

## ARKANSAS COURT OF APPEALS

DIVISION I  
No. CA10-650

MIKE ADAMS

APPELLANT

V.

BEMIS COMPANY, INC. and  
SEDGWICK CLAIMS MANAGEMENT  
APPELLEES

**Opinion Delivered** December 15, 2010

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F703426]

AFFIRMED

---

**RAYMOND R. ABRAMSON, Judge**

Mike Adams, who began working at Bemis Co., Inc. in 1982, suffered a compensable low-back injury at work in March 2006. After his injury, Adams was evaluated by and received treatment from many doctors. Bemis began paying for Adams's medical treatment almost immediately and began paying temporary-total-disability benefits in April 2007, when Dr. Williams took Adams totally off work. Bemis stopped paying for Adams's medical expenses on November 1, 2007 and stopped paying him temporary-total-disability benefits on December 31, 2007. Adams sought payment for additional medical treatment (including a proposed discectomy), temporary-total-disability benefits, and temporary-partial-disability benefits. After a hearing, the administrative law judge found that Adams was in need of continuing medical treatment, awarded him temporary-partial-disability benefits from June 9, 2008 until August 11, 2008, and awarded him temporary-total-disability benefits from

August 12, 2008 until a date yet to be determined. Bemis appealed to the Workers' Compensation Commission, which reversed the ALJ's decision. Adams appeals.

On appeal, we view the facts in the light most favorable to the Commission's decision and affirm if its decision is supported by substantial evidence. *Owens Planting Co. v. Graham*, 102 Ark. App. 299, 302, 284 S.W.3d 537, 539 (2008). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* "[When] the Commission denies a claim because of the claimant's failure to meet his burden of proof, the substantial-evidence standard of review requires that we affirm the Commission's decision if its opinion displays a substantial basis for the denial of relief." *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 255, 284 S.W.3d 91, 93 (2008). It is the Commission's duty, not ours, to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony and evidence. *Id.*, 284 S.W.3d at 94.

#### ***Additional Medical Treatment***

By statute, Bemis had to provide for Adams such medical services "as may be reasonably necessary in connection with the injury received by [Adams]." Ark. Code Ann. § 11-9-508(a) (Supp. 2009). Adams had the burden of proving by a preponderance of the evidence that the additional medical treatment requested was reasonable and necessary. *Amaya v. Newberry's 3N Mill*, 102 Ark. App. 119, 126-27, 282 S.W.3d 269, 275 (2008). "What constitutes reasonable and necessary treatment under this statute is a question of fact for the Commission to decide." *Id.* at 127, 282 S.W.3d at 275.

The Commission, in denying Adams's claim for additional medical treatment, relied most heavily on the medical opinions of Drs. Akin, Thomas, and Simpson. Dr. Akin, a neurosurgeon, opined in a March 2007 note that Adams had reached maximum medical improvement and that "his chances of improvement with any further surgical intervention would statistically be very low." Dr. Thomas, also a neurosurgeon, wrote in an October 2007 letter that Adams suffered from "chronic back pain after a work-related injury." Dr. Thomas similarly concluded, after reviewing the results of Adams's recent myelogram, that Adams "does not have any evidence of stenosis that would require neurosurgical decompression." Dr. Simpson, another neurosurgeon, evaluated Adams in May 2008. Dr. Simpson reviewed Adams's 2007 MRI and stated that he did not see anything "surgical." He further opined that he doubted "very seriously if anything surgically could be done to alleviate [Adams's] symptoms." The Commission found these doctors' opinions entitled to more evidentiary weight than the opinions of Drs. Qureshi, Shahim, and Long, who were all recommending further treatment, including a discectomy.

On appeal, Adams essentially asks us to step into the shoes of the Commission and to reweigh the obviously conflicting medical evidence. In doing so, Adams questions the weight of Dr. Simpson's opinion, stating that Dr. Simpson never actually treated him, but only reviewed his medical records. Adams similarly attacks Dr. Thomas's opinion, arguing that Dr. Thomas simply relied on reports from other doctors in rendering his opinion. Adams also points to Dr. Akins's earlier mentions of surgery as a possible treatment option and argues

that the Commission failed to take those earlier opinions into consideration. Last, Adams claims that the Commission completely ignored the opinions of two other doctors, both of whom Adams claims mentioned surgery as a possible alternative.

First, we note that the Commission's opinion is very detailed and thorough. It contains a more than twenty-page history of Adams's claim and goes over—in detail—the medical records and opinions of the many doctors who treated and evaluated Adams. This history includes the two doctors' opinions that Adams argues the Commission ignored. As to Adams's other points, we fully recognize that the medical testimony presented below conflicts—this is a classic “dueling doctors” case. But resolving the conflicting medical evidence, making credibility determinations, and deciding what weight to give particular pieces of evidence is within the Commission's province. *Martin Charcoal, Inc.*, 102 Ark. App. at 255, 284 S.W.3d at 94. Indeed, “[t]he 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.” *Diggs v. Cattlemen's Livestock Market, Inc.*, 2010 Ark. App. 311, at 3, 374 S.W.3d 806, 808. And though we may have reached a different result than the Commission, its decision to deny Adams any further medical treatment is supported by substantial evidence. *Id.* at 2, 374 S.W.3d at 807. We therefore affirm on this point.

***Temporary-Total- & Temporary-Partial-Disability Benefits***

Adams was entitled to temporary-total-disability benefits while he was still in his healing period and totally incapacitated from earning any wages. *Pyle v. Woodfield, Inc.*, 2009 Ark. App. 251, at 3, 306 S.W.3d 455, 457. “The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended.” *Id.* When the healing period ended is a factual question to be answered by the Commission. *Id.*

The statute regarding temporary-partial-disability benefits states, “[i]n case of temporary partial disability resulting in the decrease of the injured employee’s average weekly wage, there shall be paid to the employee sixty-six and two-thirds percent (66 2/3 %) of the difference between the employee’s average weekly wage prior to the accident and his or her wage-earning capacity after the injury.” Ark. Code Ann. § 11-9-520 (Repl. 2002). In other words, when an employee returns to work, but because of a temporary-partial disability is not earning the same wages as before his injury, he is entitled to temporary-partial-disability benefits. No temporary-disability benefits, whether partial or total, can be awarded after a claimant reaches the end of his healing period. *Death & Permanent Total Disability Fund v. Legacy Ins. Servs.*, 95 Ark. App. 189, 192, 235 S.W.3d 544, 547 (2006).

As mentioned above, Bemis paid Adams temporary-total-disability benefits through December 31, 2007. The Commission found that Adams’s healing period ended no later than November 1, 2007. In so finding, the Commission gave significant probative weight to Dr.

Thomas's opinion. In a November 23, 2007 letter, Dr. Thomas said that Adams had reached maximum medical improvement on November 1, 2007. In response to a question about Adams's work restrictions, Dr. Thomas said that once Adams's left foot healed (from a non-work-related injury), he should be able to return to work. Relying on Dr. Thomas's opinion, the Commission found that Adams was not entitled to any further temporary-disability benefits beyond November 1, 2007.

As with the additional-medical-treatment issue, there were varying medical opinions from several doctors regarding the date Adams's healing period ended and whether Adams had subsequently entered a second healing period. Again, it was the Commission's duty to resolve the conflicting medical evidence, to weigh that evidence, and to determine which opinions were credible. *Martin Charcoal, Inc.*, 102 Ark. App. at 255, 284 S.W.3d at 94. Dr. Thomas's opinion, to which the Commission attached "significant probative weight," provides substantial support for the Commission's decision. *Owens Planting Co.*, 102 Ark. App. at 302, 284 S.W.3d at 539. Again, the question for us is not whether we might have reached a different conclusion than the Commission, but is instead whether substantial evidence supports the Commission's decision. *Diggs*, 2010 Ark. App. 311, at 2, 374 S.W.3d at 807. Here, the answer to that question is yes. We therefore affirm on this point as well.

Affirmed.

PITTMAN and GLADWIN, JJ., agree.