

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
D.P. MARSHALL JR., JUDGE

DIVISION I

CA07-920

5 March 2008

RYAN'S FAMILY STEAK HOUSES and
ZURICH AMERICAN INSURANCE
COMPANY,

APPELLANTS

AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F511763]

v.

NORMA MIROS,

APPELLEE

AFFIRMED

Norma Miros, a waitress at a Ryan's Family Steak House, got shocked and fell while changing a lightbulb at work in August 2005. She alleged that she injured her left hip and lower back when she fell. Ryan's agreed that Miros's hip injury was compensable, but denied that she had suffered a compensable lower-back injury. After a hearing, the administrative law judge determined that Miros did suffer a compensable lower-back injury and awarded her reasonable and necessary medical treatment and temporary total disability benefits from 1 November 2005 to a date yet to be determined. The Workers' Compensation Commission agreed and affirmed the ALJ's opinion. Ryan's appeals, and commendably narrows the dispute to one point: whether substantial evidence supports the Commission's award of open-ended temporary total disability benefits.

We affirm the Commission’s finding on this duration issue. To receive temporary total disability benefits, Miros had to prove by a preponderance of the evidence that she was within her healing period and totally incapacitated from earning wages. *Searcy Industrial Laundry, Inc. v. Ferren*, 92 Ark. App. 65, 69, 211 S.W.3d 11, 13 (2005). A healing period ends when the claimant is restored insofar as the permanent nature of her injury will permit, and if the underlying condition causing her disability has stabilized and no treatment will improve it. *K II Construction Co. v. Crabtree*, 78 Ark. App. 222, 228, 79 S.W.3d 414, 417–18 (2002). The duration of Miros’s healing period was a fact question for the Commission. 78 Ark. App. at 228, 79 S.W.3d at 418.

Ryan’s appeal stands on an August 2006 opinion by Dr. Kendrick—the doctor who performed an independent medical evaluation on Miros. Dr. Kendrick said that in general Miros’s type of aggravation injury “usually clears within a period of six weeks or so when properly treated,” and that six weeks of medical treatment was required to treat her aggravation in particular. Ryan’s argues that Dr. Kendrick’s opinion is the *only* medical evidence about the duration of Miros’s healing period. The six weeks having passed, Ryan’s continues, no substantial evidence exists that Miros was still in her healing period beyond that date.

Dr. Kendrick gave that opinion a few months after he evaluated Miros and about ten months after she had her first MRI for her lower back in October 2005. The 2005 MRI showed a herniated disc in Miros’s lower back that was still present when she had a second MRI in October 2006. Dr. Kendrick did not have the benefit of the second MRI when he gave his opinion about Miros’s healing period.

The Commission evaluated all of the medical evidence and adopted the ALJ's finding that the 2006 MRI was "more thorough" than the 2005 MRI. The Commission may not arbitrarily disregard medical evidence; it must weigh all the evidence. *Coleman v. Pro Transportation, Inc.*, 97 Ark. App. 338, 346–47, ___ S.W.3d ___, ___ (2007). But the Commission may accept or reject medical opinions, and its resolution of the medical evidence has the force of a jury verdict. *Ibid.*

In awarding open-ended temporary total disability benefits, the Commission specifically considered and rejected Dr. Kendrick's opinion about the duration of Miros's healing period and relied instead on other medical evidence, including the 2006 MRI. Moreover, Miros and her husband testified to her continuing incapacity to work. The Commission was entitled to believe them, which it did. We must defer to the Commission's resolution of the disputed facts. And substantial evidence supports the Commission's findings about Miros's temporary total disability. *Ibid.*

Ryan's argument suffers from a deeper flaw—it attempts to shift the burden to Miros to prove with medical evidence that she remained in her healing period after the six weeks estimated by Dr. Kendrick. Ryan's is mistaken. Miros was not required to offer objective medical evidence to prove that she was still in her healing period. *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 227, 956 S.W.2d 196, 198 (1997).

Finally, Ryan's contends in passing that substantial evidence does not support an obligation to pay medical benefits after the six-week period estimated by Dr. Kendrick. Miros is entitled to continued medical treatment while within her healing period. *Castleberry v. Elite*

Lamp Co., 69 Ark. App. 359, 368, 13 S.W.3d 211, 217 (2000). Because the Commission rejected Dr. Kendrick's opinion about Miros's healing period, Ryan's passing argument about medical treatment—based on the same opinion—also fails.

Affirmed.

HART and BIRD, JJ., agree.