

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-824

TYSON CHICKEN, INC.

APPELLANT

V.

QUENTIN WITHERSPOON

APPELLEE

Opinion Delivered FEBRUARY 1, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F509243]

AFFIRMED ON DIRECT APPEAL;
AFFIRMED ON CROSS-APPEAL

JOSEPHINE LINKER HART, Judge

Tyson Chicken, Inc., argues that there was not substantial evidence to support the Arkansas Workers' Compensation Commission's award to Quentin Witherspoon of additional medical treatment in the form of an MRI of his lumbar spine, pain management and medication, and psychological treatment of his anxiety and depression. Witherspoon cross-appeals, arguing that the Commission's decision to deny him temporary disability benefits was not supported by substantial evidence. We affirm on direct and on cross-appeal, as there was substantial evidence to support the Commission's decision. *See, e.g., Aegon Ins. USA v. Durham-Gilpatrick*, 2010 Ark. App. 826, 378 S.W.3d 773 (requiring substantial evidence to support the Commission's decision on appeal).

According to the Commission's findings, Witherspoon sustained a compensable injury on August 5, 2005, when a forklift struck him in his right hip and back area. The Commission noted that Witherspoon consistently complained of swelling at his right hip, low-back pain,



radicular pain, and buckling of his leg. The Commission also found that Witherspoon soon developed depression related to his pain and disability that remained unabated at the time of the hearing. His treating physician, Dr. Roshan Sharma, observed low-back muscle spasms and swelling at Witherspoon's hip. On September 26, 2005, an MRI of his back showed degenerative-disc disease at L4-L5 with a central-disc protrusion and generalized disc bulging. Two surgeries were performed on a hematoma and a resulting infection at the hip. Dr. Sharma also prescribed an antidepressant.

The Commission noted that Witherspoon testified at the hearing that he continues to have low-back pain, radicular pain, and leg weakness that remains unresolved. On a visit to Dr. Sharma on May 10, 2010, Dr. Sharma diagnosed Witherspoon as having chronic anxiety and depression, low-back pain, a herniated disc at L4-L5, and a surgically treated right hip hematoma that left a large, deep, indented wound in the right hip. Dr. Sharma prescribed pain medication and an antidepressant.

The Commission further found that in his deposition, Dr. Sharma stated that Witherspoon suffered from right-lumbar radiculopathy that was confirmed by a nerve conduction study and that the earlier MRI showed a herniated disc at L4-L5. Dr. Sharma opined that a new MRI was required because of loss of disc space at two levels as shown by an x-ray. He also opined that Witherspoon's condition was unchanged and that Witherspoon needed psychological treatment and pain management and medication.

In its adjudication, the Commission held that Witherspoon was entitled to medical treatment, including an MRI, pain management and medication, and psychological treatment. Particularly, the Commission noted that Dr. Sharma's reports after the incident contained



findings of emotional problems and depression caused by the injury. The Commission noted that Dr. Sharma recommended further treatment for depression. The Commission also found that Dr. Sharma recommended additional treatment for his back injury, which included an MRI and pain management and medication. It concluded that this treatment was warranted by Witherspoon's continued and unresolved symptoms and reduced disc space as shown by an x-ray. The Commission concluded that the pain management recommended by Dr. Sharma would reduce Witherspoon's chronic pain attributable to the admittedly compensable injury. The Commission further noted that there was "no contradicting doctor's opinion."

Employees are to be accorded medical services "reasonably necessary in connection with the injury received by the employee." Ark. Code Ann. § 11-9-508(a) (Supp. 2011). On appeal, Tyson asserts that substantial evidence does not support the Commission's decision because the Commission erroneously gave Dr. Sharma's testimony more "weight and credibility than it deserves," and disregarded evidence that weighed against an award of additional medical treatment. Such matters as determining the weight and credibility to be afforded medical opinions, however, are for the Commission. *See, e.g., Aegon Ins. USA, supra*. Accordingly, we affirm the Commission's decision.

The Commission denied Witherspoon's claim for additional temporary disability benefits. Temporary-total disability is that period within the healing period in which a claimant suffers a total incapacity to earn wages. *St. Edward Mercy Med. Ctr. v. Gilstrap*, 2011 Ark. App. 323. The healing period is "that period for healing of an injury resulting from an accident." Ark. Code Ann. § 11-9-102(12) (Supp. 2011). To 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. *St. Edward Mercy Med. Ctr., supra.*

Witherspoon argues on cross-appeal that he is entitled to temporary disability benefits. The Commission, however, had before it Dr. Sharma's previous release of Witherspoon to work in 2006 and 2007, before Witherspoon was terminated from his employment. Thus, the Commission had evidence before it that Witherspoon was not incapacitated from earning wages. We cannot say that substantial evidence does not support the Commission's denial of temporary disability benefits.

Affirmed on direct appeal; affirmed on cross-appeal.

GLADWIN and WYNNE, JJ., agree.

Ledbetter, Cogbill, Arnold & Harrison, LLP, by: *E. Diane Graham* and *Rebecca D. Hattabaugh*, for appellant.

Moore & Giles, L.L.P., by: *Greg Giles*, for appellee.