

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-844

RONALD TADLOCK

APPELLANT

V.

ST. JOSEPH'S REGIONAL HEALTH
CENTER, A SELF-INSURED
EMPLOYER, SISTERS OF MERCY,
TPA, INSURANCE CARRIER, DEATH
& PERMANENT TOTAL DISABILITY
TRUST FUND

APPELLEES

Opinion Delivered MARCH 18, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. E802168]

AFFIRMED

ROBERT J. GLADWIN, Judge

The decision of the Workers' Compensation Commission's Administrative Law Judge (ALJ) filed on November 21, 2006, finding that appellant Ronald Tadlock proved by a preponderance of the evidence that he was entitled to additional medical treatment, as well as a forty-percent loss in wage-earning capacity in addition to his ten-percent-permanent-anatomical-impairment rating, was reversed by the Full Commission on June 9, 2008. Tadlock appeals claiming that the Commission's decision to deny additional medical treatment is not supported by substantial evidence. Further, Tadlock contends that the Commission mischaracterized the evidence when it denied wage-loss-disability benefits. We affirm.

Tadlock sustained a compensable neck injury in a motor-vehicle accident on February 5, 1998, while working as a paramedic for appellee St. Joseph's Regional Health Center. St. Joseph's did not dispute the compensability of the neck injury. Rather, it disputed whether Tadlock's physical problems after February 9, 1998, were directly and causally related to the motor-vehicle accident. Tadlock underwent an anterior cervical fusion on August 4, 1998, which, according to Tadlock's testimony, failed to relieve his neck pain. The Commission awarded Tadlock certain medical benefits and temporary-total-disability benefits through December 15, 1998, the end of his healing period.¹

Tadlock sought additional workers'-compensation benefits in 2001. The Commission awarded him additional temporary-total-disability benefits for the time period of April 15, 1999, through July 10, 2000. The Commission further awarded Tadlock ongoing reasonable, necessary, and related medical treatment. The Commission addressed unpaid and controverted medical bills subject to the initial proceeding.² St. Joseph's appealed to this court, and we affirmed the Commission's decision in an unpublished opinion.³

Tadlock is now seeking additional benefits in the form of medical treatment by Dr. Jacob Abraham as well as wage-loss-disability benefits. Tadlock contends that he was permanently and totally disabled as a result of his compensable neck injury and that he

¹*Ronald Tadlock v. St. Joseph's Regional Health Center*, FC Opinion filed December 9, 1999 (E802168).

²*Ronald Tadlock v. St. Joseph's Regional Health Center*, FC Opinion filed September 11, 2002 (E802168).

³*St. Joseph's Regional Health Center v. Tadlock*, No. CA02-1385, (Ark. App. June 11, 2003).

sustained substantial wage loss. St. Joseph's contends that Tadlock is not entitled to any additional medical treatment and no wage-loss-disability benefits.

At the hearing on August 24, 2006, Tadlock testified that since 1999, Dr. Abraham has given him six radio frequency denervation procedure treatments (RFCs), which is a burning of the nerves, steroid injections in his neck, and some physical therapy. He claims that the RFCs last for an average of twelve or thirteen months, and that these treatments take his pain from a level ten down to a level five or six on a zero-to-ten scale for pain. Tadlock said that he had some relief with the muscle spasms in his neck until he performed a functional capacity evaluation (FCE) in 2005, and re-injured his neck.

Tadlock has undergone two FCEs. The first, dated June 25, 1998, concluded that he was capable of performing work classified by the Department of Labor as "very heavy." The FCE recommended that Tadlock "return to work for a trial period of 2 to 4 weeks. If he is unable to sustain the work tolerances demonstrated during his FCE then he would be a candidate for a job accommodation at that time." Tadlock claimed that he was "over-medicated" for this FCE.

The second FCE was conducted on February 22, 2005. The paragraph of this FCE labeled "Reliability and Consistency of Effort" reads as follows:

The results of this evaluation suggest that [Tadlock] gave an unreliable effort, with 27 of 41 consistency measures within expected limits with limited testing due to [Tadlock's] high blood pressure and subsequent nausea he reported during testing. In limited testing, it is noted that [Tadlock] exhibited self-limiting behavior with grip testing as indicated by his 26-27% increase in grip with rapid grip exchange testing. [Tadlock's] lack of compensatory guarding during formal AROM testing of the cervical region is also inconsistent with his complaints of severe pain. He moved his neck and head freely in a normal pace of movement with AROM testing. [Tadlock's]

self perceived abilities for handling and fingering are much lower than his actual abilities.

The FCE stated that Tadlock can “perform the following activities on a Frequent basis: Reach Immediate (L), Reach Immediate (R), Handling (L), Handling (R), Bi-Manual Handling, Fingering (L), Fingering (R), and Bi-Manual Fingering.” Tadlock demonstrated “normal use of his hands and fingers,” “good ability to reach in the immediate plane,” and “no difficulty with prolonged sitting.” He can “perform the following on an Occasional basis: Squat, Kneel, Reach Overhead with the Right or Left UE, Standing and Walking.”

Despite Tadlock’s self-limiting behavior, he demonstrated “the ability to perform Sedentary work activities over the course of the workday without further stressing his cardio-respiratory systems.” This FCE reflected that Tadlock had “mild AROM deficits but good use of the hands, arms and fingers.” Additionally, his “post-test pain rating for his neck was actually less than his pre-test pain rating, indicating no significant problems with performing the Sedentary type work he performed” during the FCE.

Tadlock receives \$1200 per month in Social Security disability, and he is eligible for Medicare. He testified that he has restrictions in the range of motion of his neck and has a hard time driving and getting up and down. He said that he has not been free from neck spasms since 1999. He continues to take pain medication. Tadlock has high blood pressure, diabetes, and is six-feet tall weighing 325 pounds.

Tadlock has taken courses at the community college and gained a degree in computer science. He was able to do this through accommodations made for his injuries under the Americans with Disabilities Act. He also took an air-conditioning course, a refresher

paramedic course, and a woodworking course. Tadlock owned and operated a karate school prior to his compensable injury. Since the accident, he has to have a lot of bed rest and not a lot of activities. He testified that he cannot sleep for many hours in a row, but gets up after an hour or hour and a half because of the pain. He said that the biggest thing keeping him from a desk job is that he would have poor attendance and he would have to get up and move around. He said he has not applied for work in the computer field because his knowledge is outdated. He said he cannot drive long distances, and must stop after forty-five minutes. Tadlock said that he tried to kill himself several months prior to the hearing, but is not taking antidepressant medication.

Dr. Jacob Abraham testified in a deposition on May 11, 2005, that Tadlock has been his patient for six years. He provides pain management treatment for Tadlock. He testified that Tadlock is taking a muscle relaxer, painkiller, and anti-inflammatory drugs, which Abraham has prescribed. He said that Tadlock has always had restricted range of motion because of severe spasms and his neck pain. Abraham said that Tadlock has always had spasms and that he always had hard, very tight muscles in that area. He acknowledged that the RFCs have never given Tadlock a complete resolution of his pain. Abraham said that he has not placed restrictions on Tadlock's lifestyle. His diagnosis is failed-cervical-back-surgery syndrome. He opined that if the procedures he uses on Tadlock were not performed, Tadlock's requirement for pain medication would increase.

Dr. Anthony Russell testified by deposition taken April 2, 1999, stating that he is a neurological surgeon and saw Tadlock on April 17, 1998. He did an independent medical

evaluation (IME) with essentially normal results. He found degenerative changes when reviewing the MRI scan of Tadlock's neck. He did not recommend surgery. Russell ordered a second MRI in July 1998, which confirmed his suspicion that there were no surgical lesions present. He learned that Tadlock in fact had surgery, but was not able to relate the surgery to any one specific incident that led to it. He stated that he felt like the surgery concentrated on the degenerative changes that were already present.

Dr. Reginald John Rutherford, a board certified neurologist, testified by deposition taken August 28, 2000, that he performed an IME of Tadlock and reviewed his medical records. He said that during the clinical examination of Tadlock, Tadlock's blood pressure became quite high, and he became nauseated. He said that Tadlock was significantly overweight, weighing about 326 pounds, and that the abdominal examination was limited by obesity. Rutherford found no other objective findings other than obesity, uncontrolled hypertension and sensory changes, which may reflect a mild abnormality of the C8 nerve root. He thought Tadlock should lose weight and report back to his cardiologist for treatment of his high blood pressure. He advised Tadlock that if he were motivated to do so, he could return to work. Rutherford also opined that Tadlock should use as little medication as possible.

Rutherford performed an additional IME of Tadlock in 2004, and by a report dated July 1, 2004, Rutherford opined that Tadlock's neck pain was subjective. He strongly recommended a psychological evaluation, and alternatively, he recommended a long-acting analgesic. He stated that he thought there was no rational basis for further treatment with

cervical-epidural-steroid injections because of the potential risk of exacerbating Tadlock's diabetes and because they have not provided substantial benefit.

The ALJ awarded Tadlock a forty-percent loss in wage-earning capacity in addition to the ten-percent-permanent-anatomical-impairment rating that St. Joseph's accepted. The Full Commission reversed the ALJ on appeal, finding that Tadlock failed to prove by a preponderance of the evidence that he sustained any wage-loss disability in excess of his ten-percent-permanent-anatomical-impairment rating. The Commission further found that Dr. Abraham's additional medical treatment was not reasonably related to Tadlock's compensable neck injury. Finally, the Commission ordered St. Joseph's to pay for Tadlock to undergo a psychological evaluation. A timely notice of appeal was filed, and this appeal followed.

Our standard of review is well settled that, on appeal from the Arkansas Workers' Compensation Commission, this court views the evidence and all reasonable inferences therefrom in the light most favorable to the Commission's decision and will affirm that decision when it is supported by substantial evidence. *Arbaugh v. AG Processing, Inc.*, 360 Ark. 491, 202 S.W.3d 519 (2005). It is for the Commission to determine where the preponderance of the evidence lies; upon appellate review, we consider the evidence in the light most favorable to the Commission's decision and uphold that decision if it is supported by substantial evidence. *Id.* Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* There may be substantial evidence to support the Commission's decision even though we might have reached a different conclusion if we had sat as the trier of fact or heard the case de novo. *Id.* It is exclusively within the province

of the Commission to determine the credibility and the weight to be accorded to each witness's testimony. *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 conclusions arrived at by the Commission. *Id.*

Tadlock argues that substantial evidence does not support the Commission's decision to deny him further medical treatment. He asserts that he sustained a compensable injury that required surgery by Dr. Arthur on August 4, 1998. He maintains that the surgery did not help to reduce his severe pain and muscle spasms, which have required additional care and have been disabling. He has been unable to work and has continued under Dr. Abraham's care. The care administered by Dr. Abraham has lessened his pain from around a nine or ten to a six on a scale from zero-to-ten.

Tadlock discounts St. Joseph's argument that Dr. Rutherford's 2004 IME indicated an indeterminate etiology for Tadlock's pain. Rutherford recommended treatment by a psychiatrist and stated that Tadlock's present level of pain being treated by Abraham does not address the cause of the complaints. Tadlock argues that Dr. Rutherford saw him only one time at the request of St. Joseph's, and unlike Dr. Abraham, Dr. Rutherford has not been Tadlock's treating physician for eight years. Tadlock also points out that St. Joseph's argument regarding the 2005 FCE ignores the fact that he was pushed beyond his limit during the evaluation, causing him to have severe neck spasms and to throw up numerous times.

Tadlock argues that he has proven by substantial evidence that the medical treatments he receives from Dr. Abraham are reasonably necessary medical services and that St. Joseph's

should be liable for the expense of those services. See Ark. Code Ann. § 11-9-508(a). Reasonably necessary services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from a compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995). This court has also noted that even if the healing period has ended, a claimant may be entitled to ongoing medical treatment if the treatment is geared toward management of the claimant's compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

Tadlock argues that the treatments in question in the present appeal are identical to the treatments previously deemed compensable for this appellant, and in fact, the evidence of record indicates that Tadlock is receiving better relief than he had in the past, due to the use of improved needles. Tadlock claims that the Commission's decision herein is based solely on Dr. Rutherford's July 1, 2004 IME, which was done without records from Dr. Abraham. Tadlock argues that the Commission's decision is not supported by substantial evidence because the Commission gave more weight to Dr. Rutherford's IME than to Dr. Abraham, who is Tadlock's treating physician.

However, Dr. Rutherford actually examined Tadlock on two occasions, not just once as argued by Tadlock. Dr. Abraham stated that his goal is to maintain Tadlock at his current level of pain and not to alleviate his pain. Comparatively, St. Joseph's argues that Dr. Rutherford evaluated Tadlock looking for the actual cause of his complaints. It is well settled

that the Commission's duty is to resolve such conflicts. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001). When the Commission fulfills this duty, as it did in the present case, that decision should be affirmed on appeal. *Id.*

St. Joseph's contends, and we agree, that substantial evidence supports the Commission's denial of additional medical treatment. The evidence before the Commission was that Dr. Abraham's treatment has not resolved or permanently alleviated any of Tadlock's complaints since 1999. Dr. Rutherford's IME suggests there is no physical explanation for Tadlock's complaints of pain. The Commission considered these conflicting medical opinions, and it is entitled to determine where the preponderance of the evidence lies. 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. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000).

Tadlock claims that it is mystifying and an error for the Commission to have ordered a psychological evaluation but not further medical treatment found to be reasonable in the past. He argues it was improper for the Commission to address this new issue on appeal. However, the Commission's order awarding Tadlock additional medical treatment in the form of a psychological evaluation cannot be appealed from, as it is a favorable ruling to Tadlock. *See Ball v. Foehner*, 326 Ark. 409, 931 S.W.2d 142 (1996).

Tadlock next contends that the Commission's decision to deny him forty-percent-wage-loss disability cannot be upheld because it failed to address critical parts of the evidence that support Tadlock's claim and mischaracterized critical parts of the evidence. Wage-loss

disability is the extent to which a compensable injury has affected appellant's ability to earn a livelihood. *Johnson v. Latex Constr. Co.*, 94 Ark. App. 431, 232 S.W.3d 504 (2006).

Arkansas Code Annotated section 11-9-522 states in pertinent part:

(b)(1) In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

Ark. Code Ann. § 11-9-522(b)(1).

Tadlock asserts that the ALJ considered his anatomical impairment, age, education, work experience and other matters and determined that he suffered wage-loss disability to the extent of forty percent. St. Joseph's argues that that evidence demonstrates Tadlock has no problem performing sedentary work and that his negative attitude in looking for work affects his motivation. The Commission's opinion attacks Tadlock's credibility on the basis of his lack of motivation. Tadlock argues that motivation is a factor, but it is not the only factor that the Commission should have considered.

Tadlock points to *Johnson, supra*, arguing that the Commission was reversed when it failed to properly assess the factors related to wage loss and gave too much emphasis to a supposed lack of motivation. *See also Buford v. Standard Gravel Co.*, 68 Ark. App. 162, 5 S.W.3d 478 (1999). Tadlock urges that the Commission has mischaracterized the evidence in this matter as well. He claims that he is not lacking in motivation. He points to the evidence that before his compensable injury, he worked full time and operated a karate school; he coached softball for his son's team for three years; he was able to support and take

care of his family. After the injury, he underwent surgery and was referred to Dr. Abraham for pain management. Dr. Abraham diagnosed failed-cervical-neck-surgery syndrome and has treated Tadlock since his surgery with epidural steroid injections and radio frequency denervation. He claims to have suffered chronic pain all these years. He points out that despite the pain, he went to school and did his best on his FCE. He argues that this evidence shows that he was motivated to return to work and that he sustained a considerable loss in his wage-earning capacity.

However, St. Joseph's claims that substantial evidence supports the Commission's decision denying Tadlock wage-loss disability of forty percent to the body as a whole in excess of his percentage of permanent-physical impairment, which is ten percent. Under Arkansas Code Annotated section 11-9-522(b)(1), the Commission is to look at factors such as the employee's age, education, work experience, and other matters reasonably expected to affect his future earning capacity. The other factors include motivation, post-injury income, credibility, demeanor, and a multitude of other factors. *See Henson v. General Electric*, 99 Ark. App. 129, 257 S.W.3d 908 (2007).

St. Joseph's argues that the evidence herein demonstrates that Tadlock has no problem performing sedentary work. His negative attitude in looking for work and psychological issues stand in the way of gainful employment. The first vocational evaluation he underwent on December 21, 2004, advised him to upgrade his existing computer science skills or take courses in accounting where he could work out of his home in a variety of jobs. He did not do this, instead taking a course in heating and air conditioning and a refresher course in

paramedics, both of which are impossible for him because of his physical limitations. Also, he testified that he was not going to re-enroll in school because he has difficulty standing or sitting. However, he also testified that the community college accommodated him in order to comply with the Americans with Disabilities Act of 1990. Also, he was able to sit during car trips and pay for travels to Las Vegas, Nevada, California, and Tunica, Mississippi. He testified that he has not tried to work in the field of computer science.

Further, even though Tadlock testified about his numerous restrictions, Dr. Abraham has not placed any specific restrictions or limitation on him. St. Joseph's points out that Tadlock receives Social Security disability benefits of \$1250 per month, which arguably contributes to his lack of motivation to obtain employment. The most recent FCE states that Tadlock has no difficulty with prolonged sitting. However, Tadlock objects to a sedentary job because he cannot sit for longer than one hour at a time, ignoring that the Americans with Disabilities Act would require an employer to accommodate him.

We agree with St. Joseph's that the Commission had substantial evidence before it to deny Tadlock's request for wage-loss-disability benefits. Viewing the evidence and all reasonable inferences therefrom in the light most favorable to the Commission's decision, we must affirm. Tadlock's argument that the Commission based its decision exclusively on his lack of motivation ignores the Commission's thorough and extensive analysis. The Commission stated:

When we consider the fact that the claimant has been able to take trips to Tunica, San Diego, and Las Vegas, in a vehicle, the fact that the FCE found the claimant could move his neck and head freely at a normal pace, the fact that the claimant has been able to attend refresher courses in paramedic training as well as a woodworking and

heating and air conditioning course, we find that the evidence simply does not preponderate in favor of a finding that the claimant was entitled to any wage loss disability benefits. The claimant is able to perform sedentary work based upon his FCE.

Therefore, there is no support for Tadlock's attempt to characterize the Commission's holding as focusing exclusively on the overwhelming evidence of Tadlock's lack of motivation to return to work. Accordingly, we affirm.

Affirmed.

VAUGHT, C.J., and KINARD, J., agree.