

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G104506

JAMES BENTLEY BUHRMAN, EMPLOYEE	CLAIMANT
SCHLUMBERGER TECHNOLOGY CORP., EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 18, 2022

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE AMY C. MARKHAM, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed September 30, 2021. 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 over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits.

4. Claimant has not proven by a preponderance of the evidence that his counsel is entitled to a controverted attorney's fee under Ark. Code Ann. § 11-9-715 (Repl. 2012).

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's September 30, 2021 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.

Therefore 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.

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SCOTTY DALE DOUTHIT, Chairman

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CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my de novo review of the record in this claim, I dissent from the majority opinion finding that Claimant has not proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits and that Claimant has not proven by a preponderance of the evidence that his counsel is entitled to a controverted attorney's fee under Ark. Code Ann. §11-9-715 (Repl. 2012).

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). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Breshears, supra*; *J.A. Riggs Tractor Co. v. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990).

The claimant sustained an unscheduled compensable neck injury on May 23, 2011. On November 2, 2018, the claimant underwent an anterior cervical fusion at the C3, C4, and C5 levels. Following this procedure, the claimant was never released by his treating physician, Dr.

Stylianos Rammos. On November 10, 2020, Dr. Rammos referred the claimant to Arkansas Spine and Pain Center and prescribed outpatient physical therapy. Dr. Rammos also noted that the claimant should return for a follow-up visit in three years. Clearly Dr. Rammos is continuing to attempt to stabilize the claimant's condition. Therefore, I find that the claimant remains in his healing period.

I am aware that Dr. Victor Vargas offered an opinion in this matter. Dr. Vargas performed an Independent Medical Examination on December 7, 2020 and noted that the claimant had reached maximum medical improvement. Dr. Vargas offered the following opinion:

This patient has history of degenerative disc disease of the cervical spine for several years, he ended up having a fusion of the cervical spine C3-C5, 2 years ago. His main concerns and complaints have been headaches, dizziness, blurry vision, frequent falls which are not related to the cervical spine. He has no evidence on the recent MRI of myelopathy or nerve root impingement. The fusion is solid. There is no evidence that he has had fractures or direct injury to the spine as far as we know by all x-rays. The CT angiogram of the cervical spine done recently also showed no evidence of encroachment of the arteries at the cervical spine.

I believe the patient symptomatology is not related to the cervical spine pathology.

Consequently, I am considering with[in] a reasonable degree of medical certainty that the patient has reached the maximum medical improvement with regards of the cervical spine. I found no evidence of injury to the cervical spine and all the imaging studies including retrospective evaluation of 2017 x-rays. All his findings are consistent with degenerative changes.

Mr. Buhrman has certainly reached maximum medical improvement and he has no[t] sustained an injury that would result in any permanent impairment rating.

I do not agree with Dr. Vargas' opinion that the claimant did not sustain an injury that would result in any permanent impairment rating. In fact, such an opinion calls into the question the entirety of Dr. Vargas' opinion. Thus, I assess little weight to Dr. Vargas' opinion.

Therefore, based on the aforementioned, I find that the claimant is entitled to additional temporary total disability benefits beginning on December 7, 2020, and continuing to a date yet to be determined.

For the foregoing reason, I dissent from the majority opinion.

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M. SCOTT WILLHITE, Commissioner