

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-1121

BILLY WEBB and EMC INSURANCE
COMPANIES

APPELLANTS

V.

RONALD G. WEBB

APPELLEE

Opinion Delivered March 14, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F907467]

AFFIRMED

ROBERT J. GLADWIN, Judge

The Arkansas Workers' Compensation Commission found that appellee Ronald G. Webb proved his entitlement to additional medical and temporary-total-disability (TTD) benefits. Appellants Billy Webb and EMC Insurance Companies appeal the Commission's award of TTD benefits. We affirm.

Ronald Webb sustained a compensable injury to his low back on April 2, 2007, while working as a concrete finisher for his employer/father, appellant Billy Webb. When appellee first reported the injury, he was instructed to see Dr. Andrew Monfee, who ordered physical therapy. Appellee testified that he was then treated conservatively by Dr. Thomas Cheyne. On March 31, 2009, Dr. Cheyne noted that appellee had chronic lumbar pain with radiculopathy. An April 6, 2009 MRI indicated that appellee had multilevel disc bulging, most prominent at L5-S1. Appellee underwent lumbar epidural steroid injections (LESIs,) but on August 14, 2009, Dr. Cheyne noted that appellee was still pouring concrete, which



might have been aggravating his back. As a result, Dr. Cheyne gave appellee work restrictions and prescribed physical therapy.

Appellee continued this conservative treatment with no lasting relief until February 2010, when Dr. Cheyne sent him to a neurosurgeon, Dr. Zachary Mason. Dr. Mason ordered an MRI and a CT scan of appellee's lumbar spine. Subsequent to the CT, Dr. Mason recommended lumbar fusion surgery at L5-S1. Dr. Mason also opined that appellee was unable to work in any capacity beginning April 6, 2010, to a date yet to be determined. A peer review paid for by appellants denied the recommended surgery by decision dated July 29, 2010; subsequently, appellants denied liability for any further treatment.

Appellee was sent to Dr. Steven Cathey for an independent medical evaluation on August 5, 2010. Dr. Cathey opined that appellee was at maximum medical improvement (MMI) and assigned a seven-percent impairment rating. Dr. Cathey noted that appellee was a candidate for the surgery due to three years of failed conservative treatment and recommended that appellee file for Social Security Disability. Later, Dr. Cathey amended his recommendation by noting that appellee was a candidate for the surgery due to a congenital defect. Appellee testified that he then went to Dr. Russell Allison because he wanted to get an opinion from someone who was not related to the insurance companies. Appellee testified that Dr. Allison recommended surgery.

Regarding his work history, appellee testified that he had continued to work for Billy Webb until September 2009, when Dr. Cheyne took him off work. Appellee underwent a functional capacity evaluation (FCE) in December 2009 that indicated he could work



medium-duty jobs, but appellee explained that he could not perform concrete work within his restrictions because his work for Billy Webb was heavy duty. His employer was unable to provide him with any work that was not heavy duty. Appellee testified that he would occasionally drive to the lumber yard to pick up materials for his employer but that this work was mainly to get him out of the house, and no work was provided on a regular basis. After the death of appellee's father in November 2010, appellee has not had any employment.

Appellee testified that Dr. Monfee is currently prescribing him hydrocodone and an anti-depressant. He claimed that he used to be able to mow his yard, weed-eat, clean house, put clothes in the dryer, and get dishes out of the dishwasher without any problem, but now he is unable to do those things without pain. Appellee admitted that he still hunts and that he went on a hunting trip to Wyoming with a buddy in 2009, but that "it near liked to have killed me." Additionally, out of a sixteen- or seventeen-hour car ride, he was only able to drive four or five hours of the trip.

In an opinion filed on April 22, 2011, the administrative law judge (ALJ) found that appellee proved by a preponderance of the evidence that he was entitled to additional medical treatment, in the form of surgery and pain management, that he was entitled to TTD compensation from September 11, 2010, and continuing to a date yet to be determined, and that his attorney was entitled to an attorney's fee pursuant to Arkansas Code Annotated section 11-9-715 (Repl. 2002). Appellants appealed the ALJ's opinion but did not file a timely brief to the Full Commission. On appeal, the Full Commission affirmed and adopted the ALJ's opinion based on the record. This appeal timely followed.



In appeals involving claims for workers' compensation, we view the evidence in a light most favorable to the Commission's decision and affirm the decision if it is supported by substantial evidence. *Hickman v. Kellogg, Brown & Root*, 372 Ark. 501, 277 S.W.3d 591 (2008). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* at 506, 277 S.W.3d at 596. The issue is not whether we might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, we must affirm the decision. *Id.*

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Hickman, supra*. When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Id.* The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* Thus, we are foreclosed from determining the credibility and weight to be accorded to each witness's testimony. *Id.*

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 TTD 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*. The healing period ends when the employee is as



far restored as the permanent nature of his injury will permit. *St. Edward Mercy Med. Ctr. v. Dart*, 2011 Ark. App. 583. The question of when the healing period has ended is a factual determination for the Commission that will be affirmed if it is supported by substantial evidence. *Id.*

Appellants contend that substantial evidence does not support the Commission's decision that appellee proved entitlement to TTD benefits from September 11, 2010, to a date yet to be determined. Appellants insist that the record is lacking of any physician taking appellee off work after September 10, 2010, which is the last date TTD benefits were paid. The FCE performed on December 10, 2009, indicated that appellee could do work in the medium-level category, and Dr. Cheyne confirmed that on January 15, 2010. Appellants note that Dr. Mason indicated on April 6, 2010, that appellee was unable to work, and TTD benefits were then continued. Dr. Cathey declared appellee to be at MMI on August 5, 2010, and appellants contend that there is likely an overpayment issue because benefits were paid until September 10, 2010.

Appellants emphasize that, although Dr. Mason stated in a letter dated January 7, 2011, that appellee could not have worked in any capacity after the doctor started treating him on April 6, 2010, Dr. Mason noted that he did not take appellee off work; appellee was just not working. Thus, appellants argue that there is nothing in the record other than appellee's subjective complaints showing that he was totally incapacitated from working during the time frame TTD is sought. Appellants further argue that appellee is not totally incapacitated in



light of the fact that he continues to hunt and fish and took a hunting trip to Wyoming in 2009.

Appellee contends that the Commission properly found that he proved by a preponderance of the evidence that he is entitled to TTD benefits. His argument follows the ALJ's findings—that the medical evidence and his testimony demonstrate that he has remained within his healing period since the date of his compensable injury and has continued to do so through the date of the hearing. We agree.

The ALJ found, and the Commission adopted, that appellee's testimony was that he was in constant pain, which was described as an ache that runs down his left foot along with a burning pain down his foot. Further, the surveillance video introduced by appellants corroborated appellee's testimony and the medical evidence. Appellee's treating physician recommended that he undergo lumbar fusion, and appellee's condition at the time of the hearing required heavy narcotic medication. The Commission affirmed the ALJ's finding that the FCE performed in December 2009 indicated that appellee could only perform medium work, and all of his prior work has been in the concrete business, which requires heavy-work duties. Appellee has not worked since September 2009 due to his compensable back injury. Dr. Mason's opinion, in his response to a January 7, 2011 inquiry, was that appellee was unable to work in any capacity as of April 6, 2010.

The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Cossey v. Gary A. Thomas Racing Stable*, 2009 Ark. App. 666, 344 S.W.3d 684. Further, questions



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concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Hickman, supra*. Accordingly, we affirm.

Affirmed.

GLOVER and BROWN, JJ., agree.

Worley, Wood & Parrish, P.A., by: *Melissa Wood*, for appellants.

Laura Beth York, for appellee.