

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F802738

CHRYSTAL STEDMAN,  
EMPLOYEE

CLAIMANT

TYSON POULTRY, INC.,  
EMPLOYER

RESPONDENT

TYNET CORPORATION,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 15, 2009

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

Claimant represented by the HONORABLE M. JARED MEDLOCK,  
Attorney at Law, Fort Smith, Arkansas.

Respondent represented by the HONORABLE E. DIANE GRAHAM,  
Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondent appeals an administrative law judge's opinion filed November 4, 2008. The administrative law judge found that the claimant proved she was entitled to temporary total disability benefits "beginning February 5, 2007 and continuing through February 12, 2008." After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion as modified.

The Full Commission finds that the claimant proved she was entitled to temporary total disability benefits from August 20, 2007 through February 12, 2008.

I. HISTORY

Chrystal Stedman, age 30, testified that she began working for Tyson in October 2005. The parties stipulated that Ms. Stedman sustained a compensable injury to her left ankle on January 3, 2006. The claimant testified, "A forklift ran into me and hit my ankle and pulled it real hard, between a pallet."

Dr. Danilo L. Cruz saw the claimant on January 4, 2006: "Patient was doing okay until around 9 pm last night when a cart ran into her left foot. Since then she has been having swelling and pain in the left foot and ankle. She can not put weight on her left foot....There is edema and tenderness over the left ankle and dorsal foot area. Range of motion is minimally limited over the left ankle. There are abrasions noted just above the medial and the lateral condyle areas." Dr. Cruz assessed "1. Left ankle and foot contusions." The treatment plan included x-ray and "2. Crutches, ice pack, keep leg elevated."

A radiology report on January 4, 2006 showed "Some soft tissue swelling about the ankle." No abnormalities were seen in the claimant's left foot. The impression was "1. No acute fractures are seen at this time. 2. Soft tissue swelling as noted suggesting some degree of ligamentous injury. If patient has continued pain, follow up radiographs are recommended to rule out hairline undisplaced fractures."

The claimant agreed on cross-examination that Dr. Cruz returned her to work with the limitation of no weightbearing, and that she returned to work in the respondent's supply room, folding laundry. The claimant agreed on cross-examination that the respondent complied with the claimant's weightbearing restriction.

The claimant followed up with Dr. Cruz on January 12, 2006:

Patient has been feeling better however she continues to complain of pain when she puts weights on left ankle. She has problems using her crutches. X-ray did not show any acute fractures however soft tissue swelling such as typical ligamentous injury was noted....  
Left ankle has good range of motion. No tenderness. There is only minimal edema.  
Range of motion is normal.

Dr. Cruz assessed "1. Persistent left ankle pain."  
Dr. Cruz planned a repeat x-ray, ankle boots, Ibuprofen, and  
"4. Keep leg elevated."

A follow-up x-ray was done on January 12, 2006: "Tissue swelling about the ankle is reduced. I do not see evidence of fractures, dislocations or periosteal new bone formation to suggest acute bony trauma. IMPRESSION: 1. No fractures detected at this time."

The claimant followed up with Dr. Cruz on January 26, 2006: "The skin overlying the medial melanosis is still swollen but the range of motion is normal. Patient is able to walk with a little limping." Dr. Cruz assessed "1. Contusions of the right ankle....May resume regular duty today."

The claimant treated with Dr. Walter Russell Young on February 27, 2006 for symptoms including migraine headache and anxiety.

The claimant testified that her last day of work for the respondent-employer was March 3, 2006. The claimant testified:

Q. And can you tell the Judge why you left.

A. Basically, the main reason why I left is because I was having problems with my ankle still

and I was able to sit down for half of a day and then the other half of the day, I ended up standing for another four hours.

Q. Why were you having to stand?

A. Because someone would take my stool and when I'd come back from break, I couldn't find it....

A Tyson Foods, Inc. Exit Interview Assessment Tool indicated that the claimant's last day worked was March 3, 2006. The claimant wrote on the Assessment Tool that she was leaving Tyson Foods "To go to school & take care of my children." The claimant signed the document on or about March 9, 2006.

The claimant returned to Dr. Cruz on March 31, 2006: "Patient had an accident at work 2-3 months ago for which she sustained left ankle contusions with no evidence of fractures. Patient's left ankle had been better until a few days ago it started hurting again....LEFT ANKLE: Has good range of motion. There is some tenderness behind the left malleolar area. There is also minimal edema around the area noted. ASSESSMENT: 1. Left ankle pain." Dr. Cruz planned for the claimant to resume wearing ankle boots and resume use of crutches if necessary, keep leg elevated, and "If patient's ankle is not any better within two weeks, patient

to come back here for possible steroid injection on the area or referral to orthopedics."

The parties stipulated that there was "no dispute over the payment of medical expenses incurred in 2006."

Dr. Rizwana Khan saw the claimant on February 5, 2007:

This 26 year old lady came in complaining of ankle and heel pain of the left foot. About a year ago she was involved in a foot accident at work where her foot was caught in a pallet and was pulled. She did not have a fracture but had most likely a ligament injury at that time. She said that it took her several months to be able to start bearing weight and at that time she was released back to her regular duty. Patient reports that she actually never felt right and this pain continued and she has quit Tyson several months ago but even then the pain is there especially if she stands on her feet for several hours and when she lifts off her foot she notices numbness and tinglings and a lot of pain. She takes a lot of Ibuprofen and Tylenol on an as needed basis. Denies any significant swelling or trauma since then....

EXTREMITIES: Shows no cyanosis, clubbing or edema. Patient has minimal pain on the palpation of the total calcaneus but no specific point of tenderness has been elicited. Ankle joint movements are good and no pain or tenderness has been felt. No effusion is noted. No erythema is noted.

Dr. Khan assessed "1. Persistent left ankle and heel pain. PLAN: 1. Will go ahead and refer patient to podiatry/ortho after MRI to evaluate joint injury. 2. Contacted Tyson to see whether they will cover her MRI for

workman's compensation. 3. Patient is started on some Lodine XL 500 mg. q. day to take."

Dr. P. Peter Xaysanasy, DPM, began treating the claimant for complaints of left heel and ankle pain on February 21, 2007. The impression from an MRI examination of the claimant's left ankle on February 23, 2007 was "Fluid within the flexor hallucis longus tendon sheath. Normal variant versus tenosynovitis."

Dr. Jason H. Pleimann, an orthopaedic specialist, examined the claimant on May 4, 2007:

This is a 28-year-old female who had a crush injury to the left foot while at work on January 3, 2006. She was working at Tyson's. Her foot was caught between a fork lift and a pallet. She has had numerous treatments since that time, but has never had physical therapy. She actually ended up quitting work to be at home. She describes the pain that she has now to be mainly in the heel and in the medial ankle. It does radiate and there is some numbness to the heel at times. She does not have any swelling or increased warmth to the ankle or foot. It is worse the more she is on it during the day....

The left foot and ankle shows no obvious deformity. There is no redness or swelling. She has normal ankle and subtalar range of motion, both active and passive. Normal motor strength, ankle plantar flexors, dorsiflexors and evertors. She had tenderness posterior medially with some radiation of pain into the plantar heel and may be even into the plantar arch. Questionably positive Tinel's here. There is some tenderness under the plantar heel, but really not around the plantar

fascia origin. No dorsal foot tenderness. She has a palpable pedal pulse. Normal light touch sensation in the foot....

She has had an MRI which looks normal.

Dr. Pleimann's impression was "Crush injury, left ankle with possible residual tarsal tunnel syndrome....Will try physical therapy to include modalities and a trial with a TENS Unit....Her work status remains unchanged."

