

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F909335

JASON LOVE,
EMPLOYEE

CLAIMANT

CITY OF FORT SMITH,
EMPLOYER

RESPONDENT

REGIONS CLAIMS MANAGEMENT,
TPA

RESPONDENT

OPINION FILED SEPTEMBER 15, 2011

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

Claimant represented by the HONORABLE EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE DOUGLAS M. CARSON, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed May 11, 2011. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 27, 2009, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On August 27, 2009, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$468.00 for total

disability and \$351.00 for permanent partial disability.

4. On August 27, 2009, the claimant sustained a compensable injury to his thoracic spine, in the form of a herniated disc at T7-8.
5. There is no dispute over the claimant's entitlement to accrued medical services.
6. The claimant has proven by the greater weight of the credible evidence that the medical services, which have been recommended by Dr. Arthur Johnson (i.e. corrective surgery), represent reasonably necessary medical services under Ark. Code Ann. §11-9-508. Specifically, the claimant has proven that these medical services are necessitated by or connected with his compensable thoracic spine injury and are reasonable in light of the potential benefit that these services offer in returning the claimant to more near his preinjury state.
7. There is no dispute over temporary total disability benefits accruing through July 22, 2010.
8. The claimant has proven by the greater weight of the credible evidence that he has been rendered temporarily totally disabled by his compensable thoracic spine injury from July 23, 2010 through a date yet to be determined. Specifically, the claimant has proven by the greater weight of the credible evidence that during this time he has continued within his healing period from the effects of his compensable thoracic spine injury and has been rendered totally disabled from performing regular gainful employment by this compensable thoracic spine injury.
9. The respondent has controverted the claimant's entitlement to the medical services recommended by Dr. Johnson and any additional temporary total disability benefits after July 22, 2010.

10. The appropriate fee for the claimant's attorney is the statutory attorney's fee on the controverted temporary total disability benefits herein awarded.

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 May 11, 2011 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

PHILIP A. HOOD, Commissioner

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 findings. Specifically, I concur in the majority's finding that the claimant is entitled to additional medical treatment in the form of surgery. However, I must dissent from the majority's award of temporary total disability benefits for the period July 23, 2010 through a date yet to be

determined. In my opinion, the claimant has failed to meet his burden of proof.

My review of the evidence demonstrated that the claimant is not entitled to temporary total disability benefits for the period July 23, 2010 through a date yet to be determined. The evidence demonstrates that the claimant was released to return to work on July 5, 2010 with a 25-pound lifting restriction. The claimant has made absolutely no attempt to get any job. The claimant is capable of doing some kind of work and is, therefore, not entitled to temporary total disability benefits during this time period.

Moreover, the claimant was released as having been at maximum medical improvement and was assessed a permanent anatomical impairment rating on July 5, 2010. The claimant initially declined surgery and he was opined to be a maximum medical improvement. The claimant changed his mind, but he is deemed stable until he undergoes the requisite surgery. At the time of his surgery, which has been approved by the Commission pursuant to this order, the claimant can re-enter another healing period and, therefore, will receive temporary total disability benefits during his post surgical recovery. The courts have previously held that

the existence of one remaining form of treatment does not prohibit a finding that a claimant's healing period has ended when the claimant specifically refuses to undergo that treatment. See Thurman v. Clarke, Industries Inc., 45 Ark. App. 87, 872 S.W.2d 418 (1994). In Elk Roofing Company v. Pinson 22 Ark. App. 191, 737 S.W.2d 661 (1987), the Court found that it was possible for there to be a second distinct healing period after the original one has ended. That is the case in the claim presently before us. Therefore, the claimant has not proven that he is entitled to temporary total disability benefits after July 23, 2010 through a date yet to be determined. When the claimant undergoes the surgery, then the claimant will re-enter a new healing period and is entitled to temporary total disability benefits during that time period.

Accordingly, for all the reasons set forth herein, I respectfully concur in part and dissent in part from the majority's opinion.

KAREN H. MCKINNEY, Commissioner