

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F604949

CEDRICK D. WALKER, EMPLOYEE	CLAIMANT
COOPER STANDARD AUTOMOTIVE, INC., EMPLOYER	RESPONDENT
PHOENIX INSURANCE COMPANY, CARRIER	RESPONDENT

**OPINION FILED MARCH 13, 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 MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the Administrative Law Judge filed October 23, 2007.

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 are reasonable and are hereby accepted as fact.

3) The claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left knee while employed by respondent on April 27, 2006.

4) Respondents are liable for all medical treatment to claimant's left knee that is contained in the record herein, as I find that such treatment was reasonable and necessary and related to the claimant's compensable injury.

5) Further respondents are responsible for the surgery now recommended by Dr. D'Orsay Bryant in his February 8, 2007, report contained at page 19 of Claimant's Exhibit 1.

6) Claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from July 1, 2006, to a date yet to be determined.

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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

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

**DISSENTING OPINION**

I must respectfully concur in part & dissent in part from the majority's opinion. Specifically, I agree that the claimant has proved by a preponderance of the evidence that he suffered a compensable injury to his left knee while employed by the respondent on April 27, 2006 and is entitled

to reasonable and necessary medical treatment including the surgery recommended by Dr. D'Orsay Bryant. However, I must respectfully dissent from the majority's finding that the claimant has failed to prove by a preponderance of the evidence his entitlement to temporary total disability benefits from July 1, 2006 until a date yet to be determined. Based on a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence his entitlement to temporary total disability benefits from July 1, 2006 until a date yet to be determined, and therefore, I must respectfully dissent on this issue.

A claimant who has suffered a scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work. Ark. Code Ann. §11-9-521 (Repl. 2007); Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. 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).

Here, the majority has found that the claimant has a compensable scheduled injury and remains in his healing period. However, the majority denied temporary total disability benefits based on Ark. Code Ann §11-9-526, which states that if any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless, in the opinion of the Workers' Compensation Commission, the refusal is justifiable. Pillow v. Sanyo Manufacturing Co. Workers' Compensation Commission Full Opinion filed October 10, 2007 (F404094). An offer of suitable employment is a condition precedent to applying Ark. Code Ann. §11-9-526. Webb v. Webb, Workers' Compensation Commission Full Opinion filed June 29, 2000 (E906144). Work must be available within the employee's physical restrictions. McCuller v. Democrat Printing & Lithograph Co., Workers'

Compensation Commission Full Opinion filed April 28, 1998 (E608050). Moreover, the claimant must unjustifiably refuse employment which is suitable to his capacity. Barnette v. Allen Canning Company, 49 Ark. App. 61, 896 S.W.2d 444 (1995).

The only evidence of record regarding the respondent's Ark. Code Ann. § 11-9-526 contention is the "voluntary termination" agreement signed by the claimant on June 28, 2006, and the claimant's testimony as to his understanding of the circumstances of his termination.

The "voluntary termination" agreement is a form.

The document states:

I, Cedric Walker (name) and 23174 (clock #) understand that I being (sp) terminated from employment at Cooper Standard Automotive effective 7-5-06 due to reduction in workforce in accordance with the plant closure agreement. By signing above I am acknowledging that I am being terminated due to my seniority or that I have chosen to be voluntarily terminated. I am choosing to be paid severance pay according to option B in accordance with the El Dorado Plant closing termination agreement. By signing below I acknowledge that I have read and understand the El Dorado Plant closing termination agreement.

The plain language of the document, although it says "voluntary," clearly indicates that the claimant could not continue working for the respondent, as the plant was closing. The claimant's testimony also indicates that continued work for the respondent was not an option presented to him.

While the record clearly shows that the respondent had offered the claimant suitable light duty work up until June 28, 2006, for not only his knee injury, but over the years for other injuries as well, the question at bar, based on Ark. Code Ann. §11-9-526, is not whether or not the respondent offered the claimant suitable work before June 28, 2006. The question is: did the respondent offer the claimant suitable work after June 28, 2006? The record contains no evidence indicating that the respondent offered the claimant suitable employment after June 28, 2006.

Based on the evidence of record, the majority's conclusion that the respondent offered the claimant suitable employment after June 28, 2006, and that the claimant unjustifiably refused suitable employment, clearly required

conjecture and speculation. The record shows that the respondent presented no evidence supporting its contention that they offered the claimant suitable employment after June 28, 2006. In fact, the evidence of record, a form termination document and the claimant's testimony shows that the claimant was terminated "due to reduction in workforce in accordance with the plant closure agreement." The claimant's decision to sign a termination agreement acknowledging that he is "being terminated due to his seniority or that I have chosen to be voluntarily terminated" cannot reasonably be considered evidence that the claimant unjustifiably refused employment. It can however, reasonably be considered evidence that the claimant was being terminated due to the plant closing and that the claimant had to sign the document to receive his severance pay.

In conclusion, I find that the claimant has proved by a preponderance of the evidence that he suffered a compensable injury to his left knee while employed by the respondent on April 27, 2006 and is entitled to reasonable

and necessary medical treatment including the surgery recommended by Dr. D'Orsay Bryant. Furthermore, I find that as the respondent did not offer the claimant suitable employment after June 28, 2006, Ark. Code Ann. §11-9-526 is not a bar to the claimant's receipt of temporary total disability benefits for his scheduled injury until the end of his healing period.

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

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PHILIP A. HOOD, Commissioner