

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G904652

NELA JIKATAKE,
EMPLOYEE

CLAIMANT

CARGILL MEAT PRODUCTS,
EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT SVCS., INC,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED DECEMBER 13, 2024

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed September 13, 2023. The administrative law judge found that the claimant failed to prove she was entitled to temporary total disability benefits from June 21, 2022 through a date yet to be determined. The administrative law judge found that the claimant proved she was entitled to temporary total disability benefits from April 13, 2023 through April 19, 2023. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she was entitled to temporary total disability benefits

beginning June 21, 2022 and continuing through a date yet to be determined.

I. HISTORY

The record indicates that Nela Jikatake, now age 54, became employed with the respondents, Cargill, on October 19, 2015. The claimant's Job Title was "Debone – Breast Trim." The parties stipulated that the claimant "sustained a compensable injury to her left shoulder" on June 11, 2019. The claimant testified on direct examination:

Q. And what happened that day?

A. I was walking. I hit my toe on a pallet, my feet on a pallet. It was broken and I tripped....

Q. During that time after you fell, did you have any trouble doing your work?

A. Yes.

Q. What caused you problems doing your work after you fell?

A. It was extreme pain and when I move it, it was just too much.

Q. Did you continue to work, though, up until you saw the doctor?

A. Yes.

An MRI of the claimant's left shoulder was taken in August 2019 with the impression, "1. Mild tendinosis of the rotator cuff." An MRI of the claimant's left shoulder was taken in September 2019 with the impression, "1. Tendinopathy of the supraspinatus and infraspinatus."

Dr. John Heim reported on or about September 20, 2019, "WC new pt with left shoulder pain from a fall on 06/11/2019. Since the injury she has had 6 visits of therapy but has not helped. She also had MRI done and we

have images with report....She is not on work restrictions currently, she is no longer working.” Dr. Heim assessed “1. Adhesive capsulitis of left shoulder.” Dr. Heim noted, “Nela is scheduled for shoulder surgery on 09/23/2019. She may return to work on 09/24/2019 with the following restrictions: no use of left arm for the next 2 weeks.”

Dr. Heim performed surgery on September 23, 2019: “Arthroscopy left shoulder with lysis and resection of adhesions as well as manipulation under anesthesia.” The post-operative diagnosis was “Status post arthroscopic adhesion lysis and manipulation under anesthesia left shoulder.” The claimant testified that she did not benefit from surgery performed by Dr. Heim.

The claimant began treating with Dr. Christopher A. Arnold on January 21, 2020. Dr. Arnold assessed “Sprain of left rotator cuff capsule[.]” Dr. Arnold assessed the following Work Status: “No lifting, pushing or pulling greater than 25 lbs. No repetitive overhead.”

Dr. Arnold planned on February 4, 2020, “Your exam shows a probable cuff tear and adhesive capsulitis. We need to obtain an MRI to evaluate the extent of the tear and get a plan.”

An MRI of the claimant’s left shoulder was taken on February 19, 2020 with the following impression:

1. No rotator cuff tendon tear, tendon retraction, or muscle atrophy.

2. Intact biceps labral complex.
3. Very mild increased signal within the conjoined tendon of the rotator cuff is present. This may represent very minimal, residual tendinosis but is much improved compared to 9/6/2019.

Dr. Arnold performed a Joint Injection/Aspiration on March 3, 2020.

It was noted on March 3, 2020, "She is no left arm duty." Dr. Arnold

reported on April 7, 2020:

HISTORY: Nela Jikatake had a workers' compensation injury. She had an arthroscopy and lysis of adhesions. It offered no relief. She was seen in my office. I thought she had findings consistent with a high-grade partial tear of the cuff. I gave her a subacromial injection. This offered no relief....

RADIOGRAPHS: I reviewed her MRI. She has a high-grade partial tear of the suprapinatus.

PLAN: She has failed therapy, anti-inflammatories, arthroscopy, and subacromial injection. I think the next step would be an arthroscopy and possible cuff repair. I think it is reasonable, given the profound cuff weakness, her failure to therapy, anti-inflammatories, injection, and arthroscopy and the MRI findings. At the current time, I would recommend arthroscopy, possible cuff repair. She agrees with this plan. At the current time, no left-handed duty until we get this approved.

Dr. Heim reported on May 13, 2020:

I have reviewed Ms. Jikatake's medical records again to offer you my best assessment of her medical status based on my last visit with her.

The claimant developed an adhesive capsulitis of her left shoulder resulting in arthroscopic adhesiolysis and manipulation under anesthesia. She received post-operative physical therapy and despite inconsistent participation her results were good. She was released at MMI and was provided an impairment rating on 10/30/19. As often is the case, with this diagnosis, patients rarely recover to their pre-injury state. This is the purpose of the impairment rating.

It is my medical opinion that Ms. Jikatake does not need further treatment or diagnostic studies which is why I released her at maximum medical improvement.

A pre-hearing order was filed on March 31, 2021. The parties contended, "The claimant contends she is entitled to the additional medical treatment as recommended by Dr. Chris Arnold. Claimant reserves all other issues. The respondents contend this claim was accepted as compensable and benefits were paid. Claimant was provided treatment for this injury, which resulted in Dr. Heim performing an arthroscopic procedure on her left shoulder. She was released from his care at MMI on November 30, 2019 with a 4% whole body impairment. The rating was paid out to the claimant via a check for \$4500 in November of 2019. Respondents contend claimant's voluntary resignation from employment with Cargill [on] July 16, 2019 results in claimant not being entitled to temporary total disability benefits beyond those already paid. Respondents have provided claimant with all reasonably necessary evaluation and treatment and claimant is not entitled to additional benefits."

The parties agreed to litigate the following issue: "1. Claimant's entitlement to additional medical treatment recommended by Dr. Arnold."

A hearing was held on May 13, 2021. The claimant testified that she wanted to undergo surgery recommended by Dr. Arnold. The respondents' attorney cross-examined the claimant:

Q. And you returned to work after the injury. Correct?

A. Yes, I did go back to work.

Q. How long would you say you continued to work after the injury?

A. It was a while and then I went and asked if I could quit because I was in pain.

Q. So it was your decision to leave Cargill?

A. Yes, it was my decision because I was in a lot of pain, but when I kept going back and telling them, it was like they don't care....

Q. And when you had surgery by Dr. Heim, were you still working for Cargill?

A. No, I wasn't because I was really in pain at that time.

Q. So Cargill continued to provide medical treatment for you even though you were no longer working there?

A. Yes.

Q. And they provided medical care up until the time your doctor said that you were at maximum medical improvement. Correct?

A. Yes. It was after the doctor said that, then they stopped helping me....

Q. And have you applied for any employment since leaving Cargill?

A. No.

Q. And why not?

A. Because I still don't feel better. My hand is not better – not my hand, but my shoulder. It is still not perfect. I cannot lift up anything that is heavy.

Q. So, there is no type of work that you think that you can do in your current condition?

A. Yes....

Q. So you are saying that after the accident, you were completely unable to use your left hand?

A. Yes. Yes. That is what I have been saying from the beginning.

Q. Okay. And after the surgery, you were still completely unable to use your left hand?

A. Yes. Yes, it is still and I can't lift up anything heavy with my hand. And also when I lay on it, it also hurts.

An administrative law judge filed an opinion on May 26, 2021. The administrative law judge found, “2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment in the form of surgery by Dr. Arnold.”

Dr. Sheldon Ricklon noted on August 2, 2021 that the claimant “has applied for work at George’s to be on the line but asking for a letter [requesting] some restrictions given the issue with her left shoulder. Still with pains....Unable to reach above her head secondary to pain and very restricted ROM of her left shoulder.” Dr. Ricklon noted on September 8, 2021, “Still with [shoulder] discomfort and limited ROM esp reaching overhead. Wrote letter to employer but states it was not approved.”

In an opinion filed October 14, 2021, a majority of the Full Commission reversed the administrative law judge’s May 26, 2021 decision. The Full Commission found that the claimant “has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of an arthroscopic procedure as recommended by Dr. Arnold.” The parties have stipulated that the Full Commission’s October 14, 2021 opinion was “final.”

The claimant testified on direct examination:

Q. Did Dr. Arnold recommend additional surgery for your left shoulder?

A. Yes.

Q. Were you able to have that surgery?

A. No....

Q. Have you been able to see Dr. Arnold again?

A. No.

Q. Did you finally get a new doctor, Dr. Dougherty?

A. Yes.

Dr. Christopher P. Dougherty examined the claimant on June 20,

2022:

She is here today as a new patient for continued pain in her left shoulder s/p work accident in June 2019. Her MRI of the left shoulder shows a split tear in biceps tendon. Her exam is consistent with biceps tendinitis and adhesive capsulitis. She has failed conservative care of injections and physical therapy and over 3 years of symptoms. She needs to be set up for a left shoulder arthroscopy with MUA, lysis of adhesions and biceps tenotomy....Once approved we will get her set up for surgery and will see her back after for post operative care.

Dr. Dougherty corresponded with the claimant's attorney on August

18, 2022:

In response to your question addressed in your letter dated July 15, 2022, yes the bicep tear is related to her injury when she fell on her outstretched arm. Biceps tenotomy is indicated. If the bicep is unstable due to the rotator cuff tear, it will not be known until the time of surgery.

Biceps tenotomy means cutting off one tendon and not reattaching it, allowing it to heal to the humerus over a few weeks. The biceps will still function well after tenotomy, but there may be a change in the appearance of the arm with some flattening of the biceps.

A pre-hearing order was filed on September 13, 2022. The claimant contended, "The claimant contends she is entitled to surgery for her compensable shoulder injury as recommended by her authorized treating physician, Dr. Dougherty. Dr. Arnold had recommended surgery, which

was awarded by the Full Commission. Dr. Arnold now refuses to treat her as a workers' compensation case. Therefore, she requested a change of physician to Dr. Dougherty, and he has recommended surgery for her work-related condition. Claimant reserves all other issues."

The respondents contended, "This claim came before the Commission for a hearing on May 13, 2021. It was the Opinion of the ALJ that Claimant failed to meet her burden of proving by a preponderance of the evidence that surgery recommended by Dr. Arnold was reasonable and necessary medical treatment for her compensable left shoulder injury. That decision was appealed by the Claimant to the Full Commission. The Full Commission reversed and awarded the Claimant the 'additional medical treatment in the form of an arthroscopic procedure as recommended by Dr. Arnold.' Dr. Arnold had recommended a surgical procedure consisting of a subacromioplasty, distal clavicle excision and a rotator cuff repair based upon his [identification] of a 'high-grade partial tear of the supraspinatus' on the MRI performed on 2/19/2020. When Claimant attempted to return to Dr. Arnold to schedule the surgery, Dr. Arnold refused to perform the surgery. A second Change of Physician was authorized and on June 20, 2022, Claimant was evaluated by Dr. Dougherty."

The respondents contended, "Dr. Dougherty states in his report that 'her MRI of the left shoulder shows a split tear in biceps tendon.' As it was

the first and only visit to Dr. Dougherty, he had not ordered a new MRI, consequently, he must have been utilizing the MRI of 2/19/2020 to come to this conclusion. It had been the contention of the Respondents previously that when Dr. Marvin interpreted the MRI he noted 'no rotator cuff tear, tendon retraction, or muscle atrophy' which was contradicted by Dr.

Arnold's reading. Additionally, Dr. Marvin wrote in his report:

The long head of the biceps tendon rests normally in the bicipital groove. Intra-articular biceps tendon is normal in appearance...Intact biceps labral complex."

The respondents contended, "Dr. Dougherty's assessment now supports Dr. Marvin's interpretation of the rotator cuff tendons showing no tear and contradicts the opinion of Dr. Arnold in that Dr. Dougherty does not identify a tear in the supraspinatus, does not recommend a distal clavicle [resection] nor a rotator cuff repair. Instead, Dr. Dougherty contradicts both Dr. Marvin and Dr. Arnold by identifying a bicep tendon tear."

The respondents contended, "It is the contention of the Respondents that the Full Commission authorized a surgical procedure consisting of a subacromioplasty, distal clavicle excision and a repair of Claimant's left supraspinatus as recommended by Dr. Arnold, basing much of their Opinion in the fact that Dr. Arnold 'believe[d] [this procedure] is reasonable and necessary.' Dr. Dougherty, Claimant's new treating physician does not recommend the procedure the Full Commission found to be reasonable and

necessary, but instead believes a completely different procedure is needed. The procedure recommended by Dr. Dougherty is not the surgery awarded by the Commission, therefore, the Respondents contend that Claimant is not entitled to the surgery proposed by Dr. Dougherty.”

The parties agreed to litigate the following issue: “1. Claimant’s entitlement to additional medical treatment in the form of surgery as recommended by Dr. Dougherty.”

A hearing was held on November 9, 2022. The claimant testified that she wanted to undergo surgery recommended by Dr. Dougherty, “because I want to feel much better.” The claimant testified with regard to her left shoulder, “There is pain in it. Every now and then there will be pain in it and if I move it frequently, it will be like a stabbing pain.”

An administrative law judge filed an opinion on November 30, 2022. The administrative law judge found, “2. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment in the form of surgery as recommended by Dr. Dougherty.” The parties have stipulated that the administrative law judge’s November 30, 2022 opinion was “final.”

Dr. Dougherty performed surgery on April 13, 2023: “1. Subacromial decompression, distal clavicle resection. 2. Arthroscopic lysis of adhesion. 3. Manipulation under anesthesia.” The pre- and post-

operative diagnosis was “1. Adhesive capsulitis. 2. Biceps tendinitis. 3. Impingement syndrome. 4. Acromioclavicular joint arthritis.”

On April 17, 2023, Dr. Dougherty signed a Return to Work/School form. Dr. Dougherty indicated that the claimant could return to work on April 20, 2023 with the following Work Limitations: “Light duty with 10lb lifting restriction.”

The claimant followed up with Dr. Dougherty on April 26, 2023:

She returns to the office today for her 2 week post op visit for surgery that was performed on 4/13/23. Left shoulder arthroscopy with MUA, lysis of adhesions, subacromial decompression and distal clavicle resection. Her stitches were removed today and the incisions are well healed. She is still having some pain but she is going to therapy. She will continue with her therapy. She is cleared to return to work on Monday May 1 with restrictions of light duty and no lifting more than 10lbs with left upper extremity. We will see her back in 4 weeks for her 6 week post op visit.

The record indicates that the claimant was provided physical therapy beginning May 5, 2023. The claimant also continued to follow up with Dr. Dougherty.

A pre-hearing order was filed on June 21, 2023. The parties contended, “The claimant contends she is entitled to temporary total disability from June 21, 2022 to a date yet to be determined. Claimant reserves all other issues. The respondents contend that all appropriate benefits have been paid. Respondents further contend that light duty would have been available but for the fact that claimant voluntarily terminated her

employment with respondent employer resulting in claimant not being entitled to additional temporary total disability benefits.”

The parties agreed to litigate the following issues:

1. Temporary total disability benefits from June 21, 2022 through a date yet to be determined.
2. Attorney fee.

The respondents’ attorney examined the claimant at a deposition taken August 10, 2023:

Q. When I looked through all of your stuff, I don’t think that you have worked for Cargill since July of 2019, is that correct?

A. July what?

Q. July 19th of 2019.

A. That is correct....

Q. Do you know why you were terminated on July 19th of 2019?

A. They did not stop me. I stopped myself because I couldn’t tolerate the pain.

Q. And my question to you is when you got terminated, you just quit going to work because of the pain. Correct?

A. Yes.

Q. And when you stopped going, did you call them and tell them you were not going?

A. I didn’t call them. I told them that I wanted to resign, so they gave me two weeks to resign. I was the one that approached them because I couldn’t handle the pain. I wanted to resign.

Q. Since you resigned or since your employment terminated with Cargill back in July of 2019, have you worked for anyone else?

A. After the surgery, I went back and I worked at George’s and it was just like two –

THE INTERPRETER: Let me clarify what she means by two.

THE WITNESS: But after two weeks, the pain was just too much and I couldn’t work anymore....

Q. Other than that two weeks, have you worked for anyone else?

A. None....

Q. Let's go back to when you quit at Cargill. You were there for about a month after you injured your shoulder. Okay.

A. Uh-huh. Yes....

Q. And during that period of time, was anyone treating you for your shoulder?

A. Yes. The nurse.

Q. At Cargill?

A. Yes.

Q. Okay. And did Cargill – after you told them you hurt your shoulder, did Cargill modify your job for you?

A. They didn't.

Q. They did not?

A. Yes, they didn't. I was still at the same place.

Q. Did you ask them to modify your job?

A. They said there was no other position available.

Q. Who told you that?

A. I asked Shauna. I told her that my shoulder was really not up to spraying the chickens with water and turning them over.

Q. Who is Shauna?

A. My supervisor.

After a hearing, an administrative law judge filed an opinion on September 13, 2023. The administrative law judge found that the claimant failed to prove she was entitled to temporary total disability benefits from June 21, 2022 through a date yet to be determined. The administrative law judge found that the claimant proved she was entitled to temporary total disability benefits "from April 13, 2023, through April 19, 2023." The claimant appeals to the Full Commission.

II. ADJUDICATION

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State*

Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). “Healing period” means “that period for healing of an injury resulting from an accident.” Ark. Code Ann. §11-9-102(12)(Repl. 2012). 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.

Arkansas Highway & Transp. Dep’t v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Whether an employee’s healing period has ended is a question of fact for the Commission. *Dallas County Hosp. v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001).

An administrative law judge found in the present matter, “2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits from June 21, 2022 through a date yet to be determined. Claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from April 13, 2023, through April 19, 2023.” The Full Commission first notes that the administrative law judge erred as a matter of law in awarding temporary total disability benefits from April 13, 2023 through April 19, 2023. Ark. Code Ann. §11-9-501(a)(1)(Repl. 2012)

provides, "Compensation to the injured employee shall not be allowed for the first seven (7) days' disability resulting from the injury, excluding the day of injury." The administrative law judge's award of seven days in the present matter is not allowed in accordance with Ark. Code Ann. §11-9-501(a)(1)(Repl. 2012).

Nevertheless, it is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence and not whether there is substantial evidence to support an administrative law judge's findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission reviews an administrative law judge's opinion *de novo*, and it is the Full Commission's duty to conduct its own fact-finding independent of that done by an administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

The Full Commission finds in the present matter that the claimant proved she was entitled to temporary total disability benefits beginning June 21, 2022 and continuing through a date yet to be determined. The claimant became employed with the respondents in October 2015. The parties stipulated that the claimant sustained a compensable injury to her left

shoulder on June 11, 2019. The claimant testified that she tripped and fell. Dr. Heim performed a left shoulder arthroscopy on September 23, 2019. The claimant testified that she did not benefit from surgery performed by Dr. Heim. Dr. Arnold's impression in January 2020 was "Sprain of left rotator cuff capsule." Dr. Arnold eventually recommended additional surgery, which treatment the respondents controverted. After an administrative law judge found that the claimant was not entitled to surgery recommended by Dr. Arnold, a majority of the Full Commission filed an opinion on October 14, 2021 and found that Dr. Arnold's treatment recommendation was reasonably necessary. The claimant testified that she was unable to have surgery recommended by Dr. Arnold, and that she therefore began treating with Dr. Dougherty.

The claimant agreed at deposition that she had not worked for the respondent-employer since July 19, 2019. The claimant testified that she was unable to effectively move her left upper extremity, without pain, following the compensable injury to her left shoulder. The claimant testified that she attempted to return to work with the respondents for a time but was unable to lift objects with her left arm. The medical evidence corroborated the claimant's testimony. For example, Dr. Ricklon reported in August 2021 that the claimant was unable to lift her left arm above her head. The

claimant testified that she “stopped myself” from working for the respondent-employer “because I couldn’t tolerate the pain.”

The respondents contend that the claimant’s “voluntary resignation” was a “refusal to return to work” in accordance with *Lybyer v. Springdale School District*, 2019 Ark. App. 77, 568 S.W.3d 805. In *Lybyer*, the Court of Appeals affirmed the Commission’s finding that a “voluntary resignation” in fact disqualified a claimant from receiving temporary total disability benefits. In the present matter, the Full Commission finds that the appellate authority more applicable is *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). The Court of Appeals in *Biles* held that if, during the healing period, the employee is unable to perform remunerative labor with reasonable consistency and without pain and discomfort, her temporary total disability is deemed total. See *Pyles v. Triple F. Feeds of Texas*, 270 Ark. 729, 606 S.W.2d 146 (Ark. App. 1980). In the present matter, the Full Commission finds that the claimant was physically unable to perform remunerative labor for the respondents as a result of the compensable injury to the claimant’s left shoulder.

Dr. Dougherty opined on June 20, 2022 that diagnostic testing of the claimant showed a “split tear in biceps tendon....She needs to be set up for a left shoulder arthroscopy with MUA, lysis of adhesions and biceps tenotomy.” In their brief on appeal, the respondents agree that the claimant

re-entered a healing period beginning June 20, 2022. The respondents assert that the claimant failed to prove the “second prong” of entitlement to temporary total disability benefits, that is, “incapacity to earn wages.” The Full Commission finds that the claimant remained within a healing period and was totally incapacitated from earning wages beginning June 21, 2022 and continuing through a date yet to be determined.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she was entitled to temporary total disability benefits beginning June 21, 2022 and continuing through a date yet to be determined. *See Breshears, supra*. The claimant proved by a preponderance of the evidence that she was physically unable to perform remunerative labor for the respondents beginning June 21, 2022 and continuing through a date yet to be determined. *See Biles, supra*. The respondents failed to prove that the claimant refused suitable employment in accordance with Ark. Code Ann. §11-9-526(Repl. 2012).

The claimant’s attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant’s attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding the claimant proved she is entitled to temporary total disability benefits from June 21, 2022, to a date yet to be determined.

Our Rules require that to prevail on a request for temporary total disability benefits, the claimant must prove by a preponderance of the evidence that he is totally incapacitated from earning wages and remains in his healing period. *Hickman v. Kellogg, Brown, and Root*, 372 Ark. 501, 277 S.W.3d 591 (2008).

The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. *Id.* The determination of when the healing period has ended is a factual determination for the Commission. *Id.*

I. The claimant has been released to return to work by three treating physicians. She is not incapacitated from earning wages.

The claimant has been returned to work by three of the physicians she has encountered throughout this process. Dr. Marcus Heim reported the claimant “is not on work restrictions currently, she is no longer working.” Dr. Heim expressed reservations about the claimant’s motivation, stating, “[s]he does not seem terribly motivated so I am a little apprehensive about this,” but opined there was no other option to treat the claimant.

On September 23, 2019, Dr. Heim opined the claimant “may return to work on 09/24/2019 with the following restrictions: no use of left arm for the next 2 weeks.”

On January 21, 2020, Dr. Christopher Arnold assessed a work restriction of “[n]o lifting, pushing or pulling greater than 25 lbs. No repetitive overhead.”

The claimant’s testimony reflects her treating physician, Dr. Christopher Dougherty returned her to work with restrictions following her April 13, 2023 surgery. At her deposition, the claimant had the following exchange:

Q: (by Mr. Zuerker) Up until you saw Dr. Dougherty, did any doctor have you on

any kind of
restrictions?

A: What kind of
restrictions?

Q: Don't work or do
certain things at work.

A: No, no one said that.
Only he said that I
could work.

Q: Did Dr. Dougherty tell
you you should work?

A: Yes, he said that I
could work, but I
shouldn't carry
anything more than
five pounds and that I
should use my right
hand more than my
injured hand.

Q: And after he told you
that, did you look for
any work?

A: No, I didn't.

Dr. Dougherty opined on five occasions the claimant was physically able to return to work with light duty restrictions beginning April 20, 2023.

On May 26, 2023, Dr. Dougherty prescribed "10 work hardening visits . . . to help her transition back to work. . . At this time she is cleared to return to work, with lifting restriction of no more than 10 lbs." Dr. Dougherty

increased the claimant's lifting restriction to twenty pounds on August 9, 2023.

Dr. Dougherty clearly intended for the claimant to return to work and encouraged her to do so on numerous occasions. Her previous treating physicians clearly agreed she was capable of doing so. The only party limiting the claimant's ability to work is herself with her self-serving testimony.

We expect workers to make a "good-faith effort to return to the work force following an injury," and the claimant has failed to do so in this case. *Farmers Co-Op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). The claimant's refusal to return to the workforce despite all evidence she could do so does not entitle her to indefinite disability benefits.

II. The claimant forfeited any entitlement to temporary total disability benefits when she resigned her position from Cargill.

Our rules provide:

[i]f any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers' Compensation Commission, the refusal is justifiable.

Here, the claimant voluntarily terminated her employment in July 2019, prior to undergoing surgery. The claimant testified, "I told them that I wanted to resign... I was the one that approached them because I couldn't handle the pain. I wanted to resign."

Cargill's workers' compensation coordinator, Jennifer Ponder, stated the claimant would have been offered light duty work if she had not resigned. Ms. Ponder also testified that since her resignation in 2019, the claimant has never come back and asked Cargill for any light duty work.

The claimant simply has no interest in returning to work despite the efforts of numerous doctors and physical therapists. Her own self-limiting behavior cannot be the sole basis for an indefinite award, and we should carefully examine the claimant's credibility in this matter, as her testimony is clearly contradicted by the weight of the medical evidence.

Accordingly, for the reasons set forth above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner