

ARKANSAS COURT OF APPEALS

D I V I S I O N I

No. CA 10-756

ERIC DILL

APPELLANT

V.

GREEN DENTAL LABORATORIES
and HARTFORD FIRE INSURANCE
CO.

APPELLEES

Opinion Delivered FEBRUARY 16, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F806803]

AFFIRMED IN PART; REVERSED
AND REMANDED IN PART

JOHN B. ROBBINS, Judge

Appellant Eric Dill appeals the denial of additional medical and temporary total disability benefits by the Workers' Compensation Commission in his claim against appellee Green Dental Laboratories. Dill did not prevail before the administrative law judge (ALJ), and on appeal to the Commission, it affirmed and adopted the ALJ's decision in a two-to-one vote. Dill contends that the Commission's and ALJ's decisions lack substantial evidence to support the denial of additional benefits. We cannot reach the merits of the additional-medical-treatment argument at this time because the ALJ's opinion, affirmed and adopted by the Commission, is defective. We affirm the denial of temporary total disability to date because the decision displays a substantial basis for the denial of relief.

To explain in more detail, appellant, a man in his mid-twenties, suffered an admittedly work-related low-back injury on January 30, 2008. He attributed the injury to emptying very heavy trash bins at the end of the work day. Dill did not immediately report the injury, but he went to see chiropractor Kent Krug on his own during February 2008. Krug ordered an MRI, and the impression was multilevel degenerative disc disease and diffuse disc bulges at L4–L5 and L5–S1. Based upon the February 2008 MRI results, Krug referred Dill to neurosurgeon Dr. Zachary Mason for a second opinion regarding treatment.

Mason saw Dill in March 2008, where he recorded Dill’s complaints of low-back pain radiating into both hips and legs, accompanied by spasms. Mason read the MRI report as basically normal, but he did not see the actual film and wanted Dill to bring it to him for review.

Dill returned to Mason’s office on April 1, 2008, with the actual MRI study, “which reveals a small disc bulge at L4–5, some slight facet arthropathy, resulting in lateral recess stenosis, and smaller canal diameter.” Mason urged Dill to take a conservative approach for several weeks. He gave him a prescription for an anti-inflammatory medication and told him he could work but to avoid repetitive stooping, bending, or lifting over fifty pounds. But Mason stated that “should he fail to see improvement, then he may need bilateral decompressive foraminotomies.” Mason stated that “at MMI, his rating would be 5 percent to the body as a whole. As I have nothing to offer him from a surgical standpoint, I will return

him to the care of Dr. Krug and Dr. Warnock.” Green Dental paid benefits, including the five-percent rating, up to this point.¹

Dill did not see any medical providers for the following months until October 31, 2008, when he returned to Mason. Mason wrote that he had advised Dill in April that he might ultimately require bilateral decompressive foraminotomies. Mason ordered a follow-up MRI to determine if there were significant changes to consider.

Mason stated that the November 2008 MRI showed a bulging disc at L4–5 with facet overgrowth that, “[i]n combination the two problems create stenotic changes at L4–5, and particularly in the lateral recesses.” This was the same condition seen on the February 2008 MRI, except that “the stenosis seems to have worsened and he has not responded to conservative treatment. I think that he will have to proceed with surgical intervention before he obtains any significant improvement.” Mason recommended bilateral foraminotomy, discectomy, and stabilization of the lumbar spine.

Dill’s testimony reflected that he did not try to return to work until a two-week period in March or April 2009, driving a roller at a construction site, which he had done before. Dill said it hurt his back to sit on the equipment or to stand for long periods, and he had not tried to work anywhere since that time. He said he had a high school education and was spending

¹The five-percent permanent-partial impairment rating is compatible with the American Medical Association’s *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, at Table 72 (minor lumbar injury) and Table 75 (unoperated on, stable, documented injury associated with no- to minimal-degenerative changes as seen on MRI).

his days lying on the couch at his father's house. Dill admitted that he was on probation for a 2003 arson conviction.

The ALJ found that Dill had not proved by a preponderance that he was entitled to additional benefits including the surgery or any temporary total disability. The ALJ reasoned that because the spinal stenosis was the cause of the need for surgery, which the ALJ said "based on the MRIs, appears to be degenerative in origin," then Dill failed to prove a causal connection with his compensable injury. As to TTD, the ALJ reasoned that he was permitted by Mason in April 2008 to work within certain restrictions, that no doctor had specifically taken him off work, and that Dill had not shown that he was totally incapacitated from earning wages from and after April 2008 due to his compensable injury. The ALJ stated that his job at Green Dental and the construction company were in fact within the work restrictions issued by Mason. The Commission affirmed and adopted the ALJ's decision.²

We now consider Dill's appeal. We review decisions of the Workers' Compensation Commission to determine whether there is substantial evidence to support it. *Rice v. Ga.-Pac. Corp.*, 72 Ark. App. 149, 35 S.W.3d 328 (2000). On appeal to our court from a denial of benefits, the substantial evidence standard of review requires us to affirm if the Commission's decision displays a substantial basis for the denial of relief. *Tucker v. Roberts-McNutt, Inc.*, 342 Ark. 511, 29 S.W.3d 706 (2000). A substantial basis exists if fair-minded persons could reach

²The sole dissenting Commissioner opined that Dill proved entitlement to the surgery and TTD from and after the surgery.

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the same conclusion when considering the same facts. *Id.* It is the Commission's province to weigh the evidence and determine what is most credible. *Minn. Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). But, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Roberts v. Whirlpool*, 102 Ark. App. 284, 284 S.W.3d 100 (2008). When sufficient findings of essential facts are lacking, we are unable to perform any meaningful review of the Commission's decision. *Prock v. Bull Shoals Landing*, 2010 Ark. App. 724; *Wright v. Am. Transp.*, 18 Ark. App. 18, 709 S.W.2d 107 (1986). A satisfactory finding of fact is one that permits the appellate court to decide whether the Commission has resolved the issues in accordance with the law. *Id.* Here, such findings are lacking.

Arkansas Code Annotated section 11-9-508(a) (Supp. 2009) provides in relevant part that "the employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic . . . and nursing services and medicine . . . as may be reasonably necessary in connection with the injury received by the employee." A claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's compensable injury. *Hensley v. Bridgestone/Firestone, Inc.*, 2009 Ark. App. 364; *Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Here, the employer accepted the low-back injury as compensable and paid a permanent-impairment rating associated with that compensable injury. Both MRIs of record

reflect disc degeneration and bulging at the L4–5 disc as the cause of stenosis.³ The ALJ accepted that stenosis was the cause for the need for additional treatment.⁴ The ALJ then summarily decided that “the stenosis, based on the MRIs, appears to be degenerative in origin.”

The finding that the stenosis “appears to be degenerative in origin” is not a conclusive decision on whether the recommended surgery is reasonably necessary in connection with Dill’s compensable low-back injury. The Commission is obliged to render findings and conclusions with sufficient detail and particularity to allow us to decide whether its decision is in accordance with the law. *Wright v. Am. Transp.*, *supra*. For this reason, we remand for specific findings on the issue of additional medical treatment.

Dill also contends that there is no substantial evidence to support the denial of temporary total disability. There are sufficient findings of fact on this fact-intensive and credibility-driven inquiry. It was Dill’s burden to prove by a preponderance of the evidence that he was totally unable to earn wages, and to date, he had not done that, as described earlier in this opinion. But, we note that if additional medical treatment is awarded, then Dill could possibly re-enter a healing period.

³“Major cause” is not required when the claim is for additional medical treatment for a compensable injury, whereas it is required for payment of permanent-partial disability benefits. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000); *Gen. Elec. Railcar Repair Servs. v. Hardin*, 62 Ark. App. 120, 969 S.W.2d 667 (1998). For additional medical treatment, it must be reasonably necessary in connection with the injury. Ark. Code Ann. § 11-9-508(a).

⁴In layman’s terms, “stenosis” is the narrowing of the spinal canal’s diameter.

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Reversed and remanded for findings of fact on the issue of additional medical treatment; affirmed on the denial of TTD to date.

PITTMAN and GRUBER, JJ., agree.