

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F906250

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| STEVE THOMAS, EMPLOYEE | CLAIMANT |
| CITY OF NORTH LITTLE ROCK, EMPLOYER | RESPONDENT |
| ARKANSAS MUNICIPAL LEAGUE, CARRIER/TPA | RESPONDENT |

OPINION FILED APRIL 4, 2011

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North 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 October 26, 2010.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on or about July 7, 2009, when the claimant sustained a compensable injury to his right lower extremity.

3. The claimant earned an average weekly wage of \$400.00, resulting in an applicable temporary total disability rate of \$267.00.
4. Respondents initially accepted the claim and paid medical expenses and indemnity benefits through March 2, 2010.
5. The claimant underwent two separate partial medial meniscectomies on August 31, 2009, and on January 5, 2010.
6. The claimant reached maximum medical improvement after his second surgery on April 7, 2010.
7. Respondents accepted a two percent impairment rating assigned by Dr. Tucker on April 7, 2010.
8. The claimant has failed to prove that he is entitled to additional medical benefits at this time.
9. The claimant has proven that he is entitled to additional temporary total disability benefits from March 3, 2010, until March 22, 2010.
10. The claimant has failed to prove that he is entitled to additional permanent partial impairment benefits and § 505(a) benefits.
11. Claimant is entitled to a twenty-five percent (25%) statutory attorney's fee on the indemnity benefits awarded herein, one-half to be paid by the respondents and one-half to be withheld from the claimant's award of 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 concurs, in part, and dissents, in part.

CONCURRING & DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority opinion. After a de novo review of the record, I agree with the majority that the claimant is not entitled to additional permanent partial disability benefits. However, I find that the claimant was not returned to work while positions with the city were being advertised, 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.

Here, the majority, by affirming and adopting the opinion of the Administrative Law Judge, erroneously finds that the claimant is not entitled to benefits pursuant to §11-9-505(a). I disagree. The City failed to return the claimant to work following his release to full duty. It is undeniable that work was available. The City argues that the claimant was terminated based upon his unexcused absences from work. However, the claimant had excuses for two days and, most importantly, the Administrative Law Judge held that the claimant was entitled to TTD during the period of time in which the respondents argue that the claimant should have been at work. The claimant testified that, when he had been released in the past, Harold Ford, the

Director of the Sanitation Department, would call him the afternoon of the release and tell him when to return to work. The claimant testified that he tried to contact Mr. Ford following his release on March 10, 2010, but Mr. Ford refused to talk to the claimant, in that, he was represented by counsel. After Mr. Ford was advised by the claimant's attorney that it was permissible to speak to the claimant, the two spoke about the claimant's return to work on March 19, 2010. The claimant was sick, and he phoned David Bell, the claimant's direct supervisor, and advised him of same. Mr. Bell informed the claimant that he would have to have a doctor's note. The claimant ultimately attempted to return to work on March 22nd, at which time the claimant was informed that he was terminated. Id. The claimant returned to work with the requisite doctor's notes, yet the respondent terminated him.

The claimant's notice of termination indicates that the claimant was terminated effective the close of business on March 22, 2010, in that, he failed to report to work on March 19th, and March 22nd. As mentioned above, the Administrative Law Judge held that the claimant was entitled to TTD until March 22, 2010. That decision was not appealed. It is illogical to hold that the claimant is entitled to TTD from March 10, 2010 to March 22, 2010, yet uphold the respondent's termination for the claimant's failure to return to work during that period of time.

I would also note that the claimant also applied for another job, as a meter reader, with the City, in March, right before his termination. The claimant was informed that he was not going to be hired for that position; however, the respondents continued to advertise for the position. The city has not shown reasonable cause for not returning the claimant to work or not hiring him for the meter reader position. This is a classic case with a similar fact situation to Torrey, Id. and benefits should be awarded pursuant to Ark. Code. Ann. §11-9-505(a).

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

PHILIP A. HOOD, Commissioner