

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F604949

CEDRIC D. WALKER, EMPLOYEE	CLAIMANT
COOPER STANDARD AUTOMOTIVE, INC., EMPLOYER	RESPONDENT
PHOENIX INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 18, 2009

Upon review before the Full Commission, Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondent represented by the HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

Decision of the Administrative Law Judge: Affirmed, in part, and reversed, in part.

OPINION AND ORDER

This matter is currently before the Full Commission on remand from the Arkansas Court of Appeals. As noted by the Court of Appeals in an Opinion dated December 17, 2008, the Administrative Law Judge's finding, affirmed and adopted by the Full Commission, that the claimant remained in his healing period during the time period in question, is correct and is hereby affirmed by the Full Commission. However, the Court of

Appeals reversed the Administrative Law Judge's finding, affirmed and adopted by the Full Commission, that the claimant's "voluntary termination" precluded the claimant from receiving TTD benefits due to Ark. Code Ann. §11-9-526. Based on our de novo review of the entire record, and pursuant to the remand from the Court of Appeals, the Full Commission hereby reverses the Administrative Law Judge's finding regarding TTD benefits and awards the claimant TTD benefits from July 5, 2006 until the end of his healing period.

A claimant who has suffered a scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work. Ark. Code Ann. §11-9-521 (Repl. 2007); Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W. 3d 822 (2001).

The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. 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).

The respondent argued that the claimant should

be barred from receiving TTD benefits due to Ark. Code Ann §11-9-526, which states that if any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless, in the opinion of the Workers' Compensation Commission, the refusal is justifiable. Pillow v. Sanyo Manufacturing Co. Workers' Compensation Commission Full Opinion filed October 10, 2007 (F404094). An offer of suitable employment is a condition precedent to applying Ark. Code Ann. § 11-9-526. Webb v. Webb, Workers' Compensation Commission Full Opinion filed June 29, 2000 (E906144). Work must be available within the employee's physical restrictions. McCuller v. Democrat Printing & Lithograph Co., Workers' Compensation Commission Full Opinion filed April 28, 1998 (E608050). Moreover, the claimant must unjustifiably refuse employment which is suitable to his capacity. Barnette v. Allen Canning Company, 49 Ark. App. 61, 896 S.W.2d 444 (1995).

The Administrative Law Judge erred in his interpretation of the "voluntary termination" agreement signed by the claimant. Clearly the respondent had offered the claimant suitable light duty work before

that date, for not only his knee injury, but over the years for other injuries as well. This appears to be the respondent's main argument. However, the question at bar, based on Ark. Code Ann. §11-9-526, is not whether or not the respondent offered the claimant suitable work before July 5, 2006, obviously, they did. The question is: did the respondent offer the claimant suitable work after July 5, 2006? And if the respondent did offer suitable work, did the claimant unjustifiably refuse the work? Here, the record shows that the respondent presented no evidence indicating that they offered the claimant suitable employment after July 5, 2006. The only evidence of record regarding the respondent's Ark. Code Ann. § 11-9-526 contention is the "voluntary termination" agreement introduced by the claimant, and the claimant's testimony as to his understanding of the circumstances of his termination.

The voluntary termination document is a form.

The document states:

I, Cedric Walker (name) and 23174
I being (sp#) terminated from employment at
Cooper Standard Automotive effective 7-5-06
due to reduction in workforce in accordance
with the plant closure agreement. By signing
above I am acknowledging that I am being
terminated due to my seniority or that I have

chosen to be voluntarily terminated. I am choosing to be paid severance pay according to option B in accordance with the El Dorado Plant closing termination agreement. By signing below I acknowledge that I have read and understand the El Dorado Plant closing termination agreement.

This document shows that the plant was closing. The respondent has presented no evidence to support its argument that this document should be interpreted to show that the claimant was in fact, offered the choice of continuing his light duty employment. Nowhere on this document does it indicate that the claimant could continue working for the respondent. The plain language of the document, although it says "voluntary," clearly indicates that the claimant could not continue working for the respondent. The claimant's testimony also indicates that continued work for the respondent was not an option.

Based on the evidence of record, the Administrative Law Judge's conclusion that the respondent was offering the claimant suitable employment and that the claimant unjustifiably refused suitable employment, clearly required conjecture and speculation. The record shows that the respondent has presented no evidence supporting its contention that they offered the

claimant suitable employment after July 5, 2006. In fact, the evidence of record, a form termination document, shows that the claimant was terminated "due to reduction in workforce in accordance with the plant closure agreement." The claimant's decision to sign a termination agreement acknowledging that he is "being terminated due to his seniority or that I have chosen to be voluntarily terminated" is not evidence that the claimant unjustifiably refused employment. It is evidence that the claimant was being terminated due to the plant closing and that the claimant had to sign the document to receive his severance pay. The document in question is also evidence that the claimant's "voluntary" termination was for the benefit of the respondent, not the claimant.

As the Full Commission now finds that Ark. Code Ann. §11-9-526 does not apply to this claim, the claimant is hereby awarded TTD benefits from July 5, 2006 until the end of his healing period.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner