

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA10-821

DEBRA MACKEY

APPELLANT

V.

COBB VANTRESS, INC., and TYNET
CORPORATION

APPELLEES

Opinion Delivered February 2, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F811610]

AFFIRMED

CLIFF HOOFFMAN, Judge

Debra Mackey appeals the Workers' Compensation Commission's decision of June 3, 2010, denying her claim for temporary total disability (TTD) benefits from April 28, 2009 through July 7, 2009. She contends that there is no substantial evidence to support the Commission's finding. We affirm the Commission's decision.

Mackey developed carpal tunnel syndrome in her left wrist, an admittedly compensable injury, while employed by Cobb Vantress. She had surgery on March 25, 2009, and returned to work at light duty from April 10, 2009 to April 27, 2009. Attendance policy violations during this time of light-duty work combined with violations that occurred before her injury resulted in Mackey's termination on April 29, 2009. Mackey brought this action for TTD benefits from March 25, 2009 through July 7, 2009.

After a hearing before an administrative law judge (ALJ), the ALJ found that Mackey remained within her healing period until she was released by her doctor at maximum medical improvement on July 7, 2009. The ALJ concluded that because she returned to work before her healing period ended, her entitlement to TTD benefits ended at that time. On appeal to the Workers' Compensation Commission, the Commission affirmed and adopted the decision of the ALJ to award benefits only from March 25, 2009 to April 9, 2009.

When reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Farler v. City of Cabot*, 95 Ark. App. 121, 234 S.W.3d 352 (2006). Substantial evidence is evidence that a reasonable person might accept as adequate to support a conclusion. *Id.* In our review, we defer to the Commission in determining the weight of the evidence and the credibility of the witnesses. *Id.* A decision of the Commission is reversed only if we are convinced that fair-minded persons with the same facts before them could not reach the conclusion reached by the Commission. *Id.*

Mackey's sole point on appeal is that there is no substantial evidence to support the Commission's finding that she is not entitled to TTD benefits through July 7, 2009. Mackey claims that she is entitled to benefits for the time she was in her healing period and not working, which was March 25, 2009 through July 7, 2009, excluding April 10 through April 27, 2009. She argues that her temporary return to work at light duty while still in the healing

period does not bar TTD benefits during a second period of not working following her termination.

An employee who has suffered a scheduled injury is entitled to temporary total or temporary partial disability benefits during his healing period or until he returns to work, whichever occurs first, regardless of whether he has demonstrated that he is actually incapacitated from earning wages. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 152, 41 S.W.3d 822, 826 (2001) (citing Ark. Code Ann. § 11-9-521 (Repl. 1996)).¹ What constitutes a “return to work” under Ark. Code Ann. § 11-9-521 (Repl. 2002) is not defined by the Workers’ Compensation Act; however, this court has stated that an unsuccessful attempt to return to work does not bar additional benefits under the statute. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 6-7, 69 S.W.3d 899, 903 (2002). The appellees argue that Mackey’s return to work in April was not an unsuccessful attempt because it was Mackey’s failure to adhere to the attendance policy that caused her termination.

In *Roark v. Pocahontas Nursing & Rehabilitation*, this court held that an employer satisfied the obligation to return an employee to work under Ark. Code Ann. § 11-9-505(a)(1) (Repl. 2002) by providing the employee with light-duty work within her medical restrictions. 95 Ark. App. 176, 183, 235 S.W.3d 527, 532 (2006). The claimant in *Roark*, like Mackey, returned to light-duty work after being off of work due to injury and subsequently was terminated because of an attendance issue. The court in *Roark* noted that but for the

¹The ALJ found that Mackey’s injury was a “scheduled injury” pursuant to Ark. Code Ann. § 11-9-521 (Repl. 2002). The parties do not contest this finding.

employee's own actions in violating the attendance policy, she would have been provided continuing light-duty work. 95 Ark. App. at 184, 235 S.W.3d at 533. But for Mackey's attendance violations, she would have continued light-duty work, which she testified she could perform with one hand. Thus, Mackey's return to work was not unsuccessful in the sense contemplated in *Farmers Cooperative* such that her injury prevented her from adequately performing her job.

Mackey argues that she was wrongfully terminated from her job and that this strengthens her case for benefits. Neither the ALJ nor the Commission ruled upon this issue; thus, it is not preserved for appeal. *Baysinger v. Air Systems, Inc.*, 55 Ark. App. 174, 179, 934 S.W.2d 230, 232 (1996).

Mackey's return to work ended her entitlement to TTD benefits. This entitlement was not revived upon Mackey's termination and second period of not working, which was caused by policy violations unrelated to her compensable injury. Substantial evidence supports the Commission's finding that Mackey is entitled to TTD benefits from March 25, 2009 to April 9, 2009, but not from April 28, 2009 to July 7, 2009.

Affirmed.

GLADWIN and BROWN, JJ., agree.