

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G906118

JOSHUA C. BROWN,
EMPLOYEE

CLAIMANT

GEORGIA PACIFIC, LLC,
EMPLOYER

RESPONDENT

ESIS, INC.,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 26, 2021

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE F. MATTISON THOMAS, III,
Attorney at Law, El Dorado, Arkansas.

Respondents represented by the HONORABLE RICK BEHRING, JR.,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed June 9, 2021. The administrative law judge found that the claimant failed to prove he was entitled to temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove he was entitled to an award of temporary total disability benefits from April 24, 2019 until May 20, 2020.

I. HISTORY

The record indicates that Joshua Caleb Brown, now age 48, became employed with the respondent-employer, Georgia Pacific, in 2018. The

claimant testified that he began with the respondents as a forklift operator and was then transferred to the wood mill. The parties stipulated that the claimant sustained a compensable injury “to his tailbone/lower back” on April 9, 2019. The claimant testified on direct examination:

Q. What occurred on that date?

A. April 9th, I was working days. I was fixing on the board meter side. I was on the far end. They’ve got the rolls that come off weighing like five or six hundred pounds apiece that come off four at a time, and it’s a paper stop, black paper stop....

Q. So on this day, in particular, what occurred at that location?

A. As the rolls was about to come off, I had like maybe three minutes so I went on the end and looked and the paper stop had the sensor covered, and then I came back on this end and tried to pull it back maybe two inches, and as I was pulling it, my right heel caught the, I guess, the edge of the rollers, and I went up and came down on my tailbone on a steel plate....

Q. And, ultimately, you went to the company doctor, I believe, that day?

A. They made me work my shift before they even took me to the doctor.

According to the record, Dr. Mark Malloy examined the claimant on April 9, 2019:

Patient complains of low back pain. Reason for visit: Pain. The discomfort is most prominent in the lower, right lumbar spine. This radiates to the right anterior and posterior thigh. He characterizes it as constant, severe, and sharp. The pain level between 1 and 10 is a 10. He states that the current episode of pain started 7 to 8 hours ago. The event which precipitated this pain was slipped on a “roller” and fell on a piece of metal. This occurred at work. The pain worsens with sitting.

Also c/o pain in coccyx. Reports he fell on his “tailbone” and after that his lower back starting hurting too.

An x-ray of the claimant’s sacrum showed “no fracture of sacrum or coccyx noted on pa or lateral.” Dr. Malloy assessed “Low back pain.” Dr. Malloy returned the claimant to “Full Duty NO Restrictions/Limitations.” Dr. Malloy indicated that the claimant was “Discharged/Released from Care” on April 9, 2019. The claimant testified that he returned to regular work for the respondent-employer on or about April 10, 2019.

The parties stipulated that the claimant sustained a compensable injury to his left thumb on April 19, 2019. The claimant testified, “I had a box cutter in my hand and got my gloves on, and as I was coming down, the box cutter hit the gloves.” The claimant testified that he “cut the top of my thumb off.” The parties stipulated that the April 19, 2019 compensable injury was a “medical only” claim. The claimant treated with Dr. Allen L. Spires on April 22, 2019: “PT CUT LEFT THUMB WITH BOX CUTTER @ WORK 4/19/19. WORKS AT GEORGIA PACIFIC. PT STATES HE WAS WEARING ISSUED GLOVES AND CUT THRU WITH BOX CUTTER.” Dr. Spires assessed “Unsp open wound of left thumb w/o damage to nail.”

Dr. Malloy examined the claimant on April 24, 2019 and reported “4mm left thumb laceration, healing nicely.” Dr. Malloy diagnosed “Laceration on the finger(s).” Dr. Malloy indicated that the claimant could return to unrestricted work on April 24, 2019.

The claimant testified with regard to returning to work following the April 19, 2019 compensable injury:

Q. Were you released to go back to work?

A. They denied me. I asked for light duty and they denied me.

Q. Okay.

A. Told me to go back to work....

Q. So what occurred between the 19th or 20th when you went back to the job and the 24th when you say that you left your employment?

A. That's when I went back to see the doctor. It happened on the 19th. I was off a couple of days....

Q. What caused you to leave the employment? They say May 1st, you say the 25th. What happened on that day?

A. What made me leave is when they denied to take me to the hospital that night, you know, for my thumb, because the guy that treated my thumb said they don't want no outside recordable....

Q. So you left the employment. Were you able to continue with your normal job duties at the time you left?

A. Ain't no way I could have. I was working with my hands 12, 16 hours a day.

Q. So at the time you left, you had an injury on your thumb that had not healed?

A. Right.

Q. And you were suffering from back pain?

A. Right.

The parties stipulated that the claimant "voluntarily left his job with the respondents" on or about May 1, 2019. The respondent-employer's Human Resources Manager corresponded with the claimant on May 1, 2019:

During your new employee orientation, we shared with you our expectations for attendance and for reporting absences. Since that time, the following events have occurred:

- You have accumulated unscheduled, unexcused absences on 4/10/19, 4/20/19, 4/25/19 and 4/26/19.
 - Additionally, you failed to report your absence on 4/26/19, which constitutes a no-call/no-show event.
 - Following a phone conversation about your no-call/no show event on 4/26/19, you have failed to contact the Company and have been unavailable by phone since that time.
- Your excessive absent events, the no-call/no-show event and your failure to maintain contact do not meet our performance expectations. Therefore, your employment with Georgia-Pacific is terminated, effective 5/1/2019.

The record indicates that the claimant completed an Application for Unemployment Insurance Benefits on October 30, 2019. On the Application, the claimant indicated that he could begin full-time work immediately and answered “No” to the question, “Do you have any disabilities that limit your ability to perform your normal job duties?”

Dr. Wayne Bruffett reported on February 12, 2020:

Joshua is a 46-year-old gentleman who got hurt at work last April. He fell backwards I believe on some rollers. Since that time he is complaining of pain in his back hips and tailbone. He had some x-rays which I think are okay. His place of employment is no longer in business. He has not worked since this happened. His pain does not seem to be particularly radicular in nature....

X-rays reveal some mild degenerative changes. His sacrum and coccyx look okay. His report from his prior imaging looks stable this was also plain x-ray....

I think Joshua needs an MRI of his lumbar spine to include the sacrum and coccyx to be complete. I told him quite frankly that if this shows some significant pathology this will need to be addressed. However if it does not he will be (sic) at maximum medical improvement because the (sic) really will not be anything to do if he does not have objective evidence of injury. I will see him back afterwards.

Dr. Bruffett assessed “1. Low back pain” and “2. Body mass index 30+ - obesity.”

The claimant followed up with Dr. Bruffett on March 4, 2020:

Mr. Brown returns and he has obtained an MRI scan. There are no changes in his examination. He still has multiple complaints. Not only of tailbone pain but he complains of numbness and pain in his legs. He has all sorts of issues I guess. I reviewed his MRI scan. He does have some bulging of the discs at L4-5 and L5-S1 but I cannot say with any reasonable degree of medical certainty that anything objective on this MRI occurred as a consequence of his work-related fall in April of last year. Of course he has trouble understanding this and I did my best to explain it to him. He certainly has many subjective complaints but I do not have any real objective explanation. Therefore I would say that he has no restrictions imposed on him. I do not think any active treatment at this point is indicated. He is at maximum medical improvement. There is no applicable impairment rating in this case. He fell on some rollers nearly a year ago. He has not worked since. The medical literature would say that his chances of going back to gainful employment at this point are slim to none. That is not a good statistics (sic). Hopefully he can get back to doing something. I have no restrictions to place upon him.

Dr. Bruffett signed a Return to Work/School note on March 4, 2020 indicating, “Activity is restricted as follows: Return to full duty no restrictions.”

The record contains a Change of Physician Order dated May 4, 2020: “A change of physician is hereby approved by the Arkansas Workers’ Compensation Commission for Joshua Brown to change from Dr. Wayne Bruffett to Dr. J. Michael Calhoun[.]”

Meanwhile, the claimant completed another Application For Unemployment Insurance Benefits on May 7, 2020. The claimant answered “No” to the question, “Do you have any disabilities that limit your ability to perform your normal job duties?” The claimant identified his employer as Georgia Pacific and wrote, “I got hurt on job but I have recovered.”

The claimant continued to apply for Unemployment Insurance Benefits and continued to answer “No” to the question, “Do you have any disabilities that limit your ability to perform your normal job duties?”

Dr. J. Michael Calhoun examined the claimant on May 13, 2020:

The patient is a 44 year old male who presents with back pain. The patient originally injured his lower back on April 9, 2019 while at work. He was pulling a stool when his right leg slipped out from under him and he landed on his buttocks. He was evaluated by Dr. Malloy that day. X-rays of the sacrum and coccyx were negative. He was then referred to Dr. Wayne Bruffett. A lumbar MRI was obtained in February of this year. They show a central herniation at L4-5 affecting both L5 nerve roots. An annular tear is also present at L4-5. There was also a posterior disc protrusion at L5-S1 and an annular tear.

The patient was declared maximally medically improved by Dr. Brockett (sic) with no recommendations.

The patient has received no treatment other than over-the-counter anti-inflammatory agents. He continues to have pain in his right buttocks with radiations down the lateral thigh and lateral calf to the foot. He will occasionally have left leg symptoms in a similar distribution. He had never had similar symptoms prior to the incident in April of last year.

Dr. Calhoun assessed “Lumbar disc herniation” and “Lumbar radiculopathy.” Dr. Calhoun planned, “We are treating him conservatively by starting him on physical therapy in Crosett (sic), prescribing Flexeril a muscle relaxer and Ultram for pain. We will also see if they will authorize lumbar epidural steroid injections. He will be reevaluated in 4 weeks.”

The respondents’ attorney stated at hearing that the respondents paid temporary total disability benefits for the period beginning May 13, 2020. Dr. Calhoun signed a form dated May 14, 2020 and recommended that the claimant return to work on May 13, 2020 with the following restrictions: “No lifting in excess of 10 pounds. No repetitive squatting, bending or lifting.”

The claimant followed up with Dr. Calhoun on June 10, 2020: “The patient is a 47 year old male who presents with back pain. The patient has not had physical therapy or epidural steroid injections authorized. He is now having left leg symptoms in addition to his previous right leg symptoms.” Dr. Calhoun assessed “Lumbar disc herniation” and “Lumbar radiculopathy.” Dr. Calhoun noted, “I still cautioned him against having lumbar surgery. He was given a new prescription for physical therapy and the address is in phone numbers for both physical therapy locations in Crossett. In addition, we will check to see why the epidural steroid injections have not been authorized.”

The record contains correspondence dated June 19, 2020 from a “Caregiver” identified as Michelle Lance: “I spoke with Aiko from WC today to check status on a authorization (sic) for LESI sent back in May. She informed me that they are requesting a second opinion. I have notified pt of this information as well. He does have an attorney so we will contact him.”

The claimant testified on direct examination:

Q. You, ultimately, got some temporary total disability benefits started, is that correct?

A. Yes, sir.

Q. August 20, 2020, is that when you first started to receive benefits?

A. I want to say that is.

Q. Were you compensated for any time before August 20, 2020, when you received those benefits?

A. No.

Q. Did you get a back pay or any check?

A. No.

Q. So from May 1, 2019, to August of 2020....

A. I left the job in April.

Q. April 24th, correct?

A. Yes.

Q. So from April 24th until August 20, 2020, you did not receive any compensation or any benefits....

A. No.

Q....other than some unemployment benefits that we talked about?

A. Yes.

A pre-hearing order was filed on January 14, 2021. The text of the pre-hearing order contained the following contentions: “The claimant sustained injuries on April 9, 2019, and April 19, 2019. Both injuries were timely reported as required by law. The claimant was in need of medical

treatment for both injuries as well as TTD benefits from the (sic) April 25, 2019 to August 20, 2020. He was seen by various physicians including an independent medical examination (IME) after the conclusion of that on August 20, 2020, the claimant began to receive benefits. The claimant should be entitled to benefits for those times between the injury and the first payment of benefits. He did not injure himself in any other way and was not working during that time, therefore whatever condition exists at the time of the benefits began.paying (sic) existed at the time of the injury and would have prevented the claimant from working during the interim. Attorney fees have been withheld on part of the payments being made at this time; however, they are not being paid nor were any fees generated during the time he would be entitled to backpay, and attorney fees should be withheld from such an amount as well. The claimant reserves any and all other issues for future litigation and/or determination.”

The parties stipulated that the respondents “controvert the payment of any additional medical or indemnity benefits for either the April 9, 2019, or the April 19, 2019 compensable injuries.” The respondents contended, “The respondents accepted the compensable back injury arising from a specific incident on April 9, 2019. The respondents have paid all appropriate medical benefits as a result of the specific incident on April 9, 2019. The respondents contend they have paid all appropriate TTD

benefits as a result of the specific incident on April 9, 2019. Following the specific incident, the claimant was released to return to work and he did return to work for the respondent-employer. Despite the fact the respondents offered the claimant work within his physical limitations/restrictions, if any, he failed and/or refused to return to work for the respondent-employer. The respondents, therefore, are not responsible for the payment of any TTD benefits until he was taken off work on or about May 13, 2020. Alternatively, the claimant was released to return to work without restrictions until on or about May 13, 2020. Therefore, the respondents are not responsible for the payment of any TTD benefits from the claimant's last date of employment until on or about May 13, 2020."

The respondents further contended, "The respondents accepted the compensable left thumb injury arising from a specific incident on or about April 19, 2019. The respondents have paid all appropriate medical benefits as a result of the specific incident on April 19, 2019. The claimant was not taken off work as result of the specific incident on April 19, 2019; therefore, the Respondents are not responsible for any TTD benefits as a result of this medical only claim. Alternatively, the respondents offered work to the claimant, but he failed and/or refused to return to work for the respondent-employer. Therefore, the respondents are not responsible for the payment of any TTD benefits as a result of the specific incident on April 19, 2019. If

it is determined the claimant sustained a compensable injury and is entitled to any benefits, the respondents hereby request a set-off for any and all benefits paid by the claimant's group health carrier, all short-term disability (STD) benefits received by the claimant, all long-term disability (LTD) benefits received by the claimant, and all unemployment benefits he has received. The respondents reserve the right to supplement and/or amend their contentions to assert any additional applicable defense. The respondents specifically reserve any and all other issues for future litigation and/or determination.”

The parties agreed to litigate the following issues:

1. Whether the claimant is entitled to payment of additional temporary total disability benefits from the date he left work, April 25, 2019, through a date yet to be determined.
2. Fees for legal services.

After a hearing, an administrative law judge filed an opinion on June 9, 2021. The administrative law judge found, among other things, that the claimant failed to prove he was entitled to temporary total disability benefits from April 25, 2019 through August 20, 2020. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State*

Highway Dep't v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is defined as “that period for healing of an injury resulting from an accident.” Ark. Code Ann. §11-9-102(12)(Repl. 2012). Whether the healing period has ended is a question of fact for the Commission.

Ketcher Roofing Co. v. Johnson, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

An employee who has sustained a compensable injury is not required to offer objective medical evidence to prove entitlement to additional benefits.

Ark. Health Ctr. v. Burnett, 2018 Ark. App. 427, 558 S.W.3d 408.

In the present matter, an administrative law judge found in part, “3. The claimant has failed to meet his burden of proof in demonstrating he was within a healing period, and totally incapacitated from working during the time period for which he is requesting TTD benefits, April 25, 2019, through August 20, 2020; therefore, he is not entitled to TTD benefits during this time period.”

It is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence, not whether there is substantial evidence to support the administrative law judge’s findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission reviews an administrative law judge’s opinion *de novo*, and it is the duty of the Full Commission to conduct its own fact-finding independent of that done by the administrative law judge. *Crawford v. Pace Indus.*, 55

Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

In the present matter, the claimant contends on appeal that he is entitled to temporary total disability benefits from April 24, 2019 until May 20, 2020. The claimant does not contend that he is entitled to an award of temporary total disability benefits beyond May 20, 2020. The Full Commission finds that the claimant did not prove he was entitled to temporary total disability benefits from April 24, 2019 until May 20, 2020.

The parties stipulated that the claimant sustained a compensable injury to his tailbone and lower back on April 9, 2019. Dr. Malloy examined the claimant on April 9, 2019 and assessed “Low back pain.” Dr. Malloy returned the claimant to “Full Duty NO Restrictions/Limitations.” The claimant testified that he returned to regular work for the respondent-employer on or about April 10, 2019. Whether or not the claimant remained within a healing period for his compensable injury at that time, the Full Commission finds that the claimant did not prove he was totally incapacitated from earning wages after April 10, 2019. The parties stipulated that the claimant sustained a compensable scheduled injury on April 19, 2019. The claimant testified that he cut his thumb with a box cutter. The parties stipulated that the April 19, 2019 scheduled

compensable injury was a “medical-only” claim. Dr. Malloy returned the claimant to unrestricted work on April 24, 2019, and the claimant does not contend that he is entitled to temporary total disability benefits with regard to the April 19, 2019 compensable scheduled injury.

The claimant testified that he left his work for the respondents on or about April 24, 2019. The claimant testified that he was unable to perform his employment duties as a result of his compensable injuries. In workers’ compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). In the present matter, the Full Commission does not find credible the claimant’s testimony that he was unable to perform his employment duties for the respondents, or that the claimant was in any measure totally incapacitated from earning wages. The Full Commission attaches greater evidentiary weight to Dr. Malloy’s statement on April 9, 2019, “Full Duty NO Restrictions/Limitations.” Dr. Malloy also released the claimant to unrestricted work on April 24, 2019 following the April 19, 2019 compensable scheduled injury. The Full Commission also finds credible the testimony of Veronica Cameron, the

respondent-employer's Occupational Health Nurse. Veronica Cameron testified that the claimant returned to regular work following the April 9, 2019 compensable injury. Ms. Cameron testified that the claimant simply "walked off the job" on or about April 24, 2019.

The claimant contends on appeal that the is entitled to temporary total disability benefits beginning April 24, 2019. The Full Commission finds that the claimant did not prove he was totally incapacitated from earning wages on or after April 24, 2019. The respondents terminated the claimant's employment effective May 1, 2019 essentially as a result of excessive unauthorized absences. As the Commission has discussed, the claimant completed an Application for Unemployment Insurance Benefits on October 30, 2019. The claimant indicated on the application that he could begin full-time work immediately, and he answered "No" to the question, "Do you have any disabilities that limit your ability to perform your normal job duties?" The probative evidence does not demonstrate that the claimant was totally or partially incapacitated from earning wages at any time on or after April 24, 2019.

The claimant began treating with Dr. Bruffett on February 12, 2020, and Dr. Bruffett opined on March 4, 2020 that the claimant "has no restrictions imposed on him. I do not think any active treatment at this point is indicated. *He is at maximum medical improvement* [emphasis supplied]."

The Commission has the authority to accept or reject a medical opinion and the authority to determine its medical soundness and probative force.

Green Bay Packaging v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 692 (1999).

It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the Full Commission finds that Dr. Bruffett's opinion is credible and is entitled to significant evidentiary weight. The Full Commission finds that the claimant reached the end of the healing period for his April 9, 2019 compensable injury no later than March 4, 2020, the date Dr. Bruffett opined the claimant was at maximum medical improvement. Temporary total disability benefits cannot be awarded after an employee's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). The claimant in the present matter did not demonstrate that he was totally or partially incapacitated from earning wages on or after April 24, 2019, and the claimant did not prove that he remained within a healing period at any time after March 4, 2020, the date Dr. Bruffett assessed maximum medical improvement. We also note the claimant's written statement on the Application For Unemployment Insurance Benefits dated May 7, 2020, "I got hurt on the job but I have recovered." The claimant also continued to

answer “No” to the question, “Do you have any disabilities that limit your ability to perform your normal job duties?”

Dr. Calhoun opined on May 13, 2020 that the claimant was suffering from abnormalities in his lumbar spine. Dr. Calhoun assigned work restrictions beginning May 13, 2020, but the current evidence does not demonstrate that the claimant re-entered a healing period for his compensable injury at any time after March 4, 2020, the date Dr. Bruffett assessed maximum medical improvement. We also note the credible testimony of Veronica Cameron that the respondent-employer would have accommodated any work restrictions assigned by a treating physician. The record nonetheless indicates that the respondents began paying temporary total disability benefits for the period beginning May 13, 2020. (The claimant’s testimony indicated that he actually received temporary total disability payments beginning August 20, 2020.) The claimant does not contend that he is entitled to an award of temporary total disability benefits at any time after May 20, 2020.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove he was entitled to temporary total disability benefits from April 24, 2019 until May 20, 2020. The claimant did not prove he was totally or partially incapacitated from earning wages at any time after April 24, 2019. Additionally, the evidence demonstrates that the

claimant reached the end of the healing period for his April 9, 2019 compensable injury no later than March 4, 2020, the date that Dr. Bruffett assessed maximum medical improvement. The Full Commission therefore finds that the claimant did not prove he was entitled to an award of temporary total disability benefits from April 24, 2019 to May 20, 2020. The present claim for temporary total disability benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

M. SCOTT WILLHITE, Commissioner