

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F812341

JONATHAN R. McDONALD, EMPLOYEE	CLAIMANT
FAN SALES & LEASING, LLC, EMPLOYER	RESPONDENT
THE HARTFORD INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 11, 2009

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

Claimant appeared *pro se*.

Respondent represented by the HONORABLE A. GENE WILLIAMS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

Respondents appeal from a decision of the Administrative Law Judge finding that the claimant has proven entitlement to additional temporary total disability benefits from January 9, 2009 through April 1, 2009. Based upon our de novo review of the entire record, without giving the benefit of the doubt to either party, we find that the claimant has failed to prove entitlement to temporary total disability benefits during the period of time that he was working for Cleo's. Therefore, we find that the decision of the Administrative Law Judge must be affirmed as modified.

The facts in this claim are not in dispute. The

claimant sustained a compensable injury to his right wrist on November 12, 2008. After obtaining medical treatment, the claimant continued to work for respondent employer until November 25, 2008. The claimant subsequently obtained employment with Cleo's earning \$8.00 per hour plus some commission. Claimant testified that he worked from February 10, 2009 through March 2, 2009, for Cleo's.

Claimant's condition was not improving so he sought and obtained a Change of Physician from the Commission. The claimant came under the care of Dr. Thomas Frazier and eventually underwent surgery on April 2, 2009. The claimant acknowledged that he received temporary total disability benefits from December 12, 2008, through January 8, 2009, and that said benefits resumed after he underwent surgery. The only issue for determination is whether the claimant is entitled to additional temporary total disability benefits from January 9, 2009 through April 1, 2009.

Claimant sustained a scheduled injury; therefore, he is entitled to temporary total disability benefits for the period of time that he remains within his healing period and while he has not returned to work. See, Ark. Code Ann. § 11-9-521(a) (Supp. 1999); Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). It is

not disputed that the claimant remained within his healing period during the period of time in question. It is further undisputed that the claimant returned to work and worked for Cleo's from February 10, 2009 through March 2, 2009. As the claimant had returned to work from February 10, 2009, though March 2, 2009, the claimant is not entitled to temporary total disability benefits for this period of time.

Accordingly, we find that the claimant has proven by a preponderance of the evidence that he was both within his healing period and had not returned to work from January 9, 2009, through February 9, 2009, and again from March 3, 2009, through April 1, 2009, for which he is entitled to temporary total disability benefits.

Therefore we find that the decision of the Administrative Law Judge must be affirmed as modified.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner