

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603947

NECOLE HARPER, EMPLOYEE

CLAIMANT

CINGULAR WIRELESS,
A SELF INSURED EMPLOYER

RESPONDENT

OPINION FILED MAY 29, 2009

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

Claimant represented by HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

Respondent represented by HONORABLE SUSAN M. FOWLER, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals and respondents cross appeal from a decision of the Administrative Law Judge filed August 25, 2008.

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

1. There was an employer-employee relationship on March 23, 2006.
2. The compensation rate is \$457/343.

3. The claimant has proven by a preponderance of the evidence that she did sustain a compensable injury arising out of and in the course of her employment on March 23, 2006, at a time when she was performing employment services.

4. Respondents are responsible for the reasonable and necessary medical the claimant has pursued.

5. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period and was totally unable to earn wages from March 24, 2006 through May 2, 2006.

6. Respondents are entitled to an offset for group benefits paid in this matter pursuant to Ark. Code Ann. §11-9-411.

7. No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

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.

A. WATSON BELL, 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 opinion. Specifically, I concur with respect to the determination of compensability and the award of medical expenses. However, as after a de novo review of the record, I find that the claimant is entitled

to temporary total disability benefits from March 24, 2006 until May 2, 2006, I must respectfully dissent on this issue.

Temporary total disability is payable whenever the claimant is in a healing period and suffers an incapacity to earn wages. Ark. State Highway & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). Here, the claimant sustained an injury when she slipped and fell on water coming from the employer's ice machine in the break room at the call center where she is employed, injuring her back. The claimant credibly testified that she sought active medical treatment for her injury and was under intensive physical therapy and regular medical treatment during the period for which temporary total disability benefits are claimed. The claimant testified that she remained off work following her injury until May 2, 2006, about the time she completed intensive physical therapy. There is no evidence that claimant's testimony is contrary to the medical records. Therefore, I find that the claimant was in her healing period and totally incapacitated from earning wages

from March 24, 2006 until May 2, 2006, and is entitled to temporary total disability benefits during this time period.

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

PHILIP A. HOOD, Commissioner