

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F702776

YOLANDA SERRANO,
EMPLOYEE

CLAIMANT

PINNACLE FOODS CORPORATION,
EMPLOYER

RESPONDENT

ZURICH AMERICAN INS. COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 14, 2009

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

Claimant represented by the HONORABLE JASON M. HATFIELD,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE MICHAEL MAYTON,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed July 16, 2008. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The stipulations agreed to by the parties and
previously set forth above in this opinion are
hereby accepted as fact. (sic)
2. Claimant has failed to prove by a preponderance
of the evidence that she is entitled to additional
temporary total disability benefits beginning
August 24, 2007 and continuing through 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.

Therefore we affirm and adopt the July 16, 2008 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 dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant has failed to prove by a preponderance of the

evidence that she is entitled to temporary total disability (TTD) beginning August 24, 2007, and continuing through a date yet to be determined. After a de novo review of the record, I find that the claimant is entitled to TTD and, therefore, I must respectfully dissent.

The claimant was an assembler who placed food items on trays for the respondent. She began working for the respondent in January 1997. Her job required her to place food items on trays for packaging. On June 21, 2006, the claimant developed pain in both of her shoulders and was sent to Dr. Larry Weeks by the respondent. On July 14, 2006, Dr. Craig Cooper placed the claimant on work restrictions of no lifting above the mid-chest and no lifting more than 5 pounds. On January 18, 2007, Dr. Terry Sites diagnosed the claimant with bilateral shoulder pain with rotator cuff tendonopathy and impingement, acromioclavicular joint athropathy, cervical spondylosis, and recommended that the claimant not perform repetitive activities or line work for eight weeks. The respondent accepted the claimant's injuries as compensable. On May 23, 2007, Dr. Cooper indicated that a return to work trial was appropriate and limited the claimant's lifting to 20

pounds, no repetitive lifting, and indicated that the claimant should rotate her job every hour. On July 6, 2007, Dr. Cooper placed the claimant on permanent restrictions of no lifting over 20 pounds, no repetitive lifting, no abduction above 90 degrees, and hourly job rotation. On August 13, 2007, Dr. Sites notes that the claimant "did well" under these restrictions. The claimant was never released to full duty work. On August 1 and August 13, 2007, the medical records indicate that the respondent was not cooperating with the medical restrictions placed on the claimant. The claimant was terminated from her employment on August 24, 2007 because the respondent had no light duty work available.

Temporary total disability is that period within the healing period in which a claimant suffers a total incapacity to earn wages. Georgia-Pacific v. Carteri, 62 Ark. App. 162, 969 S.W.2d 677 (1998). The healing period is that period for healing of an injury which continues until the claimant is as far restored as the permanent character of the injury will permit. Id. The Arkansas Court of Appeals held in Mad Butcher v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982), that TTD benefits are awarded only for the period of time when a

worker is within her healing period and is incapable of earning wages. The healing period is that time when the body is healing and an employee is unable to perform remunerative labor with reasonable consistency without pain and discomfort. Farmers Cooperative v. Biles, 77 Ark. App. 1, 69 S.W.3d 899 (2002); Pyles v. Triple F. Feeds of Texas, 270 Ark. 729, 606 S.W.2d 146 (1980). The healing period continues until the employee is as far restored as the permanent character of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. Carroll General Hospital v. Green, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The determination of when the healing period has ended is a factual determination for the Commission which will be affirmed on appeal if supported by substantial evidence. Id. The term "disability" means incapacity because of compensable injury to earn the wages which the employee was receiving at the time of the compensable injury. Ark. Code Ann. § 11-9-102(8); Arkansas State Highway Dept. v. Breshears, 272 Ark. 224, 613 S.W.2d 392 (1981).

Here, the respondent's doctors recommended work with restrictions for the claimant. The claimant

testified and the medical records indicate that she "did well" when the restrictions were adhered to by the respondent. The respondent did not consistently adhere to the restrictions prescribed by the physicians, causing a recurrence of the claimant's symptoms. The respondent terminated the claimant's employment because there was no light duty work available. Based on Dr. Cooper's finding that the claimant be placed on permanent work restrictions, and because there is no physician stating that the claimant has fully healed, it cannot be said that the claimant's healing period has yet ended. Furthermore, it is clear that the claimant is totally incapacitated from earning wages. Dr. Cooper placed the claimant on permanent restrictions of no lifting over 20 pounds, no repetitive lifting, no abduction above 90 degrees, and hourly job rotation. The claimant was never released to full duty work. The claimant was terminated from her employment because the respondent had no light duty work available. Based on the claimant's credible testimony and the medical records, I find that the claimant has remained in her healing period and is totally incapacitated from earning wages and is entitled to TTD benefits beginning August

24, 2007 and continuing through a date yet to be determined.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner