. §11-9-508(a). As such, we find that the administrative law judge's finding that, "The respondents No. 1 and 2 shall pay all reasonable hospital and medical expenses arising out of the injuries of August 12, 2002, and June 15, 2003," should be affirmed.

We also find that the claimant is entitled to temporary total disability. Hence, in the present matter, the injuries to the claimant's wrists constitute

scheduled injuries. An employee who suffers a scheduled injury is entitled to temporary total disability compensation during the time that they remain within their healing period or until they have returned to work, whichever occurs first. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

The administrative law judge found in the present matter, "The claimant was temporarily totally disabled as a result of her bilateral carpal tunnel syndrome from January 16, 2004 through March 29, 2004, and continuing through the end of her healing period, exclusive of the approximate one (1) week she worked subsequent to March 29, 2004. The Full Commission affirms as modified the finding of the administrative law judge. We find that the claimant was temporarily totally disabled as a result of her bilateral carpal tunnel syndrome from January 16, 2004, and continuing through the end of her healing period, which ended no later than April 29, 2004, exclusive of the approximate one (1) week she worked subsequent to March 29, 2004.

Specifically, in the present matter, we find that the claimant proved she was entitled to temporary total disability compensation from January 16, 2004 when she became unable to work at Wolverine due to her hands,

until April 29, 2004 (the approximate date she should have returned to see Dr. Ball for recheck), exclusive of the one week she worked subsequent to March 29, 2004. While we recognize that Dr. Ball released the claimant to return to gainful employment on March 29, 2004, considering that the claimant voiced concerns about her inability to open jars, and in light of Dr. Ball having offered her therapy and continued the use of the splints; we find that the claimant remained within her healing at that time. However, because there is no other recommendation for additional medical treatment after the one-month follow up visit (which should have occurred on or about April 29, 2004), we find that the preponderance of the evidence therefore indicates that the claimant reached the end of her healing period no later than April 29, 2004. Temporary disability cannot be awarded after the healing period has ended. Trader v. Single Source Transportation, Workers' Compensation Commission E507484 (Feb. 12, 1999).

As to the award of temporary total disability compensation from both Respondents No. 1 and 2 for the claimant's compensable injuries to her left and right wrists; the administrative law judge found, in pertinent part, Respondent No. 2 is hereby ordered and directed to

pay the claimant temporary total disability benefits at the appropriate compensation benefit rate (\$187.00 per week) for the period commencing January 16, 2004, and continuing through the end of her healing period relative to her right carpal tunnel syndrome of August 12, 2002, exclusive of the one week she worked subsequent to March 29, 2004; and Respondent No. 1 is herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$254.00 as a result of the claimant's June 15, 2003, left carpal tunnel syndrome injury suffered in the employment of same for a period beginning January 16, 2004, and continuing through the end of the claimant's healing period, exclusive of the week worked by the claimant subsequent to March 29, 2004. The Full Commission affirms as modified the administrative law judge's opinion with respect to the claimant's entitlement to temporary total disability compensation from both Respondent No. 2 and Respondent No. 1 for her compensable injuries. In the present matter, the Full Commission finds that since the injury to the claimant's right wrist occurred first, while working for Respondent 2/Staffmark, they should pay first at a weekly compensation rate of \$187.00.

Although the claimant is awarded temporary total disability compensation from Respondent No. 2 due to her August 12, 2002, right carpal tunnel syndrome injury, we find that this is not a complete bar to an award of temporary total disability compensation from Respondent No. 1 due to her June 15, 2003, left carpal injury, which amounts to a weekly compensation rate of \$254.00. However, we find that we are compelled under Ark. Code Ann. § 11-9-501 to find that the claimant only sustained one period of disability for these two compensable injuries. Therefore, we find that the administrative law judge erred in awarding what amounts to a double recovery for this one period of disability. This appears to be an issue of first impression. As such, we turn to Ark. Code Ann. § 11-9-411 for guidance as this section specifically addresses how benefits received from other insurance carriers are to be handled. As a result, we find that there is an offset resulting in a decrease to \$67.00 in her temporary total disability rate from Respondent No. 1. This represents the difference between the claimant's temporary total disability rate (\$254.00) from Respondent No. 1 and her temporary total disability rate (\$187.00) from Respondent No. 2.

In summary, the Full Commission finds that Respondent No. 2 is liable for payment of temporary total disability benefits to the claimant at the weekly compensation benefit rate of \$187.00 for the period commencing January 16, 2004, and continuing through April 29, 2004, relative to her right carpal tunnel syndrome injury of August 12, 2002, exclusive of the one week she worked subsequent to March 29, 2004. We find that Respondent No. 1 is liable for payment of temporary total disability benefits to the claimant at the weekly compensation benefit rate of an offset amount of \$67.00 as a result of the claimant's June 15, 2003, left carpal tunnel syndrome injury suffered in the employment of same for a period beginning January 16, 2004, and continuing through April 29, 2004, exclusive of the week worked by the claimant subsequent to March 29, 2004.

Based on our de novo review of the entire record, the Full Commission affirms as modified the opinion of the administrative law judge. We find that the claimant proved that on or about August 12, 2002, she sustained an injury to her right wrist arising out of and in the course of her employment while working for Respondent No. 2; and she proved that on or about June 15, 2003, she sustained an injury to her left wrist arising out of

and in the course of her employment while working Respondent No. 1. We find that the claimant proved she is entitled to all reasonably necessary medical treatment arising out of her compensable injuries of August 12, 2002, and June 15, 2003. We find that the claimant proved she was temporarily totally disabled as a result of her bilateral carpal tunnel syndrome from January 16, 2004, and continuing through April 29, 2004, exclusive of the approximate one (1) week she worked subsequent to March 29, 2004. We find that Respondent No. 2 is liable for temporary total disability for the aforementioned period at the rate of \$187.00 per week due to injuries arising out of the claimant's right carpal syndrome injury of August 12, 2002. We find that Respondent No. 1 is liable for temporary total disability for the aforementioned period at the weekly compensation benefit compensation rate of \$254.00 as a result of the claimant's June 15, 2003, left carpal syndrome injury. Although the claimant is awarded temporary total disability benefits from both Respondents No. 1 and 2, we find that Ark. Code Ann. § 11-9-501 is applicable to these claims. As a result, we find that we are compelled under Ark. Code Ann. § 11-9-501 to reduce the award amount. We find Ark. Code

Ann. § 11-9-411 instructive as to how to structure this very unusual benefit payment. Ark. Code Ann. § 11-9-411 gives an offset in an amount equal to, dollar-for-dollar, the amount of benefits the claimant has been awarded for the same period of disability. Therefore, we find that Respondent No. 1 is entitled to an offset for benefits paid by Respondent No. 2. As such, we find that there is an offset resulting in a decrease to \$67.00 in her temporary total disability rate from Respondent No. 1.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in

accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

Commissioner McKinney concurs.

Commissioner Turner concurs and dissents.

CONCURRING AND DISSENTING OPINION

The Majority opinion awards the claimant temporary total disability benefits for the time period of January 16, 2004 to April 29, 2004, exclusive of a one-week period in which she worked. However, the Majority limited the claimant to receiving temporary total disability benefits from one carrier at a time, despite the fact that she suffered two compensable injuries from two separate employers.

While I concur with the Majority's decision that the claimant suffered two compensable injuries, that she is entitled to additional medical benefits and the manner in which responsibility for that award was apportioned, I dissent to the extent that the claimant is prevented from receiving temporary total disability

benefits from both carriers. In my opinion, the claimant should be entitled to receive benefits from both carriers because she sustained two separate compensable injuries. Further, I disagree with the Majority's rationale that §11-9-411 entitles either respondent to a setoff. For these reasons, I respectfully dissent.

This case is unique in that the claimant sustained two compensable injuries while working for two different respondents, yet her healing period and the time period in which she was unable to work due to the two injuries occurred simultaneously. The Administrative Law Judge initially awarded the claimant temporary total disability benefits for both injuries; despite the fact that the benefits were for the same time period. The Majority now uses Ark. Code Ann. §§11-9-411 and 11-9-501 to support their finding that one respondent would be entitled to an offset; thereby effectively limiting the claimant to drawing only the higher benefit of her two benefit amounts.

Ark. Code Ann. §11-9-411 provides in part,

(a) Any benefits payable to an injured worker under this chapter shall be reduced in an amount equal to, dollar-for-dollar, the amount of benefits the injured worker has previously received for the same medical services or

period of disability, whether those benefits were paid under a group health care service plan of whatever form or nature, a group disability policy, a group loss of income policy, a group accident, health, or accident and health policy, a self-insured employee health or welfare benefit plan, or a group hospital or medical service contract.

While the Majority uses this language to assert that this provision is applicable in the present case, I find that instead it was designed to allow respondents an interest against claimants that have already received payment from private insurance carriers. I find that strict construction of §11-9-411 is contrary to the Majority's findings. In Dooley v. Automated Conveyor Sys., Ark. App. 412, 143 S.W.3d 585 (2004), the Court said,

In American Standard Travelers v. Post, 78 Ark. App. 79, 77 S.W. 3d 554, (2002), we explained the basic rules of statutory construction,

[W]e recognize that the basic rule of statutory construction to which all other interpretive guides must yield is to give effect to the intent of the legislature. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W. 2d 190 (1998). Arkansas Code Annotation section 11-9-704 (c) (3) (Repl. 1996) states that we are to construe the workers' compensation statutes strictly. Strict construction requires that nothing be taken as intended that is not clearly expressed. Edens v. Superior Marble & Glass, 346 Ark. 487, 58 S.W. 3d 369 (2001). The doctrine of strict construction is to use the plain meaning of the language employed. Wheeler Const. Co. v. Armstrong, 73 Ark. App.

146, 41 S.W. 3d 822 (2001). Where the language of a statute is unambiguous, we determine legislative intent from the ordinary meaning of the language used. Leathers v. Cotton, 332 Ark. 49, 961 S.W. 2d 32, (1998). In considering the meaning of the statute, we construe it just as it reads, giving the words their ordinary and usually accepted meaning in the common language. Id. The statute should be construed so that no word is left void, superfluous, or insignificant; and meaning and effect must be given to every word in the statute if possible. Locke v. Cook, 245 Ark. 787, 434 S.W. 2d 598 (1968).

The Court went on to indicate:

The language of section 11-9-411(a) is clear. It is evident that the legislature intended for the amount of workers' compensation benefits payable to an injured worker to be reduced "dollar-for-dollar" by the amount of benefits that the worker has previously received for the same medical services under any of the listed group plans.

The language of §11-9-411(a) specifically lists various categories of types of insurance subject to dollar for dollar reductions, yet there is no mention of workers' compensation benefits. Per the language in Dooley, I find that workers' compensation insurance benefits are not explicitly listed, and therefore §11-9-411 is not applicable. Additionally §11-9-411(b) pertains to subrogation interests, which further limits the applicability of §11-9-411 and makes it clear it does not pertain to the present case.

I know of no case law to support a finding that §11-9-411 has ever been interpreted or broadened to include coverage of other payment by other worker's compensation carriers and in my opinion, it is bad precedent to expand it in this instance. Under the Majority's current rationale, there is no limitation regarding when two respondents are entitled to receive an offset if the claimant is receiving benefits for two different injuries which would result in them receiving benefits during the same period of time. Presumably, under the Majority's analysis, any claimant that is receiving temporary partial disability benefits and then later works for another employer and suffers a compensable injury entitling him to temporary total disability benefits would then be penalized.

I have further concerns in that the Majority bases their decision as to which employer gets an offset off of the time period that the claimant was injured rather than when and whether payment was actually received. I find that when viewing the language of §11-9-411, indicating that respondents are only entitled to an offset for amounts in which the claimant has, "previously received", a strict interpretation of the

statute does not entitle either respondent in the present case to a setoff.

While I recognize that the purpose of temporary total disability benefits is to help replace an injured worker's income for the time period they are unable to work due to a compensable injury, I find that the Majority's decision in this instance penalizes a claimant who appears to have had surgery on both wrists in order to return to work more quickly whereas if she had the surgery on her wrists at separate times and was unable to work, she would have drawn benefits from both employers. Furthermore, I find that their decision results in the improper expansion of §11-9-411 rather than strictly construing the legislation in place. For the aforementioned reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner