

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F802965

MICHAEL L. GOODWIN, EMPLOYEE	CLAIMANT
TRI NATIONAL, INC., EMPLOYER	RESPONDENT
UNITED STATES FIRE INSURANCE, CARRIER	RESPONDENT

OPINION FILED OCTOBER 12, 2010

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

Claimant represented by the HONORABLE KENNETH A. OLSEN,  
Attorney at Law, Bryant, Arkansas.

Respondents represented by the HONORABLE BETTY J. HARDY,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the  
Administrative Law Judge filed April 26, 2010

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

1. There was a March 17, 2008,  
compensable injury.
2. The temporary total disability rate is \$522.
3. The claimant has failed to prove by a  
preponderance of the evidence that he

sustained a permanent impairment for his shoulder and cervical sprain/strains.

4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to Ark. Code Ann. § 11-9-505(a) benefits.
5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to vocational rehabilitation benefits.

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 concurs, in part, and dissents, in part.

**CONCURRING AND DISSENTING OPINION**

I must respectfully concur, in part, and dissent, in part, from the majority opinion. I concur in the findings regarding permanent impairment and vocational rehabilitation benefits. However, after a de novo review of the record, I would award the claimant benefits under Ark. Code Ann. §11-9-505, and, therefore, I must respectfully dissent on this issue.

The test for entitlement to Ark. Code Ann. §11-9-505 benefits is set out in Torrey v. City of Fort Smith, 55 Ark. App. 226, 934 S.W.2d 237 (1996). The employee must prove by a preponderance of the evidence that (1) he has sustained a compensable injury, (2) that suitable employment which is within his physical and mental limitations is

available with the employer, (3) that the employer refused to return him to work, and (4) that the employer's refusal to return him to work is without reasonable cause.

Here, both the claimant and the yard manager, Mr. Jason Sipes, testified that during the time period in question, the respondent continuously advertised for drivers both by newspaper advertisements and a sign at the company's yard on Interstate 30 in Bryant. The claimant observed multiple trucks on the yard. Mr. Sipes confirmed that during the time that the claimant was trying to return to work with the respondent, the company did, in fact, have trucks on the lot and they were in need of drivers.

There is nothing in the record to impeach the claimant's credibility. He consistently testified that he did as he was directed by Ms. Melissa Foust in her December 18, 2008 letter. He contacted her and went through the re-hiring process. He watched the safety videos. He contacted the safety department multiple times about returning to driving. He was told to call dispatch. The claimant testified that he did call dispatch but was continually told that there were no trucks available. I believe the claimant. I believe that, despite the fact that the company

had trucks on the lot and needed drivers, the claimant was repeatedly told that no trucks were available. Based on the decision in Torrey, this is the exact type of case where Ark. Code Ann. §11-9-505 benefits should be awarded.

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

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PHILIP A. HOOD, Commissioner