

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F811610

DEBRA MACKEY, EMPLOYEE	CLAIMANT
COBB VANTRESS, INC., EMPLOYER	RESPONDENT
TYNET, CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 3, 2010

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

Claimant represented by the HONORABLE EVELYN BROOKS,  
Attorney at Law, Fayetteville, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the  
Administrative Law Judge filed December 7, 2009.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 10, 2009, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The parties' stipulation that claimant earned an average weekly wage of \$370.00 which would entitle her to compensation at the rate of \$247.00 for total disability benefits and

\$185.00 for permanent partial disability benefits is also hereby accepted as fact.

3. As a result of her compensable left wrist injury, claimant is entitled to temporary total disability benefits beginning March 25, 2009 and continuing through April 9, 2009.
4. Respondent has controverted claimant's entitlement to unpaid indemnity 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 dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the majority's decision is clearly in error. The claimant is entitled to temporary total disability benefits through July 7, 2009.

The injury to claimant's left wrist is a scheduled injury. An employee who suffers a scheduled injury is entitled to receive temporary total disability benefits or temporary partial disability benefits during their healing period or until they return to work, whichever occurs first, regardless of whether there is a total incapacity to earn wages. Wheeler Construction Company v. Armstrong, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). The majority, by affirming

and adopting the opinion of the Administrative Law Judge, concluded because the claimant returned to work she was not entitled to TTD benefits after that return date even though she did stop work after only seventeen days. This is clear error. In Farmers Cooperative v. Biles, 77 Ark. App. 1, 69 S.W. 3d 899 (2002) the Court analyzed the issue of a temporary return to work. The Court pointed out that the term "return to work" is not defined by the Act: "However Wheeler says nothing about what constitutes a return to work, or whether a worker who returns to work unsuccessfully regains entitlement to temporary benefits during a second period of rehabilitation." Id. In this case, there was not a second period of rehabilitation, there was a termination by the employer, thus ending the work. As the claimant was in her healing period, she was unable to obtain other work. This is a classic Wheeler and Farmers Cooperative case.

Farmers Cooperative, supra, states:

In light of the legislative purpose, it would be ludicrous to assume that the legislature sought to penalize workers who sustained scheduled injuries, or to deter such workers from making a good-faith effort to return to the work force following such an injury. Section 11-9-521(a)'s brief reference to temporary disability benefits merely establishes

the right of a worker who has sustained a scheduled injury to such benefits, and was clearly not intended to bar additional temporary total disability benefits following an unsuccessful attempt to return to the workforce. See Roberson v. Waste Management, 58 Ark. App. 11, 944 S.W. 2d 858 (1997).

Here, the claimant made a good faith attempt to return to the work-force. She was unsuccessful. Under Wheeler and Farmers Cooperative she is entitled to TTD benefits until she reaches the end of her healing period. The majority has erred as a matter of law and should be reversed.

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PHILIP A. HOOD, Commissioner