

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F710413

RAFAEL ALVAREZ,
EMPLOYEE

CLAIMANT

TRAVIS LUMBER COMPANY,
EMPLOYER

RESPONDENT

GIBRALTAR NATIONAL INS. COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 1, 2011

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

Claimant represented by the HONORABLE MICHAEL HAMBY,
Attorney at Law, Greenwood, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal and claimant cross-appeal an
opinion and order of the Administrative Law Judge filed
September 29, 2010. In said order, the Administrative
Law Judge made the following findings of fact and
conclusions of law:

1. The stipulations agreed to by the parties at
the pre-hearing conference conducted on
February 3, 2010, and contained in a pre-
hearing order filed February 4, 2010, are
hereby accepted as fact.
2. The claimant is entitled to additional medical
treatment in the form of an evaluation at UAMS

by a specialist for his chronic pain related to his compensable injury.

3. The claimant failed to prove by a preponderance of the evidence his entitlement to temporary total disability benefits from October 27, 2008, to a date yet to be determined.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the September 29, 2010 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

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

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

After a de novo review of the record, I specifically concur in the majority's determination that the claimant is entitled to evaluation by a specialist at UAMS for his chronic pain related to his compensable injury. However, as I find that the claimant is

entitled to temporary total disability benefits from October 27, 2008 until a date yet to be determined, I must dissent on this issue.

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). 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). A claimant who has been released to light-duty work, but has not returned to work, may be entitled to temporary total disability benefits where there is insufficient evidence that the claimant has the capacity to earn the same or any part of the wages that he was receiving at the time of the injury. Breshears, supra; Sanyo Manufacturing Corp. v. Leisure, 12 Ark. App. 274, 281-82 (1984). When an injured employee is totally incapacitated from earning wages and remains in the healing period, she is entitled to temporary total disability. Id.

Here, the claimant's symptoms have not changed since August 15, 2008, when Dr. Kelly placed the claimant in an off-work status if his symptoms persist. While Dr. Swicegood may have returned the claimant to work on November 12, 2008, without limitations, I find Dr. Kelly's opinion to be more reasonable, in light of the claimant's symptoms, than that of Dr. Swicegood. I find, according to Sanyo, Id., due to pain and symptoms related to his compensable injury, the same symptoms which the majority has deemed sufficient for additional reasonably necessary medical treatment, that the claimant is totally incapacitated from earning wages, remains in the healing period, and is entitled to temporary total disability.

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

PHILIP A. HOOD, Commissioner