

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-690

DAVID BELIEW

APPELLANT

V.

LENNOX INDUSTRIES and ACE
AMERICAN INSURANCE

APPELLEES

Opinion Delivered FEBRUARY 3, 2010

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F510342]

AFFIRMED

KAREN R. BAKER, Judge

Appellant, David Beliew, appeals the decision by the Workers' Compensation Commission after remand denying his claim for additional medical benefits, in the form of surgery recommended by Dr. Chakales, and temporary total disability. His sole point on appeal is that substantial evidence does not support the Commission's finding that he failed to prove that Dr. Chakales's additional medical treatment was reasonable and necessary, and the finding that he failed to prove that he was entitled to additional temporary total disability from February 12, 2006, to a date to be determined, for his low-back injury. We affirm.

This is the second appeal in this case. In *Beliew v. Lennox Industries*, CA 07-1197 (Ark. App. June 18, 2008), an unpublished opinion, this court reversed and remanded this case to the Commission for further findings because it failed to discuss the findings of the doctors who first

examined appellant and who first noted the presence of low-back pain. An extensive review of the facts of the case are found in our first opinion. On remand, no additional evidence was presented, and the Commission found that appellant did not prove that he was entitled to additional medical treatment by Dr. Chakales, and thus, he was not entitled to temporary total disability. This appeal followed.

When reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Crossett Sch. Dist. v. Gourley*, 50 Ark. App. 1, 899 S.W.2d 482 (1995). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Wright v. ABC Air, Inc.*, 44 Ark. App. 5, 864 S.W.2d 871 (1993). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; even if a preponderance of the evidence might indicate a contrary result, if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *St. Vincent Infirmary Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The Commission is required to weigh the evidence impartially without giving the benefit of the doubt to any party. *Keller v. L.A. Darling Fixtures*, 40 Ark. App. 94, 845 S.W.2d 15 (1992).

The Commission also has the duty of weighing the medical evidence as it does any other evidence. *Roberson v. Waste Mgmt.*, 58 Ark. App. 11, 944 S.W.2d 858 (1997). The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence

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has the force and effect of a jury verdict. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). When the Commission denies benefits upon finding that the claimant failed to meet his burden of proof, the substantial evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for denial of the relief. *Cooper v. Hiland Dairy*, 69 Ark. App. 200, 11 S.W.3d 5 (2000); *see also Bingle v. Quality Inn*, 96 Ark. App. 312, 241 S.W.3d 271 (2006).

The determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission; 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 it deems worthy of belief. *Cossey v. Gary A. Thomas Racing Stable*, 2009 Ark. App. 666, 344 S.W.3d 684. Moreover, and most importantly, the Commission is not bound by a doctor's opinion that is based largely on facts related to him by the claimant where there is no sufficient independent knowledge upon which to corroborate the claimant's claim. *Id.*

On appeal, appellant alleges that substantial evidence does not support the Commission's finding that he failed to prove that Dr. Chakales's additional medical treatment was reasonable and necessary, and the finding that he failed to prove that he was entitled to additional temporary total disability from February 12, 2006, to a date to be determined, for his low-back injury. The workers' compensation statutes provide that an "employer shall promptly provide for an injured employee such medical . . . services . . . as may be reasonably necessary in

connection with the injury received by the employee.” Ark. Code Ann. § 11-9-508(a) (Supp. 2007). The injured employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of a compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995). What constitutes reasonable and necessary treatment is a question of fact for the Commission. *Gansky v. Hi-Tech Eng'g*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000).

Here, the Commission was faced with conflicting medical opinions. Initial medical reports from appellant’s visit with Dr. Hord indicate “low back pain” and muscle spasms in his left paraspinous muscles of his lumbar spine area. Moreover, Dr. Daniel’s report states “discomfort general T9-L2 level.” Drs. Hord and Daniel diagnosed appellant with lumbosacral strain. Drs. Sprinkle and Meadors, who also treated appellant, determined that appellant had reached maximum medical improvement with a zero-percent impairment rating and released him to full duty work. After considering the opinions of Dr. Hord, Dr. Daniel, and Dr. Chakales, the Commission attached significant weight to the opinion of Dr. Sprinkle. In its opinion, the Commission stated:

Dr. Sprinkle agreed at deposition that his initial diagnosis has been thoracic strain. Dr. Sprinkle also credibly testified that he had examined the claimant’s thoracic and lumbar area, and that he considered “thoracic and lumbar together conceptually . . . the only tenderness and tightness I found was in that thoracic area.” Dr. Sprinkle testified that he reviewed the claimant’s lumbar MRI which showed “some degenerative disc disease changes at the L4-5 level with a tear in that disc and kind of a broad-based bulge, but no real focal extrusion.” Dr. Sprinkle opined that the findings seen on the lumbar MRI were not related to the claimant’s compensable injury In the present matter, after

considering the reports of lumbar strain by Drs. Hord and Daniel, the Full Commission finds that the claimant did not prove surgery as recommended by Dr. Chakales was reasonably necessary. We find the expert opinions of Dr. Sprinkle and Dr. Meador to be more credible. Dr. Sprinkle's reports indicated that the claimant reached maximum medical improvement no later than December 15, 2005. Dr. Meador sent the claimant back to work at full duty on February 10, 2006 with 0% impairment. Neither Dr. Sprinkle nor Dr. Meador opined that the claimant would need surgery.

It is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Hargis Transp. v. Chesser*, 87 Ark. App. 301, 190 S.W.3d 309 (2004). Here, after considering the reports of lumbar strain by Drs. Hord and Daniel, the Commission determined that Dr. Sprinkle's opinion was entitled to greater weight. Precedent requires that we defer to the Commission's resolution of these conflicting medical opinions. *Bruton v. Van Buren Pipe Corp.*, 2009 Ark. App. 320 (citing *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002)). We, therefore, affirm the Commission's finding that appellant failed to prove additional medical treatment by Dr. Chakales as being reasonable and necessary.

We also affirm the Commission's finding that appellant failed to prove entitlement to additional temporary total disability benefits after February 10, 2006. Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages; the healing period is that period for healing of an accidental injury that continues until the employee is as far restored as the permanent character of his injury will permit, and that ends when the underlying condition causing the disability has become stable and nothing in the way of treatment will improve that condition. *Crawford v. Superior Indus.*, 2009 Ark. App. 738, 361 S.W.3d 290 (citing *Carroll Gen. Hosp. v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996)). The

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determination of when the healing period has ended is a factual determination for the Commission and will be affirmed on appeal if supported by substantial evidence. *Id.* Here, Dr. Sprinkle and Dr. Meador opined that appellant reached maximum medical improvement no later than December 15, 2005 and sent appellant back to work at full duty on February 10, 2006, with 0% impairment. Neither Dr. Sprinkle nor Dr. Meador opined that the claimant would need surgery. Substantial evidence supports the Commission's decision.

Affirmed.

GLADWIN and MARSHALL, JJ., agree.