

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G004058

JESSIE CONTRERAS, EMPLOYEE	CLAIMANT
PINNACLE FOODS CORPORATION, EMPLOYER	RESPONDENT
AMERICAN ZURICH INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 27, 2011

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 MICHAEL STILES, 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 November 3, 2010.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties at all relevant times.
3. The claimant sustained a compensable burn injury on May 3, 2010.

4. Claimant was earning an average weekly wage of \$689.00 which would entitle him to compensation at the weekly rates of \$459.00 for total disability benefits and \$344.00 for permanent partial disability benefits.
5. Respondent has not paid any indemnity benefits.
6. Claimant reached the end of his healing period on June 28, 2010.
7. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning May 4, 2010 and continuing through June 28, 2010.
8. Claimant has failed to prove by a preponderance of the evidence that he is entitled to benefits pursuant to A.C.A. §11-9-505(a).
9. Respondent has controverted claimant's entitlement to all unpaid temporary total disability 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.

A. WATSON BELL, Chairman

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 claimant was not returned to work while positions with the company were available, and the claimant is entitled to benefits under Ark. Code Ann. § 11-9-505(a) and Torrey v. City of Fort Smith, 55 Ark. App. 226, 934 S.W.2d 237 (1996).

Before Ark. Code Ann. § 11-9-505(a) applies, several requirements must be met. The employee must prove by a preponderance of the evidence that he sustained a compensable injury; that suitable employment which is within his physical and mental limitations is available with the employer; that the employer has refused to return him to work; and, that the employer's refusal to return him to work is without reasonable cause. See Torrey, Id. At a minimum, Ark. Code Ann. § 11-9-505(a) requires that when an employee who has suffered a

compensable injury attempts to re-enter the work force, the employer must attempt to facilitate the re-entry into the work force by offering additional training to the employee, if needed, and reclassification of positions, if necessary. Id.

First, the claimant suffered a compensable injury. There was objective evidence shown by the medical records from Washington Regional Medical Center and the Wound Care Clinic of a burn to claimant's right arm and right side of his chest.

Second, suitable employment which is within the claimant's physical and mental limitations is available with the employer. The evidence shows the fact that the only reason the claimant was not returned to work was because the respondent supervisor claimed he wanted the claimant to be seen by the company doctor. Rather ironically, the respondent argues that the claimant is still employed.

Third, the employer has refused to return the claimant to work. At the hearing, Mr. Bill Medley, health and safety manager, admitted that he refused to return the claimant to work. The reason he gave that the claimant was not returned to work was because he had not gone to see their general practitioner, Dr. Rebecca Lewis. Mr. Medley stated, "I have one line that says 'May Return to Full Duty', but I have to be honest with you, my concern was that physician did not know what full duty may be in our facility." When asked by claimant's counsel if he attempted

to contact the Wound Care Center to get the release explained, Mr. Medley admitted he had not, and admitted that he had known that the claimant was being treated there.

Finally, the refusal to return the claimant to work is without reasonable cause. The respondent argues that the claimant was not returned to work when given a full release by the treating specialists at the Wound Care Clinic because there was some question about the credentials of the Wound Care Clinic to give someone a full release after a severe burn. Mr. Medley, health and safety manager, thought that the Wound Care Clinic was not familiar with the workings of Pinnacle Foods, and perhaps the company doctor should have seen the claimant. But no appointment was set up for the claimant. No appointment was set up through June, when he was still being treated by the Wound Care Clinic; through July, when a hearing on the issue was pending; through August and September, when exhibits were exchanged. No notes were made by respondent indicating an appointment was attempted. No letters went out informing claimant of an appointment. It is clearly the responsibility of the respondent to set up doctor's appointments. Even Mr. Medley admitted that the claimant was willing to see the doctor. But no appointment was made for the claimant. Now the respondent argues that the claimant was not returned to work because there was a refusal by him to see the company doctor. This assertion is not supported by the evidence.

The respondent has, in effect, made a demand, yet not notified the claimant of the demand, nor provided any means for the claimant to meet the demand. No notice was given to the claimant or to claimant's attorney that a condition of employment was a doctor visit, and no doctor visit was scheduled. The inaction of the respondent does not show reasonable cause for refusing to return the claimant to work.

In conclusion, the claimant has met all of the elements of Ark. Code Ann. §11-9-505(a). I would award benefits. For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner