

SPARKS MEMORIAL HOSPITAL *v.* WALTON.

5-1750

320 S. W. 2d 102

Opinion delivered January 26, 1959.

1. WORKMEN'S COMPENSATION—TEMPORARY DISABILITY, EFFECT OF INABILITY TO GIVE MEDICAL EXPLANATION OF CAUSE.—Commission's finding of claimant's continuing temporary total disability held amply supported by the record notwithstanding the inability of attending physicians to arrive at a positive medical explanation of claimant's condition.
2. WORKMEN'S COMPENSATION — MEDICAL DIAGNOSIS BY COMMISSION INDEPENDENT OF TESTIMONY.—Since the doctors were unable to discover an objective cause for claimant's disability, the appellant complains that the commissioners are making their own medical diagnosis in disregard of the testimony because they stated in effect that claimant was disabled by reason of a nerve root compression in the low back. *HELD*: The commissioners' statement merely suggested a possibility to be explored.
3. WORKMEN'S COMPENSATION — ATTORNEY'S FEE, ALLOWANCE ON APPEAL.—Since only the commission is empowered to award fee for legal services, a request for an additional award on appeal will be denied [Ark. Stats. § 81-1332].

Appeal from Sebastian Circuit Court, Fort Smith District; *Paul Wolfe*, Judge; affirmed.

*Dobbs, Pryor & Dobbs*, for appellant.

*Edward E. Bedwell & D. L. Grace*, for appellee.

GEORGE ROSE SMITH, J. This is a claim filed by the appellee, Mary Walton, for workmen's compensation. On July 11, 1956, the claimant, a housekeeper at the appellant's hospital, strained her lower back while lift-

ing a bed. There is an abundance of evidence to show that Mrs. Walton became disabled five days later and that her incapacity still existed when the full Commission heard the case in March, 1958. The Commission found that the claimant had sustained a compensable injury, that she was temporarily totally disabled from July 16, 1956, through March 17, 1958, and that she has not reached the end of her healing period. The record was left open for further proof of her disability after March 17, 1958.

In contending that the order is not supported by any substantial evidence the employer stresses the fact that the many physicians who have examined the claimant have not been able to arrive at a positive medical explanation for her condition. Despite an extensive exploratory operation and a succession of examinations and treatments the doctors have not discovered an objective cause for the severe pain that Mrs. Walton has suffered in her side, abdomen, back, and right leg.

The physicians' uncertainty does not, in our opinion, compel the conclusion that the claim must be denied. Dr. Southard and Dr. Thompson attributed Mrs. Walton's disability to the injury she suffered at the hospital. Their testimony is substantial evidence on which to rest the Commission's finding of a causal connection between the injury and the incapacity. There is no reason for saying that the Commission, upon concluding that a compensable disability had existed for more than eighteen months, should nevertheless have withheld an award pending an exact determination of the medical cause for the claimant's condition. See Larson, *Workmen's Compensation*, § 79.51. The interim finding of a continuing, temporary, total disability is amply supported by the record.

The appellant questions a statement in the Commission's formal opinion, to the effect that the medical findings "indicate to us [the commissioners] that claimant is disabled by reason of a nerve root compression in the low back." We do not regard this passing observation as an attempt by the commissioners to make their

own diagnosis without regard to the medical evidence. It merely suggests a possibility to be explored in the course of the further proceedings that the order contemplates. The essential part of the interim order is the finding, supported by substantial proof, that a disability exists and that it was caused by an accidental injury suffered in the course of the claimant's employment.

The appellee asks that an additional attorney's fee be allowed in connection with the appeal to this court. This request must be denied, as the statute does not authorize such an allowance. Only the Commission is empowered to award fees for legal services, Ark. Stats. 1947, § 81-1332, and the maximum fee was allowed in this case.

Affirmed.

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