

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA11-174

MICHAEL B. BELIN

APPELLANT

V.

UNITED PARCEL SERVICE and
LIBERTY MUTUAL FIRE
INSURANCE COMPANY

APPELLEES

Opinion Delivered October 5, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F709684]

AFFIRMED

ROBIN F. WYNNE, Judge

Appellant Michael Belin suffered a compensable low-back injury on August 3, 2007. He initially sought treatment from Dr. Brenda Covington. While receiving treatment from Dr. Covington, Mr. Belin underwent a functional-capacity evaluation on October 25, 2007, that revealed he had the ability to perform heavy-work duty. Mr. Belin continued to experience pain, however, and Dr. Covington ultimately referred him to Dr. Victor Vargas in December 2007. Dr. Vargas could find no specific injury on an MRI of Mr. Belin's lumbar spine. However, he ordered physical therapy to treat Mr. Belin's symptoms. During this time, Mr. Belin was not working but was receiving temporary-total disability benefits.

On February 26, 2008, Dr. Vargas determined that Mr. Belin had reached maximum medical improvement. He could find no structural injury or any other explanation for Mr. Belin's continued pain. Therefore, Dr. Vargas determined that there was nothing else he could do for Mr. Belin and cleared him to return to work at full duty. At that time, Mr. Belin's temporary-total disability benefits ceased.

Mr. Belin notified his supervisor that he had been released to return to work but told his supervisor that he doubted he could actually perform his job duties due to his continued pain. Although his supervisor told him to “come on in,” Mr. Belin was apparently unable to clock in. He was referred to the human-resources office, where he obtained paperwork for a change of physician. Mr. Belin applied for a change of physician and eventually saw Dr. Earl Peeples for a second opinion about his condition. Mr. Belin did not work during the time between Dr. Vargas’s release and his first appointment with Dr. Peeples.

Mr. Belin presented to Dr. Peeples for the first time on June 26, 2008. On that date, Dr. Peeples noted that he agreed with Dr. Vargas’s assessment that the MRI showed no structural deformity. Although Mr. Belin continued to experience pain, Dr. Peeples opined that there was no medical reason he could not return to work. Dr. Peeples released Mr. Belin to return to his regular duties, which he did on July 2, 2008.

After returning to work, Mr. Belin continued to treat with Dr. Peeples. Part of his treatment included taking certain prescription pain medication that impaired his ability to properly perform his work duties. As a result, his employer scheduled him for a fit-for-duty examination with Dr. W. Warren on June 1, 2009. Dr. Warren took Mr. Belin off work until he could review his medical records and determine whether his prescriptions made it unsafe for him to work. At the time of the hearing in this case, Mr. Belin’s medical records had not been provided to Dr. Warren, and Mr. Belin remained off work. However, Mr. Belin was able to work part-time as a real estate agent and earned some wages in that capacity.

The case went before the Arkansas Workers’ Compensation Commission, and appellees controverted Mr. Belin’s claims for temporary-total disability benefits for the period

between February 27, 2008, and June 26, 2008, and for the period from June 1, 2009, to a date to be determined. They also controverted Mr. Belin's claim for additional medical benefits and for benefits associated with an alleged bilateral shoulder injury. After a hearing, an administrative law judge awarded additional medical benefits and temporary-total disability benefits for both contested periods. The administrative law judge denied benefits related to the alleged shoulder injury. Appellees appealed to the Commission, which affirmed the additional medical award but reversed the temporary-total disability award.¹ This appeal followed.

On appeal, Mr. Belin argues that the Commission's decision regarding temporary-total disability benefits was not supported by substantial evidence. In reviewing a decision from the Arkansas Workers' Compensation Commission, we view the evidence and all reasonable inferences in the light most favorable to the Commission's findings. *Staffmark Invs., LLC v. King*, 2009 Ark. App. 830, at 2. We affirm those findings if they are supported by substantial evidence, which is relevant evidence that a reasonable person might accept as adequate to support a conclusion. *Id.* We will not reverse the decision of the Commission unless we are convinced that fair-minded persons considering the same facts could not have reached the same conclusions. *Id.* The question is not whether the evidence would have supported findings contrary to the ones made by the Commission; rather, it is whether there is 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. *Burris v. L & B Moving Storage*, 83

¹ Mr. Belin also cross-appealed to the Commission regarding the bilateral shoulder injury. The Commission affirmed that part of the administrative law judge's decision, and that issue is not a part of this appeal.

Ark. App. 290, 293, 123 S.W.3d 123, 125–26 (2003). It is the function of the Commission, not this court, to determine the credibility of witnesses and the weight to be given to the evidence. *Whaley v. Hardee's*, 51 Ark. App. 166, 168, 912 S.W.2d 14, 15 (1995).

An employee who has sustained a compensable injury is entitled to benefits during the period following the injury in which the employee is healing and is totally incapacitated to earn wages. *Searcy Indus. Laundry, Inc. v. Ferren*, 92 Ark. App. 65, 68, 211 S.W.3d 11, 13 (2005). This healing period ends when the employee is as far restored as the permanent nature of his injury will permit, if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition. *Id.* at 69, 211 S.W.3d at 13. The persistence of pain may not of itself prevent a finding that the healing period is over, provided that the underlying condition has stabilized. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 132, 628 S.W.2d 582, 586 (1982). However, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *J.A. Riggs Tractor Co. v. Etszkorn*, 30 Ark. App. 200, 203, 785 S.W.2d 51, 53 (1990). 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. *Searcy Indus. Laundry, Inc.*, 92 Ark. App. at 69, 211 S.W.3d at 13. An injured employee may enter a second healing period after the first has ended, where a second complication is found to be a natural and probable result of the first injury. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 194–95, 737 S.W.2d 661, 662 (1987). In such a case, the employer may be liable for additional temporary benefits. *Id.*

The Commission's decision to deny temporary-total disability benefits in this case is supported by substantial evidence. Medical records from Dr. Vargas indicate that, as of

February 26, 2008, Mr. Belin's low-back injury had healed, and he was free from any structural injury. Likewise, Dr. Peeples indicated on June 26, 2008, that he agreed with Dr. Vargas that Mr. Belin had no structural injury and that his continued pain should not prevent him from working. Although Mr. Belin continued to receive treatment for his pain, there is no indication that the underlying condition had not stabilized or that further treatments were needed for the condition itself. Considering these facts, a reasonable person could conclude, as the Commission did, that Mr. Belin was no longer in a healing period between February 27, 2008, and June 26, 2008.

As for the period following June 1, 2009, when Dr. Warren took Mr. Belin off work due to concerns about his medication, the record shows that Mr. Belin was able to work and earn income as a real estate agent during that time. The record is devoid, however, of any opinion by Mr. Belin's chosen physician—Dr. Peeples—that Mr. Belin was unable to work or that he had reentered a healing period due to a subsequent complication. Therefore, it was reasonable for the Commission to conclude that this second period was not another healing period in which Mr. Belin was totally incapacitated from earning wages.

Affirmed.

GLADWIN and GRUBER, JJ., agree.