The claimant participated in treatments of physical therapy from May 10, 2007 through June 6, 2007. The claimant testified that physical therapy aggravated her condition.

Dr. Pleimann noted on June 18, 2007, "She says the therapy has not really changed her pain symptoms at all. She continues to have pain over the medial ankle and into the heel....On exam, she has tenderness over the distal tarsal tunnel with some radiation of pain into the heel and deep palpation here. No obvious swelling. No increased warmth. No limitation in range of motion of the ankle and hindfoot." Dr. Pleimann's impression was "Left medial ankle and foot pain, probable tarsal tunnel syndrome. PLAN: I have recommended a tarsal tunnel release and a partial plantar fasciotomy. She has had multiple injections already

and questioning her further today, it does sound like she had some transient improvement with injection around the tibial nerve....No change in work status. I would expect MMI at about four to six months post op."

Dr. Pleimann performed a "Left ankle tarsal tunnel release" on August 20, 2007. The pre- and post-operative diagnosis was "Left tarsal tunnel syndrome." Dr. Pleimann noted on September 4, 2007, "Chrystal is doing well. Having some mild pain. PHYSICAL EXAMINATION: On exam, her incision is well healed (sic). Mild swelling. Normal sensation distally in the foot." Dr. Pleimann's impression was "Doing well. PLAN: Sutures were removed. She will go into a boot. She can weight bear to tolerance. I will see her in four weeks for a recheck. She can return to mainly sitting work at this time, but can get up to stand and walk around a lot. She will be doing no heavy lifting for now."

The claimant agreed on cross-examination that she made no effort to return to work after seeing Dr. Pleimann on September 4, 2007. Dr. Pleimann noted during an October 2, 2007 follow-up visit that the claimant was "having some swelling still....She is going to wean out of the boot. She

should continue at mainly sitting work at this time. I will see her back in six weeks for a final check."

Dr. Pleimann's impression on December 5, 2007 was "Improved tarsal tunnel syndrome....On exam, there is minimal swelling. Scar is well healed. Mild sensitivity along the scar line. Good range of motion of the ankle and hind foot. Negative Tinel's across the scar. Normal sensation distally in the foot....We'll let her return to four hours per day of work, beginning on Monday, December 10<sup>th</sup>. She'll do that for four weeks and then can return to a full eight hour days after that. I'll see her in eight weeks for a final check. I'll plan on rating and releasing her at that time. She has no other restrictions other than the time on her foot."

The claimant treated with Dr. R.W. Ross on December 15, 2007 for symptoms including severe cough, congestion, and shortness of breath. Dr. Ross noted that the claimant had been pregnant for about 10 weeks. The claimant sought medical treatment on December 27, 2007 for complaints of lower back and flank pain. The claimant was assessed as having musculoskeletal back pain, asthmatic bronchitis, and tobacco abuse.

The claimant followed up with Dr. Pleimann on February 12, 2008:

Chrystal is doing well. She no longer is having any numbness in the foot or sensitivity around her scar. This bothers her a little bit with weather change. She feels like her ankle is a little weak.

PHYSICAL EXAMINATION: On exam, she has some mild laxity to anterior drawer and inversion stress testing. Peroneals are mildly weak. Non-tender along her scar. Negative Tinel's over the tarsal tunnel. Normal sensation of the foot....

We'll give her some home exercises for ankle strengthening. She has reached maximum medical improvement. She has no long term work restrictions, no permanent impairment.

A pre-hearing order was filed on June 2, 2008. The claimant contended that she was entitled to temporary total disability benefits "from January 4, 2006 to her release to be able to stand for work on February 12, 2008." The respondent contended that the claimant "missed no time from work sufficient to entitle her to temporary total disability benefits prior to January 26, 2006 when her healing period ended. Claimant continued to work for the respondent until she resigned her employment. Claimant again sought medical treatment in 2007 and had an MRI which was normal. She was subsequently seen by Dr. Pleimann who performed surgery for left tarsal tunnel syndrome on August 20, 2007. She was

returned to work effective September 4, 2007. Respondent contends that claimant's healing period ended January 26, 2006 and she was paid appropriate benefits. Claimant reentered a healing period on August 20, 2007 when she underwent surgery until she was released to return to work September 4, 2007."

The parties agreed to litigate the following issues:

1. The claimant's entitlement to temporary total disability benefits from March 3, 2006 through February 12, 2008.
2. The claimant's entitlement to additional medical services.
3. Appropriate attorney's fees.

A hearing was held on September 2, 2008. The claimant testified that the respondent-employer had paid for all of her medical treatment.

An administrative law judge filed an opinion on November 4, 2008. The administrative law judge found, among other things, that the medical services of record provided to the claimant were reasonably necessary. The administrative law judge found that the claimant "was rendered temporarily totally disabled by her compensable injury for the period beginning February 5, 2007 and continuing through February 12, 2008." The respondent

appeals the award of temporary total disability to the Full Commission.

## II. ADJUDICATION

An employee who has suffered a scheduled injury is to receive temporary total or temporary partial disability benefits during her healing period or until she returns to work regardless of whether the employee has demonstrated that she is actually incapacitated from earning wages. Ark. Code Ann. §11-9-521(a) (Repl. 2002); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* Whether an employee's healing period has ended is a factual determination to be made by the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

If, during the period while the body is healing, the employee is unable to perform remunerative labor with reasonable consistency and without pain and discomfort, her temporary disability is deemed total. *Farmers Cooperative v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002), citing *Pyle v. Triple F. Feeds of Texas*, 270 Ark. 729, 606 S.W.2d 146 (Ark. App. 1980). Ark. Code Ann. §11-9-521(a) was not intended to bar additional temporary total disability benefits following an unsuccessful attempt to return to the workforce. *Biles, supra*, citing *Roberson v. Waste Management*, 58 Ark. App. 11, 944 S.W.2d 858 (1997).

In the present matter, the claimant contends that she is entitled to temporary total disability benefits from February 5, 2007 through February 12, 2008. The respondent contends that the claimant is entitled to temporary total disability benefits from August 20, 2007 until September 4, 2007; the respondent alternately contends that the claimant is entitled to temporary total disability from August 20, 2007 until January 7, 2008. The Full Commission finds that the claimant proved she was entitled to temporary total disability benefits from August 20, 2007 through February 12, 2008.

The parties stipulated that the claimant sustained a compensable injury to her left ankle on January 3, 2006. Dr. Cruz provided authorized treatment beginning January 4, 2006 and assessed "Left ankle and foot contusions." Dr. Cruz noted edema in the claimant's left ankle and dorsal foot area in addition to abrasions just above the medial and lateral condyle areas. The claimant's treatment included crutches, an ice pack, and elevation of the leg. An x-ray on January 4, 2006 showed soft tissue swelling in the claimant's left ankle. The claimant agreed at hearing that the respondent-employer provided work within the treating physician's restrictions. The claimant also continued to follow up with Dr. Cruz.

Although he noted that the claimant was still experiencing swelling, Dr. Cruz returned the claimant to regular duty on January 26, 2006. The claimant testified that she did not work for the respondent after March 3, 2006. The claimant testified that she quit her employment because she was having problems with her ankle and that someone was taking her work stool, so that she was unable to sit down for half of a day. The record does not corroborate the claimant's testimony. The claimant wrote on the Exit

Interview Assessment Tool, dated March 3, 2006, that she was leaving Tyson in order to go to school and take care of her children. The claimant did not report on March 3, 2006 that she was unable to perform her work for the respondent. The Full Commission finds that, as of the time the claimant voluntarily quit on March 3, 2006 for reasons not related to her scheduled compensable injury, the claimant was able to perform remunerative labor for the respondent.

The claimant contends that she is entitled to temporary total disability benefits beginning February 5, 2007. Dr. Khan assessed persistent left ankle and heel pain on February 5, 2007. The evidence before the Commission demonstrates, however, that the claimant had returned to work following the January 3, 2006 compensable injury and was able to perform remunerative labor for the respondent-employer at the time she voluntarily quit on March 3, 2006. The Full Commission is unable to find, based on Dr. Khan's assessment of continued pain, that the claimant should be entitled to temporary total disability beginning February 5, 2007.

The claimant began treating with Dr. Pleimann, an orthopaedic specialist, on May 4, 2007. Dr. Pleimann's

impression was "Crush injury, left ankle with possible residual tarsal tunnel syndrome." Dr. Pleimann performed a "Left ankle tarsal tunnel release" on August 20, 2007. The respondent agrees that the claimant was within a healing period for the compensable injury on August 20, 2007. The Full Commission finds that the claimant remained within a healing period for her compensable injury and was unable to return to work as of August 20, 2007. The claimant therefore proved that she was entitled to temporary total disability benefits beginning August 20, 2007. See *Armstrong, supra*.

The respondent contends that the claimant's entitlement to temporary total disability ended as of September 4, 2007 or in the alternative no later than January 7, 2008. The record demonstrates, however, that the claimant continued to remain within her healing period on those dates. Dr. Pleimann noted swelling during follow-up treatment on September 4, 2007, October 2, 2007, and January 5, 2007. Dr. Pleimann did not determine that the claimant reached maximum medical improvement until February 12, 2008. The Full Commission therefore finds that the claimant reached the end of her healing period as of February 12, 2008.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she was entitled to temporary total disability benefits from August 20, 2007 through February 12, 2008. We therefore affirm the administrative law judge's opinion as modified. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(Repl. 2002). The record indicates that the respondent controverted the claimant's entitlement to temporary total disability benefits. For prevailing in part on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs & dissents.

**CONCUR AND DISSENTING OPINION**

I must respectfully concur in part, and dissent in part from the majority opinion. However, after a de novo

review of the record, I disagree as to when the claimant's entitlement to temporary total disability benefits began. I find, as did the Administrative Law Judge, that the claimant is entitled to temporary total disability benefits from February 5, 2007 until February 12, 2008, and therefore I must respectfully dissent on this issue.

For a claimant to be entitled to TTD for a scheduled injury, he or she must either be 1) in their healing period, or 2) off work. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period continues until the claimant is as far restored as the permanent character of his injury will permit. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124 (1982). It has also been held that a healing period has not ended so long as treatment is administered for the healing and alleviation of a condition. Arkansas Hwy. & Transportation Dept. v. McWilliams, 41 Ark. App. 1 (1993). The majority implies that the claimant should be denied TTD benefits because she voluntarily left her employment with Tyson, and had she remained, they would have made work available for her that fit within her physical restrictions. This is an allegation of the respondent that was not proved,

and is in fact, irrelevant under Ark. Code Ann. §11-9-521. Absent statutory bars not raised by the respondents in this case, See Ark. Code Ann. §11-9-526, the requirements of Ark. Code Ann. §11-9-521 have been met and the claimant is entitled to temporary total disability benefits from February 5, 2007 until February 12, 2008. The claimant proved that she was in her healing period and not working from February 5, 2007 until she was finally released by Dr. Pleimann on February 12, 2008. The claimant was symptomatic when she returned to the Scott County Rural Health Clinic in February of 2007. The claimant's physicians ordered appropriate tests to make an accurate diagnosis of her condition and to arrive at an effective course of treatment. The claimant underwent conservative treatment as long as she possibly could before it was determined that surgery was her only option for improvement and she was under doctor's care until she was fully released on February 12, 2008. Therefore, under Ark. Code Ann. §11-9-521, the claimant is entitled to temporary total disability benefits from February 5, 2007 until February 12, 2008.

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

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PHILIP A. HOOD, Commissioner