

3-31-14 d

BEFORE THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

BEFORE THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

ORDER FILED

In Re Claim Of:

DEC 14 2015

WORKERS'

COMPENSATION COMMISSION

DARLA JEAN CAMP  
Employee-Claimant

)  
)

Commission File No.  
CM-2014-05687X

ATWOOD DISTRIBUTING LP  
Employer-Respondent

)  
)

ZURICH AMERICAN INSURANCE CO  
Insurer

)  
)

Claimant's Social Security  
Number: xxx-xx-4245

ORDER AFFIRMING DECISION OF ADMINISTRATIVE LAW JUDGE

I. INTRODUCTION

Respondent timely filed an appeal from the Administrative Law Judge's Order entered on September 4, 2015. The appeal hearing was heard before the Commission at its October 16, 2015 meeting. After reviewing the record, hearing oral argument, and deliberating, the Commission voted to take preliminary action to affirm the Order and instructed Commission staff to draft a proposed order with further findings supporting the decision of the Administrative Law Judge, for consideration in continued deliberation at a later meeting.

At the December 10, 2015 meeting, the Commission voted to issue this Order, with the following findings of fact and conclusions of law. After reviewing the record, hearing oral arguments, and deliberating, the Commission en banc hereby affirms and adopts the opinion of the Administrative Law Judge.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The material facts are undisputed. Claimant has not been released to work since March 23, 2014 and the Respondent has not offered alternative work. Claimant was paid the statutory maximum of thirty-two (32) weeks prior to undergoing surgery for a compensable right hip injury. The record reflects that Claimant's treating physician recommended the hip surgery on November 12, 2014, but authorization was refused. The hip surgery was ultimately authorized by order of the Administrative Law Judge and performed on July 10, 2015.
2. A hearing was held before the Administrative Law Judge on August 17, 2015, to consider Claimant's request for temporary total disability benefits from March 23, 2014 to July 9, 2015. Respondent denied any obligation to pay temporary total disability beyond the 32 weeks prior to Claimant's surgery. On September 4, 2015, the Administrative Law Judge entered an Order finding that the Claimant's right hip surgery lifted the "non-surgical" soft tissue limits on temporary total disability. The Order applied the general limits found in 85A O.S. §45 and awarded temporary total disability from March 23, 2014 to July 9, 2015, less the 32 weeks previously paid by Respondent.

EXHIBIT

3. Respondent timely filed an appeal to the Commission en banc. Respondent alleges that the Administrative Law Judge erred by awarding additional temporary total disability for the time period prior to surgery, citing *Scott v. Sprint PCS*, 2012 OK CIV APP 36, 274 P.3d 173, and *Travis v. Mays Housecall Home Health, Inc.*, 2014 OK CIV APP 79, 335 P.3d 279.
4. Respondent urges the Commission to follow *Scott*, which held that soft tissue limitations operate to limit pre-surgical temporary total disability even after surgery has been performed. The *Scott* Court found that:

The legislative structure would be thwarted if the claimant could wait months or years to decide to have surgery (which could end the healing period) and then receive compensation up to the regular TTD limits for time preceding the surgery.

*Id.* at 176 (emphasis added).

5. We do not find the *Scott* Court's reasoning persuasive for two reasons. First, there is no indication that the Claimant caused the delay in the present case. On the contrary, the record shows that the Claimant consistently sought authorization for surgery from the time it was recommended. Further, the applicable soft tissue provision now precludes an employee from collecting excessive benefits by delaying surgery in bad faith. Section 62 directs that when an employee delays surgery for more than thirty days, temporary total disability benefits "shall be terminated and the employee shall reimburse the employer any temporary total disability he or she received beyond eight (8) weeks." 85A O.S. §62.
6. Alternatively, we do find the Oklahoma Supreme Court's analysis in *Bonat v. Bed Bath and Beyond, Inc.*, 2008 OK 47, 186 P.3d 952, *as corrected* (May 19, 2008), instructive as to proper application of the soft tissue provision in Section 62. In *Bonat*, the Court found that when surgery to the soft tissue is performed, the "injury is subject to the limits imposed generally on TTD." *Id.* at 955.
7. While *Bonat* does not answer whether soft tissue limits may be lifted retroactively once surgery is performed, we find such authority from a plain reading of the statute. The temporary total disability limits in Section 62 apply to "non-surgical" soft tissue injuries only. Once surgery has been performed, the soft tissue injury is no longer "non-surgical" and the general limits in Section 45 apply. Section 45 provides:

"If the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer, he or she shall be entitled to receive compensation...for one hundred four (104) weeks."

We find that a compensable "surgical" soft tissue injury entitles an employee to temporary total disability for any period of time during which an employee is unable to work, subject to the general limits of Section 45.
8. After examining the record, hearing oral argument, and deliberating, the Commission finds that the Administrative Law Judge correctly applied the law to determine the period of time that the Claimant was entitled to temporary total disability. Therefore, the Order was neither against the clear weight of the evidence, nor contrary to law.

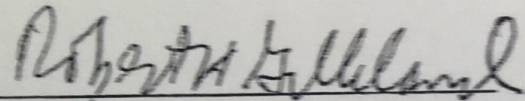
III. CONCLUSION

For the reasons stated above, the Order of the Administrative Law Judge, entered in this case on September 4, 2015, is hereby AFFIRMED, its findings and conclusions INCORPORATED herein, and remains in full force and effect as the Order of the Commission en banc.

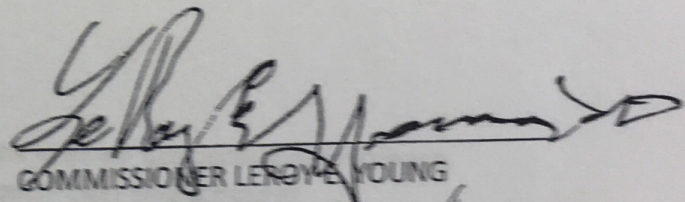
IT IS SO ORDERED.

DONE this 11th day of DECEMBER, 2015.

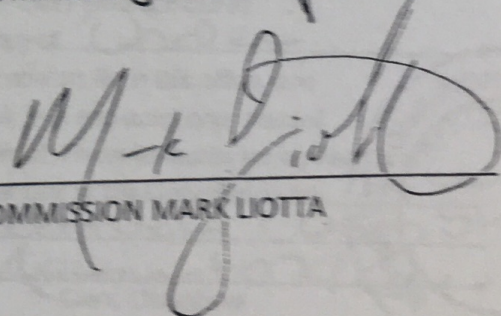
BY ORDER OF:



COMMISSIONER ROBERT H. GILLILAND



COMMISSIONER LEROY E. YOUNG



COMMISSION MARK LIOTTA