

ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-21-401

PRESTON ALLEN

APPELLANT

V.

STAFFMARK INVESTMENTS, LLC,
AND DEATH AND PERMANENT
TOTAL DISABILITY TRUST FUND

APPELLEES

Opinion Delivered May 25, 2022

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. G903144]

AFFIRMED

N. MARK KLAPPENBACH, Judge

Preston Allen appeals the decision of the Arkansas Workers' Compensation Commission that denied his claims for additional medical treatment, payment for unpaid medical bills, temporary total-disability benefits, and permanent partial-disability benefits. We affirm.

Allen was employed by appellee Staffmark Investments, LLC, a staffing agency, and assigned to work at Atlas Tool. On May 8, 2019, he was pulling a piece of metal when he slipped on oil on the floor. He fell and hit his back on a piece of metal and the right side of his body on concrete. The parties stipulated that Allen sustained compensable injuries to his lower back, right arm, and right leg. He was treated by Dr. Ronald Smith and diagnosed with a right shoulder contusion and myofascial strain of his cervical and lumbar spine areas. Dr. Smith did not find any significant physical findings upon examination and referred Allen to physical therapy daily for three weeks. On June 5, 2019, Allen reported that physical

therapy was not helping. Dr. Smith still could not find any objective evidence of a significant problem, but to ensure that something was not overlooked, he ordered MRIs of Allen's cervical and lumbar spine. On August 19, 2019, Smith wrote in his report that the MRIs did not show anything of significance. Smith reported that clinically, Allen was okay, and although he would probably continue to have some pain and discomfort, he would be able to safely resume normal work activity. Smith found that Allen had suffered no permanent impairment due to his work injury.

Allen represented himself in proceedings before the administrative law judge (ALJ). A hearing was held on August 12, 2020. Allen testified that after he was released by Dr. Smith, he went to work for Telling Industry. He said that he had to be taken off work at times due to his injury, and he was placed on light duty. He was later laid off due to the COVID-19 pandemic. On October 21, 2019, Allen went to the emergency room due to his pain and had a CT scan. Staffmark had declined to pay for this visit. Allen testified that he had not received any treatment since that date because his doctor said that his workers'-compensation proceedings must be finished first. Allen sought payment for his October emergency-room visit and additional compensation.

The ALJ found that Allen had failed to prove that he is entitled to additional medical treatment and payment for unpaid medical bills incurred at the emergency room in October 2019. The ALJ further found that he had reached maximum medical improvement on August 19, 2019; that he failed to prove that he is entitled to additional temporary total-disability benefits after that date; and that he failed to prove that he is entitled to permanent partial-disability benefits. The Commission affirmed and adopted the decision of the ALJ.

In appeals involving claims for workers' compensation, the appellate court views the evidence in the light most favorable to the Commission's decision and affirms the decision if it is supported by substantial evidence. *Carrick v. Baptist Health*, 2022 Ark. App. 134, 643 S.W.3d 466. Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission, but whether reasonable minds could reach the result found by the Commission. *Id.* Additionally, questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Id.*

In his pro se appeal, Allen claims that his injury has left him with excruciating pain that has dramatically changed his life. He argues that he is entitled to additional compensation and payment of his medical bills.

Arkansas Code Annotated section 11-9-508(a) (Supp. 2021) requires an employer to provide an employee with medical and surgical treatment "as may be reasonably necessary in connection with the injury received by the employee." However, a claimant bears the burden of proving entitlement to additional medical treatment. *Carrick, supra.* What constitutes reasonably necessary treatment is a question of fact for the Commission. *Id.* The Commission has authority to accept or reject medical opinion and to determine its medical soundness and probative force. *Id.* Furthermore, it is the Commission's duty to use its experience and expertise in translating the testimony of medical experts into findings of fact and to draw inferences when testimony is open to more than a single interpretation. *Id.*

Staffmark denied payment for Allen’s October 2019 emergency-room visit on the basis that he had been released by Dr. Smith and had returned to work at another job. The Commission found that Allen had failed to prove this treatment was reasonable and necessary. The Commission noted that Dr. Smith advised Allen that he would continue to have pain, and the emergency-room CT scan revealed similar findings to Allen’s prior lumbar MRI. In light of the medical evidence presented, we hold that there was a substantial basis for the Commission’s finding that Allen failed in his burden of proving that any further medical treatment was reasonably necessary.

Temporary total disability is that period within the healing period in which a claimant suffers a total incapacity to earn wages. *Carrick, supra*. The healing period is defined by statute as “that period for healing of an injury resulting from an accident,” Ark. Code Ann. § 11-9-102(12) (Supp. 2021), and whether it has ended is a factual determination to be made by the Commission. *Watts v. Sears, Roebuck & Co.*, 2011 Ark. App. 529, 386 S.W.3d 19. Pain management that does not improve the underlying condition does not extend the healing period. *Smallwood v. Ark. Dep’t of Hum. Servs.*, 2010 Ark. App. 466, 375 S.W.3d 747.

The Commission found that Allen reached the end of his healing period on August 19, 2019, when he was released to return to work; thus, he failed to prove that he is entitled to any temporary total-disability benefits after that date. Dr. Smith opined on that date that Allen was clinically okay, and although he may still experience pain, he was released to resume normal work activities. As Staffmark notes, Allen worked at a new job after being released by Dr. Smith until he was laid off due to the pandemic. We hold that this was

substantial evidence to support the Commission's finding that Allen was not entitled to temporary total-disability benefits after August 19, 2019.

Permanent impairment has been defined as any permanent functional or anatomical loss remaining after the healing period has ended. *Carrick, supra*. Any determination of the existence or extent of physical impairment must be supported by objective and measurable findings. Ark. Code Ann. § 11-9-704(c)(1)(B) (Repl. 2012). "Objective findings" are those findings that cannot come under the voluntary control of the patient, and complaints of pain are not to be considered objective medical findings. Ark. Code Ann. § 11-9-102(16)(A). The Commission is authorized to decide which portions of the medical evidence to credit and to translate this evidence into a finding of permanent impairment using the *AMA Guidelines to the Evaluation of Permanent Impairment*; thus, the Commission may assess its own impairment rating rather than rely solely on its determination of the validity of ratings assigned by physicians. *Carrick, supra*.

In denying Allen's claim, the Commission noted that the only medical evidence offered was the report from Dr. Smith that Allen had no impairment from his compensable injuries. There is no evidence of objective findings to support the existence of permanent impairment. Accordingly, we affirm the Commission's decision.

Affirmed.

ABRAMSON and BROWN, JJ., agree.

Preston Allen, pro se appellant.

Worley, Wood & Parrish, P.A., by: *Melissa Wood*, for separate appellee Staffmark Investments, LLC.