

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H106661

CHARLES A. LAWLESS, EMPLOYEE CLAIMANT

AT&T TECHNICAL SERVICES
COMPANY, INC., EMPLOYER RESPONDENT

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC., INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED JANUARY 29, 2024

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 DAVID C. JONES, 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 August 16, 2023. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on March 16, 2023, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability and/or temporary partial disability from May 1, 2022, through May 23, 2023.

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.

Therefore, we affirm and adopt the August 16, 2023 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.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite concurs and dissents.

DISSENTING OPINION

The Administrative Law Judge (hereinafter referred to as "ALJ") found that the Claimant failed to prove by a preponderance of the evidence that he is entitled to temporary total disability and/or temporary partial disability benefits from May 1, 2022 through May 23, 2023. After

conducting a thorough review of the record, I would find that the Claimant is entitled to temporary total disability benefits for the aforementioned period.

Temporary total disability benefits are appropriate where the employee remains in the healing period and is totally incapacitated from earning wages. *Ark. State Highway Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

Claimant suffered an admittedly compensable injury to his cervical spine as a result of a work accident on May 28, 2021. The injury required surgical intervention in the form of a fusion, and there appears to be little dispute that the Claimant remained in his healing period until at least April 5, 2022, when a return-to-work statement was issued by Amanda Hawes PA-C on behalf of Ozark Orthopedics.

Additional medical records suggest that Claimant was seen by a representative of Ozark Orthopedics again on April 21, 2022 and July 21, 2022 but was never determined to be at maximum medical improvement. However, the July 21, 2022 medical record does cite "cervical disc disorder with radiculopathy" as the "reason for visit" and determined that additional medical treatment in the form of cervical injections was necessary. Medical records also noted that the Claimant would not be at maximum medical improvement for approximately six months after his visit, or January of 2023. Thereafter, Claimant exercised his one-time right to change

physicians and began treating under Dr. Mangles in November of 2022. Dr. Mangles placed Claimant under a 40-pound lifting restriction, assessed him as suffering from dysphoria, or difficulty speaking, as a result of his previous surgical intervention for his compensable injury, and recommended an additional surgical procedure for his compensable injury.

At the time of his work accident, the Claimant worked as a Systems Engineer. Claimant's supervisor testified that Claimant's job requirements included the ability to lift at least 50-pounds and the ability to talk on the phone. After learning of his release to return to work, Claimant contacted his supervisor to find suitable employment within his restrictions but was told he was removed from his contracted position. Claimant was then instructed to apply for positions on the company job search site. Claimant's supervisor testified that the Respondent never offered the Claimant any specific employment opportunities after his release in April of 2022. In sum, Claimant was never offered a light-duty position, or any position, that was within his work-restrictions following his release. Considering the work restrictions that remained in place, the failure of the employer to offer the employment within his restrictions and the surgical recommendation by Dr. Mangles, I find that the Claimant was unable to earn wages, and therefore entitled to temporary total disability benefits from May 1, 2022 through May 23, 2023. *See Tyson Poultry, Inc. v. Narvaiz*

2012 Ark. 118, 388 S.W.3d 16, and *Superior Indus v. Thomaston*, 72. Ark. App. 7, 32 S.W.3d 52 (2000).

Additionally, all temporary total disability payments must be offset in accordance with Ark. Code Ann. § 11-9-506(b).

For the foregoing reasons, I dissent.

M. SCOTT WILLHITE, Commissioner