STATE BOARD OF WORKERS' COMPENSATION
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STATEMENT OF THE CASE

Based upon applications of the Employee and the Employer/Insurer, a hearing was held in Atlanta, Fulton County, Georgia on January 19, 2012 to determine whether the Employee underwent a change in condition for the better in connection with a compensable accident sustained on April 14, 2011. The Employer/ Insurer contends that the Employee, as of September 22, 2011, was capable of returning to regular duty work without restrictions, and that the suspension of income benefits effective October 6, 2011 was valid. The Employee disputes that she was capable of returning to unrestricted work, and seeks reinstatement of income benefits. As detailed below, I find that the evidence confirms that the Employee has not undergone a change in condition for the better so as to be capable of unrestricted work. I also find, as a threshold issue, that the Employer/Insurer failed to comply with the procedural requirements of the Act to authorize unilateral suspension of income benefits. Therefore, income benefits shall be reinstated.

ISSUES

Whether the Employee underwent a change in condition for the better, so as to be capable of returning to regular duty work without restrictions?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the stipulations of the parties, a consideration of all admissible evidence, and having observed the witnesses at the hearing, I find as fact and conclude as matters of law the following:

1. I find, and the parties stipulate to the following: That the Employee sustained compensable injuries to her left shoulder, back, neck, along with psychological trauma, on April 14, 2011, which arose out of and in the course of her employment. Temporary total disability (TTD) benefits were paid for the period April 18, 2011 through October 6, 2011, at which time TTD benefits were suspended based on a medical release to return to work without restrictions. The parties further stipulate that venue is in Gwinnett County and that the average weekly wage is $439.82. The parties agree that, by consent on May 3, 2011, Dr. Scott Quisling became the authorized treating physician. At the hearing, the parties agreed that TTD benefits had actually been suspended effective October 6, 2011, and the Employer/Insurer agreed to pay the Employee one additional day of TTD benefits, up to and through October 7, 2011, for the purpose of fully complying with the 10-day notice requirement of O.C.G.A. § 34-9-221(i). It was mistakenly believed that the WC-2 (Notice of Payment or Suspension of Benefits) suspending TTD benefits, was filed with the Board on September 27, 2011. Immediately following the hearing, however, a conference call

was held with counsels for both parties to point out that the WC-2 suspending TTD benefits was not actually filed with the Board until January 12, 2012, although the form was dated September 27, 2011. The parties were advised that judicial notice would be taken of the WC-2 filings relating to suspension of benefits. **JUDICIAL NOTICE** is taken of the following: (1) Board Form WC-2 (Notice of Payment or Suspension of Benefits) dated and filed on January 12, 2012; and (2) Board Form WC-2 (listed in ICMS as Miscellaneous Correspondence) dated September 27, 2011and filed with the Board on January 12, 2012. The record was left open until February 3, 2012 to allow for the submission of a medical report from Dr. Michael Hilton. The report was timely received and was accepted into evidence as Employer/Insurer's Exhibit #D-15.

2. The Employee began working for the Employer on August 16, 2010. The Employer is a staffing agency, and the Employee was assigned to work as a Janitor/Custodian with a business client who manufactures pressure and temperature gauges. The Employer has an office onsite within the client's plant facilities. The work-related accident occurred as the Employee was pushing a cart of trash through a door, when the door was struck by a forklift coming from the opposite direction, and the door, in turn, struck the Employee. The Employee reported the accident, and continued to perform her regular duties for three more days before seeking medical treatment. On April 17, 2011, the Employee reported to the Gwinnett Medical Center emergency room with complaints of left arm pain, neck pain, and dizziness. X-rays of the cervical spine noted mild narrowing at C5-6, and a small anterior osteophyte and degenerative changes at C3-4. A CT scan of the head was unremarkable. The Employee was diagnosed with a left shoulder contusion, neck pain, and musculoskeletal stain, and was placed on a five-day no-work status, and given a prescription of Lortab and tizanidine. Follow-up medical care was received from Premier Immediate Care of Georgia, where, on April 19, 2011, the Employee reported with complaints of left shoulder pain. A diagnosis was made of left arm/shoulder contusion and strain. On April 25, 2011, the Employee returned to the Gwinnett emergency room with complaints of passing out as a result of the side effects of the medication. The Employee was advised to discontinue the Lortab and tizanidine prescriptions, and to, instead, take ibuprofen. The Employee was also prescribed a cervical collar and referred for an outpatient MRI of her neck.

3. Based on the total work restrictions from the emergency room, the Employee began receiving TTD benefits on April 18, 2011. She returned to Premier Immediate Care on April 26, 2011 with complaints of neck and left shoulder pain, and dizziness. Diagnoses were made of cervical and left shoulder strains and contusions, and treatment was prescribed in the form of MRI scans of the neck and left shoulder, and Ultram and Toradol medications. As of May 18, 2011, Dr. Quisling, a Board-Certified orthopaedic surgeon with Lawrence Resurgens Orthopaedics, had become the authorized treating physician. Dr. Quisling noted the Employee's complaints of persistent left arm and shoulder pain, neck pain, and headaches with dizziness, and made diagnoses of left shoulder, neck, and lumbar strains, right knee contusion, headaches and dizziness. The left shoulder was injected with Cortisone, and the Employee was referred for the cervical MRI, and for a neurological consultation for the headaches and dizziness. Dr. Quisling maintained the Employee on a no-work employment status.

4. On June 15, 2011, Dr. Quisling reiterated his referral for a neurological evaluation, and maintained the Employee on a no-work status. On July 1, 2011, the cervical MRI confirmed an osteophyte at C3-4 causing neural foraminal encroachment and possible nerve root impingement at C4; left-sided facet arthropathy at C4-5; mild cervical spondylosis in the mid to lower cervical levels; and a disc protrusion at T1-2 effacing the ventral thecal sac, without cord compression or stenosis. Following the MRI, the neurological evaluation was performed by Dr. Arthur Schiff (hereinafter "Dr. A. Schiff"), of Georgia Neurology Care, on July 5, 2011. Dr. A. Schiff opined that the Employee's complaints of left arm pain and numbness, and right arm paresthesias, were related to the mild cervical cord contusion, as noted on the MRI. Additionally, Dr. A. Schiff made diagnoses of post-concussion syndrome, and a possible lumbosacral disc herniation. Treatment was recommended in the form of an EMG/Nerve Conduction Studies to confirm the cervical cord contusion, an MRI scan and EMG for the suspected lumbosacral herniation, and MRI scans for the head and thoracic spine. Following review of the MRI results and Dr. A. Schiff's evaluation, Dr. Quisling, on July 7, 2011, issued diagnoses of neural foraminal encroachment at C3-4, a small disc protrusion at T1-2, and left shoulder strain. Treatment was prescribed in the form of a Medrol Dosepak for pain, rehabilitation/physical therapy, and a psychological evaluation (due to concerns about the Employee's growing

symptoms of depression over her pain and medical condition). Dr. Quisling again maintained the Employee on a no-work status.

5. Over the course of the next four months, the Employee continued to treat with Dr. Quisling, and was evaluated by several other doctors for continued complaints of neck pain, left shoulder and arm pain, back pain radiating into her legs, and depression. On August 11, 2011, Dr. Quisling requested an MRI scan of the lumbar spine, and placed the Employee on light duty/sedentary work status with no lifting over 10 pounds. The Employer, apparently, had no suitable light duty work available to offer the Employee, and, therefore, the payment of TTD benefits continued. On August 17, 2011, the Employee underwent a psychological evaluation by Dr. Rachael Lacy, a clinical psychologist. Dr. Lacy made diagnoses of major depression; generalized anxiety disorder; panic disorder without agoraphobia; panic disorder associated with psychological factors and generalized medical condition; and health concerns with chronic pain. Dr. Lacy recommended an evaluation by a psychiatrist, who could, in turn, prescribe appropriate medications; cognitive behavioral psychotherapy; and a work-hardening program after the Employee is released to return to work. On August 19, 2011, Dr. Quisling completed an Employer/Insurer-generated Questionnaire, in which he responded to questions after being shown a work place security videotape of the Employee performing her regular duty job during the few days that she continued to work after her accident. Dr. Quisling responded that his diagnoses of the Employee's injuries corresponded to what he saw in the video; that the Employee's movements in the video might indicate that the injuries were less severe than the Employee stated; that the video would not lead the doctor to believe that the Employee's depression was preexisting, and that the video does not show the Employee to be pain free; that the video suggests that the pain and disability may not be as severe as suggested; that the Employee is not able to return to work without restrictions, but can return to restricted-duty sedentary work lifting less than 10 pounds; that the cause of the Employee's pain is work-related; and that the Employee has not reached maximum medical improvement (MMI).

6. On August 22, 2011, an MRI scan of the lumbar spine confirmed mild spondylotic changes in the low back around the L5-S1 facet joints, with no evidence of disc herniation or significant stenosis. The Employee returned to Dr. Quisling on August 30, and the doctor reiterated the same work restrictions. On September 13, 2011, an MRI of the left shoulder confirmed mild distal supraspinatus tendinosis, and mildly hooked distal acromial morphology with mild AC joint arthrosis. The radiologist for the left shoulder MRI recommended clinical correlation for symptoms of chronic impingement. On September 15, 2011, the Employee underwent an independent medical evaluation by Dr. David Schiff (hereinafter "Dr. D. Schiff"), an orthopaedist with Peachtree Orthopaedic Clinic. The Employee reported to Dr. D. Schiff with ongoing complaints of neck pain radiating into her left arm and fingers, with weakness and numbness, and headaches. Diagnoses were made of a cervical strain superimposed on spondylosis at C3-C7, and a central left disc spur complex at C4-5 with subjective left radicular symptoms. Dr. D. Schiff opined that the neurologic deficits could not be explained by the diagnostic studies, and that he disagreed with the possible diagnosis of cervical cord contusion in the absence of a signal change in the cord, or spinal cord compression shown on the MRI. As treatment recommendations, Dr. D. Schiff suggested that the Employee undergo a CT myelogram of the cervical spine, to confirm the presence of any nerve compression that would explain the symptoms in the left shoulder; and EMG and nerve conduction studies of the left upper extremity and the cervical paraspinal muscles. There is no evidence that the recommended CT myelogram was ever completed. EMG/NCV of the left upper extremity, on September 16, 2011, was normal. Dr. D. Schiff opined that formal psychological treatment was not indicated, and that the Employee should be reassessed after completing the recommended diagnostic studies. Regarding the Employee's ability to return to work, Dr. D. Schiff concluded that the Employee was capable of performing light duty work with restrictions of no overhead work; and no pushing, pulling, or lifting more than 10 pounds. The Employee, according to Dr. D. Schiff, had not yet reached maximum medical improvement. No follow-up evaluation with Dr. D. Schiff was arranged.

7. On September 22, 2011, the Employee returned to Dr. Quisling, who noted that the Employee had shown no improvement in her symptoms, and that she was complaining of paresthesias in her left hand and fingers. After reviewing the results of the most recent diagnostic tests, Dr. Quisling pointed out that the tests do not show any specific traumatic injuries. The tests do, however, confirm some mild spondylitic changes in the low back, and some mild AC joint arthrosis and supraspinatus tendinitis in the left shoulder. Dr. Quisling, nonetheless, opined

that there was a disconnect between the severity of the Employee's complaints and the clinical findings. The Employee was released to regular duty work status, and referred to a psychiatrist for treatment of her depression. According to the Employee, after her release to regular duty work, she waited to hear from the Employer about returning to work, or from someone to let her know what to do, but she never heard from anyone, and never returned to work. On October 5, 2011, the Employee returned to Dr. Quisling, with complaints of persistent left shoulder pain. Dr. Quisling decided to place the Employee back on light duty work restrictions of limited use of her left upper extremity, no overhead work, frequent breaks, no work above the shoulders, and no lifting over five pounds. The restrictions, according to Dr. Quisling, would allow the Employee to return to work without aggravating her left shoulder. The doctor stated that although he had considered (at the September 22 appointment) returning the Employee to regular duty work, it was apparent to him that the Employee's pain and symptoms would limit her ability to perform her regular duty activities. Dr. Quisling concluded that it was more appropriate for the Employee to be on light duty work status with restrictions. Dr. Quisling examined the Employee on two additional occasions, on November 9, 2011 and January 10, 2012, and reiterated the Employee's light duty work status with restrictions. The Employee's left shoulder was treated with subacromial cortisone injections, and she was prescribed continued physical therapy and psychiatric evaluation.

8. On referral from the Employer/Insurer, the Employee underwent psychological evaluations by Drs. David Adams and Michael Hilton. On October 21, 2011, Dr. Adams, a Board Certified Clinical Psychologist, made diagnoses of pain disorder associated with psychological factors and the Employee's general medical condition, major depressive disorder, and mild to moderate impairment in adaptive functioning. Dr. Adams recommended treatment with medications and cognitive behavioral psychotherapy. On January 23, 2012, Dr. Hilton, a Board Certified Psychiatrist, made diagnoses of depressive disorder, and pain disorder associated with psychological factors and the Employee's general medical condition. The depressive symptoms, according to Dr. Hilton, were directly related to the work injury, and treatment was recommended in the form of anti-depressant medications, and counseling. Regarding work, Dr. Hilton opined the Employee was not psychologically totally disabled, and that it would be beneficial for her to return to some form of light duty work as soon as possible.

9. On October 6, 2011, the Employer/Insurer suspended TTD benefits being paid to the Employee. Although the suspension occurred after the Employee was placed back on light duty work status with restrictions, it was based on Dr. Quisling September 22, 2011 regular duty work release. According to the Employer/Insurer's Claims Adjuster, TTD benefits were unilaterally suspended, despite the work restrictions, because the light duty release was only based on the Employee's subjective complaints. The adjuster also confirmed that no light duty work has ever been offered to the Employee to accommodate her restrictions. Although the adjuster testified that she filed the WC-2 suspending TTD benefits with the Board on September 27, 2011, the evidence confirms that the WC-2 was not filed until January 12, 2012. The Board's file reflects that on January 12, 2012, Counsel for the Employer/Insurer electronically filed a WC-2 showing suspension of TTD effective October 8, 2011, and a second WC-2 was filed on the same day as "Miscellaneous Correspondence," also showing suspension of TTD effective October 8, 2011. The "Miscellaneous Correspondence" copy of the WC-2 was signed by the adjuster and dated September 27, 2011.

10. On January 11, 2012, Dr. Quisling testified by deposition that, except for the T1-2 findings in the thoracic spine, there is a correlation between the Employee's subjective complaints and the objective findings with regards to the areas of her symptoms. The diagnostic tests confirm injuries to the Employee's left shoulder, and cervical and lumbar spines. The severity of the Employee's complaints are, however, more severe than the diagnostic tests indicate. Dr. Quisling also testified that, although most of the Employee's injuries are work-related aggravations of preexisting degenerative conditions, she does have a confirmed acute injury in her left shoulder. According to Dr. Quisling, the C3-4 neural foraminal encroachment in the cervical spine, the spondylitic changes in the lumbar spine, and the AC joint arthrosis in the left shoulder, are degenerative conditions aggravated by the work accident. The MRI confirmation of supraspinatus tendinosis in the left shoulder, showing inflammation within the rotator cuff, however, is an objective finding showing an acute and more recent injury, and is consistent with the occurrence of the work accident. The MRI also confirmed objective evidence of edema (swelling) in the left shoulder. Dr. Quisling testified that the Employee is still suffering from the left shoulder injury. With regards to the Employee's ability to return to work, Dr. Quisling testified that he realized during the Employee's return visit

on October 5, 2011, that light duty work status with restrictions of limited use of her left upper extremity, no overhead work, no work above the shoulders, frequent breaks, and no lifting over five pounds, was a more reasonable work status than the unrestricted regular duty release he issued on September 22, 2011. The restrictions are based on the objective MRI findings of injury in the left shoulder, and on the Employee's subjective complaints and symptoms.

11. The Employee seeks reinstatement of TTD benefits on the ground that she has not undergone a change in condition for the better so as to be capable of returning to regular duty work without restrictions. The Employer/Insurer contend that the suspension of TTD benefits was justified. The burden of proof of a change in condition is on the party asserting that such a change has taken place, in this case the Employer/Insurer. Cornell-Young v. Minter, 168 Ga. App. 325, 309 S.E.2d 159 (1983). To carry its burden of showing that the Employee is able to return to unrestricted work, the Employer/Insurer must prove that the Employee has undergone a change in their wage-earning capacity, physical condition, or status. O.C.G.A. § 34-9-104(a)(1). To show an improved economic condition, the Employer/Insurer must present evidence that the Employee's condition has improved to the point that she has either already returned to work or has the ability to return to work. Jarallah v. Pickett Suite Hotel, 204 Ga. App. 684, 420 S.E.2d 366 (1992); Fairway Transportation, Inc. v. Brewer, 192 Ga. App. 871, 386 S.E.2d 674 (1989); McDonald v. Townsend, 175 Ga. App. 811, 334 S.E.2d 723 (1985).

12. As a threshold issue, I find that the Employer/Insurer failed to comply with the procedural requirements of the Act in suspending TTD benefits, and, as a result, are obligated to reinstate TTD benefits, at a minimum, through the date of the hearing, covering the period October 6, 2011 through January 19, 2012. Pursuant to O.C.G.A. § 34-9-221(i), an Employer/Insurer is obligated to file with the Board, and serve on the Employee, notice of suspending income benefits on the ground of a change in condition for the better no "later than ten days prior to the due date of the first omitted payment of income benefits." This statutory provision entitles the Employee to 10 additional days of income benefits from the date of filing the suspension notice with the Board. Jackson v. Peachtree Housing Div. of C.O. Smith Industries, 187 Ga. App. 612, 371 S.E.2d 112 (1988). Likewise, Board Rule 221(i)(1) requires 10 days advance notice before suspending income benefits, unless the Employee has actually returned to work. In the absence of compelling evidence to the contrary, the date of filing with the Board shall be considered the date of notice. Board Rule 221(i)(2). Failure to provide the requisite 10-day notice and pay the additional benefits, entitles the Employee to payment of the additional benefits for the number of omitted days from the date of filing the notice. See Id. at 614; and Reliance Electric Co. v. Brightwell, 284 Ga. App. 235, 643 S.E.2d 742 (2007). Failure to comply with this procedural requirement prohibits the Employer/Insurer from unilaterally suspending income benefits prior to the date of the hearing, or prior to the date that the Employee actually returns to work, whichever date is earlier. See S&B Engineers and Constructors v. Bolden, 304 Ga. App. 534, 697 S.E.2d 260 (2010); Russell Morgan Landscape Management v. Velez-Ochoa, 252 Ga. App. 549, 556 S.E.2d 827 (2001). In the case herein, the Employer/Insurer did not file the WC-2 suspending income benefits until January 12, 2012, seven days before the January 19, 2012 evidentiary hearing. There is no evidence that the Employee actually returned to work. I find, therefore, that the Employee is entitled to additional TTD benefits for the period October 6, 2011 through January 19, 2012.

13. With regards to the Employer/Insurer's contention that the Employee has undergone a change in condition for the better, so as to be capable of returning to regular duty work without restrictions, I find that the Employer/Insurer has failed to carry their burden of proof. Notwithstanding the Employee's evaluation by multiple medical providers, the only statement releasing the Employee to unrestricted work status was Dr. Quisling's September 22, 2011 opinion, and this opinion was changed 13 days later on October 5, 2011. Following the Employee's accident, and initial medical treatment at Gwinnett Medical Center on April 17, 2011, she was placed on five days of total work restrictions, followed by five more days of restricted duty work status of no lifting over 10 pounds. Once the Employee came under the care of Dr. Quisling, beginning May 18, 2011, she was maintained on a no-work status until August 11, 2011, at which time she was placed on light/sedentary work status of no lifting over 10 pounds. These restrictions were reiterated in Dr. Quisling's August 19, 2011 responses to the Employer/Insurer's Questionnaire. Following his independent medical evaluation of the Employee on September 15, 2011, Dr. D. Schiff opined that the Employee was only capable of performing light duty work with restrictions of no overhead

work, and no pushing, pulling or lifting more than 10 pounds. One week later, on September 22, 2011, Dr. Quisling issued his regular duty work release, largely based on the Employee's perceived overstatement of the severity of her symptoms compared to the clinical findings. By October 5, 2011, Dr. Quisling realized that placement of the Employee on light duty work status with restrictions was a more reasonable and appropriate work release than regular duty. According to Dr. Quisling, the purpose of the work restrictions (limited use of the left upper extremity, no overhead work, frequent breaks, no work over the shoulders, and no lifting over five pounds) was to allow the Employee to return to work without further aggravating her left shoulder condition. Injury to the left shoulder was objectively confirmed by the September 13, 2011 MRI showing supraspinatus tendinosis and edema, which injuries are still present. Dr. Quisling testified that the restrictions are based on the objective testing results and the Employee's subjective complaints.

14. Dr. Quisling reiterated his restrictions on the Employee following examinations on November 9, 2011 and January 10, 2012, and in his deposition testimony of January 11, 2012. Following the Employee's Employer/Insurer-requested independent psychiatric evaluation on January 23, 2012, Dr. Hilton also agreed that the Employee was, from a psychological standpoint, capable of returning to work in a light duty capacity. Thus, I find, that the clear weight of the evidence confirms that the Employee is only capable of returning to work with restrictions, and, since no light duty job has been made available to the Employee, TTD benefits shall be reinstated effective October 6, 2011 and continuing, until suspended or terminated by law.

15. The Employer/Insurer's videotaped evidence of the Employee performing her regular duty job for short periods during the few days that she continued to work following her accident, does not change the conclusion that the Employee is only capable of returning to work with restrictions. As stated by Dr. Quisling after reviewing the video, the video does not show the lack of pain symptoms, and it does not show that the Employee is capable of returning to work without restrictions. Most of the video was taken on days leading up to the Employee's first emergency room treatment, after her condition worsened by continuing to work. Additionally, the videotape shows several instances of the Employee grabbing her back after squatting down to pick things up from the floor. I do not find that the videotape of the Employee working in April 2011, is sufficient evidence to show that the Employee is capable of returning to work without restrictions six months later, in October 2011.

16. Since income benefits were not paid when due, the Employee is entitled to 15% late payment penalties on all past due and accrued benefits. There is no evidence that income benefits were timely controverted, or that the nonpayment of such benefits was due to conditions beyond the control of the Employer/Insurer. See O.C.G.A. §§ 34-9-221(d) and (e).

17. I further find that the Employer/Insurer's defense of this claim, and their failure to pay benefits pursuant to O.C.G.A. § 34-9-221, are, in part, without reasonable grounds. Pursuant to O.C.G.A. § 34-9-108 (b)(1) and (2), attorney's fees may be assessed against the offending party where proceedings have been brought, prosecuted, or defended in whole or in part without reasonable grounds, or against the Employer/Insurer where any provision of Code Section 34-9-221, without reasonable grounds, have not been complied with. I find that the Employer/Insurer herein made the decision to ignore the opinions of the medical providers regarding the Employee's ability to return to work, and to deny further payment of income benefits to the Employee, based on their own opinion about the meaning of the Employee's subjective complaints of pain and symptoms. As of the date that TTD benefits were suspended, on October 6, 2011, the Employer/Insurer was aware that Dr. Quisling, on October 5, 2011 as the authorized treating physician, had placed the Employee back on light duty work status, with multiple restrictions related to her left upper extremity, and that the September 22, 2011 regular duty release was no longer in effect. The Employer/Insurer chose to ignore Dr. Quisling's October 5 opinion, based on their own belief that the assignment of restrictions were based solely on the Employee's "subjective complaints," and, therefore, not acceptable as a valid restricted-duty work release. The adjuster testified that the Employer/Insurer was aware of the October 5 restrictions, and that TTD benefits were suspended notwithstanding those restrictions, because the change in status, from the regular duty release of September 22, to the restricted duty release of October 5, was based on the Employee's subjective complaints, and, therefore, were not accepted. The Employer/Insurer has

continued to persist in their contention that the September 22 release remains valid, notwithstanding Dr. Quisling's changed opinion.

18. I find the Employer/Insurer's decision to base their suspension of TTD benefits, and their defense of the Employee's request for reinstatement, on their own notions of the effect of the Employee's subjective complaints to be unreasonable on several grounds. The Employer/Insurer have a statutory obligation to continue paying TTD benefits on a compensable claim absent the grounds of a change in condition, newly discovered evidence, or because benefits have been exhausted. See generally O.C.G.A. § 34-9-221(h). To suspend such benefits unilaterally, the Employer/Insurer is required to comply with the procedural requirements of the Act. O.C.G.A. § 34-9-221(i). As has already been shown, the Employer/Insurer herein failed to comply with the procedural requirements of the Act. More significantly, at the time of the October 6, 2011 suspension, there was absolutely no medical opinion that the Employee was capable of returning to regular duty work without restrictions, and, to date, there remains no such opinion. Dr. Quisling and Dr. D. Schiff, on October 6, were of the opinion that the Employee was only capable of returning to work with restrictions. Dr. Quisling reiterated his opinion on several occasions thereafter, and Dr. Hilton, on January 23, 2012, added his opinion that the Employee should return to work in some light duty capacity. Dr. Quisling opined that the Employee's complaints may have been more severe than the testing indicated, but the medical testing was still sufficient to maintain the Employee on work restrictions.

19. I find that it is not true, as argued by the Employer/Insurer, that the sole grounds for the work restrictions issued on October 5, 2011 were the Employee's subjective complaints. The medical evidence makes it clear, as does Dr. Quisling's deposition, that the diagnostic testing confirmed medical conditions that correlated to the Employee's areas of complaints of symptoms in her cervical and lumbar spines, and to her left shoulder. Dr. Quisling opined that the degenerative conditions, found in the spine and shoulder, were aggravated by the work accident, and that the acute injury in the left shoulder was persisting. The injury to the left shoulder was objectively confirmed by the September 13, 2011 MRI showing supraspinatus tendinosis and edema. Dr. Quisling testified that the assignment of work restrictions was based on the objective findings and the Employee's subjective complaints. The Employer/Insurer highlights the doctor's testimony on page 20 of his deposition, referring to the Employee's subjective complaints, but ignores the doctor's testimony on page 31 of his deposition, where he states that the restrictions are based on objective and subjective grounds. I find it disingenuous, and unreasonable, for the Employer/Insurer to persist in their contention that the sole basis for the restrictions was the Employee's subjective complaints, and to argue that these complaints somehow justify unilateral suspension of TTD benefits despite restrictions from the authorized treating physician, and objective findings of an injury to the left shoulder. Therefore, pursuant to O.C.G.A. § 34-9-108 (b)(1) and (2), the Employee is entitled to assessed attorney's fees. Counsel for the Employee presented sufficient evidence showing that $1936.60 (9.683 hours x $200.00/hour) is a fair and reasonable assessed fee, and that $375.80 is a fair and reasonable expense of litigation. I find that the attorney's fee evidence is insufficient for any additional fees or expenses.

AWARD

WHEREFORE, based upon the above findings and conclusions, the claim of the Employee for reinstatement of TTD benefits is hereby GRANTED as follows:

1. The Employer/Insurer shall pay the Employee TTD benefits at the weekly rate of $293.21 for the period October 6, 2011 and continuing, inclusive of 15% late payment penalties on all past due and accrued benefits, until suspended or terminated by law. The Employer/Insurer shall receive a credit for TTD benefits paid pursuant to the stipulation at the hearing to pay one additional day of TTD benefits, through October 7, 2011. The appropriate board form shall be filed confirming payment of this award.

2. The Employer/Insurer shall pay assessed attorney's fees in the amount of $1,736.60, and litigation expenses of $375.80, to Counsel for the Employee.

3. The Employee's claim for additional assessed attorney's fees is hereby DENIED.

IT IS SO ORDERED, this the 02nd day of March, 2012.

STATE BOARD OF WORKERS' COMPENSATION

This order is electronically signed and approved.
Johnny Mason
ADMINISTRATIVE LAW JUDGE