

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F711421

TERRY W. MENZ,
EMPLOYEE

CLAIMANT

CITY OF PARAGOULD,
SELF-INSURED EMPLOYER

RESPONDENT

MUNICIPAL LEAGUE WCT,
TPA

RESPONDENT

OPINION FILED SEPTEMBER 1, 2010

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

Claimant represented by the HONORABLE M. SCOTT WILLHITE,
Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE J. CHRIS BRADLEY,
Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed in part,
affirmed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed February 25, 2010. The administrative law
judge found that the claimant was entitled to additional
temporary total disability benefits and additional medical
treatment. After reviewing the entire record *de novo*, the
Full Commission reverses the administrative law judge's
decision in part and we affirm in part. The Full Commission

finds that the claimant did not prove he was entitled to additional temporary total disability benefits, but that the claimant proved he was entitled to additional medical treatment.

I. HISTORY

The testimony of Terry Wayne Menz, age 38, indicated that he began working for the City of Paragould's sanitation department in June 2007. Mr. Menz testified that he briefly worked "curbside" before being put on the respondent-employer's "dumpster route." The claimant's job on the dumpster route required "doing the levers" on a truck, which activity was "pretty easy." The parties stipulated that the claimant sustained a compensable injury to his right shoulder on September 4, 2007. The claimant testified, "I was pushing on a dumpster and something kind of burned and popped, and that's how it happened." The record indicates that the claimant began missing work on September 18, 2007.

Dr. Ron D. Schechter noted on November 16, 2007, "Mr. Menz is a 35 year old male who has had shoulder pain after a work related injury. His clinical evaluation was suggestive of some post traumatic AC joint arthropathy with an AC separation and intra-articular disruption with secondary

impingement type problems. He had an MRI scan that confirmed abnormal activity in the AC joint and acromial area. He failed to improve with conservative treatment." Dr. Schechter performed an operation on November 16, 2007: "Right shoulder diagnostic arthroscopy. Right shoulder open subacromial decompression with distal clavicle excision." The pre- and post-operative diagnosis was "Right shoulder impingement with AC joint post traumatic arthropathy."

The claimant followed up with Dr. Schechter on November 27, 2007: "He reports he is doing better. He has had some discomfort from surgery as expected, but no real problems. He is not tolerating the swelling well and has had difficulty with pain with his arm down, so it has been difficult to find a comfortable position....His right upper extremity was neurovascularly intact distally. The wounds were well approximated without signs of infection. He had full range of motion of his elbow already....I explained to him that I would like to keep him in a sling, otherwise, as long as he did no active motion with the shoulder he could keep the sling off. He is struggling standing with his arm hanging down so I'm going to keep them on sit down duty only for another week. After that I will let him return to

standing work with no use of the right upper extremity. In 2.5 weeks he can start active motion. We are making arrangements for formal therapy to help with the above."

Dr. Schechter's assessment on November 27, 2007 was "Pain in joint, shoulder" and "Sprain/strain, acromioclavicular." Dr. Schechter assigned a work status of "Light Duty" with the restrictions, "Work Sitting Down Only. No Use of right arm. Restriction in effect for: 6 weeks. Comments: In 1 more week, may return to standing work, but must continue no use of the right arm for 6 weeks from today."

The parties stipulated that the respondents paid temporary total disability benefits through January 7, 2008. The claimant followed up with Dr. Schechter on January 8, 2008:

He reports that he is doing better, but feels like he still has a long way to go. He has reached a point where at times he has less pain than before surgery but occasionally has increased pain after activity. He does feel like his motion has improved with therapy. He is still quite weak in the arm....He has regained full active range of motion of the shoulder compared to the contralateral side....Overall, he seems to be doing well considering his problem. His pain is progressively improving. He has rehabbed very nicely up to this point and has regained full motion. He still has some residual weakness as

expected. I have asked work comp to approve another four weeks of therapy to begin strength training. I am going to progress his activity at work to let him begin activities below shoulder level height and lifting up to 20 lbs. I will see him back in four weeks to check his progress and hope to be able to increase his activity at that time and discontinue formal therapy.

Dr. Schechter's assessment on January 8, 2008 was "Pain In Joint, Shoulder; Syndrome, Rotator Cuff Nos; Sprain/strain, Acromioclavicular;" and "Osteoarthritis, Lclzd Prm, Shoulder."

Dr. Schechter assigned the following Work Status on January 8, 2008: "Light Duty." Restrictions were "No Overhead Activities. No lifting Greater Than 20 lbs. Restriction in effect for 4 weeks." The claimant testified that he returned to light work duty for the respondent-employer in about January 2008. Dr. Schechter reported on February 5, 2008:

His wound is healed. He now has full active motion of the right shoulder compared to the left. He does have a stiffness and pain at extremes of motion. He still has weakness of his shoulder muscles diffusely....He seems to be doing well considering how far out from surgery he is. I reminded him that this surgery typically takes at least a six-month recovery which he was aware of. The most important thing is that he has regained all of his motion, so we should not have to deal with problems of adhesive capsulitis. His biggest problem right now is his weakness which is normal for this far from surgery. He is doing well

enough that we are going to advance his activity to allow up to 30 lbs. of lifting. He is going to complete the remaining physical therapy visits he has from those which were previously approved by Work Comp and then he is going to discontinue formal therapy and is completing his home exercises regularly. I will see him back in six weeks to check his progress and I'm hoping that we can release him to full duty at that time.

Dr. Schechter's diagnosis on February 5, 2008 was "Pain In Joint, Shoulder; Syndrome, Rotator Cuff Nos; Sprain/strain, Acromioclavicular; Osteoarthrosis Lclzd Prm, Shoulder." Dr. Schechter assigned a Light Duty work status, Restrictions of "No lifting Greater Than 30 lbs. Restriction in Effect for: 6 weeks."

Dr. Schechter reported on March 18, 2008:

Terry Menz is here for a follow-up today for s/p right shoulder diagnostic arthroscopy and right shoulder open subacromial decompression with clavicle excision. He reports that he is doing much better, but is not 100%. He still has some pain and weakness with extremes of activity and has crepitation in time. Nonetheless, he considers his pain about 90-95% better than before surgery....His wound was healed without signs of infection. Good range of motion but invisible discomfort and weakness in extremes. He still had some weakness with muscle resistance testing is (sic) well. Still some mild discomfort with impingement testing....Overall, he is doing very well. He's had drastic improvement compared to his preoperative status. He has some residual pain and weakness which is par of the course with this surgery. He understands as we have discussed before that it typically takes at least six months to get over this surgery. We discussed options

and agreed to try another steroid injection to see if we can speed his recovery. He is doing well enough that were (sic) going to try and let him progress as tolerated to work with no formal restrictions. He will follow-up as needed. If at some point work comp wants an impairment rating, I will be happy to do so, but would recommend waiting at least six months from the time of surgery. If work comp calls wanting the impairment rating, we will schedule the patient a 15 minute follow-up without x-rays to complete a rating.

Dr. Schechter performed a subacromial injection on March 18, 2008. Dr. Schechter's diagnosis was "Pain In Joint, Shoulder; Syndrome, Rotator Cuff Nos; Sprain/strain, Acromioclavicular; Osteoarthrosis Lclzd Prm, Shoulder." Dr. Schechter noted on March 18, 2008, "The patient is expected to have some discomfort, but may return to work with no formal restrictions."

The claimant testified on direct examination:

Q. Alright, now just looking toward the end of Dr. Schechter's notes here, some time it appears, around March the 19th, he indicated that he was going to release you to go back to try full duty work?

A. Yes.

Q. Tell me in March of this year, when he did that, what were you able to do physically with your right shoulder?

A. I felt that I couldn't do what they were wanting me to do.

Q. Okay, but tell me, what problems were you having with your right shoulder?

A. Still in pain, popping and cracking.

Q. Okay. Did you have the same strength you had in the right shoulder at that point that you had prior to the injury?

A. No.

Q. Now when you get the release in March 19th, did you go back and tell your supervisor?

A. Yes.

Q. Alright, and what job do they assign you to after that day?

A. They put me on a residential route where you have to pick up actual bags and put them in the truck....

Q. And you were having to go out and physically, manually, pick up trash bags or trash dumpsters and dump them in the truck?

A. Yes....

Q. Tell me how you were able to perform those duties on that residential route in March of 2008?

A. That's....I didn't do it cause I quit....Cause I felt I couldn't do it.

Q. Alright. What was it about that that you could not do?

A. Trying to run along with the truck and hanging on to it and jumping off, grabbing the bags, slinging them up there and jump back on there while it's moving....

According to the record, the claimant signed a Voluntary Resignation form effective March 20, 2008. The claimant wrote his reasons for leaving: "unhappy working here, and personal problems!"

The claimant participated in a Functional Capacity Evaluation on March 11, 2009:

Mr. Terry Menz is referred to Functional Testing Centers, Inc. for a comprehensive functional capacity evaluation to determine his current functional status. Mr. Menz reports on-going right shoulder pain that originated on 9-4-2007 as the result of a work-related injury that later required surgical intervention by Dr. Ron Schechter. Mr. Menz is referred to FTC by Dr. Schechter of Paragould, AR....The results of this evaluation indicate that Mr. Menz gave unreliable effort, with 28 of 47 consistency measures within expected limits....Mr. Terry Menz underwent functional evaluation on this date with unreliable results. Overall, Mr. Menz is able to perform work *at least* at the HEAVY work category according to the guidelines established by the US Department of Labor....

The claimant followed up with Dr. Schechter on March 19, 2009:

Terry Menz is here for a follow-up today for s/p right shoulder diagnostic arthroscopy and right shoulder open subacromial decompression with clavicle excision. The procedure was performed 1.25 years ago. The patient returns with work comp requesting an impairment rating. The patient reports that he is not doing as well as he would like. He acknowledges that he is drastically better than his preoperative status and is glad that he had surgery done. However, he continues

to have pain with activity. He says he has good days were (sic) he feels like his pain is about 80% improved from his preoperative status and bad days where he feels like he is only about 20% improved from his preoperative status. He's not working at all. When I questioned him about why he was not working he said that the day after I released him he quit his job because he felt like they gave him a hard time and tried to give him "crappy work to do." He has not had any work since that time....

The patient appears to have reached maximal medical improvement. In my interactions with the patient and his wife today I simply acknowledged that I felt he was as good as he was going to get and that I did not think there was anything else that I or anyone else could do to improve his pain. I explained that I would be giving a full report to work comp about his impairment but that I felt he could be released to any activity as he tolerates. He voiced understanding and left for the day....Overall, I would say that the patient has no permanent impairment. I am releasing into activities as tolerated and releasing him from care.

The parties stipulated that a Change of Physician Order was entered on July 9, 2009, "designating Dr. Spencer Guinn as the claimant's treating physician." Dr. Spencer H. Guinn examined the claimant on August 5, 2009:

This is a 37 year old male. This is a Workman's Compensation case. He sustained his original injury in 2007 while working for the City of Paragould. He states that he was trying to push a dumpster onto a truck when he felt a pop in his right shoulder. It was very painful. He denies any symptoms prior to this....Dr. Schechter recommended surgery and in November 2007 performed a diganostic (sic) arthroscopy and then an open

decompression and distal clavicle resection. He sent him to one month of physical therapy. He was then released for work, but he states that the job required heavy overhead lifting, which caused significant pain and he has not worked for the City of Paragould since the first day back. He now works for a shop that does car repair, but states all he does is answer the phone. He is not currently doing any lifting secondary to pain.

He currently reports pain in the shoulder with attempts at lifting or overhead activity. It wakes him at night....He points to the shoulder and up into his trapezius as the source of his pain....

PHYSICAL EXAM: Pleasant male in no apparent distress. Alert, oriented and responds appropriately to exam bilateral upper extremities. No skin changes or wounds. Neurovascularly intact to sensory and vascular exam. He has significant scapular dyskinesis on the right....With the arm in abduction and the internal and external rotation, particularly internal rotation he has significant popping and crepitation that is very painful. It is obviously palpable and it appears to be either in the AC joint or anterior and deep to this area. There is no instability....

X-RAYS: AP and outlet of his shoulder. He has a Type I acromion. He has approximately 1 cm of space at his AC joint. Outside surgical report was also reviewed. His pre-operative MR from 2007 was also reviewed.

ASSESSMENT: Right shoulder pain, approximately 1 ½ years out from an open subacromial decompression and distal clavicle resection. Now with a painful popping and crepitation plus significant rotator cuff inflammation versus a tear. The popping could also represent a slap tear due to his mechanism of injury.

PLAN: I had a lengthy discussion with Mr. Menz and his wife regarding his condition. In reviewing all his previous treatments, I recommended an MR arthrogram to evaluate his rotator cuff as well as his biceps anchor. I am going to see him back after the arthrogram to review his results. If he were to return to duty, he can work one handed.

A pre-hearing order was filed on October 27, 2009. The claimant contended that he had been unable to work and had not reached maximum medical improvement. The claimant contended that he was entitled to temporary total disability benefits from March 18, 2008 to the present, and that he was entitled to additional medical care recommended by Dr. Guinn.

The respondents contended that an arthrogram was not reasonably necessary in connection with the compensable injury. The respondents contended that the claimant reached the end of his healing period on or about January 7, 2008, that the claimant did not receive an anatomical impairment rating, and that the claimant was not entitled to any indemnity benefits.

The parties agreed to litigate the following issues:
"additional temporary total disability benefits (3/18/08 through a date to be determined), additional medical

benefits (pursuant to recommendation of Dr. Spencer Guinn), and controverted attorney fees.”

After a hearing, an administrative law judge filed an opinion on February 25, 2010. The administrative law judge found that the claimant was entitled to additional temporary total disability benefits beginning March 18, 2008. The administrative law judge found that the claimant was entitled to additional medical treatment. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages, whereas temporary partial disability is that period within the healing period in which the employee suffers only a decrease in his capacity to earn the wages he was receiving at the time of the injury. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). “Healing period” means “that period for healing of an injury resulting from an accident.” Ark. Code Ann. §11-9-102(12) (Repl. 2002). A claimant’s healing period ends when the underlying condition causing the disability has

become stable and if nothing further in the way of treatment will improve the condition. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). Temporary total disability benefits cannot be awarded after a claimant's healing period has ended. *Id.* The persistence of pain is not sufficient in itself to extend the healing period. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The determination of when the healing period ends is a question of fact for the Commission. *Thurman v. Clarke Indus., Inc.*, 45 Ark. App. 87, 872 S.W.2d 418 (1994).

In the present matter, an administrative law judge found that the claimant "was temporarily totally disabled for the period commencing March 18, 2008, and continuing through the end of his healing period, a date to be determined, with the exception of the three (3) month period subsequent to June/July 2009, during which time the claimant work (sic) for Mr. Jerry Buck, when the (sic) was temporarily partially disable (sic)."

The Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits. The parties stipulated that the claimant sustained a compensable injury to his right

shoulder on September 4, 2007. Dr. Schechter subsequently performed a diagnostic arthroscopy, subacromial decompression, and distal clavicle excision. Dr. Schechter provided follow-up treatment to the claimant, and the respondents paid temporary total disability benefits through January 7, 2008. Dr. Schechter assigned the claimant a light-duty work status on January 8, 2008, which work status included a 20-pound lifting restriction. The claimant testified that he returned to light-duty work for the respondent-employer in about January 2008. Dr. Schechter noted on February 5, 2008 that the claimant had "regained all of his motion" in the right shoulder. Dr. Schechter increased the lifting restriction to 30 pounds.

Dr. Schechter reported on March 18, 2008 with regard to the claimant, "He's had drastic improvement compared to his pre-operative status." Dr. Schechter released the claimant to work with no formal restrictions. The claimant testified that he was placed on the respondent-employer's "residential route" on or about March 19, 2008, and that he was physically unable to pick up heavy trash bags. The record does not corroborate the claimant's testimony that he was unable to perform his employment duties. Dr. Schechter, the

treating physician, released the claimant to work with no lifting restrictions as of March 18, 2008. Moreover, the Voluntary Resignation form signed by the claimant on March 20, 2008 merely indicated, "unhappy working here, and personal problems!" The claimant did not indicate in his voluntary resignation that he could not perform his work, and the record does not otherwise show that the claimant informed the respondent-employer on March 20, 2008 or any other time that he was unable to perform his work duties.

Whether or not the claimant remained within a healing period as of the date of Dr. Schechter's release on March 18, 2008, the evidence demonstrates that the claimant was no longer incapacitated to earn his pre-injury wages. The Functional Capacity Evaluation on March 11, 2009 showed that the claimant could perform work in "the heavy work category." Moreover, the claimant did not inform Dr. Schechter in the March 2009 follow-up visit that the claimant had not been able to perform his work duties. Instead, the claimant told Dr. Schechter that the respondents "gave him a hard time" and "gave him crappy work to do." The record does not corroborate the claimant's

testimony that his post-injury physical condition precluded gainful employment with the respondents.

Dr. Schechter opined on March 19, 2009 that the claimant had reached maximum medical improvement. The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In the present matter, the Full Commission attaches significant evidentiary weight to Dr. Schechter's opinion. The Full Commission finds that the claimant reached the end of a healing period for his compensable injury no later than March 19, 2009. We also find that the claimant was no longer totally incapacitated from earning pre-injury wages as of January 8, 2008, the date Dr. Schechter released the claimant to light work duty. Based on the record currently before us, the Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits after January 7, 2008.

B. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably

necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). The employee has the burden of proving that requested medical treatment is reasonably necessary. *Fayetteville School Dist. v. Kunzelman*, 93 Ark. App. 160, 217 S.W.3d 149 (2005). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (2005).

An administrative law judge found in the present matter, "4. The medical treatment recommended by Dr. Spencer H. Guinn, to include diagnostic studies, is reasonably necessary in connection with the treatment of the claimant's September 4, 2007, compensable right shoulder injury." The Full Commission affirms this finding. The parties stipulated that the claimant sustained a compensable injury to his right shoulder on September 4, 2007. On November 16, 2007, Dr. Schechter noted that the claimant's clinical evaluation suggested post-traumatic AC joint arthropathy, along with an AC separation, intra-articular disruption, and impingement-type problems. Dr. Schechter performed a diagnostic arthroscopy, subacromial decompression, and distal clavicle excision. Dr. Schechter

provided follow-up treatment after surgery. The last active treatment of record from Dr. Schechter took place on March 18, 2008, when Dr. Schechter performed a subacromial injection. Dr. Schechter pronounced maximum medical improvement on March 19, 2009 and released the claimant from his care.

The claimant thereafter received a change of physician to Dr. Guinn. Dr. Guinn examined the claimant on August 5, 2009 and accurately described the treatment history of the claimant's compensable injury. Dr. Guinn noted significant scapular dyskinesia in the claimant's right shoulder, along with painful internal rotation and "palpable" popping and crepitation. Dr. Guinn noted that x-rays showed a Type I acromion with spacing in the AC joint. Dr. Guinn opined that the claimant had rotator cuff inflammation and possibly a "slap tear" as a result of the compensable injury. Dr. Guinn recommended "an MR arthrogram to evaluate his rotator cuff as well as his biceps anchor. I am going to see him back after the arthrogram to review his results."

The Commission has the duty of weighing medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. *Green Bay*

Packaging v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 695 (1999). In the present matter, although Dr. Schechter released the claimant from further treatment, the Full Commission finds that Dr. Guinn's treatment recommendation is entitled to significant evidentiary weight. The record shows that the claimant suffers from abnormalities in his right shoulder which are causally related to the September 4, 2007 compensable injury. We therefore find that Dr. Guinn's treatment recommendations were reasonably necessary in connection with the claimant's compensable injury.

Based on our *de novo* review of the entire record currently before us, the Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits after January 7, 2008. We find that the claimant proved he was entitled to additional medical treatment as recommended by Dr. Guinn, and that the respondents are liable for said treatment. The Full Commission therefore reverses the administrative law judge's decision in part and we affirm in part. For prevailing in part on appeal, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

Commissioner McKinney concurs in part and dissents in part.

CONCURRING DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the claimant has failed to prove by a preponderance of the evidence that he was entitled to additional temporary total disability benefits. However, I must respectfully dissent from the majority's award of additional medical treatment. In my opinion, the claimant has failed to meet his burden of proof.

The evidence demonstrates that the claimant was released to return to work on March 18, 2008. At that time, Dr. Ron Schechter indicated "the patient is expected to have some discomfort, but may return to work with no formal restrictions." The claimant was not released from Dr. Schechter's care, but was only released to return to regular duty. The claimant did not seek medical treatment again until March 19, 2009, when he was directed to go to Dr. Schechter for an impairment rating. There are absolutely no

medical records to indicate that the claimant sought treatment in the interim from another physician. The claimant did not seek a change of physician from the Commission, nor did he seek medical care under his Medicaid benefits. The claimant has Social Security disability and is entitled to medical care benefits.

Further, it is not until August of 2009 when the claimant sought treatment from Dr. Guinn that Dr. Guinn thought the claimant could have a slap tear due to the mechanism of injury because his shoulder was popping. However, I would note that a slap tear due to the compensable injury was ruled out on November 16, 2007, when Dr. Schechter performed the diagnostic arthroscopy.

The evidence demonstrates that the claimant quit his job upon returning after being released to do work with no restrictions. The claimant's refusal to work for the respondent employer and his quitting due to being unhappy with the job and "personal problems" coupled with the fact that the claimant did not seek any kind of medical care until August of 2009 is certainly indicative that the respondents are not responsible for any additional medical treatment. The only medical records are from March of 2009

where the respondents directed the claimant to return to Dr. Schechter for a permanent anatomical impairment rating. Simply put, I cannot agree that the claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority's award of additional medical treatment.

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. Specifically, I concur in the determination that the claimant is entitled to additional medical treatment. However, I dissent from the majority's finding that the claimant is not entitled to further temporary total disability benefits. After a de novo review of the record, I find that the claimant is entitled to additional temporary total disability benefits from March 18, 2008 until a date yet to be determined, with

the exception of the three-month period the claimant performed light-duty work for a friend.

The claimant was released to return to work by Dr. Schechter on March 18, 2008, without any formal restrictions related to the September 4, 2007 compensable right shoulder injury. However, Dr. Schechter acknowledged that the type of surgery the claimant underwent on November 16, 2007, "typically required at least six months" recovery. At the time of the March 18, 2008 release, the claimant was only four months post-op. Furthermore, the claimant, who is right-handed, relayed complaints of pain and weakness attributable to the compensable injury at the time of the March 18, 2008 visit.

After his release, the evidence shows that the claimant was scheduled to be assigned to a residential route by respondent. The duties of a residential route included slinging trash bags into the back of the garbage truck. In addition to asserting that the assignment should not have been given to him due to his seniority, claimant noted the difficulty he would experience slinging the trash bags in the back of the truck over an eight-hour period.

The claimant is entitled to temporary total disability during his healing period if he shows by a preponderance of the evidence that he has a total incapacity to earn wages. Carroll General Hospital v. Green, 54 Ark. App. 102, 923 S.W.2d 878 (1996). The healing period is defined as that period of healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994). Conversely, if something further in the way of treatment will improve the condition, the healing period has not ended.

Here, the evidence shows that at the time of the March 18, 2008 release from Dr. Schechter, the claimant remained symptomatic and in need of further medical treatment. The claimant underwent a procedure on his right shoulder which typically required a recovery period of six months. The claimant's proposed assigned job duties, as of March 18, 2008, required him to sling bags of trash into the back of a truck. In addition to slinging the bags, the

claimant was required to lift the bags, and to ride on the back of the truck, holding on with one or both hands, as the truck proceeded along the residential route. It is my opinion that common sense dictates a finding in favor of the claimant. It does not take specialized knowledge to come to the conclusion that the claimant, with his compensable right shoulder injury, could not perform the duties of a residential garbage man.

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

PHILIP A. HOOD, Commissioner