

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H401589

BECKY L. KEETER, EMPLOYEE

CLAIMANT

CLAY MAXEY CHEVROLET CADILLAC,  
EMPLOYER

RESPONDENT

CENTRAL ARKANSAS AUTO DEALERS/  
RISK MANAGEMENT RESOURCES,  
CARRIER/TPA

RESPONDENT

OPINION FILED JULY 2, 2025

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

Claimant represented by the HONORABLE DANIEL E. WREN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

Claimant appeals an opinion and order of the Administrative Law Judge filed February 5, 2025. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. That the Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. An employer/employee relationship existed at all pertinent times.
3. Claimant suffered a compensable injury to her back.

4. The claimant earned an average weekly wage of \$1322.91, sufficient for a TTD/PPD rate of \$835.00/\$626.00 respectively.
5. That the issue of “termination for cause” was not barred by collateral estoppel.
6. That the claimant has failed to satisfy the required burden of proof to prove by a preponderance of the evidence that she is entitled to temporary total disability.
7. That all remaining issues are moot.
8. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the February 5, 2025 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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MICHAEL R. MAYTON, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

The ALJ found that the Claimant failed to prove by a preponderance of the evidence that she is entitled to temporary total disability. After conducting a thorough review of the record, I would find that the Claimant is entitled to temporary total disability benefits from January 19, 2024, to a date yet to be determined.

Temporary total disability benefits are appropriate where the employee remains in the healing period and is totally incapacitated from earning wages. *Ark. State Highway Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The Claimant has the burden of proof in showing that he remains in his healing period and is totally incapacitated from earning wages. *Id.* According to Arkansas Code Annotated § 11-9-526:

If 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.

On September 1, 2023, Claimant suffered a compensable injury to her lower back while working for the Respondent. On September 15, 2023, Claimant was seen by Kimberly Peters, APRN, and diagnosed with a strain of the Claimant's lumbar region and given the work restrictions of "Continue light duty. No bending over. No lifting more than 10 pounds." On January 8, 2024, Claimant underwent an MRI which showed:

**IMPRESSION:**

Degenerative changes throughout the lumbosacral spine, and at the L1-2 level, there is no central canal or neural foraminal stenosis.

The L2-3 and L3-4 levels reveal bony spurring and early disc disease and flattening of the thecal sac but not causing severe central canal neural foraminal stenosis.

At the L4-5 level, there are early type I Modic changes with a herniated nucleus pulposus flattening the thecal sac and narrowing the left neural foramen and the right neural foramen to some degree.

Facet joint disease is present.

[Unreadable] S1 levels more normal appearing.

This is rather dramatically changed since 2015.

Claimant followed up with Kimberly Peters, APRN after her MRI on January 11, 2024, and was diagnosed with a herniation of the intervertebral disc of lumbosacral region. Peters gave the Claimant the work restrictions of “Light duty. Wear lumbar back support. Sit down job best until further evaluation. No lifting more than 1 pound. No bending over to pick anything up off the floor. No quick twisting or turning.” Claimant was fired for cause from her position with the Respondent on January 19, 2024. On February 5, 2024, Claimant followed up with Dr. Wayne Bruffett who diagnosed Claimant with herniated nucleus polyposis L4-5 with bilateral radiculopathy worse on the right. Dr. Bruffett stated that Claimant’s “current reported symptoms do correlate with the mechanism of injury,” and recommended the Claimant for a complete discectomy and fusion.

In *Tyson Poultry, Inc., v. Narvaiz*, the Supreme Court of Arkansas found that “when an employer terminates a workers’ compensation Claimant’s employment due to his misconduct, the Claimant has not refused employment; rather, his employment has been terminated at his employer’s option.” Claimant was placed on strict work restrictions on January 11, 2024 by Kimberly Peters, APRN as a result of her compensable injuries she received while working for the Respondent. Claimant was then fired for alleged misconduct on January 19, 2024, similar to the facts of *Tyson v.*

*Narvaiz*. I find that at the time of the termination, Claimant was unable to earn wages due to her compensable injury and resulting work restrictions and that it is reasonable to conclude that she was totally incapacitated. Claimant clearly was within her healing period, and Claimant did not refuse to work due to her termination with Respondent. Therefore, I find that the Claimant is entitled to temporary total disability from January 19, 2024, to a date yet to be determined.

For the reasons stated above, I respectfully dissent.

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M. Scott Willhite, Commissioner