

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CA07-405

November 7, 2007

CITY OF LITTLE ROCK and RISK
MANAGEMENT RESOURCES
APPELLANTS

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F111738]

V.

RONNIE C. HUDSON

APPELLEE

AFFIRMED

This is a workers' compensation case. On May 19, 2001, appellee, Ronnie Hudson, a fireman with the Little Rock Fire Department, suffered a compensable injury to his left shoulder. He was assessed at maximum-medical improvement on July 10, 2002, and received attendant benefits. In July 2003, appellee saw Dr. William F. Hefley, Jr., concerning problems with his left shoulder, and surgery was performed in August 2003. Appellants, the City of Little Rock and Risk Management Resources, denied appellee's claim for additional benefits associated with the August 2003 surgery.

At the time of the hearing on this matter, appellee had worked for the fire department for thirty-five years and served as a captain. He was fifty-eight years old. Following the hearing, the administrative law judge determined that appellee had not

sustained his burden of proving that his original May 2001 compensable left-shoulder injury was a factor in his need for additional treatment and temporary-total disability concerning his left-shoulder surgery in August 2003. Hudson appealed to the Commission, which reversed the ALJ and determined that appellee had proved that his treatment from Dr. Hefley in August 2003 was reasonably necessary and that he was entitled to temporary-total disability compensation from August 29, 2003 until March 22, 2004. Appellants now argue that the Commission's decision is not supported by substantial evidence. We disagree and affirm.

Standard of Review

In considering appeals from Commission decisions, we view the evidence and all reasonable inferences therefrom in the light most favorable to the Commission's findings and will affirm the decision if the findings are supported by substantial evidence. *Murphy v. Forsgren, Inc.*, ___ Ark. App. ___, ___ S.W.3d ___ (June 13, 2007). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* If reasonable minds could reach the Commission's decision, we must affirm the decision. *Id.* It is the exclusive function of the Commission to determine the credibility of witnesses and the weight to be given their testimony. *Id.*

Additional Medical Treatment

In the first part of appellants' argument, they contend that there was nothing in the records to support a finding that the surgery and treatment appellee sought on his own from Dr. Hefley was reasonably necessary and related to the May 2001 left-shoulder

injury. In support of their position, they recount testimony and other evidence from the case. However, in reviewing Commission decisions we must view the evidence and all reasonable inferences therefrom in the light most favorable to the Commission's findings.

In reversing the ALJ, the Commission explained:

The respondents initially accepted compensability for a work-related accident occurring May 19, 2001. The claimant credibly testified that he injured his left shoulder while putting out a fire on that date. A subsequent MRI study of the claimant's left shoulder showed a tear in the supraspinatus tendon. Dr. Bowen's impression after reading the MRI was "symptomatic partial rotator cuff tear, left." Dr. Bowen planned surgery. Dr. Hefley saw the claimant in July 2001 and planned procedures including a left shoulder arthroscopy, acromioplasty, distal clavicle excision, and treatment of the rotator cuff tear.

The respondents sent the claimant to Dr. Collins. Dr. Collins performed a repair of the left rotator cuff in October 2001. The record indicates that the claimant's shoulder afterward was at times reported to be symptomatic [sic]; however, the claimant credibly testified, "It never got any better. It just continued to hurt." The Full Commission recognizes the claimant's testimony that the claimant thought he presented to Dr. Hefley on his own, but the record indicates that Dr. Roberts referred the claimant back to Dr. Hefley. Dr. Hefley's reports in July 2003 and following indicated that the claimant needed additional medical treatment for his left shoulder. Dr. Hefley performed surgery on August 29, 2003. Dr. Hefley informed Dr. Roberts that, during surgery, "I found a Type 2 SLAP lesion. He had a small tear of the anterior edge of the supraspinatus. I could see sutures from a previous rotator cuff repair through bone tunnels in the tuberosity.... I did an arthroscopy, SLAP repair, rotator cuff repair, subacromial decompression, and distal clavicle excision and removed the previous suture knots that might have been contributing to his impingement."

The Full Commission finds that the claimant proved Dr. Hefley's surgery on August 29, 2003 was reasonably necessary in connection with the claimant's May 19, 2001 admitted injury. The evidence before us demonstrates that the physical abnormalities reported by Dr. Hefley were the causal result of the compensable injury. We note the claimant's credible testimony that his pain was gone following surgery from Dr. Hefley, and that Dr. Hefley "fixed my shoulder." This probative evidence of post-surgical improvement is a relevant consideration in determining whether surgery was reasonably necessary. We reverse the

administrative law judge's finding that surgical treatment provided by Dr. Hefley was not reasonably necessary.

We conclude that reasonable minds could accept the evidence laid out by the Commission to support their conclusion, and that, therefore, substantial evidence supports the Commission's decision.

TTD Benefits

Having concluded that there was substantial evidence to support the Commission's decision concerning the causal relationship between appellee's original left-shoulder injury and his August 2003 left-shoulder surgery, the temporary-total disability benefits issue is easily resolved.

Temporary-total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *Searcy Indus. Laundry, Inc. v. Ferren*, 92 Ark. App. 65, 211 S.W.3d 11 (2005). When an injured employee is totally incapacitated from earning wages and remains in his healing period, he is entitled to temporary-total disability. *Id.* The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. *Id.* The determination of when the healing period has ended is a factual determination for the Commission and will be affirmed on appeal if supported by substantial evidence. *Id.* These are matters of weight and credibility, and thus lie within the exclusive province of the Commission. *Id.*

Here, although appellee had earlier been assessed as reaching maximum-medical improvement in July 2002, he had the additional left-shoulder surgery on August 29, 2003. As previously discussed, the Commission concluded that the August 2003 surgery was reasonably necessary and that it was causally related to appellee's original compensable left-shoulder injury. Dr. Hefley kept him off work until March 22, 2004, and his absence from work was due to his August left-shoulder surgery. As cited above, the determination of when the healing period has ended is a factual determination for the Commission and will be affirmed on appeal if supported by substantial evidence. We conclude that the Commission's finding in this regard is supported by substantial evidence.

Affirmed.

HART and MILLER, JJ., agree.