

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F605329 & F605330

DYEANN LARRY, EMPLOYEE	CLAIMANT
RED CARPET EMPLOYMENT AGENCY, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED JULY 30, 2008

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

Claimant represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed January 18, 2008.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties and recited herein are reasonable and hereby accepted as fact.

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3) Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable back injury while employed by the respondent on April 9, 2006.

4) Respondents are liable for payment of all medical treatment contained in the record herein as I find such treatment contained in the record was reasonable, necessary, and related to the claimant's compensable back injury; including, but not limited to, future treatment by Dr. Contreras and the recommendations currently made by Dr. Contreras.

5) Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits from the date of the compensable incident through the date of this order.

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.

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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 Hood concurs, in part, and dissents, in part.

CONCURRING & DISSENTING OPINION

I must respectfully concur in part and dissent in part from the majority's opinion. Specifically, I agree that the claimant met her burden of proving by a preponderance of the evidence that she suffered a compensable back injury while employed by the respondent on April 9, 2006. I agree with the majority's decision to order the respondent to pay for the all medical treatment contained in the record as reasonable, necessary and related to the claimant's

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compensable back injury; including future treatment by Dr. Contreras. However, I disagree with the majority's determination that the claimant failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence entitlement to TTD benefits, therefore, I must respectfully dissent on this issue.

HISTORY

The claimant worked for the Red Carpet Employment Agency, assigned to work at Coleman Cable as a machine operator. The claimant's job duties called for her to use a lift to lift up large, heavy, round spools of wire, feeding them into seven successive machines. the claimant testified that on April 9, 2006, one of the spools got stuck. The claimant testified that while she was pushing and pulling on the spool trying to get it unstuck, she injured her back. The claimant testified that she reported her injury to her supervisor, Mr. Harvey King. The claimant reported the injury to Red Carpet the next day, but that "Misty" never

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called her back and, in fact, called her and fired her the next day, never offering workers' compensation benefits. The claimant sought treatment on her own at Wadley Regional Medical Center, and was eventually having an MRI, which showed an annular tear at L4-5 and a broad based disc protrusion at L4-5. Eventually, the claimant's course of treatment led her to Dr. Fred Contreras, who opined that her back injury was due to the work incident, and recommend a lumbar myelogram/CT.

DISCUSSION

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12). The healing period continues until the employee is as far restored as the permanent character of her injury will permit. When the underlying condition causing the disability becomes stable and when nothing further will improve that

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condition, the healing period has ended. Mad Butcher Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). See Searcy Indus. Laundry, Inc. v. Ferren, 92 Ark. App. 65, 211 S.W.3d 11 (2005). "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).

Here, the claimant was treated by the emergency room at Wadley Regional Medical Center on April 15, 2006, the hospital wrote: "You are not to return to work. The physician wants you to go home, so you can give proper care to your problem." The claimant testified that she was prescribed Robaxin, Hydrocodone and Naproxen. The claimant testified that she continued to have problems and was unable to return to work, but did not have the money to follow up with her family doctor. The claimant continued to suffer, and visited the Wadley Emergency Room again on May 1, 2006 and May 18, 2006. The claimant testified that on one of the May ER visits she was given a shot. The claimant was advised

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by the Wadley ER to visit the People's Clinic, a free clinic in Texarkana, but the free clinic was not accepting new patients. The claimant sought treatment from a chiropractor, Dr. Marc Hagebusch. On August 16, 2006, Dr. Hagebusch wrote: "In order to avoid further aggravation of her condition, I recommend that she be excused from work pending an orthopedic evaluation of her lumbar spine." Dr. Hagebusch helped the claimant obtain an MRI, which showed the annular tear and protrusion at L4-5. The claimant has also seen Dr. Alkire, Dr. Soeller and Dr. Syed, a pain management doctor. No doctor states in any report that the claimant has ever reached MMI.

As to the claimant's capacity to work, the claimant testified on direct examination:

...I am unable to work. I can barely work around the house. I have to have help with the stuff that I do around the house and I barely do do it because once I start doing it, I start getting in pain, so I just go on and lay back down because it is hard to do it. And I have to take this medication, too, and the medication, it makes me dizzy...

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On cross examination:

...I'm unable to walk a whole lot, I'm unable to sit for long periods of time and walk long periods of time. I'm unable to bend over or do a lot of bending and stooping because when I do that it hurts me to do that. I can't even stand up at my kitchen sink and do my dishes. I have to use a pillow and a stool to sit there and I have to wash so many and then I have to go back to my bedroom and lay down and relax my back because the pain just starts hurting and my hip area starts hurting.

No doctor has specifically released the claimant to return to work. All doctors have recommended further treatment, even Dr. Alkire, who recommended EMG/NCV's. The only doctor to specifically opine as to the claimant's work status is Dr. Hagenbusch, who recommended that the claimant be excused from work. While the Commission has the authority to resolve conflicting evidence, including medical testimony, Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996), the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro-transportation, ____ Ark. App. ____, ____ S.W.2d____, (2007). The medical record, in conjunction with

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the claimant's credible testimony, clearly shows that the claimant has proved by a preponderance of the evidence that she remains in her healing period and that her disability entitles her to receive TTD benefits from the date of injury until a date yet to be determined.

For the aforementioned reasons, I must respectfully concur in part, and dissent in part.

PHILIP A. HOOD, Commissioner