

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H103080

JIMMY FOSTER,
EMPLOYEE

CLAIMANT

BOONEVILLE HUMAN DEVELOPMENT
CENTER, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 9, 2023

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

Claimant represented by the HONORABLE JARID M. KINDER, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The claimant appeals and the respondents cross-appeal an administrative law judge's opinion filed February 9, 2023. The administrative law judge found that the claimant failed to prove his cardiovascular and right ulnar neuropathic conditions were compensable. The administrative law judge found that the claimant proved he was entitled to a period of temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved the diagnosis of atrial fibrillation was a natural consequence of the compensable COVID-19 condition sustained by the claimant. We find that

the claimant did not prove the right ulnar neuropathic condition was a natural consequence of the compensable injury. The Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits. The Full Commission finds that the claimant proved he sustained 10% permanent anatomical impairment as a result of the diagnosis of atrial fibrillation.

I. HISTORY

Jimmy Glenn Foster, Sr., now age 68, testified that he had formerly been employed with the respondents, Booneville Human Development Center. The claimant testified on direct examination:

Q. And what does BHDC do?

A. They take care of clients that is not able to take care of their self. They feed them. They take care of them. They teach them how to work and they just work with clients that is not privileged to be at home.

Q. What did you do for them?

A. I done the same thing. I bathed them. I shaved them. I brushed their teeth. I made their beds. We fed them. We washed their clothes. We dried them and stuff like that....

Q. Was your job at Booneville Health, was that a physical job?

A. Yes, sir....The physical part where we would strip the client's bed, remake them ourselves, mop and sweep the floors, clean the toilets. We would take their clothes down to laundry and wash and dry them and fold them and put them away. And make sure that they had food to eat at the time of food and we would brush their teeth and shave them....

Q. Now, out of an eight-hour workday, how much of that would you spend on your feet working?

A. Pretty much the whole eight hours constantly being busy.

The parties stipulated that the employee-employer-carrier relationship existed on July 31, 2020, and that the claimant “sustained a compensable injury” on that date. The claimant testified on direct examination:

Q. When did you contract COVID-19?

A. I want to say it was August. That’s when I got tested and I tested positive at the facility. And then we came to Fort Smith and done another testing under a big tent and they also tested positive.

Q. How did you contract it?

A. COVID-19 had hit our facility through staff at first and then it spread to the clients. And we had one client that – when I came on duty that morning, we had one client that was quarantined and he had COVID and I had to take care of him....

Q. When did you start noticing symptoms?

A. About probably the last week in July and the first week in August. I started losing my breath and feeling really bad.

According to the record, the claimant received emergency medical treatment on August 8, 2020: “Jimmy G. Foster, a 65 y.o. male presents to the ED with a Chief Complaint of Shortness of Breath....65-year-old white male with a history of seasonal rhinitis transferred from Waldron for COVID pneumonia after he had been sick for approximately 8 days.” The clinical diagnoses were “Pneumonia due to COVID-19 virus (Primary)” and “Morbid obesity with BMI of 70 and over, adult.”

Dr. Monali Hanmant Patil reported on September 9, 2020:

Jimmy G. Foster is a 65 y. o. male admitted 8/8/2020 with complaints of shortness of breath. Patient works [at] human development center in Booneville. Patient had an exposure to

COVID patient couple 2 weeks ago. Patient started having symptoms about 8 to 9 days ago. Patient tested positive for COVID. Symptoms started were getting worse with hypoxia cough low-grade fevers. Patient presented to the ED. He was noted to be hypoxic. He was initially started on BiPAP. Patient was not tolerant of BiPAP he was switched to high flow nasal cannula.

Dr. Michael Morse prepared a Nerve Conduction & Electromyography Report on December 10, 2020, with the following conclusion: "There is a moderately severe right median nerve entrapment at the wrist consistent with a clinical diagnosis of carpal tunnel syndrome. There is a mild nonlocalizing ulnar neuropathy. EMG shows no active or chronic denervation."

Dr. Keith Bolyard noted on January 15, 2021:

The patient is 66 years old. We are asked to see him via Workers' Compensation for his right shoulder. He is struggling through post-COVID hospitalization... He reports a normal right shoulder prior to COVID. His complaints are that of a snapping of the right scapula and pain and weakness of the shoulder.

He has been diagnosed with possible right cubital tunnel syndrome, possible right carpal tunnel syndrome. Though his symptoms of carpal tunnel were not related today, numbness of the ulnar nerve distribution fingers was part of the symptom complex as well....

PHYSICAL EXAMINATION: He has internal rotation almost equal on the right shoulder as he does the left. He does have a palpable snap at the inferior angle of the scapula with certain range of motions....

X-RAY STUDIES: X-rays today, 3 views of the right shoulder show a large inferior humeral head osteophyte....

IMPRESSION: 1. Right glenohumeral joint arthritis with stiffness.

2. Snapping scapula syndrome right.

Dr. Bolyard planned, "I think the scapula is probably more consistent with a dyskinesis. We will have him continue with home physical therapy that he can do on his own checking with the physical therapist every couple of weeks, working on range of motion and strengthening....I tried to make it clear that his snapping scapula would not be a surgical intervention, but is probably more related to muscle imbalance....No surgical intervention is planned or contemplated."

The claimant began treating with Dr. Julio F. Schwarz on February 1, 2021:

66-year-old white male who has been diagnosed as having paroxysmal atrial fibrillation. Patient does not experience specific symptoms with recurrence of atrial fibrillation. He does complain of dyspnea on mild to moderate exertion, moderate to severe in intensity, subsiding within 3 minutes post exercise cessation. Patient describes no other associated symptoms. The only means to avoid such is to prevent this level of physical activity....

ASSESSMENT AND RECOMMENDATIONS:

1. Dyspnea on exertion.
2. Paroxysmal atrial fibrillation.
3. Essential hypertension.
4. Family history of heart disease.
5. Subarachnoid hemorrhage in August, 2020, of uncertain etiology, residual right hemiparesis.
6. Overweight.
7. Residual right hemiparesis, ambulates with a walker.

Rhonda Murphy, Assistant Claims Determination Manager,

corresponded with the claimant on March 31, 2021:

Public Employee Claims Division (PECD) administers the workers compensation benefits for AR Human Development Center – Booneville.

Your claim has been accepted as compensable based on your positive COVID-19 medical status. PECD will be responsible for the authorized necessary and reasonable medical treatment associated with this illness (if indicated). The total disability rate is based upon sixty-six and two-thirds (66 2/3%) of your average weekly wage at the time the exposure (sic). Based on the wage information we have received, you will be entitled to receive TTD compensation in the amount of \$329.00 per week. TTD compensation is based on a seven day week.

It is my understanding that you received Director's Leave pay through 1/8/2021. A State Warrant for compensation benefits in the amount \$3,948.00 representing payment for the period of 1/9/2021 through 4/2/2021 has been ordered. You should receive the warrant in the next seven to ten business days.... Temporary Total Disability (TTD) compensation will continue to be paid to you on a bi-weekly basis until you receive the release letter from AR Department of Health and return back to work....

A Human Resources Specialist informed the claimant on August 16, 2021, "You are due for your five-year background checks. Please fill out the attached forms and bring back to Human Resources by Friday, September 10, 2021 along with your driver's license or photo ID."

An Assistant Personnel Manager corresponded with the claimant on October 25, 2021 and stated in part, "Your Background Checks with our facility are currently out of date and in violation of Office of Long-Term Care regulations. Please return the requested Background Check forms and updated medical information by November 2, 2021 to prevent us from proceeding with termination."

The respondent-employer's Director of Residential Services corresponded with the claimant on November 30, 2021: "This letter is to inform you that your employment with the Arkansas Department of Human Services is terminated effective November 30, 2021....Your resignation has been coded 'Involuntary' based on an internal investigation."

The claimant testified on direct:

Q. Were you terminated from this position?

A. Yes, sir, I was.

Q. What was your understanding of why you were terminated?

A. From what I understand, refusing to go have an FBI background check because I wasn't released from the doctor at that time.

Q. Did you go have the FBI background check done?

A. No, sir.

Q. Why did you not?

A. Because I was still under doctor's care and wasn't released to go back to work.

The claimant participated in a Functional Capacity Evaluation at Functional Testing Centers, Inc. on April 26, 2022: "Mr. Foster completed functional testing on this date with **unreliable** results....Overall, Mr. Foster demonstrated the ability to perform work in at least the **SEDENTARY** classification of work[.]"

In addition, an "IMPAIRMENT EVALUATION SUMMARY – Lower Extremity" was prepared at Functional Testing Centers, Inc. on April 26, 2022:

Mr. Foster reports that he contracted COVID-19 (sic) at work and was hospitalized with acute respiratory failure and had subsequent placement on a ventilator. He later had onset of skin breakdown in his Coccyx area with an open wound. Diagnosis: Long term COVID 19 syndrome....Mr. Foster's primary complaint is shortness of breath with strenuous activity. He reports additional areas of pain that include: right shoulder, low back and coccyx. He also reports chest pain. Co-morbidities include: Hypertension.... When utilizing the Guides Table 8 (p. 162): Classes of Respiratory Impairments: Mr. Foster does have a class 2 (mild) impairment with a 10% Whole Person Impairment.

The claimant's testimony indicated that he did not receive temporary total disability benefits after May 6, 2022.

Rhonda Murphy corresponded with the claimant on May 17, 2022:

We have received a report from Rick Byrd indicating you have reached maximum medical benefit as of 4/26/2022. Mr. Byrd also stated you have a 10% Permanent Partial Impairment for a mild ventilatory defect. This impairment rating entitles you to 45 weeks of PPD benefits at the weekly rate of \$247.00 for a total of \$11,115.00. PPD benefits are paid bi-weekly, and your first PPD payment will cover the dates 5/7/22 through 5/20/22. You should receive this check in the next few days. The PPD benefits will pay out on March 17, 2023....

Dr. Sara L. Roberson reported on June 17, 2022:

Jimmy G. Foster 10/16/1954 is a patient of mine at the family medicine clinic in Waldron. I have been this patient's primary care provider since 2014. He is requesting this letter statement concerning his ability to work. This patient was hospitalized with severe COVID-pneumonia, he has had deterioration in his health that has included diastolic heart failure, pulmonary hypertension, paroxysmal A. fib and respiratory failure. He has had a great deal of trouble regaining his prior level of functioning. I do not believe the

patient will be able to return to work and should strongly consider retirement at this time.

Dr. Terry Clark examined the claimant on September 26, 2022:

Jimmy's primary problem is COVID. The problem began on 7/31/2020. Additional History: Pt contracted COVID while at work. He has had many complications from it. He is here to review FCE and IR results.

He apparently contracted Covid-19 at work and had an extremely complicated course which included respiratory failure, a small right-sided subarachnoid hemorrhage, a coccygeal decubitus, atrial fibrillation and right ulnar nerve neuropathy.

He had an FCE on 4/26/2022 which showed multiple inconsistencies and sub-maximal effort. He is here today to review those reports. He is currently being treated for pneumonia by his PCP, unrelated to the Covid....

MMI has been reached as of today's date. Agree with the impairment rating of 10% whole person. Due to inconsistencies on the FCE I am unable to determine work restrictions....

MEDICAL CAUSATION

The cause of this problem is related to work activities.

RECOMMENDED WORK STATUS

Jimmy's recommended work status is Regular Duty. The effective date for this work status is 9/26/2022.

Dr. Clark diagnosed "1. Acute respiratory failure with hypoxia. 2.

Other nontraumatic subarachnoid hemorrhage. 3. Pressure ulcer of sacral region, stage 4."

A pre-hearing order was filed on October 6, 2022. According to the text of the pre-hearing order, the claimant contended, "1. The claimant, Jimmy Foster, sustained compensable injuries following a COVID-19 injury on August 6, 2020 while working for Booneville Development Center in

Booneville, Arkansas. Said injuries, include, but are not limited to: a respiratory disorder, sacral wound, paroxysmal atrial fibrillation, dyspnea on exertion, essential hypertension, hypertensive heart disease, left ventricular diastolic dysfunction, pulmonary hypertension, left ventricular dilation, trivial nonrheumatic mitral insufficiency trivial nonrheumatic tricuspid insufficiency, a subarachnoid hemorrhage, and hemiparesis. 2. Sara L. Roberson has taken the claimant off work indefinitely due to his severe COVID-pneumonia and subsequent deterioration of health. 3. To date, the claimant has only been released as at maximum medical improvement for his sacral wound on September 27, 2021 and his lungs (mild ventilatory defect) [on] April 26, 2022. He remains in his healing period and has not been returned to work and thus contends he is owed temporary total disability benefits from May 17, 2022 through a date yet to be determined. 4. Due to the controversion of entitled benefits, the respondents are obligated to pay one half of the claimant's attorney's fees. 5. Claimant reserves the right to raise additional contentions at the hearing of this matter."

The respondents contended that "the claimant reported on August 5, 2020 that he tested positive for COVID, with his last day at work being July 31, 2020. Respondent did accept this claim as compensable pursuant to Ark. Code Ann. §11-9-601 (effective from March 11, 2020 and until May 1, 2023) and respondent has provided benefits to or on behalf of the claimant

for this claim. Respondent has provided reasonable and necessary medical treatment for the claimant, including treatment with Dr. Terry Clark, Dr. Delilah Easom for wound care and Dr. Julio Schwarz, cardiac specialist. The claimant tested unreliably in the Sedentary classification of work at a Functional Capacity Evaluation on April 26, 2022 with 13 of 53 consistency measures. The claimant was paid his salary by his employer until January 8, 2021 at which point the claimant was paid temporary total disability benefits by the respondent from January 9, 2021 until May 6, 2022 when the claimant was released at maximum medical improvement by his treating physician, Dr. Terry Clark. The claimant was assigned permanent anatomical impairment of 10% to the whole person which has been accepted by respondent and permanent partial disability benefits are being paid to the claimant for this impairment rating. The claimant would not return to work and would not complete his mandatory background checks for his job. The claimant's employment ended November 30, 2021. The respondents reserve the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery."

The parties agreed to litigate the following issues:

1. Whether claimant is entitled to temporary total disability benefits.
2. Attorney's fee.

After a hearing, an administrative law judge filed an opinion on February 9, 2023. The administrative law judge found that the claimant failed to prove his “heart disease” and “right ulnar neuropathy” were compensable conditions. The administrative law judge found that the claimant was entitled to a period of additional temporary total disability benefits. The claimant appeals to the Full Commission and the respondents cross-appeal.

II. ADJUDICATION

A. Natural Consequence

1. Atrial Fibrillation

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148. The basic test is whether there is a causal connection between the injury and the consequences of such. *Id.* The burden is on the employee to establish the necessary causal connection. *Id.* Whether there is a causal connection is a question of fact for the Commission. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

An administrative law judge found in the present matter, “2. Claimant has failed to prove by a preponderance of the evidence that his

heart disease was the result of his compensable illness from COVID-19.” It is the Full Commission’s duty to enter findings in accordance with the preponderance of the evidence and not on 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). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat’l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). 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).

The Full Commission finds in the present matter that the claimant’s atrial fibrillation and associated diagnoses were a natural consequence of the compensable injury. The claimant was employed for several years with the respondents, Booneville Human Development Center. The evidence does not demonstrate that the claimant had been treated for atrial fibrillation prior to the compensable injury. The parties stipulated that the claimant sustained a compensable injury on July 31, 2020. The claimant testified that he contracted COVID-19 while performing employment services for the respondents. The claimant was indeed clinically diagnosed with “Pneumonia due to COVID-19 virus (Primary)” on August 8, 2020.

The claimant received emergency treatment and extended in-patient residential treatment as a result of contracting COVID-19 in the respondents' workplace. Dr. Schwarz, a cardiologist, diagnosed "Paroxysmal atrial fibrillation" on February 1, 2021. The Full Commission again notes from the record that the claimant had not been diagnosed with atrial fibrillation prior to contracting COVID-19 in the workplace. Dr. Roberson reported on June 17, 2022, "This patient was hospitalized with severe COVID-pneumonia, *he has had deterioration in his health that has included diastolic heart failure, pulmonary hypertension, paroxysmal A. fib* and respiratory failure [emphasis supplied]." The Commission is authorized to accept or reject medical opinions, and our resolution of the medical evidence has the force and effect of a jury verdict. *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000). The Full Commission in the present matter accepts Dr. Roberson's June 17, 2022 report as medical evidence demonstrating that the claimant's diastolic heart failure and atrial fibrillation were natural consequences of the compensable COVID-19 condition suffered by the claimant. Dr. Roberson's causation opinion is further supported by Dr. Clark's report on September 26, 2022, "He apparently contracted Covid-19 at work and had an extremely complicated course which included respiratory failure, a small right-sided

subarachnoid hemorrhage, a coccygeal decubitus, *atrial fibrillation* and right ulnar nerve neuropathy [emphasis supplied].”

The Full Commission finds that the claimant proved the diagnosis of atrial fibrillation was a natural consequence of the compensable COVID-19 condition sustained by the claimant in the workplace. We therefore find that the treatment of record for same was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

2. Right Ulnar Neuropathy

An administrative law judge found, “3. Claimant has failed to prove by a preponderance of the evidence that his right ulnar nerve neuropathy was the result of his compensable illness from COVID-19.” The Full Commission affirms this finding. As we have discussed, the parties stipulated that the claimant sustained COVID-19 in the respondents’ workplace on or about July 31, 2020. The record indicates that the claimant subsequently received an extensive course of inpatient residential treatment. Dr. Morse performed electrodiagnostic testing on December 10, 2020 and concluded, “There is a moderately severe right median nerve entrapment at the wrist consistent with a clinical diagnosis of carpal tunnel syndrome.” 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, there is no probative evidence demonstrating that Dr. Morse's diagnosis of carpal tunnel syndrome was causally related to the claimant's COVID-19 condition. Nor did Dr. Morse opine that the clinical diagnosis of right carpal tunnel syndrome was causally related to COVID-19 contracted by the claimant.

Dr. Bolyard noted on January 15, 2021 that the claimant reported a "snapping of the right scapula and pain and weakness of the shoulder." Dr. Bolyard's impression was "1. Right glenohumeral joint arthritis with stiffness. 2. Snapping scapula syndrome, right....I think the scapula is probably more consistent with a dyskinesia....No surgical intervention is planned or contemplated." The evidence does not demonstrate that glenohumeral joint arthritis, snapping scapula syndrome, or dyskinesia were in any way causally related to the compensable COVID-19 illness suffered by the claimant. Nor is there any probative evidence demonstrating that the claimant sustained right ulnar neuropathy as a result of treatment provided at any time on or after July 31, 2020. The Full Commission therefore affirms the administrative law judge's finding that the claimant did not prove "his right ulnar neuropathy was the result of his compensable illness from COVID-19." The claimant did not prove by a preponderance of the evidence that the diagnosed condition of right ulnar neuropathy was a natural consequence of the compensable injury. Treatment for right ulnar

neuropathy was not reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

B. Temporary Disability

Temporary total disability 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.” Ark. Code Ann. §11-9-102(12)(Repl. 2012). The healing period continues until the employee is as far restored as the permanent character of the 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).

An administrative law judge found in the present matter, “4. Claimant has met his burden of proving that he is entitled to temporary total disability benefits from May 7, 2022 through September 26, 2022.” The Full Commission does not affirm this finding. The parties stipulated that the claimant sustained a compensable injury on or about July 31, 2020. The compensable injury sustained by the claimant was COVID-19, contracted

by the claimant in the workplace. The claimant testified that he did not work for the respondents after approximately July 31, 2020. Correspondence from an Assistant Claims Determination Manager indicated that the claimant received "Director's Leave pay" through January 8, 2021. The record indicates that the claimant was paid temporary total disability benefits for the period beginning January 9, 2021 and continuing through at least April 2, 2021. On August 16, 2021, a Human Resources Specialist asked the claimant to complete a series of background checks in order to continue his employment with the respondents. The claimant testified that he did not comply with this request, "Because I was still under doctor's care and wasn't released to go back to work." The respondents therefore terminated the claimant's employment effective November 30, 2021.

The claimant participated in a Functional Capacity Evaluation on April 26, 2022: "Mr. Foster completed functional testing on this date with **unreliable** results....Overall, Mr. Foster demonstrated the ability to perform work in at least the **SEDENTARY** classification of work[.]" An "IMPAIRMENT EVALUATION SUMMARY" prepared on April 26, 2022 indicated, "When utilizing the Guides Table 8 (p. 162): Classes of Respiratory Impairments: Mr. Foster does have a class 2 (mild) impairment with a 10% Whole Person Impairment." The claimant testified that he did not receive temporary total disability benefits after May 6, 2022. The

respondent-carrier informed the claimant on May 17, 2022 that it accepted “a 10% Permanent Partial Impairment for a mild ventilatory defect.”

The claimant contends on appeal that he is entitled to temporary total disability benefits from May 7, 2022 through September 26, 2022. The Full Commission finds that the claimant did not prove he remained within a healing period or was totally incapacitated from earning wages at any time after April 26, 2022. We note that the claimant was assigned a permanent anatomical impairment on April 26, 2022. Permanent impairment is any functional or anatomical loss remaining after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). Temporary total disability 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 evidence does not demonstrate that the claimant remained within a healing period or re-entered a healing period at any time after April 26, 2022. We recognize Dr. Roberson’s note on June 17, 2022, “I do not believe the patient will be able to return to work and should strongly consider retirement at this time.” The Full Commission finds that Dr. Roberson’s June 17, 2022 report was describing a permanent condition and cannot reasonably be interpreted as evidence demonstrating that the claimant remained within a healing period related to the compensable

injury. We also recognize Dr. Clark's conclusion on September 26, 2022, "MMI has been reached as of today's date." 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). In the present matter, the Full Commission places minimal evidentiary weight on Dr. Clark's conclusion that "MMI has been reached" as of September 26, 2022. The record instead demonstrates that the claimant was as far restored as the *permanent character* of his injury would permit no later than April 26, 2022. *See Harvest Foods, supra*. The evidence does not demonstrate that the claimant remained within a healing period or re-entered a healing period at any time after April 26, 2022. The claimant therefore did not prove that he was entitled to additional temporary total disability benefits.

C. Permanent Impairment

Finally, permanent impairment is any functional or anatomical loss remaining after the healing period has been reached. *Johnson, supra*. The Commission has adopted the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) to be used in assessing anatomical impairment. *See Commission Rule 34*; Ark. Code Ann. §11-9-522(g)(Repl. 2012). It is the Commission's duty, using the *Guides*, to

determine whether the claimant has proved he is entitled to a permanent anatomical impairment. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1)(Repl. 2012). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012). Although it is true that the legislature has required medical evidence supported by objective findings to establish a compensable injury, it does not follow that such evidence is required to establish each and every element of compensability. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997). All that is required is that the medical evidence be supported by objective medical findings. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006). Medical opinions addressing impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B)(Repl. 2012).

Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a)(Repl. 2012). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause

must be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012).

In the present matter, the Full Commission finds that the claimant proved that he is entitled to a 10% permanent anatomical impairment related to his compensable atrial fibrillation. The Full Commission has determined that the atrial fibrillation diagnosed by Dr. Schwarz was a natural consequence of the compensable injury sustained by the claimant on or about July 31, 2020. Dr. Schwarz reported on April 4, 2022 that his diagnosis included "1. Paroxysmal atrial fibrillation." Dr. Schwarz noted that an echocardiogram showed "Ejection Fraction: 60%." Dr. Schwarz reported that the claimant displayed "2. Dyspnea on exertion."

The 4th Edition of the *Guides*, p. 6/195, Table 12, Class 2, provides for a "10-29% impairment of the whole person." The Full Commission finds that the claimant proved he sustained permanent anatomical impairment in the amount of 10% as a result of the compensable atrial fibrillation sustained by the claimant. The record indicates that the claimant "is asymptomatic during daily activities." The surveillance evidence before the Commission demonstrates that the claimant is able to perform daily activities such as drive a vehicle, shop, and occasionally preach and lead music at his local church. A cardiac arrhythmia was documented by ECG as reported by Dr. Schwartz. In addition, the claimant's treating physicians

have recommended a dietary adjustment and have prescribed the use of drugs to treat the compensable atrial fibrillation.

With regard to atrial fibrillation, which was a natural consequence of the compensable injury, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a 10% permanent anatomical impairment in accordance with the 4th Edition of the *Guides*, p. 6/195, Table 12, Class 2. The existence of 10% permanent anatomical impairment is supported by objective medical findings confirmed on diagnostic testing as reported by Dr. Schwarz. The claimant also proved that the compensable injury was the major cause of the 10% permanent anatomical impairment resulting from atrial fibrillation.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved the diagnosis of atrial fibrillation was a natural consequence of the compensable COVID-19 condition sustained by the claimant. We find that the claimant did not prove the right ulnar neuropathic condition was a natural consequence of the compensable injury. The Full Commission finds that the claimant did not prove he was entitled to additional temporary total disability benefits. We find that the claimant proved he sustained 10% permanent anatomical impairment as a result of the diagnosis of atrial fibrillation. Said 10% permanent anatomical

impairment is in addition to the 10% rating accepted and paid by the respondents with regard to respiratory impairment.

The Full Commission denies the respondents' motion to strike the claimant's appeal brief. We advise the parties that, in performing a statutory *de novo* review, the Full Commission has considered solely and exclusively the testimony and evidence submitted to the administrative law judge on December 6, 2022. We have not relied on or considered any "new evidence" cited in the claimant's briefs on appeal. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing in part on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's determination that the claimant's atrial fibrillation is a compensable consequence of the claimant's compensable July 31, 2020 COVID-19 infection.

What constitutes a compensable, or natural, consequence under the Act is well settled. Arkansas Code Annotated § 11-9-508(a) requires an employer to provide an injured employee such medical services as may be reasonably necessary in connection with the injury received by the employee. As highlighted by the Majority, when the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148 (2010).

However, for this rule to apply, the basic test is whether there is a causal connection between the injury and its alleged consequences. *Id.* The burden is on the employee to establish the necessary causal connection. *Id.* Whether a causal connection exists between two episodes is a question of fact for the Commission. *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

While it is the Commission's duty use its expertise to determine the soundness of medical evidence and to translate it into findings of fact and has authority to accept or reject a medical opinion and to determine its medical soundness and probative force, "[s]peculation and conjecture

cannot substitute for credible evidence.” *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (2005); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002); *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998).

On February 1, 2021, Dr. Julio Schwartz, a cardiologist with Mercy Clinic Cardiology, determined that the claimant suffered from atrial fibrillation. (Resp. Ex. 1, P. 56). A year later, on February 15, 2022, FNP Gayla Johnson recommended a 72-hour Holter monitor to assess claimant’s cardiac rate and rhythm, stating that the claimant “does have a history of atrial fibrillation and he is not on an anticoagulation.” (Cl. Ex. 1, P. 83). At that time, the claimant presented with atrial fibrillation, “hypertensive heart disease, pulmonary hypertension, left ventricular diastolic dysfunction, left atrial dilation, [and] mitral and tricuspid regurgitation;” however, his condition was stable. *Id.* Claimant once again presented to Dr. Schwartz on March 28, 2022. (Cl. Ex. 1, P. 92). Dr. Schwartz reported that the claimant has a family history of heart disease¹. *Id.* Neither FNP Johnson nor Dr. Schwartz, both cardiac specialists, attributed the claimant’s heart complaints to his COVID-19 infection. Dr. Schwartz, the only cardiologist who treated the claimant, did not assess a permanent impairment rating for

¹ As noted by the ALJ in his December 2022 opinion, there is an additional entry from Dr. Schwartz dated April 1, 2022. It is unclear from the record whether the claimant attended two visits with Dr. Schwartz.

the claimant's atrial fibrillation and stated in his report dated February 1, 2021 that the "[p]atient does not experience specific symptoms with recurrence of atrial fibrillation." *Id.* Based on the findings of Dr. Schwartz, the claimant is not entitled to a permanent impairment rating for his atrial fibrillation even if it is determined for the purposes of argument it is a compensable consequence of his work-related injury.

The majority has based its finding that the claimant's atrial fibrillation is related to his work injury on the reports of claimant's family practitioner, Dr. Sara Roberson, and an occupational medicine specialist, Terry Clark, rather than the treating cardiologist. Neither Dr. Roberson nor Dr. Clark ever stated within a reasonable degree of medical certainty as required by our Act that the claimant's atrial fibrillation was the result of his work-related injury. "[A] compensable injury must be established by medical evidence supported by objective findings. Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty." Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Again, "[s]peculation and conjecture cannot substitute for credible evidence." *Id.* In fact, Drs. Roberson and Clark merely noted in their reports that the claimant had atrial fibrillation without stating the condition was related to or caused by his COVID-19 diagnosis.

Not one physician who has treated the claimant has stated within a reasonable degree of medical certainty that the claimant's atrial fibrillation is related to or is the result of his compensable injury or that he sustained any permanent impairment as a result of his atrial fibrillation. Speculation and conjecture cannot substitute for credible evidence. There is no credible evidence that the claimant's atrial fibrillation is work related or that this condition has caused any permanent impairment. To find otherwise is speculation and conjecture by the Commission.

For the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner