

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H005743

JOE C. KELL, EMPLOYEE

CLAIMANT

NASHVILLE SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 5, 2021

Hearing held before Administrative Law Judge Chandra L. Black, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On September 7, 2021, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A prehearing telephone conference was conducted on April 20, 2021, from which a Prehearing Order was filed on that same day. Said order and the responsive filings by the parties have been marked as Commission's Exhibit No. 1.

Stipulations

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-insurance carrier relationship existed at all relevant times, including on or about June 10, 2020.

3. That the Claimant is entitled to the maximum compensation rates for a 2020 injury.
4. All issues not litigated are reserved under the Arkansas Workers' Compensation Act.
5. The Respondents have controverted this claim in its entirety.
6. The Respondents are entitled to credit for a period of 90 days if the Claimant is awarded temporary total disability (TTD) compensation.

Issues

The parties agreed to litigate the following issues:

1. Whether the Claimant sustained a compensable injury (in the form of COVID-19) during and in the course and scope of his employment with the respondent-employer, Nashville School District.
2. Whether the Claimant is entitled to temporary total disability compensation from June 11, 2020 through and until a date yet be determined.
3. Whether the Claimant is entitled to medical benefits for his alleged injury.
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 he sustained a compensable injury in the form of the contraction of Covid-19 in June 2020. The condition was contracted during a mandated school district meeting in which approximately 12 people were present. Claimant [sic] exposure resulted in medical expenses and temporary disability. Claimant contends payment of temporary total disability

benefits beginning June 10, 2020 and continuing to a date yet to be determined. This file is controverted in its entirety.

Claimant reserves the right to pursue other benefits to which Claimant may become entitled in the future.

Claimant's attorney respectfully requests that any attorney's fees owed by Claimant on controverted benefits by award or otherwise be deducted from Claimant's benefits and paid directly to Claimant's attorney by separate check, and that any Commission Order direct the Respondent to make payment of attorney's fees in this manner.

Respondents:

Respondents contend there is no causal connection between the Claimant's work-related activity and his diagnosis. Respondents further contend the Claimant was exposed to COVID in a non-work-related setting and, thus, Respondents are not liable for benefits associated with diagnosis.

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 Claimant's testimony and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the aforementioned stipulations as fact.
3. The Claimant proved by a preponderance of the evidence that on or about June 10, 2020, he contracted COVID-19 during and in the course of his employment while

attending a mandatory meeting with Nashville School District administrators.

4. The Claimant proved by a preponderance of the evidence that all of the medical treatment of record (including Dr. Ferguson’s recommendations on August 25, 2020) is reasonably necessary in connection with the injury received by him. However, there is no documented recommendation by any physician or medical personnel for any further treatment for the Claimant’s compensable injury. Therefore, I find that the Claimant failed to prove his entitlement to any further medical treatment due to his COVID-19 injury of June 10, 2020.
5. The Claimant proved his entitlement to temporary total disability from June 13, 2020 until November 25, 2020.
6. The Claimant’s attorney is entitled to a controverted attorney’s fee on the indemnity awarded pursuant to this Opinion.

Summary of Evidence

Mrs. Karen Kell, Mr. Joe Kell/the Claimant, and Mr. Dalton James “Bunch” Nichols testified during the hearing.

The record also consists of the hearing transcript of the September 7, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission’s Exhibit No. 1 includes the Commission’s Prehearing Order of April 20, 2021, and the parties’ respective response to the Prehearing Questionnaire; Claimant’s Medical Exhibit, consisting of 26 numbered pages along with his Non-medical Exhibits consisting of five pages, which were characterized as A through E and marked as Claimant’s Exhibit 1; Respondents’ Medical Records, consisting of 12 numbered pages were marked as Respondents’ Exhibit 1; Respondents introduced into evidence a compilation of Respondents’ Hearing Exhibit Index of

Non-Medicals, consisting of 43 numbered pages, which have been marked as Respondents' Exhibit 2. The parties filed Post-hearing Briefs, these have been blue-backed and made a part of the record.

Testimony

Mrs. Karen Kell

Mrs. Karen Kell, the Claimant's wife, testified on behalf of her husband. The couple has been married for twenty-six (26) years. She is a retired schoolteacher as of August 2020. Mrs. Kell taught sixth grade math.

She verified that her husband was hospitalized with COVID-19. Mrs. Kell agreed that on June 15, 2020, the Claimant was tested for COVID-19, but had been sick before then. According to Mrs. Kell, the Claimant woke up Saturday (on June 13, 2020) morning feeling sick. At that time, the Claimant had symptoms which included a fever and "he hurt all over." He stayed in bed that day. As a result, he went and got tested, and the results came back within 48 hours.

Mrs. Kell testified that on June 19, 2020, she drove the Claimant to the hospital. She let him off at the door. She testified that she was not allowed to go into the hospital with him due to hospital guest restrictions surrounding COVID-19. According to Mrs. Kell, she wanted the Claimant to have chest X-rays performed. Said X-rays were performed, and the Claimant was discharged home. She testified that the Claimant had been sick all week with a high fever.

Mrs. Kell testified that the following day, on Saturday, June 20, 2020 the Claimant was not any better. As a result, Mrs. Kell called their family physician, Dr. Ferguson. Thereafter, the Claimant's primary care physician called and had the Claimant hospitalized at Howard Memorial Hospital in Nashville from Saturday through Tuesday (June 20 through June 23, 2020). Next, the Claimant was transferred to CHI St. Vincent Infirmery (in Little Rock) by way of ambulance,

where he was placed on a ventilator. Mrs. Kell testified that after being hospitalized for 40 days, the Claimant got better. The Claimant was discharged to the Baptist Health Rehabilitation Institute for 20 days. Mrs. Kell denied that the Claimant has returned to work since that time. She gave an overview of the Claimant's physical condition on the day he went to the rehabilitation hospital, which included the inability to adjust his body in the bed or raise his hands more than an inch off his bed. According to Mrs. Kell, the Claimant could not move his feet or head, and he was unable to adjust any part of his body in the bed. Mrs. Kell essentially testified that from the time he got discharged until the days of the hearing, the Claimant has gotten progressively better. However, she stated that he has not returned to work.

Mrs. Kell testified that on the Claimant's return home from rehab, he tired extremely quickly. She essentially testified that the Claimant must sit and rest a lot throughout the day. Although the Claimant is better, Mrs. Kell stated that the Claimant is not a hundred percent. According to Mrs. Kell, the Claimant is slow in getting around and gets winded easily. She testified that prior to getting COVID-19, the Claimant always lived a very active life.

She confirmed that her husband was the assistant superintendent with the school district. Ms. Kell testified that prior to the June 10th school meeting, the Claimant was "physically okay." She denied that prior to the meeting the Claimant was showing any symptoms of COVID.

Mrs. Kell denied being in contact with anybody before the meeting on 10th that later discovered they had COVID. She testified that they later found out Mr. Nichols had become sick on Thursday evening and was not at work on Friday. Mrs. Kell testified at that point, the Claimant was not having any symptoms, but they knew that the Claimant and Mr. Nichols had been together.

On cross-examination, Mrs. Kell confirmed that she tested positive for COVID-19 in June 2020. Mrs. Kell admitted that she and her husband rode in the car together weeks leading up to

the test on June 15th. She also admitted that on June 15th and they both were tested for COVID. At that time, Mrs. Kell was not positive. However, the Claimant later found out, he was positive. She confirmed that in the two or three weeks before June 15th they lived in the same house together, slept in the same bed, and shared a bathroom. She verified that she does not know for certain that she was not in contact with someone who had COVID-19. However, Mrs. Kell stated that she did not know of anyone she had been in contact with who had COVID-19. She confirmed that she is aware of the term asymptomatic transmission. Mrs. Kell agreed that there is no way to know the exact moment someone is infected with the COVID-19 virus, nor can you see someone breathing out the virus.

Mrs. Kell agreed that based on the information that we all have been provided, someone who wears a mask and engages in social distancing is supposedly less likely to contract the virus than someone who does not wear a mask and mingles closely with people.

On redirect examination, Mrs. Kell confirmed that they both tested on June 15, 2020. She testified that she did not test positive but had symptoms. Mrs. Kell went back on Wednesday, the 17th and got retested and was positive for COVID-19.

Mrs. Kell testified on recross examination that on the 15th she had a hacking cough, along with a tickle in the back of her throat and a very low-grade fever of 99 degrees. She agreed that through her own personal experience, she is aware of people who have tested positive, who had no symptoms. Mrs. Kell further agreed that she has heard of people who had all the “telltale symptoms” and tested negative.

Upon being questioned by the Commission, Mrs. Kell confirmed that the Claimant participated in a school meeting on Wednesday June 10, 2020 and three days later, on a Saturday

morning, he became ill. At that point, Mrs. Kell denied that she had any symptoms. She denied being around someone who later tested positive for COVID.

Mr. Joe Kell/Claimant

Mr. Kell confirmed that he is 60 years old. He graduated from Harding University in 1986 with a bachelor's degree in education. The Claimant moved to Hope and started working on his master's degree, which he received from Henderson State University. According to Mr. Kell, he later received a superintendent certificate, which is equivalent to a specialist degree today. Prior to becoming the assistant superintendent, Mr. Kell worked as a building principal, teacher, and coach. He worked as an assistant superintendent for approximately 17 years.

Regarding his illness, Mr. Kell testified that he has no recollection of being on a ventilator. He confirmed that on June 10, 2020 he attended a meeting at the school, on a Wednesday morning. The Department of Education had sent out guidelines for dealing with the issue of COVID-19 pandemic. As a result, they met to discuss these standards. Mr. Kell, the superintendent, the service personnel, transportation director, the building principles and technology coordination and others for a total of 12 people; they met in the boardroom at the administration building. At that time, school was out for the summer.

The purpose of the meeting was for discussion about COVID and how to deal with it in the upcoming year. He confirmed that he started getting sick on Saturday, the 13th. According to Mr. Kell, that morning he got up at 5:30 because he had planned to go fishing. Mr. Kell testified that he sat on side of the bed with flu-like symptoms, his body ached, and he had a headache. Therefore, Mr. Kell canceled his plans and decided to get back in bed. He got tested on Monday and was positive. Mr. Kell testified that he recalls very little after getting back in bed on Saturday and the

following month. He does not recall getting tested for COVID-19, but he does remember going to the hospital for X-rays.

The Claimant agreed he was hospitalized at CHI St. Vincent and on a ventilator for a while. He confirmed that he has not returned to work. Mr. Kell agreed that the meeting on June 10, 2020 was his last official act as assistant superintendent. He retired from the school district in March of 2021. According to Mr. Kell, he had already planned to retire in May of last year. However, Mr. Kell testified that he decided not to go back to work because there was no use in drawing it out, so he retired in March.

With respect to June 10, 2020 the Claimant admitted that on the following Friday after the meeting, he found out from Mr. Graham (the superintendent) that Bunch Nichols had tested positive for COVID-19. Mr. Kell confirmed that of the people who were attendance at the meeting, the following people got sick: Mr. Doug Graham, the superintendent; Bunch Nichols, the transportation/athletic director; Mr. Bryce Petty, the technology coordinator; and Mr. Rick Rebsamen, the elementary principal, and himself.

Since this time, the Claimant has had a discussion with Mr. Nichols about the fact that he tested positive for COVID-19. He confirmed that he is familiar with the Log Cabin Democrat article. The one where they interviewed Mr. Nichols and Mr. Graham.

Mr. Kell denied that before the meeting he was around anyone who testified positive for COVID-19. He admitted to going to the grocery store and things of that nature around this period of time. However, Mr. Kell denied being at a place for an extended period of time and being in an enclosed area with a person who later tested positive for COVID-19, other than during the school meeting. According to Mr. Kell, the June 10th meeting lasted about an hour and a half to two

hours. Mr. Kell denied that they took a break during the meeting. He estimated the size of the room to be 40 by 30 (feet), with a total of 12 people being in attendance.

On cross-examination, Mr. Kell agreed that as far as the set up for the meeting, he and Mr. Nichols were on opposite ends of a standard school table. He agreed that it was a 6-foot folding table. He agreed that everybody social distanced properly at the meeting. The Claimant denied wearing a surgical mask during the meeting. Upon being shown a copy of his deposition testimony where he testified that he wore a mask, Mr. Kell stated, “The mask I don’t – I’m not sure.” The Claimant explained that at the time of his deposition he was having trouble recalling everything.

Under further questioning, Mr. Kell agreed that wearing a mask and social distancing puts you in a better position than if you are not doing those things as far as susceptibility to contracting the virus. Two weeks prior to the onset of his symptoms on June 13, 2020 Mr. Kell admitted that he had gone to the grocery store, restaurants, and done other normal daily life. He agreed that he shops at the Walmart in Nashville, which is the busiest store in town. Mr. Kell further agreed that three weeks before the onset of his symptoms he would have ridden in a car with his wife, Doug Graham, and Bunch Nichols. He verified that all three of them tested positive for COVID-19 in June 2020. Mr. Kell agreed that the transactions on his bank statement for June 10th have charges from Dollar General, Simple Simon’s Pizza, Gulf gas station, Atwoods Farm Supply, Murphy gas, KFC, Walmart, Wendy’s, and Brookshire’s. He verified that he was unable to testify under oath that those were not charges made by him or his wife.

Mr. Kell further agreed that it was a practice for him to go to lunch with Superintendent Graham, and Bunch Nichols on workdays at least three to four days a week. He agreed that one of the places they would frequent is Starz Café, a local family restaurant there in Nashville. According to Mr. Kell, they would get a table rather than at a booth. They normally sat in the back

by the window at one of those tables. He agreed that when they went to lunch, they would all ride in the same vehicle. According to Mr. Kell, Doug would normally drive his truck, which is a double-cab truck. The Claimant would ride in the front seat, and Bunch would ride in the back seat. He agreed that they would have to sometimes stand in line and order off the menu on the board. Mr. Kell stated that they did not go to lunch on June 10, 2020. He did not recall how many times or if he went to lunch with Bunch or Superintendent Graham in the two weeks leading up to the 10th. Mr. Kell was also unable to recall if they went to lunch any time after the June 10th meeting and before he got sick and started having symptoms on the 13th. He did recall if he went to lunch on Thursday with Bunch and Doug. Mr. Kell explicitly denied that he could remember if they went to lunch after June 10th.

Under further questioning, Mr. Kell specifically denied going to lunch with Bunch Nichols and Superintendent Doug Graham after the June 10, 2020 meeting. He admitted that during his deposition he probably testified that they went to lunch on June 10, 2020. However, Mr. Kell explained that since that time, he has talked to Bunch and Mr. Graham and they both told him they did not go to lunch after the meeting. According to Mr. Kell, he later remembered that he ordered something off the internet and the package was being delivered that day and his wife was out of town, so he went home because he did not want to leave the package out on the porch.

Regarding his pay, Mr. Kell verified that he drew his full paycheck up until that point, then he announced he was retiring. He admitted that his retirement is in no way classified as disability retirement. Mr. Kell admitted that he was already eligible to retire before contracting COVID-19. He confirmed that he was in T-DROP, and still had four more years to go before retiring.

Both on redirect and recross examination, Mr. Kell confirmed that he does not remember if they wore masks during the meeting despite what he said during his deposition.

Upon being questioned by the Commission, Mr. Kell stated that he did not have any contact with Mr. Nichols prior to the meeting. Mr. Kell did not recall if he had contact with Mr. Nichols after the meeting. He testified that during the meeting, he and Mr. Nichols sat next to each other.

Specifically, Mr. Kell explained the seating arrangement with respect to the other people who ended up with COVID-19.

THE WITNESS: We were all on the same side of the room. The table were set up in a horseshoe –

THE COURT: Okay.

THE WITNESS: -- all right? Mr. Graham was in the middle. I was up at this top corner. Mr. Graham was in the middle. I was up at this top corner. Mr. Nichols was at the same table with me. Right next to him was Bryce Petty, the technology coordinator who caught it. Right next to him - - I think he was at the next table. I think he was by himself at table and then at the next table - -

THE COURT: When you say “he” who are you referring to?

THE WITNESS: Bryce Petty, our technology coordinator.

THE COURT: So who all ended up with COVID in addition to you-all?

THE WITNESS: Mr. Graham, the superintendent, who was in the middle; Bryce Petty, who was sitting right there at the next table --

THE COURT: Okay.

THE WITNESS: - - and Rick Rebsamen, who was sitting at the next table.

On further recross examination, Mr. Kell was not aware of the janitor at the school having tested positive for COVID within two weeks before the meeting.

Upon further redirect examination, Mr. Kell confirmed five out of 12 people in attendance at the June 10, 2020 meeting were COVID-19 positive.

James Dalton “Bunch” Nichols

Mr. Nichols was called as a witness on behalf of the Respondents. He confirmed that he goes by his nickname, “Bunch.” As of the date of the hearing, Mr. Nichols worked for Nashville High School. According to Mr. Nichols, he is in charge of transportation, facilities, and athletics. He held this position back in June of 2020. Mr. Nichols agreed that through that position, he has grown to know Mr. Kell over the last 20 years. He confirmed that he considers Mr. Kell a friend. Mr. Nichols denied that he has any type of ill will or vendetta against Mr. Kell to where he would want to hurt him or sabotage his claim for any reason.

He confirmed their sitting arrangement at Starz Café, as attested to by Mr. Kell. However, Mr. Graham confirmed that the three of them went to lunch after the meeting. He denied that they wore masks in the vehicle when they went to lunch. Mr. Nichols further denied that any of the people in Starz wore a mask.

He agreed that the meeting was on a Wednesday, June 10, 2020. Mr. Nichols missed work on the Friday after the meeting. He admitted that he underwent testing on Friday and did not get his results until the following Monday. Mr. Nichols testified that he visited his son in Northwest Arkansas, and his son called him and told him he had tested and was positive. He did not recall going to lunch with Mr. Kell on Thursday or at any point in the two weeks leading up to June 10, 2020.

According to Mr. Nichols, he went to Northwest Arkansas to visit his son the weekend prior to the meeting, in order to help him move from one location to another vacation. He admitted that he missed work on Friday because he had symptoms. As a result, Mr. Nichols went and got tested.

On cross examination, Mr. Nichols denied that Rick Rebsamen, and/or Mr. Bryce Petty went out to lunch with the three of them on June 10, 2020. He verified that Mr. Rebsamen and Petty tested positive for COVID. Mr. Nichols also agreed that five out of 12 people in this meeting testified positive. He went on to explain that he had gone to Northwest Arkansas to visit his son over the weekend to help him move from one location to another. Mr. Nichols returned from Northwest Arkansas to Nashville on Sunday. Then on Wednesday, Mr. Nichols attended the meeting. He had been around his son the prior Saturday and Sunday.

Mr. Nichols testified:

Q Okay. All right. Let me ask you: Mr. Nichols, in your dealings with Mr. Kell, has he been an honest and straightforward individual with you:

A Joe Kell?

Q Yes, sir.

A There ain't a better guy. Yes, sir.

He admitted to talking to reporters with Log Cabin Democrat. However, Mr. Nichols testified that he had some problems with the newspaper article. He explained that he does not know if he made them all sick. Instead, Mr. Nichols testified that he said, "There is a chance I made them all sick." Yet, Mr. Nichols admitted that he said every bit of what is printed in the article. Mr. Nichols basically testified that he would not want to intentionally make Mr. Kell sick for anything in the world.

Upon being questioned by the Commission, Mr. Nichols admitted that no one wore a mask during the meeting.

Medical Evidence

My review of the medical record shows that on June 19, 2020 the Claimant sought medical treatment from Howard Memorial Hospital Emergency Department due to chief complaints of

chills, muscle aches, cough, and fever, which had been constant. The Claimant's condition was described as moderate. According to these medical notes, the Claimant had been seen recently by a health care provider. He was positive for COVID-19 per test results from his primary care physician (PCP). The Claimant also reported having a headache and nausea. Chest X-rays showed "possible faint left lung ground glass opacities, likely infectious." Dr. Parker Jenkins instructed the Claimant not to engage in strenuous activity, rest, drink plenty of fluids, and to stay isolated for 14 days along with other directives for COVID-19 related symptoms. Afterwards, the Claimant was told to get with his PCP for retest. The Claimant was discharged home in good and stable condition.

On June 20, 2020, the Claimant returned to Howard Memorial Hospital at the direction of Dr. Clay W. Ferguson for direct admission into the hospital for treatment with IV fluids and supportive care. The Claimant stated that his symptoms were moderate at that time. He complained of a cough and shortness of breath. The Claimant was noted to be a poor historian. However, the Claimant denied any chest pain at that time. His admitting diagnosis was COVID-19 pneumonia. At that time, the Claimant was admitted to the hospital under Covid Protocols.

Subsequently, on June 23, 2020, X-rays were performed of the Claimant's chest, with an impression of "Worsening airspace opacities bilaterally." As a result, the Claimant was transferred to CHI St. Vincent in Little Rock. The Claimant's discharge diagnosis remained COVID-19 pneumonia, and his condition was worsening. Dr. Chinede Ede wrote the following Discharge Summary:

Patient is a 59-year-old Caucasian male admit for COVID-19. He was hypoxic on arrival. He was started on supplemental oxygen and continue to require more oxygen. He was managed with marik protocol for COVID-19, oxygen trended up to 6 L and we switched to high-flow nasal cannula. He was requiring as much as 35% on 100 percent oxygen. Pt was in more respiratory distress, he was short of breath, he was breathing at 40s. Due to

high requirement for oxygen, shortness of breath a patient transferred to St [sic] Vincent in Little Rock for high level of care.

On that same date, Dr. Ede authored a Physician's Authorization for Ambulance Service, directing that the Claimant be transferred to CHI St. Vincent Infirmary, in Little Rock. Per this documentation, Dr. Ede opined that the Claimant needed specialty services in the form of a pulmonologist due to COVID-19 and a worsening of his condition.

Dr. Clay Ferguson authored a clinic note on August 25, 2020. The reason for the appointment was a follow up of the Claimant's hospitalization due to COVID-19. Specifically, Dr. Ferguson wrote, in relevant part:

Patient is here for hospital follow-up. He developed very serious covert complications and has been hospitalized for the past 3 months or so. He is now back home. He does need home health assistance. His strength is returning although he definitely needs help with monitoring of med management and a routing law draw. The do have hospital follow-up with specialist schedule for tomorrow. Overall he is doing very well. Were[sic] going to arrange home health and that I will see him for home visits monthly for the next 2 to 3 months.

Prior medical records of the Claimant have been reviewed. These records show that the Claimant treated at various times for cold symptoms and other general sinus congestion and nasal drainage.

The most recent prior medical record was from April 22, 2019. At that time, the Claimant presented to Dr. Ferguson due to sinus congestion and sinus tenderness with drainage associated with cough after working outdoors. The Claimant was noted to have a history of allergies. He had a report of a low-grade fever but mostly sinus congestion and headache. His physical exam was unremarkable. The Claimant was assessed with "Viral upper respiratory tract infection." Dr. Ferguson gave the Claimant a Decadron shot, with a routine six-month follow up.

Adjudication

A. Compensability

Due to the Public Health Emergency created by the outbreak of COVID-19, any employee who tests positive for COVID-19 may be eligible for Arkansas workers' compensation benefits if they can demonstrate a causal connection, as required by law, between their diagnosis of COVID-19 and their employment duties. In the case at bar, the central issue is whether the Claimant contracted COVID-19 at work on June 10, 2020 during a mandatory meeting with other school administrators, or in some other setting outside of the course and scope of his employment with the Nashville School District. The Claimant contends that he contracted COVID-19 from Mr. Dalton "Bunch" Nichols in the course and scope of his employment during a mandatory school district meeting with other school administrators on June 10, 2020. The Respondents contend that the Claimant contracted COVID-19 in some other setting rather than during said meeting.

In that regard, the Claimant must establish a causal relationship between his diagnosis of COVID-19 and his employment activities. Based on my review of the record as a whole, without giving the benefit of the doubt to either party, I am persuaded that the Claimant has presented sufficient evidence to establish by a preponderance of the evidence that he contracted COVID-19 while attending a mandatory meeting on June 10, 2020.

Specifically, the Claimant worked as assistant superintendent for the Nashville School District for almost two decades. On June 10, 2020, the Claimant was required to attend a meeting with the superintendent and other school administrators to discuss the school district's protocol for State mandated guidelines for dealing with the health crisis created by the COVID-19 pandemic.

Prior to this meeting, the Claimant was in good health and had no significant prior problems with his lung or respiratory condition. He was very physically active and displayed no symptoms relating to COVID-19.

During the hearing, I found the Claimant to be a poor historian. However, I found the Claimant to be a credible witness. In fact, the Claimant readily admitted during the hearing that he had engaged in routine activities of daily living outside of having attended this meeting. The Claimant lives in the home with only his wife.

To date, the Claimant has not been contacted by anyone or any entity notifying that he was potentially exposed to the virus. The only known contact for exposure in the present matter for the Claimant has been at the June 10, 2020 meeting.

Nevertheless, it is undisputed on the weekend prior to the Wednesday, June 10, 2020 meeting, Mr. Nichols spent the weekend with his son in Northwest Arkansas helping him move. According to Mr. Nichols he returned to Nashville on Sunday, June 7, 2020. On Wednesday, June 10, 2020, Mr. Nichols attended the school meeting, along with the Claimant and 10 other school officials. On Thursday, Mr. Nichols began experiencing COVID-19 symptoms. His son contacted him to let him know he has tested positive for COVID-19. As a result, Mr. Nichols went for testing on Friday, June 12, 2020 and was found to be positive for COVID-19.

The Claimant started feeling sick on Saturday, June 13, 2020. Therefore, both the Claimant and his wife both went for COVID-19 testing on June 15, 2020. The Claimant was found to be positive for COVID-19, but Mrs. Kell tested negative. Subsequently, on June 17, 2020 Mrs. Kell went back for testing and it was determined that she was positive for COVID-19.

Ultimately, three other people who attended the June 10, 2020 meeting contracted COVID-19. The timeline of the events established by the testimony of the witnesses during the hearing and medical evidence is persuasive and supportive of a finding that the Claimant's exposure to COVID-19 occurred at work. Here, the Claimant has definitively identified the source of his exposure, Mr. Nichols. Although the Claimant engaged in other routine activities of daily living, no evidence whatsoever has been presented to show that the Claimant was in contact with or potentially exposed to COVID-19 while engaging in any of these activities. The same applies to Mrs. Kell in this regard.

Most notably, to date, there has been no other identifiable source of the Claimant's exposure to COVID-19, other than his contact with Mr. Nichols. Although the Claimant, Mr. Graham, and Mr. Nichols frequently went to lunch together, neither Mr. Nichols or the Claimant recalled them going to lunch on Thursday or at any point in the two weeks leading up to June 10, 2020.

I am persuaded that the Claimant contracted COVID-19 during the June 10, 2020 meeting with school officials. The following leads me to this conclusion: the fact that five out of the 12 people in attendance at the meeting contracted COVID-19; that during the meeting they were in an enclosed room without any breaks, not wearing a mask and not social distancing; the meeting lasted two hours; those in closest proximity to Mr. Nichols tested positive for COVID-19; that days leading up to the meeting, the Claimant had not gone to lunch with Mr. Nichols; the Claimant and his wife were both asymptomatic prior to the meeting; Mrs. Kell tested positive for COVID-19 after the Claimant; and that the Claimant's only definitive identifiable exposure was during the meeting. Under these, I am persuaded that it is more probable than not, that the Claimant's exposure to COVID-19 occurred during the June 10, 2020 meeting. Hence, I find that the Claimant

proved by a preponderance of the evidence a causal connection between his work activities on June 10, 2020 and his subsequent diagnosis of COVID-19, so as to prove a compensable injury.

Of note, the Claimant is not required to prove with absolute certainty that the source of his COVID-19 infection resulted from his employment activities because that is inherently scientifically impossible. However, the Claimant has proven by a preponderance of the evidence that his contraction of COVID-19 resulted from his employment activities on June 10, 2020.

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).

In the claim at bar, the medical records of evidence clearly prove that the Claimant's lengthy respiratory(lungs) related illness and need for treatment are directly related to his exposure to COVID-19 injury of June 10, 2020. Under these circumstances, I find that the preponderance of the evidence shows that the medical treatment rendered to the Claimant was both reasonable and necessary in order to treat, diagnose, and address his respiratory and other COVID-19 related symptoms. Therefore, the Respondents are liable for all medical treatment received by the Claimant in connection with treatment for COVID-19, including Dr. Ferguson's recommendation on August 25, 2020. However, there are no other recommendations for treatment of the Claimant's compensable injury. Under these circumstances, I find that the Claimant failed to prove by a preponderance of the evidence his entitlement to any additional medical treatment.

Temporary Total Disability Compensation

The Claimant has requested temporary total disability for benefit for the time period of June 11, 2020 to a date yet to be determined.

An injured employee for an unscheduled injury is entitled to temporary total disability compensation during the time that he is within his healing period and totally incapacitated to earn 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).

In this instance, the medical evidence, and the testimony elicited from the Claimant and his wife demonstrate that the Claimant remained in his healing period and was unable to work during the time period of June 13, 2020 until November 25, 2020. Here, the Claimant and his wife both credibly testified that the Claimant became ill on Saturday, June 13, 2020. He was hospitalized at a local hospital and later transfer to CHI St. Vincent in Little Rock. There the Claimant remained hospitalized for 40 days. Thereafter, he was transferred to Baptist Rehabilitation for 20 days. The Claimant saw his primary care physician Dr. Clay Ferguson on August 25, 2020. At that time, Dr. Ferguson opined that the Claimant was doing vey well overall. However, at that time, Dr. Ferguson indicated that he was going to arrange home healthcare for the Claimant, and that he would see him for home visits, monthly for the next two to three months.

Both the Claimant and his wife testified that the Claimant has gotten progressively better since his release from rehab.

Under these circumstances, I find that the Claimant proved he remained in his healing period and unable to work from June 15, 2020 until November 25, 2020. As such the Claimant proved his entitlement to temporary total disability from June 13, 2020 until November 25, 2020.

C. Controverted Attorney's Fee

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

Award

The Claimant proved by a preponderance of the evidence that he contracted COVID-19 during a mandatory meeting with school officials on June 10, 2020. He proved his entitlement to temporary total disability from June 13, 2020 until November 25, 2020. The Claimant also proved his entitlement to all of the medical treatment of record. Therefore, the Claimant's attorney is entitled to a controverted attorney fee.

The Respondents are hereby 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.

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This fee is to be paid one-half by the carrier and one-half by the Claimant.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge