

## ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-1230

ST. EDWARD MERCY MEDICAL  
CENTER and SISTERS OF MERCY  
HEALTH SYSTEM

APPELLANTS

V.

KAREN GILSTRAP

APPELLEE

**Opinion Delivered** May 4, 2011

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F909603]

AFFIRMED

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### JOSEPHINE LINKER HART, Judge

St. Edward Mercy Medical Center and Sisters of Mercy Health System, appellants, appeal from the Arkansas Workers' Compensation Commission's award of benefits to appellee, Karen Gilstrap. Appellants assert that the Commission's decision is not supported by the substantial evidence required for affirmance. *See, e.g., RPC, Inc. v. Hargues*, 2011 Ark. App. 264. Specifically, appellants contend that because there were no facts supporting an objective finding of an injury, substantial evidence could not support the Commission's finding that appellee sustained a compensable injury. Appellants alternatively argue that if appellee suffered a compensable injury, substantial evidence does not establish that appellee's current medical condition was caused by the work-related incident and that she is therefore entitled to medical services and temporary total-disability benefits. We affirm.

The administrative law judge's opinion, which was adopted by the Commission, notes

that on October 15, 2009, appellee, a certified nursing assistant, felt a pull in her back with severe lower back pain while lifting a patient. Though appellee finished her shift and returned to work the next day, the pain continued to worsen. Because of the pain, she left work and was unable to return the next day. She was seen in the emergency room that day and subsequently admitted to the hospital. On October 30, 2009, appellee underwent surgery. The pre- and post-operative diagnosis was a ruptured annulus at L4-5 and L5-S1.

The administrative law judge concluded that appellee suffered a compensable injury supported by objective findings. He further found that appellee was entitled to temporary total-disability benefits from October 17, 2009, to a date yet to be determined, as she underwent a two-level fusion and had been unable to perform any type of work activity since that time. He also found that appellee was entitled to reasonable and necessary medical treatment regarding her low-back injury.

Appellants argue that substantial evidence does not support a finding of a compensable injury because there were no objective findings. Rather, appellants contend that there were only disc bulges associated with chronic preexisting degenerative disease. A “compensable injury must be established by medical evidence supported by objective findings.” Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2009). “Objective findings” are defined as “those findings which cannot come under the voluntary control of the patient.” Ark. Code Ann. § 11-9-102(16)(A)(i). Given the surgical findings, a ruptured annulus at L4-5 and L5-S1, we conclude that there was substantial evidence of objective findings.

Appellants alternatively contend that even if appellee suffered a compensable injury, she was healed by the surgery, thus eliminating the need for subsequent medical services and temporary total-disability benefits. Appellants assert that appellee's current medical condition was not caused by the work-related incident and existed prior to the work-related incident, namely, her preexisting degenerative condition and diverticulitis.

Temporary-total disability is that period within the healing period in which a claimant suffers a total incapacity to earn wages. *See, e.g., RPC, Inc. v. Hargues, supra.* The healing period is "that period for healing of an injury resulting from an accident." Ark. Code Ann. § 11-9-102(12). To be entitled to temporary total-disability benefits, the claimant must prove that she remains within her healing period and suffers a total incapacity to earn wages. *See, e.g., RPC, Inc. v. Hargues, supra.* The employer must also 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).

Appellee testified that she was still under a physician's care and would receive additional testing the next day, as there may have been another disc involved; that she had not been released to go back to work; and that she was "[p]retty much [in] constant pain." Further, she testified that the symptoms she suffered before the injury were "very different" from the symptoms she suffered after the injury. Given this testimony, we conclude that substantial evidence supports the Commission's finding that appellee remained in her healing period from the compensable injury and was entitled to temporary total-disability benefits as

Cite as 2011 Ark. App. 323

well as medical services related to her compensable injury.

Affirmed.

MARTIN and HOOFFMAN, JJ., agree.