

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F804757

ADDIELEAN TURNER, EMPLOYEE	CLAIMANT
MILLCREEK REHABILITATION OF ARKANSAS, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE CO., INSURANCE CARRIER/TPA	RESPONDENT

**OPINION FILED JULY 10, 2009**

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

Claimant represented by HONORABLE LEWIS E. RITCHEY, Attorney at Law, Little Rock, 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 November 13, 2008.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties at the full hearing and recited

herein are reasonable and are hereby accepted as fact.

3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits from December 6, 2007, through March 6, 2008.

4. All issues not specifically addressed herein are reserved.

5. Subsequent to the full hearing in this matter, the claimant requested a change of physician. Therefore, the Clerk is requested to immediately transfer this matter to Medical Cost for consideration of the pending request for a change of physician.

in the course of her employment with the

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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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence her entitlement to temporary total disability benefits from December 6, 2007 through March 6, 2008.

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 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).

After reviewing the medical record, it is clear that Dr. Nutt did nothing to treat the claimant's compensable back injury and his opinion should be given very little weight. On the other hand, Dr. Foscue ordered an MRI, which showed a bulging disc, set the claimant up with an effective medication regimen and ordered physical therapy. Dr. Foscue also ordered the claimant into an off work status. It is my opinion that Dr. Foscue provided effective, appropriate treatment for the claimant's compensable back injury and his opinion should be given great weight. Based on the medical record, specifically the records of Dr. Foscue, whose treatment I would note is not "unauthorized"

as the respondent had informed the claimant that it was controverting any further benefits, I find that the claimant has proved by a preponderance of the evidence her entitlement to temporary total disability benefits from December 6, 2007 through March 6, 2008.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner