

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA12-808

LEONARD STALLWORTH
APPELLANT

V.

HAYES MECHANICAL, INC.
APPELLEE

Opinion Delivered March 13, 2013

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION, [NO. F611714]

AFFIRMED IN PART; REVERSED
AND REMANDED IN PART

KENNETH S. HIXSON, Judge

Appellant Leonard Stallworth sustained admittedly compensable injuries to his lower extremities while working as an iron worker for appellee Hayes Mechanical, Inc., on August 17, 2006. On that day, a falling beam caused Mr. Stallworth to fall four feet to the ground from a scissor lift. The appellee voluntarily paid medical expenses and temporary total disability (TTD) benefits through December 14, 2006, when Mr. Stallworth was medically released to return to work. Mr. Stallworth sought additional medical benefits and TTD benefits, and in an opinion dated May 5, 2008, the Workers' Compensation Commission awarded additional diagnostic and conservative treatment by Dr. D'Orsay Bryant, which included x-rays of the lumbar spine, left hip and femur, and anti-inflammatory medication. However, the Commission denied Mr. Stallworth's claim for additional TTD benefits.



This case came before the Commission on three subsequent occasions. On April 5, 2010, the Commission issued an opinion denying Mr. Stallworth's claim for additional TTD benefits and additional medical treatment for his back and leg. On June 14, 2011, the Commission again denied Mr. Stallworth's claim for additional TTD benefits, but it awarded additional medical treatment by Dr. Bryant. Hayes Mechanical paid for medical benefits provided by Dr. Bryant through November 2011, and it also voluntarily paid TTD benefits from July 29 through October 27, 2011.

The fourth proceeding before the Commission, from which this appeal arises, pertained to Mr. Stallworth's claim for additional TTD benefits, additional medical treatment by Dr. Bryant, and penalties and interest against Hayes Mechanical for its alleged nonpayment of awarded benefits. The Commission denied each of those claims on May 16, 2012, and in this appeal Mr. Stallworth challenges the sufficiency of the evidence supporting these findings. We affirm the Commission's denial of additional TTD benefits and penalties and interest, but we reverse and remand for additional findings of fact on the issue of medical benefits.

On appeal of a workers' compensation case, we view the evidence in the light most favorable to the Commission's decision, and we uphold that decision if it is supported by substantial evidence. *Ester v. Nat'l Home Ctrs., Inc.*, 335 Ark. 356, 981 S.W.2d 91 (1998). Substantial evidence exists if reasonable minds could reach the same conclusion. *Id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusion arrived at by the Commission. *Id.* Where the Commission denies benefits because the claimant failed to meet



his burden of proof, we will affirm if the Commission's decision displays a substantial basis for the denial of relief. *Castaneda v. Lexicon, Inc.*, 2012 Ark. App. 103.

We first address the issue of temporary total disability benefits. To receive temporary total disability benefits, a claimant must prove that he was within his healing period and that he was totally incapacitated from earning wages. *Hickman v. Kellogg, Brown & Root*, 372 Ark. 501, 277 S.W.3d 591 (2008).

In the Commission's opinion, it correctly determined that most of the additional TTD benefits sought by Mr. Stallworth were barred by res judicata. The doctrine of res judicata is applicable to decisions by the Workers' Compensation Commission, and it applies where there has been a final adjudication on the merits of an issue. See *White v. Gregg Agric. Enters.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The key question regarding the application of res judicata is whether the party against whom the earlier decision is being asserted had a full and fair opportunity to litigate the issue in question. *Id.* In the most recent proceedings before the Commission, Mr. Stallworth requested additional TTD benefits dating back to March 2007 and continuing through a date yet to be determined. However, as found by the Commission, most of these claimed TTD benefits were denied by the Commission in its prior orders after being fully litigated by Mr. Stallworth, and res judicata precludes Mr. Stallworth from relitigating those periods of alleged temporary total disability that have already been denied.

The Commission also denied Mr. Stallworth's claim for the additional TTD benefits that were not foreclosed by res judicata, which included his request for TTD benefits from



October 27, 2011, to a date yet to be determined. While Mr. Stallworth testified that he did not think he was capable of performing any work, issues of credibility are left to the Commission. See *Powers v. City of Fayetteville*, 97 Ark. App. 251, 248 S.W.3d 516 (2007). Mr. Stallworth did not present medical documentation supporting his contention that he was totally incapacitated from earning wages, and in reaching its decision, the Commission relied on a functional-capacity evaluation indicating that Mr. Stallworth could work within the medium range of physical demands. On this record, we conclude that the Commission's decision displays a substantial basis for denying any additional TTD benefits.

We next turn to Mr. Stallworth's argument that the Commission erred in denying his claim for additional medical treatment from Dr. Bryant. Arkansas Code Annotated section 11-9-508(a) (Repl. 2012) requires an employer to provide an injured employee such medical services "as may be reasonably necessary in connection with the injury received by the employee." Mr. Stallworth notes that, in a letter written on November 17, 2011, Dr. Bryant wrote that Mr. Stallworth is "a superb candidate for continued treatment of his work-related injury to the low back and hip with injections administered on an intermittent basis" for therapeutic reasons of providing pain relief.

In denying additional medical treatment, the Commission noted that Dr. Bryant had chosen the use of therapeutic steroid injections for pain relief. The Commission found that Mr. Stallworth had been provided all necessary medical treatment and would continue in treatment only for purposes of pain management. Because these findings do not adequately



support the Commission's denial of additional medical treatment, and additional findings are necessary to resolve the issue, we must remand to the Commission.

An employee may be entitled to ongoing medical treatment after the healing period has ended if the treatment is geared toward management of the compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). In *LVL, Inc. v. Ragsdale*, 2011 Ark. App. 144, 381 S.W.3d 869, we held that pain management may be reasonably necessary treatment in connection with the claimant's compensable injury, and in that case we affirmed the Commission's award of pain-management therapy. In the present case, the fact that the injections proposed by Dr. Bryant are directed toward pain management does not disqualify them from being reasonably necessary if that treatment is causally related to the compensable injury.

In the appellee's brief, it correctly asserts that, although Dr. Bryant stated that the injections were for treatment of the compensable injury, Dr. J. Michael Calhoun reported on December 22, 2011, that any further injections would be for Mr. Stallworth's preexisting degenerative problems and not his acute work injury. However, this was an issue of conflicting medical evidence for the Commission to resolve, *see Cedar Chem. Co. v. Knight*, 99 Ark. App. 162, 258 S.W.3d 394 (2007), and the Commission made no determination as to whether the steroid injections were for treatment of Mr. Stallworth's compensable condition.

In carrying out its duty to find the facts, the Commission is required to make findings of fact, and those findings must contain all the specific facts relevant to the issues so that the



reviewing court may determine whether the Commission has resolved these issues in conformity with the law. *See Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 57 S.W.3d 735 (2001). We do not review the decisions of the Commission de novo on the record or make findings of fact that the Commission should have made but did not. *See Sonic Drive-In, Inc. v. Wade*, 36 Ark. App. 4, 816 S.W.2d 889 (1991). Our function is to review the sufficiency of the evidence to support the findings that the Commission does make, and when it fails to make specific findings on an issue, it is appropriate to reverse and remand the case for the Commission to make such findings. *Id.* Therefore, we reverse and remand for the Commission to revisit Mr. Stallworth's claim for additional medical benefits and to determine whether the injections proposed by Dr. Bryant are for treatment of Mr. Stallworth's compensable injuries.

Mr. Stallworth's remaining argument is that the Commission erroneously denied his claim for penalties and interest. However, we find no error in the Commission's determination that Mr. Stallworth failed to establish any noncompliance with the Commission's orders or nonpayment of any ordered benefits by the appellee. Therefore, the Commission's denial of penalties and interest is affirmed.

Affirmed in part; reversed and remanded in part.

GLADWIN, C.J., and WYNNE, J., agree.

Leonard Stallworth, pro se appellant.

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