

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
PER CURIAM

DIVISION I & II

CA07-392

WILLIE BELL

JANUARY 30, 2008

v. APPELLANT

RAZORBACK CONCRETE CO. and
WAUSAU BUSINESS INSURANCE CO.

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F501809]

APPELLEES
SUBSTITUTED OPINION UPON DENIAL
OF REHEARING; AFFIRMED ON DIRECT
APPEAL; AFFIRMED ON CROSS-APPEAL

Appellant, Willie Bell, appeals from a decision by the Workers' Compensation Commission, affirming the ALJ's finding that appellant proved by a preponderance of the evidence that he sustained a compensable injury, but reversing the ALJ's finding that he was entitled to temporary-total-disability benefits. On appeal, Bell argues that the Commission erred in denying him an award of temporary total disability because he was forced to return to work when he was denied medical treatment by appellee. On cross-appeal, appellees/cross-appellants Razorback Concrete Company and Wausau Business Insurance Company assert that the Commission's decision that appellant sustained a compensable injury for which he was entitled to reasonably necessary medical expenses is erroneous and not supported by the evidence. We affirm on direct appeal and cross appeal.

On December 28, 2004, Willie Bell was climbing back into the seat of a front-end loader when he hit his right knee on a tool box. He explained that, as he climbed on to the front-end loader,

it was necessary to pivot on his right foot in order to get into the seat. He stated that, after striking his knee on the tool box, he felt a type of heat sensation in his knee. Nevertheless, he continued to perform his job duties after the incident. As the day progressed, he began to have pain and swelling in his knee. When he noticed these symptoms, he notified dispatcher Chad McCullar of his injury. The pain and swelling continued in his knee, and he began experiencing difficulty when walking. He testified that he continued to report his symptoms to the dispatcher every other day until he finally told the dispatcher that he needed to go to the emergency room.

Bell was seen at the emergency room on January 17, 2005, for his right-knee complaints and relayed a history of the December 2004 work accident. The emergency-room physician referred him to orthopedic surgeon, Dr. Yao. Bell relayed this information to his supervisor, and an appointment was made for an examination by Dr. Yao. Bell saw Dr. Yao on January 18, 2005, and Dr. Yao directed Bell to remain off work from January 19, 2005, until January 27, 2005. Bell had a follow-up visit with Dr. Yao on January 26, 2005, at which time an MRI scan of the right knee was ordered. After the follow-up visit, Bell was released to light-duty work. Bell testified that while on light-duty work, he walked with a pair of crutches and wore a knee brace; however, he still experienced pain and swelling in his right knee.

At another follow-up visit to Dr. Yao on February 14, 2005, Bell stated that Dr. Yao explained that the recommended surgery relative to the right knee was being denied. Bell testified that after the denial, he was unable to obtain further medical treatment. On February 17, 2005, Bell called Dr. Yao's office and requested to be released to return to full-duty work. He explained that he did so because of his financial obligations (child support for four children) and the fact that he had no other means of support. Per his request, Dr. Yao released him to full-duty work from February 18, 2005, through April 22, 2005. Bell testified that, even though he was able to perform

full-duty work, he continued to experience symptoms in his right knee.

On April 22, 2005, appellant was driving from West Memphis when he encountered a road block. As he progressed through the road block, he was arrested when it was discovered that he had an outstanding warrant in that county and that his automobile insurance had lapsed. Upon his release from jail, he discovered that his position at Razorback Concrete had been filled. A few weeks later, Bell became employed at City Electric. However, he was only there one month, as he was unable to perform the physical labor because of the pain he still experienced in his knee. Bell testified that because of the present condition of his right knee, he was unable to find further employment.

The ALJ found that Bell sustained an injury to his right knee arising out of and in the course of his employment; that Bell was temporarily totally disabled and within his healing period from the December 28, 2004 scheduled right knee injury, and not working from approximately May 4, 2005, and continuing, exclusive of a one-month period when he was employed, through the end of his healing period or return to gainful employment; and that respondent shall pay all reasonable hospital and medical expenses arising out of the December 28, 2004 right-knee injury. The Full Commission found that Bell had proved that he sustained a compensable injury for which he was entitled to additional medical treatment; however, the Commission also found that Bell did not prove that he was entitled to temporary-total-disability compensation, thereby reversing that portion of the ALJ's decision. From that decision, comes this appeal.

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002). Substantial evidence is that which a reasonable

person might accept as adequate to support a conclusion. *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 944 S.W.2d 524 (1997). The question is not whether the evidence would have supported findings contrary to the ones made by the Commission; there may be substantial evidence to support the Commission's decision even though we might have reached a different conclusion if we sat as the trier of fact or heard the case de novo. *CDI Contractors v. McHale*, 41 Ark. App. 57, 848 S.W.2d 941 (1993). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 6 S.W.3d 98 (1999). Questions concerning credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Ark. Dep't of Health v. Williams*, 43 Ark. App. 169, 863 S.W.2d 583 (1993).

The only issue presented to this court by Mr. Bell is whether sufficient evidence supports the Commission's denial of temporary total disability. We find that it does.

The Commission made the following findings in the opinion:

The claimant's testimony indicated that he returned to full work duty on or about February 18, 2005. The claimant was therefore not entitled to temporary total disability after that date. *See, Armstrong, supra*. The record indicates that the claimant worked until April 22, 2005. The claimant was then incarcerated as the result of an arrest warrant detected during a traffic stop. The claimant testified that he was in jail for 12 days. The Full Commission does not find that the respondents were obligated to hold open the claimant's job until he was released from jail. The claimant has previously returned to work for a little over two months, performing his regular duties. The claimant on appeal cites *Farmers Cooperative v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002) for the proposition that he was entitled to continued temporary disability, because he "unsuccessfully attempted to return to the workforce." Nevertheless, we note the following language from *Biles*, citing *Pyles v. Triple F. Feeds of Texas*, 270 Ark. 729, 606 S.W.2d 146 (Ark. App. 1980): "If, during the period while the body is healing, the employee is unable to perform remunerative labor with reasonable consistency and without pain and discomfort, his temporary disability is deemed total."

We again note, however, that the instant claimant had returned to full duty and was

performing remunerative [sic] labor before his arrest and incarceration beginning April 22, 2005. The claimant does not cite any authority holding that a respondent-employer is required to pay temporary disability when an employee has returned to remunerative labor but is subsequently absent from the workplace for reasons unrelated to a compensable injury. The Full Commission therefore reverses the administrative law judge's award of temporary total disability.

Temporary-total disability is that period within the healing period in which an employee suffers a total or partial incapacity to earn wages. *Breakfield v. In & Out, Inc.*, 79 Ark. App. 402, 88, S.W.3d 861 (2002). As applied to scheduled injuries, a claimant is entitled to receive temporary total or temporary partial disability benefits *during the healing period or until he returns to work* regardless of whether he has demonstrated that he is actually incapacitated from earning wages. *See Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001) (emphasis added). In this case, it is clear that Bell had returned to full-duty work on February 18, 2005, and remained on full-duty work until April 22, 2005. Bell did not return to work after April 22, 2005, and ultimately his employment was terminated. However, he was not terminated because of his inability to complete the assigned work duties; rather, it was because he was incarcerated on an outstanding warrant on April 22, 2005, and remained incarcerated for twelve days. Because Bell had returned to full-duty work for more than two full months and was terminated for reasons unrelated to his injury, we find that there was substantial evidence to support the Commission's determination that Bell was not entitled to an award of temporary-total disability.

Appellees argue on cross-appeal that the Commission erred in finding that appellant sustained a compensable injury for which he was entitled to reasonably necessary medical expenses. Appellees assert that the Commission's determination of compensability was error for two reasons. First, the medical records in evidence were not sufficient to support a finding of compensability, and second, Bell's right knee injury problems and need for treatment, if any, existed prior to his

employment with appellee employer. To receive workers' compensation benefits, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and identifiable by the time and place of the occurrence. Ark. Code Ann. § 11-9-102(4) (Supp. 2007). As the claimant, appellant bears the burden of proving a compensable injury by a preponderance of the credible evidence. *See* Ark. Code Ann. § 11-9-102(4)(E)(i) (Supp. 2007).

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2007); *Crawford v. Single Source Transp. Fidelity & Cas. Ins. Co.*, 87 Ark. App. 216, 189 S.W.3d 507 (2004). Objective findings are those findings which cannot come under the voluntary control of the patient, *Crawford, supra*, and are only necessary to establish the existence and extent of an injury, *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

Appellee asserts that Mr. Bell relied on his own testimony as proof of his knee ailments and that he offered little, if any, medical proof linking his ailments to his alleged December 28, 2004 accident. We disagree. In order to prove a compensable injury the claimant must prove, among other things, a causal relationship between his employment and the injury, *Wal-Mart Stores, Inc. v. Westbrook*, 77 Ark. App. 167, 171, 72 S.W.3d 889, 892 (2002), and it is the Commission's function to determine the weight to be afforded to the testimony and medical evidence. *Searcy Indus. Laundry, Inc. v. Ferren*, 82 Ark. App. 69, 110 S.W.3d 306 (2003). Medical opinions must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Wal-Mart Assocs., Inc. v. Davis*, 98 Ark. App. 422, ___ S.W.3d ___ (2007).

In this case, the Commission's opinion acknowledged that the record showed a "host of

chronic and acute problems involving claimant's right knee," and even stated that "[f]rom November 1996 until June 1999, the record details a near-constant series of medical treatment and mishaps involving claimant's knee." However, the Commission also determined from the medical evidence, or lack thereof, that there was generally no treatment of record for Mr. Bell's right knee after June 1999 until the December 28, 2004 incident. From that point forward, the record contained numerous objective medical findings, particularly from Dr. Yao, from which the Commission could determine compensability. Specifically, Dr. Yao noted on February 15, 2005, that Mr. Bell had a "new medial meniscus defect which diagnostic testing had not revealed prior to the December 2004 injury." Further, Dr. Yao noted that "[Mr. Bell] stated that his right knee had been doing well without any pain until the 12/28/2004 injury." The Commission has the duty of weighing the medical evidence as it does any other evidence. *Liaromatis v. Baxter Co. Regional Hosp.*, 95 Ark. App. 296, 236 S.W.3d 524 (2006) (citing *Roberson v. Waste Mgmt.*, 58 Ark. App. 11, 944 S.W.2d 858 (1997)). The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Based on the evidence presented, we find that there was sufficient evidence to support the Commission's decision that Mr. Bell sustained a compensable injury for which he was entitled to reasonably necessary medical expenses.

Affirmed on direct appeal; affirmed on cross-appeal.

GLOVER, MARSHALL, VAUGHT, HEFFLEY and MILLER, JJ., agree.