

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H102165**

JACQUELINE WILLIAMS, EMPLOYEE

CLAIMANT

WELLPATH, LLC, EMPLOYER

RESPONDENT

**AMERICAN ZURICH CO./CORVEL
ENTERPRISE CO. INC., CARRIER/TPA**

RESPONDENT

OPINION FILED MAY 17, 2022

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON in Pine Bluff, Jefferson County, Arkansas.

Claimant, Ms. Jacqueline Williams, appeared at the hearing and was *pro se*.

Respondents were represented by Mr. Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-captioned claim on February 17, 2022, in Pine Bluff, Arkansas. A Prehearing Order was previously entered in this case on November 23, 2021. The Prehearing Order has been marked as Commission's Exhibit #1 and was made a part of the record without any objection from the parties.

Stipulations:

During the pre-hearing telephone conference and/or during the hearing, the parties agreed to the following stipulations. They read:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer-employee relationship existed on December 8, 2020, when Claimant sustained a compensable work-related injury to her head, right hip, and low back.
3. Respondents have paid medical and temporary total disability benefits as a result of the compensable injuries sustained on December 8, 2020.

4. Claimant was released by Dr. Edward Saer at MMI with no work restrictions and no impairment on March 15, 2021.
5. At the time of the compensable injuries, Claimant was earning sufficient wages to entitle her to temporary total disability (TTD)/permanent partial disability (PPD) compensation rates of \$711.00/\$533.00, the maximum rates for 2020.
6. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues:

The parties agreed to litigate the following issues, which were also modified at the hearing:

1. Temporary total disability (TTD) from December 9, 2020, through December 14, 2020.¹
2. Temporary total disability (TTD) benefits for time off work from February 9, 2021, until Claimant reached MMI on March 15, 2021.

Contentions:

The following contentions were submitted by the parties:

Claimant contends that she is entitled to pain and suffering for her compensable injuries as well as lost wages.

Respondents contend that they accepted this claim as compensable and provided all appropriate medical and indemnity benefits. On March 15, 2021, Claimant reached MMI with no impairment and no work restrictions. After her release, Claimant has not requested - - nor has she required - - any additional medical treatment as a result of the compensable injuries sustained on December 8, 2020. Claimant is not entitled to any additional medical treatment. The Claimant

¹ At the hearing, Claimant clarified that she was also requesting TTD from December 9, 2020, through December 14, 2020. Respondents had no objection to litigating the issue; thus, it was added as an issue for the hearing. The third issue identified at the Prehearing Telephone Conference was Claimant's entitlement to travel expenses for medical treatment. However, the parties agreed prior to the hearing that the issue of travel expense reimbursement had been resolved, and thus, that issue was not litigated.

suffered from pre-existing conditions and reached her baseline condition no later than March 15, 2021. The Respondents provided all appropriate temporary disability benefits as a result of the compensable injuries sustained on December 8, 2020. On or about February 9, 2021, the Respondent-Employer offered the Claimant work within her restrictions; however, the Claimant chose not to return to work. The Respondents, therefore, are not responsible for any temporary disability benefits after February 8, 2021, pursuant to Arkansas Code Annotated § 11-9-526. The Claimant's healing period ended on March 15, 2021. The Claimant did not suffer any permanent anatomical impairment as a result of the compensable injuries sustained on December 8, 2020. The Claimant cannot meet her burden of proving she is entitled to pain and suffering pursuant to the Arkansas Workers' Compensation Act. In the alternative, if it is determined that the Claimant is entitled to additional benefits, the Respondents hereby request a setoff for all benefits paid by the Claimant's group health carrier, all short-term disability benefits received by the Claimant, all long-term disability benefits received by the Claimant and all unemployment benefits received by the Claimant. The Respondents reserve the right to supplement their contentions and assert any applicable defense.

Summary of Evidence:

The record consists of the hearing transcript of February 17, 2022, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit #1 included the Prehearing Order entered on November 23, 2021; Claimant's Exhibit #1 consisted of eighteen (18) pages of handwritten entries concerning conversations with Claimant and her supervisors; Claimant's Exhibit #2 consisted of twenty (20) pages of printed text messages between Claimant and Ms. Chisom and Claimant and Mr. Martez; Respondents' Exhibit #1 was seven (7) pages in length and consisted of medical records;

Respondents Exhibit #2 was thirteen (13) pages in length and included the following 1) an e-mail to Claimant, 2) an Employee Action Form, 3) a letter to Claimant, 4) a chart with available work days for Claimant, 5) Claimant's earning statements, and 6) Claimant's unemployment application.

Witnesses:

During the hearing, Ms. Williams (Claimant, used interchangeably herein) and Rebekah Davis, regional manager for Respondent-Employer, were the only witnesses to testify.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witness and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. I hereby accept the above stipulations as fact.
3. Claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from December 9, 2020, through December 14, 2020.
4. Claimant failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits for the time period between February 9, 2021, until Claimant reached MMI on March 15, 2021.

CASE IN CHIEF

Hearing Testimony:

Claimant testified at the hearing that she had a bachelor's degree in science and was a Licensed Practical Nurse (LPN). Claimant testified that she had worked for Respondent-Employer

“on and off” since July or August of 2011, but that she began working for Respondent-Employer consistently in February or March of 2020. As of December 8, 2020, she was working full time at the prison units in southeast Arkansas. Her job duties for Respondent-Employer included distributing medication to inmates and assisting the doctors with “sick call.” Claimant described an incident at work on December 8, 2020, when she was assisting with an emergency (a “code”) at the barracks. Claimant stated,

Well, we were responding to a code at the barracks. We got our equipment and we went down there me and the inmate and they - - they walked faster than me; so by the time they got there, I was getting in front of the bed and as they was pulling the inmate over, I was like, “Hold on,” and before I could say, “Hold on,” they swung his body over and knocked me over my head and this part of my body hit the steel frame of the bed on the other side and the floor. My body hit the floor.

(Tr. 20).

Claimant stated that, as a result of the event, she sustained some injuries, but she did not “feel it until the next day.” Furthermore, Claimant testified that:

Q: Okay. So that was on December 8th?

A: Yes, ma’am.

Q: Is that correct?

A: Yes, ma’am.

Q: Did you return to work on December the 9th?

A: No, ma’am.

Q: Okay. And when did you go back to work?

A: I don’t remember the exact - - I went back a couple of days trying to see if I could perform the duties of the job, but I don’t remember the exact days. I know I did like one or two days here and there.

Q: Okay.

A: And then, when I couldn’t do the job, I ended up going PRN.

Q: Which means?

A: Just as needed.

Q: Just as needed?

A: When they need you.

Q: Okay. All right. And you don't know when you did that?

A: I think I got a check stub showing, when I went back a couple times, but I'm not for sure exactly. But I know I went back a couple of times. I don't know the exact days. I'm sorry. I should have written them down.

Q: But you said after December the 8th, you tried to go back to work a couple of different times?

A: Yes, ma'am, I did.

Q: But you don't know what those dates were?

A: I don't remember the days.

(Tr. 20-21).

Furthermore, on direct examination, Claimant testified as to the February 9, 2021, through March 15, 2021, time frame:

Q: All right. And then, we're also here to address February the 9th through March the 15th, correct?

A: Yes, ma'am.

Q: All right. And do you, and I may have asked you this already, do you know - - when did you return to work? Did you return to work at all full time for Wellpath?

A: I tried to work a couple days. I worked at the Pine Bluff Unit.

Q: But I mean after December?

A: I went - - no, I went one or two days. I didn't go full time after that time.

Q: Okay. Were you on restricted work duty at the time? Had a doctor - -

A: Yes, ma'am.

Q: - - restricted your work?

A: I was on restrictions.

Q: Was it light duty?

A: I was able to work, but I was on restrictions, light duty.

Q: Okay. Okay. On light duty. And when was that? Do you know that time frame?

A: I don't know when - - my restrictions.

(Tr. 23-24).

On cross-examination, Claimant testified that with the exception of one medical bill from Jefferson Regional Medical Center, Respondents had paid for medical treatment related to her compensable injury of December 8, 2020. Claimant further agreed that she had also received some temporary disability benefits; however, the temporary disability benefits ceased once Dr. Saer put Claimant on light duty work restriction on or about February 8, 2021. Claimant confirmed that Respondent-Employer had offered her work within her work restrictions. Specifically, Claimant testified:

Q: All right. And you had a conversation with I believe your former supervisor that no longer works at Wellpath, Ms. Chisom, along with Ms. Davis that's here today about you returning to work, isn't that correct?

A: Yes, sir.

Q: And they offered you work within the restrictions that Dr. Saer had recommended for you, is that correct?

A: Yes.

Q: All right. And at the time, you told them that you couldn't go back to work, is that correct?

A: No, I didn't say that. I said I couldn't come back that day, because I had a incident going on in my house, my pipes busted.

Q: All right.

A: And I was willing to go back that Monday.

Q: All right. So they offered you work, correct?

A: Yes, they did.

Q: And you told them that for whatever reason, you couldn't come back, is that correct?

A: I couldn't come back 'til that Monday.

Q: All right. And then, you ended the call by asking to go on PRN status, is that correct?

A: Yes.

Q: And you were the one that chose to go PRN, is that correct?

A: Yes, I was.

Q: All right. And as a full-time employee for Wellpath, your supervisor makes your schedule, is that correct?

A: Yes, sir.

Q: All right. And you testified before your accident, you were working days, is that correct?

A: Yes, sir.

Q: All right. Now, as a PRN employee, you're the one that picks out the days that you want to work, correct?

A: Yes, sir.

Q: And if those days are available at Wellpath, then, they can offer you the days that you're selecting, is that correct?

A: Yes, sir.

Q: And that's true for any PRN, is that correct?

A: That's true.

Q: And that is what you selected to do on February 8th, when you had this conversation with Ms. Chisom and Ms. Davis, is that correct?

A: Yes.

Q: And with the exception of a short period of time that you said that you had worked full duty after you'd been released full duty by Dr. Saer, you've maintained on PRN status with Wellpath, is that correct?

A: Up until this date, I took a full-time position and I went back to PRN.

Q: All right. During that entire period of time up until here recently, you were the one that has chosen to be on PRN status?

A: Yes, I did.

Q: All right. And I think you told me in your deposition that you liked that, because you were able to dictate your schedule, is that correct?

A: Yes, it is.

Q: Wellpath no longer had the ability to tell you when you wanted to work, because you were on PRN and you get to pick when you want to work, correct?

A: They asked me what days I did want to work, and then, I'll tell them - -

Q: And you tell them.

A: - - I can work those days.

(Tr. 25-28).

Furthermore, on cross-examination, with regard to text messages that she offered, Claimant testified that she and Ms. Chisom, her former supervisor, messaged regarding work on the Monday, Tuesday, and Wednesday, the week after Dr. Saer had put her back on restricted work duty. Claimant stated that although the three days were offered, she responded that she was only available to work on Monday of that week. Although Claimant testified that she did not agree to

work Tuesday and Wednesday of that week because she “was in pain,” she agreed that she did not state in the text messages that she was in pain until a couple of weeks later. Claimant also agreed that although three days of work were offered to her, she chose only one. She also admitted that the work that was offered to her was within her work restrictions.

When shown a copy of her wage records, Claimant testified that she had worked some hours in February after being released to light duty but that she selected the days that she wanted to work. Claimant stated that even after Dr. Saer released her to full duty on March 15, 2021, she continued to work PRN and was still working PRN at the time of the hearing. As for the number of hours she was working per week, Claimant stated that during February and March of 2021, she was not working sixty (60) hours because she was in too much pain; however, she stated that she was currently working between “45 to 64 hours plus as PRN.” When asked whether she was aware that if she had elected to work sixty (60) hours per week during the February to March of 2021, time frame, that Respondent-Employer would have accommodated her, Claimant responded that, “They could have, but they didn’t.” According to the Claimant, she was asking for more hours via text message and was refused those hours.

Claimant was also questioned regarding unemployment benefits. Claimant testified that she had filed for unemployment benefits and that she told the truth on the application. She further testified that she could perform her job duties as normal after March, when the doctor released her. However, she stated that she chose to continue to continue her PRN status with Respondent-Employer after March 15, 2021, when Dr. Saer released her to return to work at full duty.

When questioned by the Commission, Claimant agreed that she had elected to work PRN to better manage her health.

On recross examination, Claimant stated that she had a prior workers' compensation injury to the back with pain radiating to the right leg before she began working for Respondent-Employer full time. Claimant underwent treatment for that prior injury, and the claim ultimately settled. Nevertheless, Claimant testified that in February of 2020, after her second steroid injection for her back, she had returned to Legacy Spine where she was treating for the prior back injury, and she was still complaining about back pain that was radiating down to her foot. Although Claimant had previously testified that she had returned to normal after the prior back injury, she testified that she was still taking medication (Neurontin and tramadol) for her back and leg issues while working for Respondent-Employer.

Despite taking medication for her back and leg, according to the Claimant she was not in any pain after she returned to work from the previous injury, and she had no complaints with regard to her back.

Rebekah Davis:

Ms. Davis testified that she was a regional manager for Respondent-Employer and had been employed there since November of 2013. She stated that she was familiar with the facts of the claim and that Claimant had been off work for a period of time as a result of her injury. She stated that there was a point in time when Claimant was released to return to work with some restrictions. She testified that Respondent-Employer was able to accommodate those restrictions and that she and Ms. Chisom had a conversation with Claimant about the accommodations. During that conversation on February 8, 2021, they offered the Claimant work within her restrictions. Ms. Davis also identified an e-mail that was sent to Claimant and summarized the conversations between Claimant, Ms. Chisom, and Ms. Davis on February 8, 2021. When asked about Claimant's response, Ms. Davis testified that Claimant said that she could not return to work full

time and that she could not give them a date as to when she would return. Ms. Davis stated specifically that Claimant said she could not come back the following Monday and that she was unsure if she would be able to work full time. Ms. Davis stated that Claimant mentioned not coming back to work initially due to some “floor issues and maybe a plumber” that was scheduled to repair her floors. When asked if Claimant was told that she would need to come back to work to continue to receive pay and benefits, Ms. Davis responded, “Yes.” However, Claimant informed Ms. Davis that she was not able to return to work. When they were discussing options, Claimant ultimately elected to work PRN.

Ms. Davis testified that Respondent-Employer accepted Claimant’s request to go PRN. She explained that Respondent-Employer is the medical contractor for the Department of Correction and provides medical services for the inmates at the state prison units. The supervisors (directors of nursing) make the employees work schedules and there are “certain set days, shifts, rotating weekends, or Monday through Friday.” Ms. Davis further explained that when an employee is PRN, they are per diem and work on an as-needed basis. When an employee is PRN, the employee either submits dates of availability or the supervisor contacts the PRN employee with dates that they are needing him/her to work. The employee is able then to either accept the dates or refuse them. In sum, the employee is in control of the work schedule.

When asked about an Employee Action Form, Ms. Davis confirmed that the form showed Claimant’s change in status to PRN and a pay increase. Ms. Davis explained that typically when an employee is on PRN status, the employee provides the supervisor with a schedule indicating which days the employee is available to work. If Respondent-Employer has shifts open during the time that the employee indicates his/her availability, then the employee may work that shift. If there is no shift work available, then there is no work available to the employee.

Ms. Davis further testified that Claimant was a full-time employee and was working the day shift prior to her accident. When presented with a nursing schedule, Ms. Davis testified that Claimant's name appeared on the schedule, and the schedule included some of the dates that Claimant would have provided as being available to work during the February time period. Ms. Davis further stated that there were also instances when a nursing supervisor may contact an employee even if they are not listed on the schedule and ask if they are available to work. Ms. Davis indicated that Claimant had worked during the February time period, and it may have been a date that Claimant did not originally post as being available to work.

As for work within Claimant's restrictions, Ms. Davis stated that had Claimant not gone to PRN status, Respondent-Employer had work available within her restrictions that would have compensated Claimant at her average weekly wage. In other words, Respondent-Employer was able to accommodate her work restrictions. But rather, Claimant chose to go to PRN status and in turn, she provided Respondent-Employer with the dates that she was willing to work. Lastly, Ms. Davis was not aware of any instance when Claimant asked to work during the February time frame that Respondent-Employer had work available but refused to let Claimant work.

When questioned by the Claimant, Ms. Davis was asked if she could recall a time when Claimant asked for work and was refused. Ms. Davis responded that she could recall Claimant asking to work a night shift but stated that Respondent-Employer could not accommodate her restrictions on the night shift, as the job duties for night shift work were "totally different" than on day shift.

On re-direct examination, Ms. Davis clarified that on day shift, Claimant would have been doing sick call, which was a stationary position, where she would be able to get up and walk around in between patients to avoid prolonged sitting. Claimant would not have to go out to other

buildings to pass medications because there were other staff members available to do that on the day shift. These duties are not performed on night shift. On one occasion when Claimant called to discuss a night shift, Claimant was under the impression that night shift was easier in terms of the accommodations. However, Ms. Davis testified that the job duties on the day shift would have been easier for Claimant and would have been within her work restrictions. Ms. Davis further explained that during the day shift there is typically a supervisor present. As a result of obtaining new business, Respondent-Employer needed to integrate and train some of the employees, including Claimant. There was a supervisor there during the day to assist with training, but there is no supervisor on duty during the night shift. On the night shift, an employee would not have the supervisor there and would work with other LPNs on duty.

Claimant asked Ms. Davis to explain the type of training she was allegedly undergoing on the day shift. Ms. Davis responded that Ms. Chisom was educating her on the updated sick call protocol because Claimant had been off work and had not done the computer work associated with sick call in a while. Claimant disagreed that she was undergoing any training by Ms. Chisom on the day shift and asked if there were any protocols with sick leave in the computer, to which Ms. Davis responded, “Yes.”

Medical Exhibits:

In February of 2020, prior to Claimant’s compensable injury in the instant claim, Claimant was seen by Dr. Elizabeth Sullivan at Legacy Spine and Neurology for a follow up on her low back pain. The History of Present Illness indicated the following: that Claimant’s low back pain had resolved after her second lumbar steroid injection but had returned approximately one month prior; that her low back pain radiated to her right leg and foot; that the pain varied in severity; that Gabapentin helped with pain relief but made her sleepy; and that Claimant had not tried Cymbalta

and had not returned to physical therapy since workers' compensation stopped paying for it. Dr. Sullivan reviewed Claimant's MRI from 2019, and agreed with the final reports, which stated:

MRI thoracic spine without contrast

Small central protrusion at the T1-2 level. Otherwise, unremarkable MRI of the thoracic spine. I have reviewed these images in clinic and agree with the final report as noted above.

MRI cervical spine without contrast

Straightening of the cervical lordosis. This might indicate the presence of muscle spasm. Right paracentral protrusions at the C3-4, C4-5, and C5-6 levels contributing to contouring of the cord at each level. I have reviewed these images in clinic and agree with the final report as noted above.

MRI lumbar spine without contrast

Broad-based disc displacement with rightward predominance and moderate facet hypertrophy at the L4-5 level contributing to abutment of bilateral exiting L4 nerves and abutment of bilateral descending L5 nerves. No dominant lateralizing disc protrusions or herniations are seen. I have reviewed these images in clinic and agree with the final report as noted above.

For Claimant's spinal stenosis of the lumbar region, intervertebral disc degeneration of the lumbar region, and radiculopathy, Claimant was instructed to restart physical therapy, start Cymbalta, and continue Gabapentin at the current dose.

Medical records showed that after the December 8, 2020, compensable injury, Claimant visited MedExpress in Pine Bluff on December 15, 2020, where she was assessed with sprained ligaments of the lumbar spine, sprain of the right hip, and contusion of the head. She was taken off work at that time by Roslyn Burks, Nurse Practitioner.

Medical records show that Claimant was released to return to work at full duty, no restrictions, on March 15, 2021, by Dr. Edward Saer, an orthopedic spine specialist.

Documentary Exhibits:

A summary of the relevant documentary evidence included the following:

- 1) Respondents introduced a February 8, 2021, e-mail from Carol Ann Chisom to the Claimant, copying Rebekah Davis, Robert Deocales, and Mary Eastin,

- indicating that Claimant had reported to Ms. Chisom that she had been released from her doctor with restrictions including prolonged standing and sitting, and Claimant was advised that Respondent-Employer could accommodate those restrictions. The e-mail communication also indicates that Claimant was given a return to work date of February 9, 2021, but that Claimant reported that she would not be able to return until Monday, February 15, 2021, due to some plumbing issues at her home. The e-mail communication also confirms that Claimant elected to go PRN and gave dates of availability starting on February 15, 2021. The PRN request was accepted immediately. Claimant was asked to keep Respondent-Employer apprised of her dates of availability and informed that she would be scheduled based on Respondent-Employer's needs.
- 2) Respondents also introduced an employee action form indicating that Claimant requested PRN status effective February 8, 2021, and that she would receive a slight increase in pay from \$24.50 an hour to \$26.62 an hour.
 - 3) Respondents also introduced a letter dated February 9, 2021, from Mary Eastin acknowledging Claimant's report dated February 8, 2021, relating to her current medical condition and ability to work. The letter stated that Claimant should return to work on February 15, 2021, at the Cummins Unit; that she should report to Kristen Marter; and that her scheduled shift would be 6:30 a.m. until 7:00 p.m. (PRN status per her request) while she was under restrictions. The letter indicated that Claimant's tasks would include pill call at the pharmacy window, sick call, treatment call, and walking pill pass (no stairs), which were all consistent with her physical abilities, knowledge, and skills. The letter was signed by Claimant indicating that she accepted the offer of temporary modified duty and understood the duties assigned to her.
 - 4) Respondents also introduced Claimant's wage records from Respondent-Employer for the following pay periods: beginning December 6, 2020, and ending on December 19, 2020; beginning February 14, 2021, and ending on February 27, 2021; beginning February 14, 2021, and ending on February 27, 2021; beginning February 28, 2021, and ending March 13, 2021
 - 5) Respondent-Employer records demonstrating employee availability for work indicates that Claimant's availability for February and March of 2021, included only two days: March 1st from 6:30 a.m. until 7:00 p.m. and March 3rd from 6:30 a.m. until 7:00 p.m.
 - 6) An application for unemployment benefits dated March 16, 2021, where Claimant's information showed that she indicated that she could begin work immediately; that that she could work full time; and that she did not have any disabilities that limited her ability to perform her normal job duties.

ADJUDICATION

A. Claimant’s Entitlement to Temporary Total Disability Benefits:

1. December 9, 2020, through December 14, 2020:

Claimant contends that she is entitled to temporary total disability benefits from December 9, 2020, through December 14, 2020.

In the instant claim, the Claimant suffered a compensable injury in the form of a lumbar strain on December 8, 2020. Her back injury is an unscheduled injury.

An injured employee who suffers 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 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).

Here, Claimant’s testimony demonstrates that she attempted to return to work on a couple of occasions after her compensable work injury on December 8, 2020; however, she stated that she was unable to perform her job duties. In light of her diagnosis of lumbar strain and given the work requirements of an LPN, I find her testimony about being unable to perform her job duties to be credible. Based on the testimony, I find that Claimant was incapacitated from earning wages from December 9, 2020, through December 14, 2020, due to her compensable injury, and based on the evidence of record, she remained within her healing period between December 9, 2020, and December 14, 2020 (the Claimant was not released to full-duty work until March 15, 2021, by Dr. Saer).

I note that Respondents contend that they have paid some temporary total disability benefits to the Claimant as a result of the December 8, 2020, compensable low back strain; however, it is unclear from the record as to the period of time for which temporary total disability benefits were paid, as those payment records were not available.

Arkansas Code Annotated section 11-9-501(a) (Repl. 2012) states that:

- (a)(1) Compensation to the injured employee shall not be allowed for the first (7) days' disability resulting from injury, excluding the day of injury.
- (2) If a disability extends beyond that period, compensation shall commence with the ninth day of disability.
- (3) If a disability extends for a period of two (2) weeks, compensation shall be allowed beginning the first day of disability excluding the day of injury.

Based on the evidence of record, I find that the Claimant is entitled to temporary total disability benefits from December 9, 2020, through December 14, 2020, except for those dates when Claimant worked.

2. February 9, 2021, through March 15, 2021:

The Claimant contends that she is entitled to temporary total disability from February 9, 2021, through March 15, 2021. On the other hand, the Respondents contend that they have provided all appropriate temporary disability benefits as a result of the compensable injuries sustained on December 8, 2020. Respondents assert that on or about February 9, 2021, Respondent-Employer offered the Claimant work within her restrictions; however, Claimant chose not to return to work. Therefore, Respondents are not responsible for any disability benefits after February 8, 2021, pursuant to Arkansas Code Annotated § 11-9-526.

Ark. Code Ann. § 11-9-526 (Repl. 2012) provides for Compensation for disability-Refusal of employee to accept employment, which states:

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.

In the present matter, the Claimant was placed on light duty work restrictions on or around February 8, 2021. Ms. Davis testified that she and Ms. Chisom had a conversation with Claimant on February 8, 2021, and offered her work within her restrictions, giving her a return date of February 9, 2021. Claimant corroborated Ms. Davis' testimony when she admitted that Ms. Davis had, in fact, offered her work within her work restrictions. Claimant further testified that during the conversation with Davis and Chisom, Claimant informed them that she could not return to work on February 9, 2021, and that she needed additional days off due to personal reasons, including plumbing repair issues at her home. Claimant stated that when her request for additional time off was denied, she voluntarily elected to change her status to PRN and work on an as needed basis rather than continuing with her current full-time position. Ms. Davis testified that Respondent-Employer accepted Claimant's request to change her employment status. Testimony showed that Claimant's decision to change her work status to PRN offered Claimant the ability to control her work schedule. Claimant testified that she continued with PRN status even after she was released to full duty work by Dr. Edward Saer, an orthopedic spine specialist, on March 15, 2021, and with one exception, she continued to work on an as needed basis as of the date of the hearing.

Ms. Davis also testified that during a day shift, light-duty work for Claimant would have included sick call, which was a stationary position, where she would be able to get up and walk around in between patients to avoid prolonged sitting, and Claimant would not have to walk to

other buildings to pass medications. There is no evidence whatsoever establishing that the Claimant was unable to perform these employment duties.

While there was some documentary evidence in the form of handwritten notes where it appeared that Claimant documented her allegations of retaliation and harassment on the part of Respondent-Employer regarding her return to work after February 9, 2021, that evidence has been given little weight as it contained hearsay statements and Claimant's testimony was the best evidence of the events from February 9, 2021, through March 15, 2021. Claimant also submitted documentary evidence in the form of printed text messages regarding her requests to change shifts from the day shift to the night shift. Again, the evidence has been given little weight due to relevancy, as many of the messages were outside the time frame of the issues litigated at the hearing and it also contained hearsay statements.

In sum, the testimony showed that the Claimant was working full time on the day shift when she suffered her compensable injury on December 8, 2020. Ms. Davis credibly testified that on or around February 8, 2021, Claimant was offered work within her restrictions, which could be accommodated on the day shift only. Claimant elected not to return to work when the work was offered, and then voluntarily elected to change her employee status to PRN (an as needed basis).

Under these circumstances, I find that the Claimant's assertion for temporary total disability is barred by Ark. Code Ann. § 11-9-526, as the testimony was clear that Claimant refused suitable employment offered by Respondent-Employer that was within her work restrictions. As such, I find the Claimant's request for temporary total disability benefits from February 9, 2021, through March 15, 2021, should be and is hereby respectfully denied.

ORDER

The portion of the claim for temporary total disability benefits from December 9, 2020, through December 14, 2020, is hereby granted. The Respondents are directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth herein this Opinion.

The portion of the claim for temporary total disability benefits from February 9, 2021, through March 15, 2021, is hereby respectfully denied and dismissed in its entirety.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE