

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA10-953

RPC, INC., and TARA CLAIMS
SERVICES, INC.

APPELLANTS

V.

JERRY HARGUES

APPELLEE

Opinion Delivered APRIL 6, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F811308]

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Jerry Hargues injured his back at work on October 27, 2008. His employer, CUD Energy Services, part of RPC, Inc., accepted his injury as compensable and paid benefits accordingly. Later, Hargues sought additional medical treatment, in the form of back surgery per Dr. Brad Thomas's recommendation, and temporary-total disability benefits from the date of his injury through a date yet to be determined. The administrative law judge (ALJ) granted both of Hargues's requests. RPC appealed to the Commission, which affirmed and adopted the ALJ's decision and findings. RPC (and its insurance carrier, Tara Claims Services, Inc.) now appeals to us. We, however, affirm.

In workers' compensation cases, we affirm if the Commission's decision is supported by substantial evidence—relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Walker v. Cooper Auto.*, 104 Ark. App. 175, 176, 289 S.W.3d 184,

186 (2008). We review the evidence and the reasonable inferences deducible therefrom in the light most favorable to the Commission's findings. *Id.* Even if we might have reached a different result than the Commission, we must affirm if reasonable minds could have come to the same conclusion as the Commission. *Id.* It is the Commission's duty, not ours, to weigh the evidence, to resolve any conflicts in the evidence, and to assess each witness's credibility. *Id.* at 176–77, 289 S.W.3d at 186. When the Commission, as it did here, affirms and adopts the ALJ's opinion, we consider both the ALJ's decision and the Commission's majority opinion. *Fayetteville Sch. Dist. v. Kunzelman*, 93 Ark. App. 160, 162, 217 S.W.3d 149, 151 (2005).

Additional Medical Treatment

The employer must provide such medical services “as may be reasonably necessary in connection with the injury received by the employee.” Ark. Code Ann. § 11-9-508(a) (Supp. 2009). The employee must prove by a preponderance of the evidence that any medical treatment requested is both reasonable and necessary. *Owens Planting Co. v. Graham*, 102 Ark. App. 299, 303, 284 S.W.3d 537, 539 (2008). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Id.*

The ALJ, in deciding to grant Hargues's request for additional medical treatment, first noted Hargues's prior back problems. Indeed, Hargues had suffered two previous back injuries, one in 1987 and another in 1994. The ALJ found that Hargues had no problems performing his job duties or any other activities prior to his October 2008 work injury. But

since the injury, Hargues had been experiencing sharp radiating pains, numbness, and tingling in his lower right leg and foot. These symptoms had not resolved despite conservative treatment.

The ALJ also pointed to Dr. Steven Cathey's deposition testimony that Hargues "most likely suffered some type of an event superimposed on preexisting changes." Both Dr. Cathey and Dr. Thomas examined Hargues, and their examinations yielded similar results. But the two doctors' recommendations for going forward were different. Dr. Thomas recommended that Hargues undergo back surgery, while Dr. Cathey opined that he did not think that surgery would benefit Hargues. The ALJ attached little weight to Dr. Cathey's opinion on this point and instead found that "the surgery recommended by Dr. Thomas is reasonably necessary and causally related to [Hargues's] compensable injury."

At its core, this case boils down to the competing opinions of Drs. Cathey and Thomas regarding what form of treatment (if any) would most benefit Hargues at this stage. *Diggs v. Cattlemen's Livestock Market, Inc.*, 2010 Ark. App. 311, at 7–10. We defer to the Commission's resolution of these conflicting medical opinions. *Walker, supra*. In sum, substantial evidence supports the award of additional medical treatment—the back surgery recommended by Dr. Thomas; we therefore affirm on this point.

Temporary–Total Disability Benefits

Temporary–total disability (TTD) is defined as "that period within the healing period in which the employee suffers a total incapacity to earn wages." *King v. Peopleworks*, 97 Ark.

App. 105, 108, 244 S.W.3d 729, 732 (2006). The healing period is “that period for healing of an injury resulting from an accident.” Ark. Code Ann. § 11-9-102(12) (Supp. 2009). In other words, “[t]o be entitled to temporary total disability benefits, the claimant must prove that [he] remains within [his] healing period and suffers a total incapacity to earn wages.” *Smallwood v. Ark. Dep’t of Human Servs.*, 2010 Ark. App. 466, at 7. A question about when (or if) a claimant’s healing period ended is a factual one for the Commission to decide. *King*, 97 Ark. App. at 108, 244 S.W.3d at 732. If any injured employee refuses employment suitable to his capacity offered to or procured for him, he shall not be entitled to any compensation during the continuance of the refusal, unless, in the opinion of the Commission, the refusal is justifiable. Ark. Code Ann. § 11-9-526 (Repl. 2002).

In granting Hargues’s request for TTD benefits, the ALJ attached minimal weight to Dr. Cathey’s conclusion that Hargues reached maximum-medical improvement roughly three weeks after his work injury. In determining that Hargues was still within his healing period, the ALJ instead focused on Hargues’s testimony about his continuing back problems and Dr. Thomas’s recommendation that Hargues undergo back surgery. The ALJ also noted that Dr. Sharon Meador placed Hargues on light-duty work almost immediately after his injury and had not removed the restriction. The ALJ found credible Hargues’s testimony that, with light-duty restrictions, he could not perform his job duties at CUD or at any of his previous jobs as all of these jobs were very physically demanding.

At the hearing there was conflicting testimony about whether Hargues was ever offered light-duty work at CUD. Testimony from various supervisors and managers indicated that Hargues refused to return to work despite being offered work at the company within his restrictions. One of these supervisors also testified about the company policy to provide work within an injured employee's restrictions. Hargues, however, testified that he had several conversations with the safety supervisor, in an unsuccessful attempt to navigate through the Kafkaesque maze of bureaucratic obstacles, but that he was never offered any light-duty work at the company. The ALJ apparently resolved this conflicting testimony in favor of Hargues, as it determined that Hargues was never offered any work within his restrictions.

Again, it is the Commission's duty, not ours, to weigh the evidence, to resolve conflicts in the evidence, and to assess each witness's credibility. *Walker, supra*. As such, substantial evidence supports the award of TTD benefits from the date of Hargues's injury to a date yet to be determined—Hargues is still in his healing period and was never offered any work within his restrictions. Thus, we affirm on this point as well.

Affirmed.

PITTMAN and MARTIN, JJ., agree.