

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F701749

SARAH JOHNSON,
EMPLOYEE

CLAIMANT

EARLE SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

AR SCHOOL BOARDS ASSOC, WCT.,
TPA

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED JANUARY 13, 2011

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

Claimant appears Pro Se.

Respondent No. 1 represented by the HONORABLE GUY ALTON
WADE, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID L. PAKE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part,
reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed July 19, 2010. The administrative law judge
found that the claimant sustained compensable injuries to
her cervical spine, lumbar spine, and left shoulder. The
administrative law judge found that the claimant was

entitled to reasonably necessary medical treatment and temporary total disability benefits. The administrative law judge found that the statute of limitations did not bar the claim.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove she sustained a compensable injury to her left shoulder. The claimant proved that she was entitled to the medical treatment of record she received through April 17, 2007. The Full Commission finds that the claimant did not prove she was entitled to temporary total disability benefits, because the applicable statute of limitations bars the claimant's claim for additional benefits.

I. HISTORY

Sarah Johnson, age 50, testified that she began working as a bus driver for Earle School District in 1999. Ms. Johnson testified that she sustained a previous work-related injury in 2003: "I slipped and fell on the school bus and I hurt my back and my shoulder....my left shoulder."

Dr. Ron South saw the claimant in June 2005: "The patient complains of low back pain. She states this started in 2003....The patient reports she hit the middle of her

back on the school bus at that time. She states the pain slowly improved. However she reports in April of 2004 her back pain started again. She reports the back pain has progressively worsened....The patient also complains of numbness to both lower extremities. She complains of neck pain." Dr. South noted that an MRI of the claimant's lumbosacral spine in May 2005 had shown "Small diffuse bulge at L5-S1 level slightly narrowing the left neuro foramen. The S1 nerve roots are intact."

Dr. South assessed Low Back Pain. Electrodiagnostic testing in June 2005 showed "Abnormal nerve conduction studies of both lower extremities." The conclusion from a CT of the claimant's lumbar spine post-myelogram was "Mild diffuse disc bulge at L4-L5 and moderate diffuse disc bulge at L5-S1 as described above." A CT of the cervical spine was done in August 2005 with the conclusion, "Chronic degenerative changes at C6-C7 and C7-T1. This includes some foraminal stenosis on the left at C7-T1. Other findings as described above. Only small lateral disk protrusion is seen in the foramen on the left side at that level, but all the findings appear chronic." The claimant agreed on cross-examination that she underwent surgery to her left shoulder

in September 2005. Dr. South assessed Low Back Pain Deteriorated on April 27, 2006.

The parties stipulated that an employment relationship existed at all pertinent times, including October 6, 2006. An administrative law judge questioned the *pro se* claimant:

Q. Let's discuss the accident that occurred on October 6th of 2006....What injuries did you suffer in this accident?

A. Well, my shoulder and my neck....

Q. So you had pain in both shoulders?

A. Yes, sir.

Q. Okay. And down your back?

A. Yes, sir.

An emergency physician record dated October 6, 2006 indicated that the claimant had been in a motor vehicle accident and complained of injury to her head and neck. The clinical impression was Neck Strain. An x-ray of the claimant's cervical spine was done on October 6, 2006: "Alignment is normal. Only the first six vertebral bodies can be evaluated on the lateral film therefore C7 cannot be evaluated. If pathology in the region of C7 is suspected, CT is recommended. No abnormalities of the first six

vertebral bodies are noted. Intervertebral discs and prevertebral soft tissues are normal."

The claimant testified that she was off work following the October 6, 2006 accident. The claimant saw Dr. South on October 17, 2006: "The patient returns to clinic today for a subsequent visit. During the last visit physical therapy was ordered....The patient reports her back pain is about the same. The patient reports the physical therapy did not helped (sic)." Dr. South assessed Low Back Pain Deteriorated and referred the claimant to pain management "for possible LESIs."

The claimant began treating with Dr. Sunil Gera, a pain manager, on October 17, 2006:

46 year old black female who has been having this pain for three years. She is a bus driver alleged to have been hurt while climbing on a bus when she slipped and hit her back on the side rail....Since this incident she has been having pain....

ASSESSMENT:

1. Low back pain.
2. Lumbar disk bulge.
3. Degenerative joint disease of the spine.
4. Degenerative disk in lumbar area with facet arthropathy in the lumbar area.

Dr. Gera planned a trial of two lumbar epidural steroid injections.

A licensed practical nurse in the office of Dr. W.G. Burks, Wynne Medical Clinic, signed a Certificate to Return to Work on October 18, 2006: "Sarah Johnson has been under my care from 10-18-06 to 10-22-06 and will be able to return to work on 10-23-06."

The record indicates that Dr. Gera signed a Work Release Form on November 7, 2006 indicating that the claimant was "Unable to work effective 11-8-06 through November 12, 2006, but may return to work 11-13-06."

The claimant followed up with Dr. Gera on November 21, 2006: "She had two epidural steroid injections which have not given her much relief, she is some better but now her pain is lateralized to the right side....Considering she had very minimal relief with the epidurals, has a lot of tenderness in the facets, with radiological evidence of degenerative disk disease I will proceed with the initial diagnostic block for right L4-5, L5-S1 medial nerves to rule out facetogenic cause of pain."

Dr. Gera gave the claimant a Work Release Form indicating the claimant was "Unable to work effective 12/6/06 through 12/12/06, but may return to work 12/13/06." Dr. Gera reported on December 12, 2006, "Patient had good

results with the initial block so I will do the confirmatory block using a different anesthetic **to rule out false positive or placebo effect** before making a decision for radiofrequency neurolysis....I will put her on light duty as driving a bus for 90 miles is definitely increasing her pain. She has facet disease so prolonged sitting will definitely increase her pain."

Dr. Gera gave the claimant a Light Duty Work Form dated December 12, 2006 indicating that the claimant was "Able to work from 12-12-06 until January 23, 2007. RESTRICTIONS: No lifting more than 20 lbs., No bending & twisting at the same time, No prolonged standing or sitting for more than 2 hours."

Dr. Gera noted on January 23, 2007, "According to her she drives a bus and any bumping movement causes her a lot of pain in both the back and neck....I will keep her on light duty until her next visit." Dr. Gera gave the claimant a Light Duty Work Form dated January 23, 2007, indicating that the claimant was able to perform full-time work from January 24, 2007 until February 20, 2007 with the following restrictions: "No lifting more than 20 lbs., No

bending & twisting at the same time, No prolonged standing or sitting for more than 2 hours."

Dr. Gera gave the claimant a Work Release Form dated January 31, 2007, indicating that the claimant was "Unable to work effective 1-30-07 through 2-4-07, but may return to work 2-5-07." The claimant was given a Certificate to Return to Work from Wynne Medical Clinic dated February 5, 2007: "Sarah Johnson has been under my care from 2-5-07 to 3-5-07 and will be able to return to work on 3-6-07."

The claimant signed a Form AR-C, Claim For Compensation, on February 15, 2007. The claimant appeared to write in the Accident Information section of the Form AR-C that she had been involved in a school bus wreck which caused back and neck pain. The claimant did not indicate in the Claim Information section whether the claim for was initial benefits or additional benefits. The Commission received the Form AR-C on February 19, 2007.

The claimant followed up with Dr. Gera on February 20, 2007: "Last visit had radiofrequency neuroloysis of left-sided L4-5, L5-S1 medial nerves. She is very happy as most of her pain in the back is gone. She has some pain with movements, she is no longer driving the truck which is also

helping her. She has pain in her neck bilaterally much more on the right than the left side, goes to the shoulder and to the upper arm, denies radiation to the fingers. She notices her hands are swollen....Patient has degeneration in the lower cervical area with facet arthropathy, there is history of being rear-ended during motor vehicle accident which may have exacerbated her pain to some extent. Nevertheless, I will first rule out the facetogenic cause for the lower facets since pain is more in the trapezius and upper arm area."

The claimant was seen at Wynne Medical Clinic on March 5, 2007 and was taken off work until April 6, 2007. Dr. Gera noted on March 14, 2007, "She is off of work due to this pain as she cannot drive with the severe pain in her neck."

The claimant signed a Form AR-N, Employee's Notice Of Injury, on March 16, 2007. The claimant wrote on the Notice Of Injury that she injured her back and neck in the October 6, 2006 accident: "I got hit from behind really hard cause (sic) my back and my neck to jerk forward hard."

A Workers Compensation - First Report Of Injury Or Illness was prepared on March 19, 2007. The First Report

indicated that the claimant had sustained a "low back/neck strain" in the October 6, 2006 motor vehicle accident. A representative of the respondent-carrier signed a Form AR-2 on March 19, 2007 accepting the claim as a "Medical - Only Claim (no indemnity due)." On or about March 20, 2007, a representative of the respondents signed a Form AR-2 accepting the claim as "Medical Only."

The claimant followed up with Dr. South on March 22, 2007: "The patient reports that since the last visit she has had neck pain. This started after she was involved in a MVA in Oct. 2006. The patient reports she was at work driving a school bus and someone hit the rearend of the bus." Dr. South assessed Neck Pain Unchanged. The claimant was seen at Wynne Medical Clinic on April 5, 2007 and was apparently taken off work until "further notice."

An MRI of the claimant's cervical spine was taken on April 9, 2007, with the following conclusion, "No large bulges in the cervical spine though there is a bulge noted at the C7-T1 level and more bulges noted to a greater extent at the T2-3 level and smaller at the T1-2 and T3-4 levels. I would recommend a formal evaluation with MRI of the thoracic spine for further evaluation."

The claimant was seen at Wynne Medical Clinic on April 12, 2007 and was given a Certificate to Return to Work: "Sarah Johnson has been under my care from 4-12-07 to 4-15-07 and will be able to return to work on 4-16-07. No driving the bus for 2 months."

The claimant testified that she returned to work as a bus driver on April 17, 2007.

The claimant began treating at Traylor Chiropractic Clinic on or about August 27, 2007. The claimant complained of symptoms in her neck and back as a result of the October 6, 2006 motor vehicle accident.

Dr. Jean Simard diagnosed "shoulder rotator cuff tear" and signed a Certificate on March 3, 2008 indicating, "Patient is scheduled for surgery on 3-18-08 & will be off work 10 weeks afterwards." An administrative law judge questioned the claimant:

Q. Now, what happened in March of 2008 to cause you to go off of work again?

A. My shoulder, I had to have surgery on my shoulder.

Q. And you pointed to your shoulder. You're talking - and you pointed to your left shoulder?

A. Yes, sir.

Q. But it was the left shoulder that you hurt back in 2003.

A. Yes, sir....

Q. The need for surgery in March of 2008, was that sudden or how did that come about? Was it just - were you continuing to have complaints and symptoms in that shoulder all the time that you were working?

A. Yes, sir, after I had that accident, it started hurting, my shoulder was just constantly hurting all the time.

A claims specialist for the respondents signed a Form AR-4, Report Of Compensation Paid/Suspension Of Payments, on July 16, 2008. The Form AR-4 indicated that the claimant had been paid Hospital Expenses, Medical Expenses, and Drugs, Medicine. The Form AR-4 was stamped "Closed" on August 14, 2008.

The claimant signed another Form AR-C, Claim For Compensation, on March 13, 2009. The claimant described the part of body injured in the October 6, 2006 accident: "Shoulder, cervical spine, lumbar spine injuries as a result of motor vehicle accident." The claimant claimed on the Form AR-C that she was entitled to additional temporary disability benefits and additional medical expenses.

A pre-hearing order was filed on March 1, 2010. The claimant contended that she injured her back, neck, and

shoulder in the October 6, 2006 accident. The claimant contended that she had not been paid any disability benefits. The respondents contended, "The respondents' first notice of any claimed injury was on or about March 9, 2007 at the time of the Form C. The respondents accepted this claim as compensable 'medical only' and have paid all reasonable, necessary and related treatment." The respondents contended that "the claimant's current complaints are the result of pre-existing conditions for which the respondents are not responsible."

The parties agreed to litigate the issues, "temporary total disability benefits (10-06-06 through 04/07; 03-17-08 through 08/08) and additional medical benefits."

After a hearing, an administrative law judge filed an opinion on July 19, 2010. The administrative law judge found that the claimant sustained compensable injuries "to her cervical spine, lumbar spine and left shoulder" on October 6, 2006. The administrative law judge awarded temporary total disability benefits and medical treatment. The administrative law judge found that the statute of limitations did not bar the claim.

The respondents appeal to the Full Commission.

II. ADJUDICATIONA. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(Repl. 2002) provides:

(4) (A) "Compensable injury" means:
(i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i).

The burden of proof of a compensable injury shall be on the employee, and the burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (i) (Repl. 2002). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

An administrative law judge found in the present matter, "3. On October 6, 2006, the claimant sustained

injuries to her cervical spine, lumbar spine and left shoulder arising out of and in the course of her employment[.]” The Full Commission finds that the claimant did not prove she sustained a compensable injury to her left shoulder.

The parties stipulated that an employment relationship existed on October 6, 2006. The claimant was involved in a work-related motor vehicle accident that day. The claimant testified that she sustained injuries to her neck, back, and both shoulders. The record does not corroborate the claimant’s testimony or contention that she injured her left shoulder on October 6, 2006. The respondents accepted compensability for medical treatment related to the claimant’s neck and low back following the motor vehicle accident. The evidence does not demonstrate that the claimant sustained a compensable injury to her left shoulder. None of the medical records or reports immediately following the accident described any complaints, symptoms, or injuries related to the claimant’s left shoulder. The emergency physician record on October 6, 2006 indicated that the claimant complained of injury to her head and neck, and the clinical impression was Neck Strain. Dr.

South assessed Low Back Pain Deteriorated on October 17, 2006.

Dr. Gera began treating the claimant on October 17, 2006. Dr. Gera's assessment included low back pain and degenerative joint disease of the spine, but Dr. Gera did not mention an injury to the claimant's left shoulder. Dr. Gera's follow-up visits with the claimant did not report or describe an injury involving the claimant's left shoulder. In the claim for compensation she signed on February 15, 2007, the claimant reported that she suffered from back and neck pain, not shoulder pain. A First Report Of Injury prepared on March 19, 2007 indicated that the claimant had sustained a low back and neck strain in the October 6, 2006 accident. There was no mention of an injury to the claimant's shoulder. Dr. South assessed Neck Pain Unchanged in March 2007.

The first indication of record regarding any complaints involving the claimant's shoulder took place on March 3, 2008, approximately 17 months after the October 6, 2006 accident, when Dr. Simard diagnosed "shoulder rotator cuff tear." The claimant testified that her left shoulder had begun hurting after the October 6, 2006 accident.

Nevertheless, the evidence does not demonstrate that the claimant sustained a rotator cuff tear or any injury to her left shoulder as a result of the October 6, 2006 motor vehicle accident. The record does not corroborate the claimant's testimony or her report on the March 13, 2009 claim for compensation that she sustained an injury to her shoulder on October 6, 2006.

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her left shoulder. The claimant did not prove that she sustained an accidental injury causing internal or external physical harm to her left shoulder. The claimant did not prove that she sustained an injury to her left shoulder which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that she sustained an injury to her left shoulder which was caused by a specific incident, identifiable by time and place of occurrence on October 6, 2006. The claimant did not establish a compensable injury to her left shoulder by medical evidence supported by objective findings. There is no evidence before the Commission demonstrating that Dr.

Simard's diagnosis of "shoulder rotator cuff tear" in March 2008 was causally related to the October 6, 2006 motor vehicle accident. The claimant did not prove by a preponderance of the evidence that she was entitled to workers' compensation benefits for her left shoulder.

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 claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). 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, "8. Respondent #1 shall pay all reasonable hospital, and medical expenses arising out of the injury of October 6, 2006." The claimant was involved in a work-related motor vehicle accident on October 6, 2006, and the

respondents accepted compensability for subsequent medical treatment related to the claimant's neck and low back. The claimant proved that she was entitled to all of the medical treatment of record she received following the October 6, 2006 accident through April 12, 2007. The claimant proved that said treatment was reasonably necessary in connection with the admitted compensable injuries to the claimant's neck and back.

The Full Commission finds that the claimant reached the end of the healing period for her compensable injuries no later than April 17, 2007. The claimant did not prove that she was entitled to any additional medical treatment for her neck or back after April 17, 2007. We recognize that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury.

Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). In the present matter, however, the evidence does not demonstrate that the claimant required ongoing management of her neck and back injuries after the claimant's healing period ended no later than April 17, 2007. The record does not show that treatment the claimant

received at Traylor Chiropractic Clinic beginning August 27, 2007 was reasonably necessary in connection with the claimant's neck and back injuries. We have determined *supra* that the claimant did not prove she sustained a compensable left shoulder injury. The claimant did not prove that any treatment rendered by Dr. Simard was reasonably necessary. Additionally, no medical report of record has indicated that the claimant is a candidate for surgery with regard to her neck or cervical spine, nor is the claimant a candidate for surgery with regard to her low back or lumbar spine. The claimant did not prove she was entitled to any testing or treatment with regard to her mid-back or thoracic spine as a result of the October 6, 2006 compensable injuries to the claimant's neck and low back.

C. Filing of claims

Ark. Code Ann. §11-9-702 (Repl. 2002) provides:

(b) TIME FOR FILING ADDITIONAL COMPENSATION.

(1) In cases where any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater....

(c) A claim for additional compensation must specifically state that it is a claim for additional compensation. Documents which do not specifically request additional benefits shall not

be considered a claim for additional compensation.

An administrative law judge found in the present matter, "7. The present claim for additional workers' compensation benefits was filed with the Arkansas Workers' Compensation Commission within one (1) year from the date of the last payment of compensation and is therefore is not barred pursuant to Ark. Code Ann. §11-9-702(b)(1)." The Full Commission does not affirm this finding. The parties stipulated that an employment relationship existed on October 6, 2006, when the claimant was involved in a work-related motor vehicle accident. The respondents accepted compensability for medical treatment related to the claimant's neck and low back. The claimant signed a Form AR-C, Claim For Compensation, on February 15, 2007. As we have noted, the claimant did not indicate in the Claim Information section of the Form AR-C whether the claim was for initial benefits or additional benefits. Because the Form AR-C signed by the claimant on February 15, 2007 did not specifically state that it was a claim for additional compensation, said document cannot be considered a claim for additional compensation. Ark. Code Ann. §11-9-702(c), *supra*.

The claimant does not dispute the respondents' assertion that the last date of service for which the respondents paid for the claimant's medical treatment was "through March 5, 2007, for reimbursement for treatment at Wynne Medical Clinic." The furnishing of medical services constitutes "payment of compensation" within the meaning of the limitations statute, and such payment of compensation or furnishing of medical services tolls the running of the time for filing a claim for additional compensation. *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W.2d 253 (1994), citing *Heflin v. Pepsi-Cola Bottling Co.*, 244 Ark. 195, 424 S.W.2d 365 (1968). The one-year limitations period begins to run from the last payment of compensation, which the Court has held means from the date of the last furnishing of medical services. *Id.*, citing *Superior Federal Savings & Loan Ass'n v. Shelby*, 265 Ark. 599, 580 S.W.2d 201 (1979).

In applying the statute and caselaw to the present matter, one year from the last date of treatment was March 5, 2008. The greater time period was two years from the date of the injury, October 6, 2008. The instant claimant was therefore required to file a claim for additional compensation no later than October 6, 2008. The Form AR-C

filed by the claimant on or about February 19, 2007 did not specifically state that it was a claim for additional compensation and shall not be considered a claim for additional compensation. Ark. Code Ann. §11-9-702(c), *supra*. The claimant did not claim entitlement to additional compensation until the filing of the Form AR-C on or about March 13, 2009. The statute of limitations in the instant matter expired no later than October 6, 2008, and the claimant's claim for temporary total disability benefits is barred.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding that the claimant proved she sustained injuries to her neck and low back. The claimant proved that she was entitled to the medical treatment of record she received for her neck and low back from the date of injury and continuing through April 17, 2007. The claimant did not prove that she was entitled to additional medical treatment after April 17, 2007. The Full Commission reverses the administrative law judge's finding that the claimant sustained a compensable injury to her left shoulder, and we reverse the administrative law judge's finding that the applicable

statute of limitations did not bar the claim for additional benefits. We find that the statute of limitations expired on October 6, 2008, and that the claimant's claim for additional benefits on March 13, 2009 was not timely filed. The statute of limitations therefore bars the claimant's claim for temporary total disability benefits. The claimant did not prove that she was entitled to any additional benefits related to the October 6, 2006 compensable injuries after April 17, 2007.

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

I must respectfully concur, in part, and dissent, in part, from the majority opinion. Specifically, I concur in the finding that the claimant did not prove she sustained a compensable injury to her left shoulder. However, as I believe her request for temporary total disability benefits

related to her compensable neck and lumbar injuries is not time-barred, I must respectfully dissent from the majority on this issue.

Ark. Code Ann. §11-9-702, Filing of claims, provides, in pertinent part:

(a) Time For Filing.

(1) A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. If during the two-year period following the filing of the claim the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in §11-9-102(4).

* * * * *

(b) Time For Filing Additional Compensation.

(1) In cases in which any compensation, including disability or medical has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater.

* * * * *

(c) A claim for additional compensation must specifically state that it is a claim for additional compensation. Documents which do not specifically request additional benefits shall not be considered a claim for additional compensation.

On October 6, 2006, the claimant, a bus driver, was in a motor vehicle accident which resulted in injuries to several students on the school bus and the fatality of the driver of the other vehicle. The claimant was transported to the emergency room of Crittenden Memorial Hospital following the accident and received emergency medical treatment for her neck and lumbar spine.

A Form AR-C was filed with the Arkansas Workers' Compensation Commission on February 19, 2007, by the claimant's attorney. A First Report of Injury or Illness, Form 1A-1, was prepared on March 19, 2007, by the Third Party Administrators of respondent-employer in connection with the October 6, 2006 accident of the claimant. The Form 1A-1 reflects that the employer was notified of the October 6, 2006 accident on October 6, 2006.

Respondent #1 paid medical bills for the medical treatment received by the claimant under the care of Dr. Burks, from October 18, 2006 through March 5, 2007, in the form of reimbursement of the claimant's co-pay. The amount of the check, which was issued on March 19, 2007, was \$60.00. For services rendered to the claimant on October 10, 2006 and October 18, 2006, Wynne Medical Clinic was issued a check by respondent #1 on February 29, 2008, in the amount of \$123.10. On October 6, 2006, the claimant was transported to the emergency room of Crittenden Memorial Hospital from the accident scene by EMT Medical Transfers, Inc. The \$852.00 bill of EMT Medical Transfers, Inc., was paid by respondent #1 in a check issued April 27, 2007. Diagnostic Imaging Assoc., which provided services to the claimant on October 6, 2006, was issued a check in the amount of \$16.00 on February 29, 2008. For services rendered to the claimant on October 6, 2006, Tyler Emergency Physicians, the physicians staffing the emergency room of Crittenden Memorial Hospital, was issued a check in the amount of \$72.62 by respondent #1. Respondent #1 issued a check on February 29, 2008, to the claimant, in the amount of \$60.00, for reimbursement of prescriptions obtained on

October 6, 2006. On March 13, 2008, respondent #1 issued a check in the amount of \$275.93 to Crittenden Memorial Hospital, for services rendered on October 6, 2006.

While respondent #1 did not pay any other medical bills for treatment incurred by the claimant in connection with the October 6, 2006 compensable injuries, the evidence shows that the claimant continued to receive medical treatment subsequent to March 5, 2007, when the claimant was seen by Dr. Burks, and for which respondent #1 reimbursed the claimant for a co-pay on March 19, 2007.

On March 13, 2009, another Form AR-C, was filed with the Arkansas Workers' Compensation Commission, seeking additional workers' compensation benefits, including temporary total disability benefits from the time period when the claimant was being provided medical benefits by the employer. Clearly, these temporary total disability benefits should have been paid initially, and they fall under the claimant's initial claim for benefits which was filed on February 19, 2007. As the initial claim for benefits was timely filed, and has never been dismissed, the claimant did not need to file a claim for additional

benefits to receive the temporary total disability benefits she is now requesting.

The evidence reflects that respondent #1 was aware that the claimant was off work pursuant to the directions of her treating physicians relative to the injuries sustained in the October 6, 2006 accident. Respondent #1 was furnished with the off-work certificates of the claimant's treating physicians by the claimant. During his interview following the October 6, 2006 accident, Earle School District Superintendent Jack Crumbly acknowledged that the bus driver, the claimant, was still off work and would be returning to the doctor to check up on the injuries she sustained in the accident. Acting Superintendent Ricky Nicks testified that respondent #1 had a workers' compensation file in the office relative to the claimant. The claimant testified that she furnished the off-work slips generated by her treating physicians in connection with the treatment of her injury to supervisory personnel of respondent #1. Nevertheless, respondent #1 did not pay any temporary total disability benefits to the claimant for the period she was off work pursuant to the directions of her physicians in connection with the October 6, 2006 accident.

Temporary total disability for unscheduled injuries is that period withing the healing period in which the claimant suffers a total incapacity to earn wages. Arkansas State Highway & Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). A claimant's healing period has not ended when treatment is being administered for the healing and alleviation of the condition. In the instant claim, on April 12, 2007, Dr. Burks' office issued a Certificate to Return to Work on behalf of the claimant effective April 16, 2007, with the limitation of "no driving the bus for 2 months". Accordingly, the claimant is entitled to temporary total disability benefits from October 7, 2006 through April 16, 2007.

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

PHILIP A. HOOD, Commissioner