

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H404171

HUNTER SHELTON, Employee	CLAIMANT
DIVERSIFIED, LLC, Employer	RESPONDENT
TRAVELERS PROPERTY CASUALTY CO. OF AMERICA, Carrier	RESPONDENT

OPINION FILED JUNE 23, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by LAURI THOMAS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 5, 2025, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 20, 2025, and a pre-hearing order was filed on February 24, 2025. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed June 21, 2024.

3. Claimant sustained a compensable injury on June 21, 2024, and the employer has now controverted the claim in its entirety.

Prior to the hearing, the parties agreed that respondent had not controverted the claim, but instead, had accepted a compensable injury to the left ankle and foot on June 21, 2024. The parties also agreed to stipulate that respondent is continuing to provide claimant with medical treatment and that claimant would be entitled to benefits at the maximum compensation rate.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensation rate.
2. Whether claimant is entitled to additional temporary total disability benefits, medical benefits.
3. Attorney fee.

Based upon the parties stipulations, the only issues for consideration at the time of the hearing are claimant's entitlement to temporary total disability benefits from November 12, 2024, through January 10, 2025, and a controverted attorney fee.

The claimant contends "he sustained a compensable injury while working for respondent on or about June 21, 2024. At that time, claimant was in the course and scope of his employment with respondent when the claimant jumped out of the way of a roll of wire and injured his left ankle and left foot upon landing. The claimant underwent an MRI that found a large cyst in his Sinus Tarsi. As a result of the findings, the claimant has attended numerous sessions of physical therapy at Advanced Orthopedic Specialists. He also received one injection of Depo-Medrol and Lidocaine to his left subtalar joint with Dr. Hagan at Advanced Orthopedic Specialist. Since claimant had

failed conservative treatment for his left ankle, Dr. Yakin recommended a left subtalar arthroscopy with debridement and excision of a cyst, the procedure took place on December 12, 2024. On December 16, 2024 Dr. Yakin placed the claimant as “unable to return to work” with no specified date to return to work and ordered 6 additional weeks of physical therapy. In a letter dated December 5, 2024 the claimant received an official notice that confirmed his termination. The letter stated the termination was a result of policy violations and lists his final date of employment as November 12, 2024. The claimant’s termination came shortly after he discussed retaining representation for his injury and rejecting a phone call from his employer on November 12, 2024. On that day, the claimant was being treated for kidney stones and had requested paid time off as advised by his employer. The claimant advised his employer that he would not be joining the call. He also informed his employer about his recent use of prescribed narcotics and expressed his hesitation about joining the call while under the influence of a controlled substance. The employer terminated the claimant for retaliatory purposes and to avoid paying the temporary total disability for his upcoming surgery.”

The respondents contend “this is an accepted claim, and all appropriate benefits have been paid.”

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The parties stipulations at the prehearing conference that the Arkansas Workers' Compensation Commission has jurisdiction of this claim and that the employee/employer/carrier relationship existed on June 21, 2024, are hereby accepted as fact.

2. The parties stipulation that claimant suffered a compensable injury to his left ankle and foot on June 21, 2024, is also hereby accepted as fact.

3. The parties stipulations that respondent is continuing to provide claimant with medical treatment at the time of the hearing and that claimant would be entitled to compensation at the maximum compensation rates are also hereby accepted as fact.

4. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning December 12, 2024 (the date of his surgery) and continuing through January 10, 2025 (the date he returned to work for another employer). Respondent is entitled to a credit for any temporary total disability benefits previously paid for this period of time.

5. Respondent has controverted claimant's entitlement to all unpaid temporary total disability benefits.

FACTUAL BACKGROUND

Claimant is a 30-year-old man who worked for respondent for almost a year as an audio/video instillation technician. His job duties included lifting heavy equipment, climbing ladders and using lifts to get into ceiling spaces, and running wire hundreds of yards. Claimant suffered an admittedly compensable injury to his left ankle and foot on

June 21, 2024. On that date, he and other employees were running cable down a hallway at Tennessee Technical Institute when someone yelled to “Watch out”. Claimant jumped out of the way and in doing so injured his left ankle and foot.

Claimant reported his injury and initially sought medical treatment from an urgent care facility in Tennessee where he was instructed to follow-up with his primary care physician, Dr. Abernathy.

Claimant testified that Dr. Abernathy believed that he had a torn ligament and recommended that he see a specialist. As a result, claimant came under the care of Dr. Yakin, orthopedic surgeon, who initially diagnosed claimant’s condition as a sprained ankle and recommended the use of a walker boot and physical therapy. When claimant’s condition did not improve, Dr. Yakin ordered an MRI scan which revealed a cyst in the ankle which he treated with a steroid injection. In a report dated November 25, 2024, Dr. Yakin noted that the steroid injection had worsened claimant’s symptoms and he recommended surgery. Dr. Yakin performed a left subtalar arthroscopy with debridement and cyst excision on December 12, 2024. Following the surgery, he also ordered physical therapy for the claimant.

Claimant has filed this claim contending that he is entitled to temporary total disability benefits from November 12, 2024, through January 10, 2025.

ADJUDICATION

Claimant contends that he is entitled to temporary total disability benefits for his compensable injury from November 12, 2024, through January 10, 2025. Claimant’s ankle injury is a scheduled injury. An employee who suffers a scheduled injury is

entitled to temporary total disability benefits during their healing period or until they return to work. ACA §11-9-521(a); *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 SW 3d 822 (2001). However, the claimant's "failure to return to work must be causally related to the injury." *Foster v. Tyson Poultry*, 213 Ark. App. 172, 426 SW 3d 563 citing *Fendley v. Pea Ridge School District*, 97 Ark. App. 214, 216-17, 245 SW 3d 676, 677-78 (2006).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning on December 12, 2024, the date of his surgery, and continuing through January 10, 2025, the date he returned to work for another employer.

Claimant is requesting temporary total disability benefits beginning on November 12, 2024, the date his employment was terminated. As the court in *Foster* indicated, the claimant's failure to return to work must be causally related to the injury. I do not find that claimant's failure to work beginning on November 12, 2024, is causally related to his injury. Instead, his failure to return to work on November 12, 2024, is attributable to a non-work-related condition; kidney stones and his decision not to attend a Zoom meeting with his employer. While claimant's decision may have been justified given his kidney stones, it is not related to his work injury.

After his compensable injury, claimant continued to work for respondent as an audio/video installation technician, performing his regular job duties. He continued to perform those job duties through his termination on November 12, 2024.

As previously noted, claimant came under the care of Dr. Yakin, orthopedic surgeon, with his first visit occurring on August 9, 2024, at which time Dr. Yakin prescribed physical therapy and the use of a walker boot. Dr. Yakin made no mention of any work restrictions at that time and claimant continued to work for respondent. Claimant apparently returned to Dr. Yakin on November 6, 2024, and later that same day, he went to Northwest Medical Center emergency room for complaints of kidney stones. Neither of these medical records are in evidence. There is a note from the emergency room taking claimant off work for one day for the kidney stones.

Claimant testified that after November 6 he decided to take PTO leave and contacted his supervisor and attempted to complete an online request but there was an error on the website and his PTO did not go through. There was some discussion at the hearing regarding this request and whether claimant had followed proper procedures for approval. However, for reasons to be discussed, the claimant's failure to continue working for respondent after November 12, 2024, are not related to his compensable injury.

Claimant also testified that the medical report given to him at Dr. Yakin's office after his visit on November 6 did not accurately reflect limitations given to him by Dr. Yakin. Claimant contacted Dr. Yakin's office and on November 8, 2024, Dr. Yakin indicated:

The injured worker may return to work so long as the following functional limitations or restrictions as listed below are adhered to.

- No climbing
- No walking more than 100 yards

Based on his PTO request, claimant did not return to work or even attempt to return to work within the limitations given to him by Dr. Yakin. November 8 was a Friday and claimant was scheduled off work on Saturday, Sunday, and Monday (Veteran's Day). On Tuesday, claimant was asked to attend a Zoom meeting. Claimant testified that he had suffered from another kidney stone and was taking hydrocodone so he requested that the meeting be rescheduled, but respondent refused. Claimant testified that he did not feel comfortable participating in a meeting while taking hydrocodone. Based on claimant's refusal to participate in the Zoom meeting, his employment was terminated by respondent effective on November 12, 2024.

Although claimant had been given restrictions, Dr. Yakin had indicated that claimant could return to work within those restrictions. Attending the Zoom meeting would have fallen within those restrictions. Claimant's decision to not attend the meeting and his subsequent termination was related his kidney stone and medication, not his ankle injury.

Q And when the time came to do that light-duty work, you did not participate? You did not show up?

A Unfortunately, I had a kidney stone, which you can't ever know when a medical emergency is going to happen, but that is why PTO is there.

Q Okay.

A So I followed the handbook by letting my supervisor know I couldn't show up to the meeting and explained it wasn't for recreational. It was for a medical emergency. It wasn't just because I didn't want to work. It's because I couldn't function at the meeting. I don't think anyone would require a worker to go to any meeting on any medication.

Regardless of whether one thinks claimant's refusal to attend the Zoom meeting was justified, given his kidney stones and his taking hydrocodone, the law requires that the failure to return to work be related to the compensable injury. Under these circumstances, I find that claimant's failure to return to work and his termination by respondent was not related to his compensable injury, but rather to a non-work-related condition. Therefore, I do not find that claimant is entitled to temporary total disability beginning on November 12, 2024.

I do find that claimant is entitled to temporary total disability benefits beginning on December 12, 2024, the date of his surgery, and continuing through January 10, 2025, the date he returned to work for another employer. Dr. Yakin performed surgery on claimant's left ankle on December 12, 2024. On December 16, 2024, Dr. Yakin indicated in a report that claimant was unable to return to work until further "specified". On December 23, 2024, Dr. Yakin indicated that claimant could return to work at a sit-down job once he was no longer taking narcotic pain medication. As noted, claimant returned to work on January 10, 2025, for another employer.

Based on the foregoing, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning December 12, 2024, and continuing through January 10, 2025. At one point in the hearing, Attorney Ryburn indicated that respondent had paid claimant some temporary total disability benefits beginning on the date of the surgery. Respondent is entitled to a credit for any temporary total disability benefits previously paid.

AWARD/ORDER

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning December 12, 2024, and continuing through January 10, 2025. Respondent is entitled to a credit for any temporary total disability benefits previously paid during this period of time. Respondent has controverted claimant's entitlement to any unpaid temporary total disability benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

All sums herein accrued are payable in a lump sum and without discount. This award shall bear interest at the maximum legal rate until paid.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$547.50.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE