

DIVISION II

CA07-126

October 3, 2007

MICHAEL DAVID LUTEN

APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F410396]

V.

XPRESS BOATS & BACKTRACK
TRAILERS

APPELLEE

REVERSED AND REMANDED

This is an appeal from the Arkansas Workers' Compensation Commission's denial of the appellant's claim for additional temporary total disability benefits for an admittedly compensable injury sustained while employed as a truck driver for appellee. Appellant argues that the Commission erred in that it mischaracterized the evidence and erred as a matter of law in requiring him to provide objective medical evidence to prove that he remained in his healing period. We reverse and remand.

The presumption of correctness that attaches to a decision of a court of record does not apply to decisions of an administrative agency such as the Workers' Compensation Commission; instead, an agency's action must be upheld, if at all, on a basis articulated by the agency itself. *See AT&T Communications v. Arkansas Public Service Commission*, 40 Ark. App. 126, 843 S.W.2d 855 (1992). Here, the Commission's opinion is unclear with

respect to the basis for its findings and conclusions. The opinion states, in pertinent part, that:

In conclusion, the claimant has failed to prove by objective medical findings that his physical condition has worsened since his release by Dr. Smith in November of 2004. Moreover, the record demonstrates that the claimant reached the end of his healing period no later than November 3, 2004, in that there is no objective medical evidence demonstrating a change in his physical condition since that time. Further, the claimant has failed to prove by a preponderance of the evidence that he has been totally incapacitated from earning wages from November 4, 2004, to a date yet to be determined. The objective medical evidence presented in this claim simply does not corroborate the claimant's self-serving testimony. . . .

We expressly held in *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997), that, although a claimant must offer objective medical evidence to prove the existence of an injury, objective medical evidence to show that his healing period continues is not required. Here, the Commission's opinion suggests that it believed that proof by objective medical evidence was essential to show that appellant remained in his healing period. Because the Commission's opinion does not clearly explain whether the Commission believed that the lack of objective medical evidence to show continuance of the healing period was of itself fatal to appellant's claim, we are unable to determine whether it resolved the issues before it in conformity with the law. See *Wright v. American Transportation*, 18 Ark. App. 18, 709 S.W.2d 107 (1986). Therefore, we reverse and remand for the Commission to clarify the basis for its decision.

Reversed and remanded.

GLADWIN, J., agrees.

ROBBINS, J., concurs.