

ARKANSAS COURT OF APPEALS
NOT DESIGNED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION II

CA 07-201

OCTOBER 10, 2007

BOB D. WEAVER

APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[NO. F213311]

V.

SUPERIOR INDUSTRIES, INC. and
CROCKETT ADJUSTMENT CO.

APPELLEES

AFFIRMED

Appellant Bob D. Weaver sustained an admittedly compensable injury to his right wrist while working for appellee Superior Industries on October 17, 2002. The appellee paid temporary total disability benefits through March 1, 2005, as well as related medical expenses through May 12, 2005. A controversy arose regarding Mr. Weaver's claim for continuing TTD and medical benefits, and after a hearing the Workers' Compensation Commission found that Mr. Weaver failed to prove that he is entitled to additional TTD or medical treatment. Mr. Weaver now appeals, arguing that the Commission's decision is not supported by substantial evidence. We affirm.

On appellate review of workers' compensation cases, the appellate court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the

findings of the Commission and will affirm the Commission's ruling if there is any substantial evidence to support the findings made. *Daniels v. Affiliated Foods S.W.*, 70 Ark. App. 319, 17 S.W.3d 817 (2000). Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* Where the Commission denies benefits because the claimant failed to meet his burden of proof, the substantial evidence standard of review requires us to affirm if the Commission's decision displays a substantial basis for denial of relief. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). Furthermore, it is within the Commission's sole discretion to determine the credibility of each witness and the weight to be given their testimony. *Id.* The appellate court reviews the decision of the Commission and not that of the administrative law judge. *High Capacity Prods. v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998).

Mr. Weaver testified that he is fifty-one years old and began working for Superior Industries in February 2002. His employment involved manufacturing wheels for automobiles. On October 17, 2002, Mr. Weaver was using a sledgehammer and sustained an injury to his right wrist. He immediately reported to the company aid station, where his wrist was wrapped with a bandage. On the following day, Mr. Weaver saw a doctor and was given a cast, which he wore for three or four months. He was diagnosed with a carpal fracture and his prognosis was good.

Mr. Weaver continued his employment with Superior Industries until November 3, 2002. Despite medical reports to the contrary, Mr. Weaver testified that he has not worked

since that date. He stated that he would like to start a landscaping business, but that his wrist condition prevents it. Mr. Weaver is right handed, and testified that he is unable to use his right hand to perform any labor. Mr. Weaver stated that he has done construction most of his life and has never had any jobs where he could use only one hand. He also stated, "If I try and get up out of a chair my right wrist feels like a knife is stuck in it." Mr. Weaver maintained that he had never had any problem with his right wrist before the work-related accident.

Mr. Weaver's primary physician for treatment of his right wrist condition was Dr. Peter R. Heinzelmann. Dr. Heinzelmann first saw Mr. Weaver on January 9, 2003, and reported that Mr. Weaver was complaining of pain on the ulnar side of his wrist. Dr. Heinzelmann ordered an arthrogram for evaluation of the wrist, which was performed on January 13, 2003. The arthrogram revealed findings consistent with tears of the scapholunate and lunotriquetral ligaments as well as the triangular fibrocartilage. Dr. Heinzelmann subsequently scheduled a right wrist arthroscopy, which he performed on November 5, 2003. Dr. Heinzelmann reported:

The findings during the arthroscopic inspection of Mr. Weaver's wrist joint on November 5, 2003, showed arthritic changes on the radial side of the joint between the distal radius and proximal scaphoid bones with areas of the joint completely devoid of articular cartilage. For this reason, a surgical repair of the injured ligament within the joint would not have been indicated. I therefore did not proceed with that surgery.

An MRI was performed on November 17, 2003, and on November 24, 2003, Dr. Heinzelmann reported:

The MRI of his right wrist showed edema of the entire scaphoid bone and loss of normal articular surfaces at the proximal pole of the scaphoid and the scaphoid fossa of the distal radius. There is also evidence of a triangular fibrocartilage tear. The articular surfaces at the radial lunate and lunocapitate joints appear normal. There was not evidence of a fracture on this study.

Mr. Weaver has a constellation of abnormalities in his left wrist joint including arthritis changes at the radial scaphoid joint, evidence of ligament tears at the scapholunate and lunotriquetral joints and tear of the triangular fibrocartilage. In view of these findings, I recommend a second opinion regarding any further treatment of his wrist by Dr. Ed Weber in Little Rock.

There is nothing in the record showing that Mr. Weaver was ever evaluated by Dr. Weber.

Mr. Weaver again visited Dr. Heinzelmann for a recheck of his right wrist on March 29, 2005, when Dr. Heinzelmann reported, "He states he has not returned to his regular work as a stone and brick mason." Dr. Heinzelmann gave the impression, "Radial scaphoid arthritis, probably secondary to scapholunate dissociation," and indicated that he wanted to see Mr. Weaver in a few months to see how he was progressing. Dr. Heinzelmann's final report came on May 12, 2005, when he stated:

Mr. Weaver was seen in the clinic on 05/12/05, in followup for his right wrist arthritis and pain. He states that he is performing fairly strenuous manual activity with his right hand now in shoveling and lifting heavy rocks in his landscape work. With this type of activity, he is having recurrent and significant pain on the radial aspect of his right wrist but not on the ulnar aspect.

His previous wrist arthrogram showed arthritic changes at the radial scaphoid joint with areas of complete loss of the articular cartilage on the opposing surfaces of the radial scaphoid joint. I have talked to him about the possibility of a wrist surgery which would involve removal of the scaphoid bone and fusion of the four other bones in the wrist joint together but I would not recommend this surgery unless his pain is extremely severe and prolonged and definitely limiting his work activities.

At this point, I would like to proceed with a triple phase bone scan with coned down views of both wrists to further document his area of arthritis in the right wrist. I will see him back after this is completed.

On appeal, Mr. Weaver now argues that the Commission erred in both failing to award additional medical benefits and in failing to award additional temporary total disability benefits. Pursuant to Ark. Code Ann. § 11-9-508(a) (Repl. 2002), an employer shall provide the medical services that are reasonably necessary in connection with the injury received by the employee. Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

In support of his argument that he should be entitled to additional medical benefits, Mr. Weaver notes that Dr. Heinzelmann recommended possible fusion surgery as early as January 20, 2003, which was again referenced in Dr. Heinzelmann's most recent report dated May 12, 2005. Also in that last report was a recommendation to proceed with a triple phase bone scan. Mr. Weaver submits that his condition is still the same as when Dr. Heinzelmann originally recommended surgery, and that he is at least entitled to additional medical testing to ascertain the extent of his injury and need for continuing treatment. Mr. Weaver asserts that Dr. Heinzelmann recommended continuing treatment and that there is no logical reason why his treating physician should be arbitrarily dismissed.

Mr. Weaver argues that the Commission further erred by failing to award additional TTD benefits. Mr. Weaver asserts that he proved entitlement to TTD because he had not been able to work, is still in his healing period, and requires additional medical treatment.

We hold that the Commission's opinion displays a substantial basis for denying additional medical treatment. As the Commission noted, Dr. Michael Moore evaluated Mr. Weaver's right wrist condition, and he identified degenerative changes and reported, "It is my opinion that the arthrogram findings, which revealed leaks through the lunotriquetral ligament and triangular fibrocartilage complex, are most likely related to age and not a traumatic injury." The Commission also relied on the fact that the original problem was with the ulnar side of the right wrist, whereas the current complaints are associated with the radial side. Moreover, it is evident from the medical reports that Mr. Weaver also suffers from significant problems with his left wrist that are unrelated to his compensable injury. It was reasonable for the Commission to conclude that the problems concerning both of appellant's wrists were related to degenerative or arthritic conditions and not a traumatic injury. While Dr. Heinzelmann did recommend a bone scan as asserted by appellant, this procedure was for viewing both wrists and "to further document his area of arthritis in the right wrist." And while fusion surgery was suggested as an option, Dr. Heinzelmann reported, "I would not recommend this surgery unless his pain is extremely severe and prolonged and definitely limiting his work activities." In the same report Dr. Heinzelmann stated that Mr. Weaver had engaged in "fairly strenuous manual activity with his right hand[.]" Given the medical

history, the Commission did not err in concluding that any further medical treatment was not connected to the compensable injury.

Nor do we find error in the Commission's refusal to award additional TTD benefits. While Mr. Weaver testified that he had not worked since leaving his employment with Superior Industries, the Commission specifically found that his testimony was not credible. Dr. Heinzelmann's March 29, 2003, report made reference to appellant working as a stone and brick mason, and his May 12, 2005, report documented strenuous landscaping and heavy lifting. Therefore, substantial evidence supports the Commission's finding that Mr. Weaver did not suffer a total incapacity to earn wages.

Affirmed.

PITTMAN, C.J., and GLADWIN, J., agree.