

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G905176**

TWANNA CARTER, EMPLOYEE	CLAIMANT
AR DEPARTMENT OF COMMUNITY CORRECTION, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, TPA	RESPONDENT

OPINION FILED 14 JANUARY 2025

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 16 October 2024 in Little Rock, Arkansas.

The claimant appeared *pro se*.

Arkansas Insurance Department, Public Employee Claims Division, Mr. Robert Montgomery, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 16 October 2024 in Little Rock, Arkansas.

The parties participated in a prehearing telephone conference on 16 July 2024. A

Prehearing Order, admitted to the record without objection as Commission's Exhibit No 1, was entered on 17 July 2024.

That Order set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/TPA relationship existed at all relevant times, including 1 August 2019, when the claimant suffered an accepted compensable injury to her right lower extremity. Some benefits were provided accordingly.
3. The claimant's average weekly wage at the time relevant to this claim was \$636.52 per week, which would entitle her to Temporary Total Disability (TTD) benefits in the amount of \$424 per week and Permanent Partial Disability (PPD) benefits in the amount of \$318 per week.

The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claim for additional benefits is barred by the statute of limitations.

2. Whether the claimant is entitled to additional benefits, including future medical treatment, reimbursement for past medical treatment, and indemnity benefits.

All other ISSUES are reserved.

The parties' CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated into the Prehearing Order. The claimant contends, generally, that she was not appropriately compensated and that she is entitled to additional medical and indemnity benefits. The respondents, however, contend that all appropriate benefits have been paid. They further contend that the last compensation provided to compensation was in the form of treatment from Campbell Clinic, P.C., on 5 May 2021. Payment for that treatment was completed on 29 March 2022. The respondents subsequently filed a Form AR-4 with the Commission on 22 March 2023. They contend that this claim for additional benefits is barred by the statute of limitations under A.C.A. § 11-9-702(b)(1).

The claimant was the only WITNESS.

The EVIDENCE considered in this claim consisted of the hearing testimony along with the following EXHIBITS: Commission's Exhibit No 1 (the Prehearing Order), Respondents' Exhibit No 1 (an index page and four pages of medical reports), Respondents' Exhibit No 2 (one index page and ten pages of non-medical records), and Respondents' Exhibit No 3 (one index page and an 18-page functional capacity evaluation report).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witness, observing her demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously-noted stipulations are accepted as fact.

3. The claimant failed to prove by a preponderance of the evidence that she is entitled to any additional benefits.
4. In light of Finding/Conclusion № 3, the statute of limitations issue is moot and will not be addressed.

III. HEARING TESTIMONY AND EVIDENCE

Claimant Twanna Carter

The claimant testified she injured her leg on 1 August 2019 while she was participating in some training on subduing noncompliant inmates. Her injury was accepted by the respondents as compensable, and she began receiving medical and indemnity benefits accordingly. She ultimately underwent surgical repair for her ACL and MCL injuries. Afterwards, she received a permanent impairment rating; and that rating was paid by the respondents. The claimant disagrees with the opinions offered around her release from care and believes that she is entitled to ongoing treatment for pain and other unspecific benefits. She has not returned to work since sustaining her injury.

On cross examination, the claimant acknowledged that her treatment included care from Dr. Frederick Azar at the Campbell Clinic in Memphis, Tennessee. She was also seen by Dr. Carlos Roman, who placed her at maximum medical improvement (MMI) on 8 March 2021. On 23 March 2021, she underwent a functional capacity evaluation (FCE) that found her efforts to be unreliable. The claimant disagreed with those findings and stated that she did the best that she could do in the testing.

According to her testimony, the claimant was aware that Dr. Roman was a pain specialist at the time that she saw him in March of 2021. She acknowledged that his final report stated that, "There are no further medications required."

The claimant testified that she last saw Dr. Azar in May of 2021 and acknowledged receiving a nine percent (9%) impairment rating to her lower extremity in May of 2021. She

further acknowledged the receipt of \$5,144.94 as compensation for that rating. The check for that payment was dated 10 August 2021.

Medical and Documentary Evidence

The medical reports indicate that the claimant saw Dr. Roman on 8 March 2021. He placed her at MMI on that date, noting that there were “no further injections, procedures, or medications required.” The claimant’s last visit with Dr. Azar was on 5 May 2021, when he agreed that she was at MMI. He concluded, “I am going to release her from my care at this time and render an impairment based on the AMA guides.” He calculated a nine percent (9%) impairment to the lower extremity, which translated to a four percent (4%) impairment to the whole person. [Resp. Ex. No 1.]

The respondents introduced several non-medical records, including a Form AR-N dated 2 August 2019, and payments records that are consistent with the claimant’s testimony. The final date of service for medical treatment is represented as 5 May 2021 at Campbell Clinic (Dr. Azar’s practice). The payment history print-out for the claimant’s impairment rating payment shows a date of 10 August 2021. [Resp. Ex. No 2.]

A functional capacity evaluation report found that the claimant put forth an unreliable effort during her 23 March 2021 evaluation. Only 20 of 53 consistency measures were within expected limits. [Resp. Ex. No 3.]

IV. ADJUDICATION

The stipulated facts are outlined above and accepted. It is settled that the Commission, with the benefit of being in the presence of a witness and observing their demeanor, determines a witness’ credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999). A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how

much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, 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 that it deems worthy of belief. *Id.*

The claimant believes that she is entitled to additional medical benefits beyond the treatment already provided. Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries. A.C.A. § 11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

The testimony suggested that the claimant believes that her complaints of pain and difficulties have not been properly addressed. The respondents, however, presented evidence, by way of medical reports, from two providers that agreed that the claimant was at MMI in 2021. The Commission may accept or reject a medical opinion and determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). I find the reports and opinions of Drs. Azar and Roman to be credible. A permanent impairment rating was determined by one of her providers, and the claimant acknowledged that she received appropriate benefits consistent with that rating.

A claimant may be entitled to additional treatment even after her healing period is ended, if that treatment is geared towards management of a compensable injury. *Patchell, supra*. The claimant testified that she has seen other providers for pain since her release from care; but she did not introduce any records to suggest a causal connection between her injury and her more recent treatment(s). I do not find that the claimant met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment.

The claimant also testified about the difficulties she has faced since her injury and not returning to work. She claims that she remains unable to work due to her injury. Temporary total disability (TTD) is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." A.C.A. § 11-9-102(12). The healing period continues until the employee is as far restored as the permanent character of her injury will permit, and if the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996). The determination of when the healing period has ended is a question of fact for the Commission. *Carroll Gen. Hosp. v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996).

Based on the evidence in the record, I do not find that the claimant proved by a preponderance of the evidence that she entered a new healing period that may entitle her to additional TTD benefits. Temporary total disability benefits cannot be awarded after the healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). The claimant testified generally that she still experiences pain. Persistent pain,

however, does not extend a claimant's healing period, provided that the underlying condition has stabilized. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The medical evidence credibly establishes that the claimant's condition stabilized in 2021 when Drs. Azar and Roman released her from care at MMI.

Having found that the claimant failed to meet her burden of proof on her request for additional benefits of any type, the issue of whether the statute of limitations has run is moot.

V. CONCLUSION

Because the claimant failed to meet her burden of proof on any claim for additional benefits, this claim is DENIED and DISIMSSSED.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE