BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H204677

NaTASHA ONICK, EMPLOYEE **CLAIMANT**

JACKSONVILLE N. PULASKI SCH. DIST.,
SELF-INSURED EMPLOYER **RESPONDENT**

ARK. SCHOOL BDS. ASSN.,
THIRD-PARTY ADMINISTRATOR **RESPONDENT**

OPINION FILED AUGUST 22, 2023

Hearing before Administrative Law Judge O. Milton Fine II on May 24, 2023, in Little Rock, Pulaski County, Arkansas.

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

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 24, 2023, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on March 28, 2023. The Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. After amendments at the hearing, they read as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employee/self-insured employer/third-party administrator relationship existed on or about September 24, 2021, when Claimant sustained a compensable injury to her lower back.

3. Respondents accepted Claimant's lower back injury as compensable and paid for her treatment at Concentra Health Centers.

4. Claimant's average weekly wage of $279.71 entitles her to compensation rates of $187.00/$154.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. After the withdrawal of the compensability issue in light of Stipulation No. 2, *supra*, the following were litigated:

1. Whether Claimant is entitled to additional treatment of her stipulated compensable lower back injury.

2. Whether Claimant is entitled to temporary total disability benefits.

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

All other issues have been reserved.

Contentions

The respective contentions of the parties, following amendments at the hearing, are as follows:

Claimant:

1. Claimant contends that she sustained admitted, compensable injuries to her back on September 24, 2021.

2. She further contends that she is entitled to payment of temporary total disability benefits for the periods of September 25, 2021, to November 30, 2021; and from April 2, 2022, through a date yet to be determined, less and except a two-week period therein that she worked for Shutter Health.

3. Claimant's attorney respectfully requests that any attorney's fees owed by Claimant on controverted indemnity benefits paid by award or otherwise be deducted from her benefits and paid directly to counsel by separate check; and that any Commission order direct Respondents to make payment of attorney's fees in this manner.

Respondents:

1. Respondents contend that any reasonable, necessary, and authorized medical treatment has been paid associated with this claim. Indemnity benefits were paid while Claimant was in an off-work status. They respectfully request a credit for any such benefits already paid.

2. It is Respondents' position that the authorized medical care does not indicate entitlement to additional indemnity benefits. Claimant has sought unauthorized medical care for which Respondents are not liable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, 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. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven by a preponderance of the evidence her entitlement to additional treatment of her stipulated compensable lower back injury in the form of her visit to MedExpress Clinic on September 24, 2021.
4. Claimant has not proven by a preponderance of the evidence her entitlement to any other treatment of her stipulated compensable lower back injury other than that set out in Stipulation No. 3 and Finding of Fact/Conclusion of Law No. 3, *supra*.
5. Claimant has not proven by a preponderance of the evidence her entitlement to temporary total disability benefits for any period.
6. Claimant has not proven by a preponderance of the evidence that her attorney is entitled to a controverted fee under Ark. Code Ann. § 11-9-715 (Repl. 2012) because no indemnity benefits have been awarded herein.

CASE IN CHIEF

Summary of Evidence

The witnesses were Claimant and Erica Logan.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of her medical records,

consisting of one index page and 65 numbered pages thereafter; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of two index pages and 86 numbered pages thereafter; and Respondents' Exhibit 2, non-medical records, consisting of one index page and 15 numbered pages thereafter.

Adjudication

A. Additional Treatment

As the parties stipulated *supra*, the only treatment that Claimant has undergone on her lower back—which, again, the parties have agreed she sustained a compensable injury thereto—was her visit to Concentra Health Centers. The medical records in evidence, however, show that since she suffered this injury on September 24, 2021, she has undergone extensive additional treatment. Respondents deny responsibility for all of this. They have argued not only that this treatment was not reasonable and necessary, but that it was unauthorized as well.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown*, *supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The

standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). In order to prove his entitlement to the requested treatment, Claimant must also prove that it is causally related to her compensable injury of September 24, 2021. *See Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601.

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment, even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex*, *supra*. A claimant is not required to furnish objective medical evidence of her continued need for medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id*. In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id*.

Claimant is a high school graduate. During the time period relevant to this cause of action, she was employed by Respondent Jacksonville North Pulaski School District. She described her position there as follows: "It was just considered a bus aide, where I just supervised special-needs kids on the bus, just keeping them in their seats and quiet so the bus driver could do her job, drive." It was her opinion that that the job had physical requirements because it entailed the aide intervening if a fight broke out on the bus or if a student there otherwise became disruptive. In addition, she assisted a wheelchair-bound individual on and off the bus. Claimant participated in three morning and three afternoon bus runs—one each for elementary, middle school, and high school.

In relating how she injured her lower back on September 24, 2021, Claimant testified:

> Well, my driver, Ms. Norman, it was about 6:00, 6:15ish to 6:30, roughly around that time. We was on our route. We left the bus pound, we were on our route, and right before we got to our first stop to pick up our first

> student it was dark, and she tried the curve, made a right-hand on the curve and hit the ditch . . . [w]e went in the ditch. She hit it, I flew from the right side, because I always sit in the back . . . [a]nd that, like I say, the next thing you know, I was—hit my head on the window and got throwed all the way over to the right-hand side—well, the left-hand side of the bus.

After this happened, Claimant and the bus driver were able to complete the route.

Initially, Claimant was seen at MedExpress. When asked why she went there, she stated that the secretary at the school district's bus barn, Nicole Hyman, instructed her to do so. Hyman worked under Coach Barry Hickingbotham, who at that time was over the barn and bus operations for the school district. Claimant testified that Hyman gave her a form that had MedExpress on it, and that was why she went there. The form is not in evidence, however.

Thereafter, she went to Concentra. This, too, was at the behest of Respondents. Claimant explained that while she was off work after the MedExpress visit, she was not being paid temporary total disability benefits. She first contacted Tammy Knowlton, who was the human resources person for the district then; and from there, she consulted with Melody Tipton, the adjustor on the claim.

Asked how she was feeling during the period after the October 4, 2021, Concentra appointment, Claimant replied: "Oh, oh, I was, I was bad. I couldn't move. I was still, I had numbness, yes . . . [d]own my right side . . . [into] my legs, because due to the pain I had in the back."

Later, Claimant went to her primary care physician, Dr. Vivian Suarez, at the University of Arkansas for Medical Sciences. She admitted that she also sees Suarez

for pre-existing issues that include diabetes and hypertension. Claimant testified that she went to her doctor "just trying to see what was going on" with her back.

Claimant has also been undergoing pain management at Pain Treatment Centers of America. She acknowledged that, as reflected in the records in evidence, she had treated there for approximately one year prior to September 24, 2021. But she explained that those visits were primarily for her neck, and that her back was not a major issue until the bus accident. This is, however, at odds with her deposition testimony that she had no back treatment before the work-related incident in question.

It was her testimony on direct examination that her prescriptions for Hydrocodone, Meloxicam, Tizanidine, and Gabapentin are related to her stipulated lower back injury. But this conflicts somewhat with her deposition testimony that she was taking Hydrocodone and Gabapentin for her neck problem before the bus accident. Claimant has also undergone injections for her back, along with an MRI.

The following exchange occurred:

> Q. Did you talk with Ms. Tipton or anyone else associated with the school district about what you were supposed to do with respect to seeing a doctor? And I know that you told us about beforehand, but I'm talking about after you had gone to Concentra, did you talk with someone about what you were supposed to do in the way of getting medical treatment?
>
> A. Well, I reached out to [Knowlton] . . . [w]ell, reached out to her, but I got no response, no, no—they wasn't—she wasn't answering the phone call. I left messages, got emails, tried to get hold [sic] to her, and in the process, like I said . . . Ms. Melody, pretty much after I had got released from Concentra, I didn't hear back from her. I didn't hear, you know, she didn't return phone calls or nothing to that nature.

> Q. Did you want to talk with her about what you were supposed to do in the way of getting medical treatment?
>
> A. Correct.
>
> Q. Okay.
>
> A. I mean, because like I said, once she sent me to Concentra, they had—I went there twice whatever, and then they released me, but yeah, I didn't see—I didn't hear anything back from anybody . . . [f]rom Jacksonville, nor Pulaski.
>
> Q. But were you trying to communicate?
>
> A. I was trying to communicate with them to see what I needed to do, and so in the process of that, that's why I just continued to go to my PC[P] and Pain Centers.

Claimant acknowledged that the emails she purportedly sent that are referenced in the above passage were not offered into evidence.

Respondents have argued that any treatment Claimant has undergone with regard to her back after the Concentra appointment was unauthorized. In *Tempworks Mgmt. Servs. v. Jaynes*, 2023 Ark. App. 147, 662 S.W.3d 280, the Arkansas Court of Appeals wrote:

> Briefly, Ark. Code Ann. § 11-9-514(c)(1) requires an employer or insurance carrier to deliver a Commission-approved notice to the employee "which explains the employee's rights and responsibilities concerning change of physician." Unauthorized medical expenses incurred after the employee has received the notice are not the employer's responsibility. *Id*. § 11-9-514(c)(3). But if the employee is not furnished a copy of the notice, the change-of-physician rules don't apply.

The change-of-physician rules do not apply absent proof that the claimant received a copy of the rules from the respondent either in person or by certified registered mail.

Ark. Code Ann. § 11-9-514(c)(1)-(2) (Repl. 2012). *See also Jaynes*, *supra*; *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000).

A preponderance of the evidence establishes that Claimant received a copy of these rules. She admitted at the hearing that she was given the two-sided Form AR-N, a copy of which is in evidence. The following exchange on cross-examination confirms this:

> Q. Ms. Onick, I'm going to show you what's been marked as Respondents' Exhibit 2.
>
> A. Okay.
>
> Q. And we're going to look at page 4.
>
> A. Uh-huh.
>
> Q. Is that the document that you filled out when you got back to the bus pound?
>
> A. Yes. Yeah, it looks like it. Yes, uh-huh.
>
> Q. Okay. So this is all your writing on the form?
>
> A. That's mine, except this right here (indicating on form).
>
> Q. Okay. Someone else wrote the supervisor's name?
>
> A. In Jacksonville, and this. That was Ms. Nicole.
>
> Q. So that would be the cursive writing?
>
> A. Yes, ma'am, uh-huh, that would be Ms. Nicole.
>
> Q. All right. But in the middle section here it says, "What part of your body was injured?" It says, "Lower back, neck, and left side," is that correct?
>
> A. Correct, uh-huh.

Q. And it also shows that you got a copy of the front and the back side of that form, is that correct?

A. Yes.

Q. This is your signature and phone number?

A. Yeah, that's me, uh-huh, yes.

Q. And you did, in fact, receive a copy, correct?

A. I'm not sure.

Q. Did you?

A. I'm not sure. I don't remember receiving it. If I did, I—

Q. You testified in your deposition that they did give you a copy?

A. She gave me a copy, okay?

While Logan testified that school district employees with minor injuries are sent to Jacksonville Medical Care, and major injuries are referred either to either an Urgent Care or an emergency room, I note that her tenure as the human resources director for the district began after the events in question, when Knowlton retired. However, her testimony establishes that beginning in September 2021, she became familiar with the policy of the school district regarding this when Knowlton trained her in, inter alia, workers' compensation so that she could function in this area when Knowlton was out. As confirmed by the excerpt of the new employee orientation manual that was in evidence, Claimant was to be seen at Jacksonville Medical Clinic in the event she needed non-emergency treatment, or at the Baptist Medical Center emergency room at

Springhill if emergency treatment was required. MedExpress was not on the list of approved treatment destinations, per Logan.

The record of Claimant's September 24, 2021, visit to MedExpress contains the following notation:

> ARKANSAS SCHOOL BOARD ASSOCIATION
> P.O. BOX 165460
> LITTLE ROCK, AR 72216-5460
> Policy Holder: OC-JACKSONVILLE NORTH P

This, coupled with Claimant's credible testimony on this point, leads me to find that the preponderance of the evidence establishes that Hyman—the school district employee who furnished her the workers' compensation paperwork in the aftermath of the bus accident, also gave her paperwork that at least tacitly instructed Claimant to go there to be seen in connection with her stipulated compensable back injury. Regardless of whether MedExpress was on the list given in orientation, or whether Hyman consulted with Knowlton or others before giving Claimant this instruction, Claimant was entitled to rely on it. *See Foote's Dixie Dandy, Inc., v. McHenry*, 270 Ark. 816, 607 S.W.2d 323 (1980). Thus, Claimant has proven that this treatment was authorized.

The treatment that Claimant underwent after the October 4, 2021, visit to Concentra, however, is a different matter. The evidence shows that no one purporting to be acting on behalf of Respondents authorized Claimant to treat with Dr. Suarez or Pain Treatment Centers of America. Claimant has sought to justify this by saying that she first attempted to seek approval from Knowlton and Tipton before going to these places, but could not get a response from either. Nothing before me corroborates this.

Moreover, Claimant's medical records show that in her first three visits to Pain Treatment Centers of America after the bus accident—on November 8, 2021, January 13, 2022, and February 17, 2022—she did not even mention the accident. For instance, she presented on November 8, 2021, with "neck and low back pain" (which was cited in pre-accident treatment records there) that "has not changed significantly since [the] last visit . . . ." This is repeated in the January 13, 2022, report. It stands to reason that if Claimant were seeking authorization from Respondents to go to Pain Treatment Centers of America for her back injury, the subject of the accident would have appeared in those records prior to when it actually does—on March 28, 2022, which is approximately six months after the bus went into the ditch. In that instance, she reported that she "had [a] lumbar injury prior to [the] last visit," which would date it before the February 17, 2022, appointment.

A similar situation exists with regard to Dr. Suarez. Claimant did not see her until May 9, 2022, per the records in evidence. Even then, that particular record is silent to an event at work.

If a preponderance of the evidence establishes that Claimant's authorized treating physicians refuse to see her again, and Respondents refuse to provide a new physician, then the change-of-physician rules do not apply after the claimant has been denied additional authorized medical treatment. *See Sanyo Mfg. Corp. v. Farrell*, 16 Ark. App. 59, 696 S.W.2d 779 (1985). The October 7, 2021, treatment record by Clint Bearden, P.A., of Concentra, states that Claimant could come back "as needed." Regardless, the evidence before me simply does not preponderate that Respondents

refused to provide Claimant a new physician after her discharge from Concentra on October 7, 2021. Therefore, she has not proven her entitlement to the treatment by Dr. Suarez and Pain Treatment Centers of America.

B. Temporary Total Disability

In this proceeding, Claimant has also claimed entitlement to temporary total disability benefits for the following dates: September 25, 2021, to November 30, 2021; and from April 2, 2022, through a date yet to be determined, less and except a two-week period therein that she worked for Shutter Health. Respondents at the hearing acknowledged that they did pay some benefits of this type under the claim—but were not prepared to offer a stipulation to specify the exact[1] period. But they maintained that she was not entitled to any additional temporary total disability benefits.

Claimant's stipulated compensable lower back injury is unscheduled. *See* Ark. Code Ann. § 11-9-521 (Repl. 2012). An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which she has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Also, a claimant must demonstrate that the disability lasted more than seven days. *Id*. § 11-9-501(a)(1).

[1]Because nothing before me reflects what period, if any, Claimant was paid temporary total disability benefits, I am left with no choice but to address the issue as if none had been paid.

Claimant must prove her entitlement to temporary total disability benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012).

Claimant's medical history includes two strokes—with the second one ending her employment as a school bus driver. The following exchange took place:

> Q. And according to your deposition testimony, the stroke affected your right side causing some weakness, and you have problems sitting and standing too long because of that stroke, is that right?
>
> A. Well, but I don't—I can't stand and sit long, yeah. That['s] just [be]cause of my back, my back, from back pain.
>
> Q. You didn't testify that you have weakness because of the stroke?
>
> A. Yeah, I did, yes.

According to Claimant, she began having difficulty performing her job after sustaining the back injury. Her testimony was that she was no longer able to handle the students on the bus: "I'd bring a pillow just to try to get on with it." Although she attempted to come back to work, this effort was not successful: "It didn't do good. I think at that point I just felt like, like I said I couldn't perform the job, best of my ability, you know, due to the accident."

Claimant quit her bus aide position on October 15, 2021, per the resignation form that is in evidence. The form reflects that the effective date of the resignation was October 10, 2021, and that the last day she worked was October 7, 2021. On the form, Claimant merely wrote "personal reasons" as the basis for her resignation. In an email to her supervisor, Coach Hickingbotham, on October 7, 2021, she shed no further light on this. Instead, the email from her simply reads:

> Hello coach sadly [sic] to inform you that I will not be continuing work with you guy's [sic] Thank you and Ms. Nicole for all you did for me. Sorry it didn't work out [sic] Oct 10, 2021

While Claimant testified that she informed Hickingbotham in the email that the back injury was the reason for her quitting, the text quoted above does not bear this out.

The following exchange took place on direct examination:

Q. What were the personal reasons?

A. Just me not being able to perform that job anymore.

Q. Why did you think you were not able to perform the job?

A. Just trying, just let alone trying to get at up and—up and down on the bus, trying to sit there, and you know, you hitting potholes and things like that.

Eventually after leaving the school district, on December 1, 2021, Claimant went back to work for another employer. At Home Again, she worked as a personal care assistant, looking after elderly clients in their homes. She stayed there until April 1, 2022, doing, among other things, cooking and providing companionship. Asked why she left that position, Claimant responded:

> Well, I had to stop that because they had gave me a client that I wasn't able to take care of because she was strictly bedridden and you had to use a lift to lift her up and just, you know, clean her, wipe or whatever, so my body and my back would not let me do that.

Even though Claimant told Dr. Suarez on May 4, 2022, that she could not find another job because of her Hydrocodone use, this proved not to be the case. From August 22, 2022, through September 12, 2022, Claimant worked for a business called Shutter Health. This entailed working from her home, answering calls from patients and

scheduling their appointments. Asked why she quit, Claimant stated: "I couldn't sit there for eight hours, sit in a seat, so I had to let it go." She has not applied for work anywhere since then.

This and the personal care aide jobs have been the only two she has held since resigning from the school district. Describing how she is doing at present, Claimant stated:

> Good day, I make it to get up, actually get up and probably walk, you know, to the restroom, and that's pretty much it. But my day, the majority of my days just consist of I be [sic] in the bed. I'll take my medication and I just—because, like I say, I've got either having back problems, you know, to where I can't move. Everything is hurting on me.

The evidence shows that when Claimant was seen at MedExpress on September 24, 2021, she was not given any restrictions. When Bearden saw her at Concentra on October 4, 2021. He did not assign her any restrictions, but wrote: "PT [physical therapy] is medically necessary to address objective impairment/functional loss and to expediate return to full activity." Bearden recommended six therapy sessions spread over two weeks. Just three days later, however, he examined her again and wrote:

> Musculoskeletal: Normal gait. No tenderness or swelling of extremities. Range of motion is within normal limits. Normal muscle strength and tone. Overall subjective pain complaints exceed objective findings from Ms. Onick['s] exam. Es[s]entially normal.

He added that she was "at functional goal, not at end of healing," but could "return to work with no restrictions" as of October 7, 2021. Claimant confirmed in her testimony that she is unaware of being taken off work by any medical provider since then. She has previously applied for Social Security disability benefits—both times unsuccessfully.

Based on the above evidence, I cannot find that Claimant has proven by a preponderance of the evidence that she suffered a total incapacity to earn wages for any period in connection with her stipulated compensable lower back injury. In addition, with respect to her entitlement to temporary total disability benefits after her resignation, the effective date of which was October 10, 2021, the Arkansas Court of Appeals in *Lybyer v. Springdale Sch. Dist.*, 2019 Ark. App. 77, 568 S.W.3d 805, held that "a voluntary resignation is a refusal to return to work [per Ark. Code Ann. § 11-9-526 (Repl. 2012)][2], which does not entitle [a claimant] to TTD benefits under the Act." In sum, Claimant has not proven her entitlement to temporary total disability benefits.

C. Attorney's Fee

Claimant has asserted that she is entitled to a controverted attorney's fee in this matter. However, because she has not shown her entitlement to indemnity benefits in any amount in connection with this claim, a controverted fee cannot be awarded under Ark. Code Ann. § 11-9-715 (Repl. 2012).

CONCLUSION AND AWARD

Respondents are hereby directed to pay/furnish benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until

[2]This provision reads:

> 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.

paid, pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

_____
Hon. O. Milton Fine II
Chief Administrative Law Judge