

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS.: H204976 & H306277

**LYNA M. BEALS,
EMPLOYEE**

CLAIMANT

**MILLIGAN RACING(ALLEN MILLIGAN),
EMPLOYER**

RESPONDENT

**LIBERTY MUTUAL INSURANCE CORPORATION,
INSURANCE CARRIER**

RESPONDENT

**LIBERTY MUTUAL GROUP,
THIRD PARTY ADMINSTRATOR (TPA)**

RESPONDENT

OPINION FILED MAY 9, 2024

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Hot Springs, Garland County, Arkansas.

Claimant represented by the Honorable Evelyn E. Brooks, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the Honorable Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On February 9, 2024, the above-captioned claims came on for a full hearing in Hot Springs, Arkansas. A prehearing telephone conference was conducted in the above-styled claims on November 8, 2023, from which a Prehearing Order was filed on that same day. A copy of said order and the parties' responsive filings have been marked as Commission's Exhibit 1 and made a part of the record without objection.

Stipulations

During the prehearing telephone conference, and/or hearing the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. That the employee-employer-carrier relationship existed at all relevant times including on or about April 16, 2022 (when the Claimant alleges to have sustained her first compensable injury to her), and on May 11, 2022.
3. The Claimant's average weekly wage was \$600.00. Her compensation rates are \$400.00 and \$300.00.
4. The Respondents have controverted this claim in its entirety.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act, including but not limited to the Claimant's alleged injuries to her shoulder, right elbow, and right knee. All matters pertaining to AWCC Claim Number H204976 (relating to the April 16, 2022, neck injury) were resolved in my April 19, 2023, Opinion and are *res judicata*.

Issues

By agreement of the parties, the issues to be litigated at the hearing included the following:

1. Whether the Claimant sustained a compensable injury to her neck on May 11, 2022.
2. Whether the Claimant is entitled to temporary total disability compensation from May 12, 2022,¹ through January 12, 2023.
3. Whether the Claimant is entitled to the medical benefits of record relating to her neck condition; and future medical treatment as recommended by her treating physician, Dr. John Pace.

¹ There is a clerical error in the Hearing Transcript at page 9 of line 3. It reads that the Claimant is requesting temporary total compensation beginning on May 12, 2023. The year is incorrect. It should be beginning on May 12, 2022.

4. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The respective contentions of the parties are as follows:

Claimant:

Claimant contends that she is entitled to medical treatment for her neck injury, exacerbated on May 11, 2022, whether she is entitled to temporary total disability and temporary partial disability benefits from date last work full time to a date yet to determined. Claimant reserves all other issues.

Respondents:

The Claimant has suggested that her neck injury was exacerbated by another event on May 11, 2022. All matters concerning claim no. H204976 were decided in the April 19, 2023, opinion and are res judicata. If there were a new incident, it should not be adjudicated under H204976. However, the Form C filed on June 5, 2023, shows an injury date of April 16, 2022. The Claimant is not entitled to additional treatment to her neck or to TTD per the previous decision that was not appealed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witness and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.

3. The Claimant proved by a preponderance of the evidence that she sustained a compensable injury to her neck on May 11, 2022.
4. The Claimant proved by a preponderance of the evidence that the medical treatment of record she received was reasonable and necessary treatment for her compensable May 11, 2022 neck injury.
5. The Claimant proved her entitlement to temporary total disability from May 12, 2022 until January 12, 2023. She also proved her entitlement to temporary partial disability from the date she began working part-time and continuing.
6. The parties stipulated that the Respondents have controverted this claim (H30677) for her May 11, 2022, neck in its entirety. Therefore, the Claimant is entitled to a controverted attorney's fee on all of the indemnity benefits awarded on this claim.
7. All issues not litigated herein this Opinion are reserved.

Summary of Evidence

Mrs. Lyna M. Beals (referred to herein as the "Claimant"), was the only witness to testify at the hearing.

The record consists of the February 9, 2024 hearing transcript and the following exhibits: Specifically, Commission's Exhibit 1 includes the Commission's Prehearing Order filed on November 8, 2023 and the parties' responsive filings; Claimant's Exhibit No. 1 the April 19, 2023 Opinion consisting of twenty-eight (28) numbered pages; Claimant's Medical Evidence Index consists of fifty-one (51) numbered pages was submitted on January 24, 2024; and Respondents' Exhibit 1, contains the Record of the Previous Hearing Transcript of the January 20, 2023. It is retained in the Commission's file.

Testimony

At the time of the hearing, the Claimant was fifty-one (51) years of age. At the previous hearing, the Claimant testified that in July 2021, she was hired to work for Mr. Allen Milligan, the owner of Milligan Racing, a horse racing company. She testified that Mr. Milligan is a horse trainer, and she worked as a groomer for him. The Claimant confirmed that she was employed by Allen Milligan on May 11, 2022.

The Claimant now contends that she sustained an injury to her neck on May 11, 2024, while performing employment duties for the respondent-employer/Mr. Milligan. Specifically, the explained:

Q And what happened on May 11, 2022?

A On May 11th, that was at the end of the meet for Oaklawn and I had to clean a lot of the stalls and move a lot of tack and truckloads of things, such as his saddles and, you know, just all of the stuff that comes with moving from meet to meet, and everybody left the State of Arkansas except myself, and so I was there to pretty much clean out everything from Oaklawn. We couldn't leave anything there.

Q So who was – was your husband there with you cleaning out the stall?

A Yes. Thomas Beals, my current husband, he helped me. I asked for his help, as well.

Q And so what specifically happened on that day?

A We moved about six truckloads worth of things, such as a washing machine and a lot of heavy items, and we had to move it from Oaklawn to Royal, to the farm where he has some, you know, storage area.

Q So as you were moving the washing machine, what happened?

A When I was moving the washing machine -- the washing machine and trying to pick it up with my husband, I had felt some significant pain in my right neck area, and I - I just could not lift it and I felt a lot of pain at that time and I knew that there was something definitely wrong.

She confirmed that she reported her injury to her employer. The Claimant testified that at

the time of her May 11, 2022, injury, she was already on light duty during this time period due to being struck by a horse in April 2022. According to the Claimant, she told Mr. Milligan she was in a lot of pain as a result of the washing machine incident on May 11, 2022. The Claimant testified that she told Mr. Milligan she has tingling up her arm, and no feeling in both hands, and that she was unable to do the work she had been doing the prior ten years at Oaklawn with the horses. The Claimant went on to testify that she cannot groom anymore. She testified that she had not had any problems whatsoever with her neck prior to her incident with the horse in April of 2022. According to the Claimant, she was strong, could type 75 words per minute, and had feeling and mobility in her hands. Per the Claimant, as of the date of the hearing, she cannot feel her hands and it is to the point that they are constantly numb. She has difficulties with her hands even when driving.

The Claimant denied that she had any other accidents or injuries to her neck since the May 11, 2022, incident with the washing machine. She denied that numbness and tingling in her hands and arms have gone away since May of 2022. According to the Claimant she had to seek treatment from Dr. Pace's office on Adcock Road in Hot Springs. She was getting injections in her neck to try to alleviate some of the tingling to see if that would help. However, the Claimant stated that nothing alleviated the pain and the tingling, and it is still there.

She testified that she needs nerve testing of her arms. On the other hand, the Claimant testified that the appointments to get in to see Dr. Kramer are set six months out. According to the Claimant, Dr. Kramer is a neurologist in Hot Springs. She testified that she went there for an appointment, but she did not have Medicaid and they wanted her to pay \$500.00 out-of-pocket that she does not have the resources to pay. The Claimant confirmed that her last appointment was in February of last year at the National Park Medical Center. She explained that she simply could not afford to get the testing done out-of-pocket. According to the Claimant, she was referred to

Dr. Kramer by Dr. Pace. The Claimant denied being released by Dr. Pace. According to the Claimant, once they were told she had stopped working for Mr. Milligan, her treatment was completely stopped.

The Claimant denied that the Respondents continued to pay for her medical treatment after the May 11, 2022, incident. She testified that her current symptoms in her neck and hand includes tenderness to touch. She takes aspirin every day and night, and she puts muscle cream, and Icy Hot on her neck area to alleviate her neck symptoms. The Claimant testified that there is something significantly wrong that was never there prior to this incident. She specifically testified that not having feeling in her hands is what is so frustrating.

On cross-examination the Claimant verified that she is currently working for Doc Clement. She testified that it is a full watch center, and basically, she watches the cameras and looks for foal and mares in distress. The Claimant testified that she still works with horses, but the work is nothing she is used to doing, which was grooming. She testified that she has worked there for about a month. The Claimant testified that she was unemployed for quite a while after the incident, primarily due to her neck. She admitted that she testified during the previous hearing that she worked doing hot walking until May, when the meet ended.

The Claimant denied having drawn unemployment benefits. The Claimant essentially denied any other sources of income. She testified that she sold various items online trying to make ends meet. The Claimant confirmed that when the hot walking job ended in May, she did not work until January of 2023. She admitted that she is now on Medicaid. The Claimant agreed that it has been over a year since she saw a doctor. She testified that when she went to see Dr. Kramer, there was a problem with her Medicaid, and that is why they wanted her to pay out-of-pocket. According to the Claimant, she has been on Medicaid for a couple of weeks.

She confirmed that during the first hearing, it was over an injury that happened in April of 2022. The Claimant agreed that is when the horse reared up and kicked threw. That was the initial injury to her neck. She specifically testified that she was struck by the horse and thrown onto the cement. The Claimant admitted that the pain never went away. She denied getting any relief from the pain of either incident. Instead, the Claimant testified that her pain worsened when she picked up all the truckload of items for Mr. Milligan in May. The Claimant testified that that she was in pain from lifting the washer, which was in her neck and her lower back. She admitted that she indicated at that prior hearing that she injured her low back due to the May 11, 2022, incident.

The Claimant stated that she was not asking for benefits for her low back due to the May 11 incident because her main pain right now is her neuropathy symptoms.

Under further questioning, the Claimant was asked how she hurt her neck. She replied, “Are you kidding me? When you have to lift up a washing machine onto a truck and I’m a female, and I’m already injured and in pain and have no feeling in my hands? I mean, I almost dropped it.”

The Claimant testified that when driving she has to literally bang her hands on the steering wheel trying to even feel her hands. The Claimant denied having any MRIs besides the one for her neck. In her current job, the Claimant denied using a keyboard. However, she does use a monitor. The Claimant testified that she would continue to work at her current job until she can find something else. According to the Claimant, she needed to find work because she was in the middle of losing her job. Per the Claimant, she was evicted and had no choice but to return to work. The Claimant, her doctor explained that if she was lifting and hurt on her right side, her neck is inflamed.

She verified that she currently works a part-time job. The Claimant confirmed she works about 30 hours a week.

Medical Evidence

On April 18, 2022, the Claimant sought treatment for pain from the Sherwood Urgent Care Clinic, in Hot Springs. There, the Claimant came under the care of Pamela Speed, NP (nurse practitioner). At that time, the Claimant complained of shoulder and neck pain. The Claimant reported a history of having been injured on the Saturday while working with horses at the racetrack. Specifically, the Claimant stated that she was pushed over striking her right shoulder and her neck was hurting. The Claimant reported that most of her symptoms were on the right cervical side. Additionally, the Claimant stated that she had muscle aches, muscle pain, and muscle spasms. On physical examination, Nurse Speed noted that the Claimant had mild neck spasm, along with anterior neck bilateral pain. Nurse Speed diagnosed the Claimant with among other things, "Cervicalgia, Illness, Acute," for which she prescribed a medication regime which included a Medrol Pak 4mg in a dose pack, and Robaxin. Speed authored an Excuse for Work on that same day. She released the Claimant to restricted/accommodated duty. Her restrictions included limited standing, sitting, and walking along with a ten-pound lifting restriction to her right hand.

The Claimant sought follow-up care from Sherwood Urgent Care on April 21, 2022, due to pain in her neck, among other bodily parts. She stated that she was kicked by a horse on the left side, but this caused her to fall, and she landed on her right side, striking her head on the ground. The Claimant reported she "hit her head on a concrete floor" when she fell. She reported that she started having dizziness, headache, and nausea after leaving the clinic. However, the Claimant specifically reported that her symptoms were now better. Her shoulder pain, and right back pain

were now resolved, and her ROM in her neck was normal. Although the Claimant reported her symptoms had resolved, a CT of the head was ordered due to a diagnosis of concussion without loss of consciousness. Medical staff instructed the Claimant to return to the clinic for follow-up care after the imaging was completed.

Subsequently, on June 14, 2022, the Claimant returned to Sherwood Urgent Care for additional medical care. The nurse practitioner, Robyn Chreene, wrote that the Claimant had an injury at work on April 18 [sic], 2022 and was seen there at the clinic. Per these medical notes, the Claimant had a CT of the head performed on April 26, 2022, and received the results on April 28, 2022. The nurse practitioner noted that the Claimant was told to come back for clearance to return to work, but she never returned. At that time, the Claimant reported that her employer refused to return her to work until she was 100%, but she does not feel 100%. The Claimant stated that she did not know what to do and wanted to know what she should do given her condition. She reported that she continued to have right-sided neck pain from the initial injury although her X-rays of the C-spine were normal. But the Claimant denied numbness or tingling or any radiation of pain down her arm. At that time, the Claimant reported that she hurt her back in a separate incident on May 11, 2022, lifting something. They ordered physical therapy and noted that they would move forward with an MRI of the neck and shoulder if the Claimant did not improve with therapy. Although Nurse Chreene continued the Claimant on light duty, she stated that she did not feel the Claimant needed to be placed completely off work. On physical examination, the Claimant's ROM was noted to be normal in her neck as well as her shoulder with no radiculopathy symptoms. Specifically, Speed wrote, "Low suspicion for rotator cuff injury or cervical nerve root impingement from work injury."

On June 28, 2022, the Claimant presented for follow-up care on her neck and back pain under the care of Robyn Chreene, NP. She reported that she had her first physical therapy appointment on July 7, 2022. The Claimant had not returned to work. She stated that the muscle relaxers caused her to be nauseated. Therefore, she had been using ice or heat to the affected area. Per these clinical notes, Nurse Chreene called the Claimant's boss to get clarification on the availability of light duty work and due to her boss stating she had to be a 100% before returning to work. Specifically, the nurse practitioner wrote, "At the last visit the patient stated she was injured at work on 5/11 as well as reinjuring her right shoulder and neck. Discussed with patient that her boss states she was no longer employed with them and that she was unsure if this was still covered with workers [sic] comp as she was not an employee." The nurse practitioner instructed the Claimant to alternate ice and heat to her shoulder; continue with anti-inflammatory; attend physical therapy as needed; and to follow-up as needed.

The Claimant underwent evaluation for physical therapy on July 7, 2022, at Levi Hospital. Dalton Steele PT, DPT, Cert. DN authored a Physical Therapy Initial Evaluation physical therapy note. Physical Therapist Steele noted that the Claimant presented to the therapy clinic with complaints of right shoulder pain following a work-related accident. In particular, the Claimant reported she was kicked by a horse in mid-April. She stated that she was kicked on the left side and fell onto the concrete on her right side. Of significance, the Claimant stated that she sought treatment from Sherwood Urgent Care and was told she suffered a concussion. She reported that her concussion symptoms resolved but she has been having a lot of pain and difficulty with her right shoulder. The Claimant stated she believed she needed an MRI for her shoulder due to sharp and burning pain in her shoulder that does not seem to go away.

An MRI of the Claimant's cervical spine was performed on November 16, 2022, with an impression of "At C5-6 there is moderate right neural foraminal stenosis nerve impingement. Multilevel degenerative disc and facet changes."

William James, CRNA, for Dr. John Pace evaluated the Claimant on December 19, 2022. At that time, the Claimant reported joint pain, muscle pain, muscle cramps, neck pain, middle back pain, muscle stiffness and lower back pain. On physical examination, the Claimant was noted to have cervical spine stiffness and decreased ROM, along with thoracic tenderness among symptoms related to the lumbar spine. James performed a right C5-6 epidural steroid injection.

The Claimant was seen in the office of Dr. Pace on January 3, 2023. At that time, the Claimant was evaluated by Dr. Pace's CRNA, William James. At that time, the Claimant was assessed with "Radiculopathy, cervical region." She continued with the symptoms noted above. However, the Claimant reported improvement with paresthesia in her fingers since the right ESI on the right C5-6, which was performed on December 19, 2022.

On January 31, 2023 the Claimant returned to Dr. Pace's office for a follow-up visit of the C56 ESI, which was performed on December 19, 2022. Although the Claimant had multiple ailments, her most relevant complaints to this claim being problems with her neck. Specifically, the Claimant's neck problems included spinal stenosis in the cervical region, neck pain, and cervical radiculopathy. At that time, the Claimant was assessed with "Arthropathy of cervical spine facet joint." Per these clinic notes, the Claimant did great with the procedure. She had improved paresthesia in bilateral hands and lateral forearm. The Claimant was assessed with "Spondylosis with myelopathy or radiculopathy, cervical region," for which her current medication regimen was continued.

The Claimant returned to Dr. Pace's office on February 28, 2023. At that time, the Claimant reported, among other things, continued pain in her neck along with weakness and numbness and tenderness in both upper extremities. On physical examination, the Claimant had cervical spine tenderness and decreased ROM. Dr. Pace recommended that the Claimant undergo bilateral upper extremities EMG/NCV studies. He also wrote a referral for the Claimant to be evaluated by a neurologist for her cervical spine radiculopathy.

Adjudication

A. Compensability

The Claimant has asserted a compensable neck injury on May 11, 2022, while working for the respondent-employer/Milligan Racing.

"Compensable injury" means an accidental injury causing physical harm to the body, arising out of and in the course of employment and which requires medical services or results in disability or death. Ark. Code Ann. §11-9-102(4)(A)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). The Claimant must prove by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. § 11-9-102(4) (E)(i).

Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant proved by a preponderance of the credible that she was sustained an accidental injury to her cervical spine arising out and in the course of her employment on May 11, 2022, while working for Milligan Racing.

Here, I am persuaded that the Claimant was performing work-related activities when she reinjured her neck on May 11, 2022. Specifically, the Claimant credibly testified that she was reinjured on May 11, 2022, while working for Milligan Racing. Her testimony proves that she reinjured her neck on May 11, 2022, while trying to lift a washer onto the back of a truck with her husband. I find that the Claimant's account of this incident to be credible. Her testimony was corroborated by her husband's testimony in this regard when he credibly testified during the first hearing about the May 11th incident. The Claimant's testimony is also corroborated by the contemporaneous medical documentation of record, namely the clinic notes from June 14, 2022.

Hence, the Claimant testified that she reported her injury to Mr. Milligan. Thereafter, the Claimant sought initial medical services for her second neck injury of May 11, 2023, from Hot Springs - Sherwood Urgent Care Clinic on June 14, 2022. At that time, the Claimant specifically mentions the occurrence of a separate May 11 incident.

Subsequently, the Claimant underwent an MRI of the cervical spine on November 16, 2022, which revealed that at "C5-6 there is moderate right neural foraminal stenosis nerve impingement." I am persuaded that these objective medical findings are causally related to the Claimant's May 11, 2022, work-related injury due to the following reasons. Specifically, x-rays taken on April 18, 2022 of the Claimant's cervical spine were normal. It was not until after the May 11, 2022, work-related incident that the cervical spine abnormalities were revealed. Here, both the Claimant and her husband credibly testified that she was "reinjured" in May of 2022.

Moreover, when the Claimant returned to the Urgent Care Clinic on April 21, she reported that her right shoulder pain had resolved, and of significance the ROM in her neck was now normal. At that time, medical staff instructed the Claimant to return for a follow-up visit to the Urgent Care Clinic to get clearance to return to work. However, the Claimant failed to return to

the clinic as directed to obtain clearance to return to work. More importantly, the Claimant did not seek further medical treatment/follow-up care until after the May 11 lifting incident. Thus, the Claimant continued working her regular full-time and even more laborious employment duties for Milligan Racing after her first neck injury of April 16, and did not stop working until after her second work-related neck injury of May 11, 2022, which is at issue now. The Claimant also testified that she had no prior problems with her neck, and she denied having sustained any other injuries or accidents after the May 11, 2022 injury.

In light of the above cited reasons, I find that the abnormalities of the Claimant's neck revealed on the November 16, 2022 MRI establishes an injury to her neck by medical evidence supported by objective findings.

Therefore, based on all of the foregoing, I find that the Claimant has met all of the necessary requirements for establishing a compensable injury to her cervical spine while performing employment activities for her employer. Thus, I therefore find that the Claimant proved by a preponderance of the evidence that she sustained a compensable injury to her neck on May 11, 2022, during and in the course of her employment with the respondent-employer/Milligan Racing.

B. Medical Benefits

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The Claimant bears the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005).

The Claimant proved that the treatment of record that she received for her May 11, 2022 neck injury beginning on June 14, 2022 and continuing was reasonable and necessary for her neck

injury. Her testimony shows that she continues with pain, and numbness and tingling in her hands and arms, which has been related to her neck injury of May 2022. Prior to her work injury, the Claimant had not had any problems or complaints of the neck, except for the first injury to her neck, a few weeks earlier on April 16. I thus find that the Claimant proved her entitlement to additional medical treatment for her neck injury, including the care recommended by Dr. John Pace in the form of bilateral upper extremities EMG/NCV studies, and the referral for further evaluation of her cervical spine complaints by a neurologist.

C. Temporary Total Disability and Temporary Partial Compensation

Here, the Claimant contends that she is entitled to temporary total disability benefits for her neck injury of May 11, 2022, beginning on May 12, and continuing until January 12, 2023.

An injured employee for an unscheduled injury is entitled to receive temporary total disability compensation during the time that she is within her healing period and totally incapacitated from earning wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. Id. Temporary total disability cannot be awarded after the Claimant's healing period has ended. Trader v. Single Source Transportation, Workers' Compensation Commission E507484 (February 12, 1999).

The Claimant proved her entitlement to any temporary total disability for her compensable cervical spine injury of May 11, 2022, and continuing until January 13, 2023, because she was totally incapacitated from earning her regular wages as a groomer and other laborious work during

this time limit. She has remained within her healing period since the day of her injury, and it continues. In that regard, Dr. Pace has ordered additional diagnostic testing to determine the extent of her injury; and he has referred the Claimant for further evaluation by a specialist/neurologist for her continued neck pain and other difficulties, including but not limited to numbness and tingling of her both her upper extremities. Therefore, I find that the Claimant proved her entitlement to temporary total disability from May 12, 2022, until January 12, 2023.

The Claimant also contends she is entitled to temporary partial disability. Temporary partial disability is that period within the hearing period in which the employee suffers only a decrease in her capacity to earn the wages she was receiving at the time of the injury.

Here, the Claimant credibly testified that she returned to work part-time performing less strenuous employment duties and continues to do so. The evidence before me shows that the Claimant's earning capacity has been diminished since that time and continued through the date of the hearing. The Claimant has remained within her healing since the day of her injury. The Claimant has suffered a decrease in her earning capacity due to her compensable neck injury so as to prove her entitlement to temporary partial disability benefits from the time she started working part-time until a date yet to be determined.

D. Attorney's Fee

It is undisputed that the Respondents have controverted this claim in its entirety. Therefore, the Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein to the Claimant pursuant to Ark. Code Ann. § 11-9-715.

AWARD

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809. Pursuant to Ark. Code Ann. § 11-9-715, the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the Claimant.

All issues not addressed herein are expressly reserved under the Arkansas Workers' Compensation Act.

IT IS SO ORDERED.

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE