

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CA09-754

WILLIAM D. PRANTER

APPELLANT

V.

HERBIE DANIELL d/b/a DANIELL  
ELECTRIC; OHIO CASUALTY  
INSURANCE CO.; and SECOND  
INJURY FUND

APPELLEES

**Opinion Delivered** NOVEMBER 18, 2009

APPEAL FROM THE WORKERS'  
COMPENSATION COMMISSION  
[F511401]

AFFIRMED

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**RITA W. GRUBER, Judge**

William D. Pranter appeals a decision of the Workers' Compensation Commission denying his claims for additional benefits that he alleged were related to a compensable back injury he sustained in a 2005 automobile accident. Pranter raises two points on appeal. First, he challenges the Commission's denial of his claim for additional medical care including back surgery. Second, he challenges the Commission's findings that he did not remain in his healing period and that appellee, Herbie Daniell d/b/a Daniell Electric (Daniell), was entitled to credit for overpayment of temporary total disability benefits. We affirm the Commission's decision to deny additional benefits.

The issues of additional medical benefits, additional temporary total disability benefits, and overpayment credit were litigated at a 2008 hearing before an administrative law judge.

Daniell controverted Pranter's claim for additional medical benefits, particularly a lumbar fusion recommended by neurosurgeon Dr. James Arthur, as not being reasonably necessary in relation to the compensable injury. In support of this contention, Daniell asserted that the compensable injury was a temporary aggravation and that "claimant's condition from the back injury resolved, leaving him with the effects of his long-standing, preexisting chronic problems." Daniell also controverted Pranter's claim for temporary total disability benefits, asserting that Pranter was able to work in some capacity after August 23, 2006. Daniell therefore requested overpayment credit for temporary total disability benefits it had paid from August 24, 2006 through January 31, 2008.

The law judge awarded Pranter's claim for additional medical benefits, but his claim for additional temporary total disability benefits was denied. The law judge found that Pranter had not proven he remained in his healing period and was totally unable to earn wages from August 24, 2006 to an undetermined date, and that Daniell was entitled to credit for an overpayment of temporary total disability benefits from August 24, 2006 through January 31, 2008. The Commission reversed the award of additional benefits and affirmed the denial of additional temporary total disability benefits in a 2-1 decision. In doing so, the Commission affirmed the law judge's findings that the disputed healing period had ended and that Daniell was entitled to overpayment credit for temporary total disability benefits.

Pranter raises two points on appeal. First, he contends that the Commission erred in arbitrarily ignoring the medical opinion of Dr. Arthur and therefore denying Pranter the

additional medical care, including back surgery, to which he is entitled. Second, he contends that substantial evidence does not support the Commission's finding that he did not remain in his healing period and it had ended, thus entitling Daniell to an overpayment credit. We disagree and affirm the Commission's decision.

*1. Whether the Commission erred in arbitrarily ignoring the medical opinion of Dr. Arthur and therefore denying his claim for additional medical care, including back surgery*

In evaluating Pranter's claim, the Commission considered the treatment Pranter received by Dr. Arthur, an independent medical evaluation by Dr. Scott Schlesinger, Pranter's past medical history, the testimony of Pranter and Dr. Arthur, and video surveillance. The Commission explained its denial of Pranter's claim for additional medical benefits as follows:

When we consider the fact that the claimant was observed going in and out of his house with no apparent problems until he noticed the video surveillance person, the fact that the claimant was less than truthful with his doctors and did not disclose accurate histories, the opinion of Dr. Schlesinger that the claimant was not a surgical candidate and the fact the claimant had on-going back problems prior to this compensable accident, we cannot find that the claimant has proven that additional medical treatment is reasonable and necessary in connection with his minor compensable aggravation.

Pranter contends that the Commission erred in arbitrarily ignoring Dr. Arthur's medical opinion and therefore Pranter's claim for additional medical care, including the lumbar surgery that Dr. Arthur recommended. He argues that the Commission ignored Dr. Arthur's testimony regarding MRI findings, the cause of Pranter's acute herniated disc, the lack of a release to return to work, and objective tests that supported the need for additional medical care including surgery. He relies upon Dr. Arthur's testimony about Pranter's disc

herniation, shown by an MRI performed ten days after his undisputed accident:

It certainly was inconsistent with a long history of mild back pain, muscle spasms, that sort of thing. It's more consistent with a more acute picture. A more acute injury. Correct, I am talking in terms of something happening to cause that injury. Something specific happening rather than chronic.

Dr. Arthur opined that the pathology he saw at L5-S1 was inconsistent with prior accidents that had precipitated Pranter's lumbar back pain and treatment, explaining that a past ruptured disc would have dried up and not have had high water content like the one he observed.

Pranter also points to Dr. Arthur's testimony regarding events that occurred after he assessed Pranter with a ten-percent permanent physical impairment rating in July 2006 and gave him physical restrictions for work on August 23, 2006. Dr. Arthur testified that Pranter was not released to work in mid-November but was fitted with a lumbar corset, and the "trial of work" moved to "talk about lumbar fusion." Dr. Arthur testified that a report from Pranter's work-hardening program was not good and that his physical therapist, who was experienced with lumbar problems, was impressed with the pain and recommended discontinuing with work hardening. Explaining that discograms are not under patients' control because "they can't tell what you are doing," Dr. Arthur stated that Pranter had no pain during an October 31, 2006 discogram when one level was injected but "came off the table" when Dr. Arthur injected S1.

As further evidence of his need for surgery, Pranter points to his own testimony that his reason for not seeking work was his knowledge that he could not work with his pain. He also notes his testimony that his household duties, travels, and hunting had become limited,

and he asserts that video surveillance pictures used against him actually show his stiffness, hesitating, and discomfort. Questions of credibility and the interpretation of evidence, however, are matters for the Commission rather than this court. *Hargis Transp. v. Chesser*, 87 Ark. App. 301, 190 S.W.3d 309 (2004). In the present case, we find no merit in Pranter's arguments regarding these matters.

Nor do we find that the Commission arbitrarily disregarded Dr. Arthur's opinion that Pranter needed additional medical care, including fusion surgery at L5-S1. Recognizing that Dr. Arthur's recommendation was based on Pranter's symptoms, complaints, and response to treatments, the Commission recounted the following medical events. Dr. Schlesinger, after performing the independent medical evaluation, recommended epidural steroid injections and therapy for Pranter's lumbar problem and opined that it did not require surgery. Dr. Arthur, whom Pranter saw afterward, initially recommended the same treatment. Pranter underwent carpal-tunnel surgery by Dr. Arthur based upon EMG test results. He obtained only temporary relief from steroid injections to the lumbar spine. Dr. Arthur released him to restricted light-duty work by August 23, 2006, but Daniell could not meet the restriction requirements and Pranter did not return to work at all. He had more steroid injections but was still having back pain when Dr. Arthur ordered the discogram. Pranter testified that he was in a great deal of pain after the October 31, 2006 discogram; he took Demerol and pain medication, and he ultimately tried a lumbar corset.

Although the Commission may not arbitrarily disregard medical evidence or the

testimony of any witness, *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005), we again note that we defer to the Commission's findings on what testimony it deems credible and that the resolution of conflicting evidence is a question of fact for the Commission. *Hargis Transp. v. Chesser, supra*. Here, the Commission thoroughly discussed Dr. Arthur's recommendation for additional treatment and other related evidence, and the Commission weighed this evidence. Its rejection of Dr. Arthur's recommendation was not a disregard of it.

2. *Whether substantial evidence supports the Commission's finding that Pranter reached the end of his healing period on January 31, 2008, and that Daniell was entitled to an overpayment credit*

Temporary total disability is that period within the healing period in which a claimant suffers a total incapacity to earn wages. *Ark. State Highway & Transportation Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The question of when the healing period has ended is a factual determination for the Commission, and it will be affirmed if substantial evidence supports it. *Owens Planting Co. v. Graham*, 102 Ark. App. 299, 284 S.W.3d 537 (2008).

The Commission noted Arthur's assignment of the ten-percent permanent impairment rating in July 2006 and the return to work with restrictions on August 23, 2006. However, the Commission pointed to Pranter's testimony that he previously was involved in other motor vehicle accidents and had suffered back pain; that in 2001 he took Soma for back

spasms and in 2002 switched to Flexeril; that he had sought chiropractic care for pain, numbness, and tingling in his arms, hands, and fingers in 2002 and 2003; and that he had “muscular tension” in 2003 and 2004. The Commission recounted Planter’s testimony that he did not seek employment elsewhere upon learning from his former employer that there was no work available within his limited restrictions. The Commission noted that Planter still hunted deer, turkey, and bear; kept trash off his in-laws’ property; posted “no trespassing” signs on the property, which required him to get in and out of his vehicle every forty feet; and traveled to cities in Florida and Oklahoma, both by automobile and air. The Commission described activity that was videotaped outside Planter’s home:

The respondents introduced surveillance of the claimant and the claimant described what was going on during one of the surveillance periods. According to the claimant, he had a plumbing pipe that burst and he had two buddies come over to work on it. The claimant was seen turning off the water at the main line and moving up the steps quickly. It is also of note that the claimant looked directly into the camera as if he realized he was being observed.

Planter asserts on appeal that his testimony and the findings of Dr. Arthur, summarized under the first point of this opinion, constitute proof that he remained in his healing period and totally unable to earn wages from August 24, 2006 through January 31, 2008. The evidence cited by the Commission, however, constitutes substantial evidence to support its determination that Planter’s healing period had ended by January 31, 2008, and that Daniell was entitled to overpayment credit from August 24, 2006 until then.

Affirmed.

MARSHALL and HENRY, JJ., agree.