BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H109299

DAVID J. WISE, EMPLOYEE	CLAIMANT
MIDLAND INDUSTRIAL SERVICES, LLC, EMPLOYER	RESPONDENT
LIBERTY MUTUAL GROUP, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MAY 19, 2023

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE DAVID C. JONES, 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 November 10, 2022. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury.

I. HISTORY

David James Wise, now age 62, testified that he had been a diabetic for approximately 20 years. Mr. Wise testified that he controlled his diabetic

condition with medication. Dr. Shawn L. Brummett saw the claimant on June 30, 2020, "Patient here to follow up on diabetes." Dr. Brummett noted that the claimant's past medical history included "Diabetes mellitus." Dr. Brummett assessed "Type 2 diabetes mellitus without complication, without long-term current use of insulin. Mixed hyperlipidemia. Essential hypertension." Dr. Brummett planned treatment with medication and follow-up in three months.

The record indicates that the claimant became employed with the respondents, Midland Industrial Services, LLC on or about August 18, 2021. The claimant testified that the respondent-employer hired him to be a Project Manager. The parties stipulated that the employee-employer-carrier relationship existed on August 26, 2021. The claimant testified on direct examination:

> Q. And where were you located on August 26th of last year?
> A. I was in Vernon, Texas.
> Q. And what were you supposed to be doing that day?
> A. I was told I was sent over there to meet a crew and meet the guys and see what was going on….
> Q. So what did you end up doing that day?
> A. I ended up meeting the crew. And when I met the crew, the foreman was – that was Tyler Hayden, a good foreman, but he didn't have the right type crew to do what he was doing. He had mainly welders. So I wasn't supposed to be on my tools, but I went ahead and helped him and I cut brackets all day for running steam lines on that roof.
> Q. So where were you cutting the brackets?
> A. Up on the roof. It was like on top of the Wright Bacon plant. It was 40 feet in the air and it was around, you know,

100 or more on that black roof, and I was cutting stainless steel brackets all day. And it was terrible, hot, but …
Q. And what kind of shoes were you wearing that day?
A. I had my most comfortable pair, Justins. They are leather. And when it's hot like that – these are a low-top. They are not a high-top boot. They are really comfortable and that is what I wore that day. They are real nice steel-toed shoes.
Q. Okay. And how long were you on the roof that day?
A. We was on the roof for 10 hours that day.
Q. And what time do you start?
A. I guess around 7:00, a little before….
Q. So toward the end of the day or some time during the day, did you begin having some symptoms in your feet?
A. Yeah, around noon, 1 o'clock, it started. It was hot. And there was no way to get away from that black roof. You know, my feet started feeling a little scalded and hot, which it's like walking on hot pavement. You know, by the time it was quitting time, I knew I scalded my feet….
Q. So what did you do after work that night?
A. Well, I went to – actually went to Walmart and got me some ice packs and some Aloe vera for my feet. And I had lotion and stuff. And I just took a cold shower, you know, tended to my feet the best I could.
Q. Did you return to work the next day?
A. Yes, I did.
Q. And did you report this problem?
A. I told Hayden and a guy they called Kanoe….I told – the whole group, we meet every morning, and I told everybody. I was like, you know, I scalded and burnt my feet yesterday….But I told Tyler that I burnt my feet. But in all fairness to Tyler and me, we didn't think that it was all that bad….
Q. So how long were you supposed to be in that area for Midland?
A. Well, they just said three or four days and that is just – when I left, that is what I was told and then I was going to Georgia – I think it was Georgia – to meet a crew that was there and do the same thing, but I never made it to Georgia.
Q. So did you end up leaving the job early?
A. I left – yeah. I think they had a few more days, two or three more days, and I told them, you know, my feet are not right and I went ahead and left.

> Q. And who did you tell that to?
> A. I told it to Tyler….
> Q. And when you went home from that job what happened then?
> A. I went home and I think I took off 13 days and, you know, I doctored my feet. My wife and my little girl doctored my feet and soaked it in Epsom salt and put everything from Aloe vera to antibiotics on it to try to take care of it. I figured, you know, it would go away and heal up.
> Q. And did you go back to work?
> A. I actually got hired on by Multi-Craft and I told them right up front that I burnt my feet and they sent me to a project in Georgia – I mean in Jonesboro.

The claimant testified with regard to the alleged accidental injury, "I scalded my feet. I knew they were scalded….They just kept getting worse and worse." The claimant's wife, Barbara Ann Wise, testified that the claimant reported the alleged injury to her.

David Rook testified that he was the Division Manager for the respondent-employer's Industrial Refrigeration Safety Division. The respondents' attorney examined David Rook:

> Q. So [the claimant] was hired in mid-August. Is that correct?
> A. Yes.
> Q. All right. And if you can, Mr. Rook, take us through and tell us about the orientation process. Who does that and when did that take place?
> A. Well, it's a typical function that most companies use and what we do is go over the safety portion. I am not talking about the HR portion. The safety portion for us is to cover the awareness training of safety-related components of what we do in our business. Identifying slips, trips and falls, electrical safe work practices, emergency notification procedures, confined space awareness, just stuff that these folks would encounter, the employees we have, in the general industry and construction environment.

> Q. All right. And you did the presentation yourself?
> A. I did….
> Q. And for the record, I have got some documents right there, if you want to grab that right there. Those are Respondents' Exhibit No. 2. Are those some of the documents that Mr. Wise executed? It would be the next set.
> A. That is correct.
> Q. And did you all go over – and that first page, is that the company handbook?
> A. Yes. This is the signature page saying he received it….
> Q. And that is Page 2 of the exhibit, the handbook statement?
> A. Yes, that is correct.
> Q. And that document talks how injuries no matter how slight, you are supposed to report it to your supervisor. Is that correct?
> A. That is correct….
> Q. So it's safe to say you told him how and when to report injuries at orientation. Is that correct?
> A. Well, that is correct. On the safety side, if you don't report it immediately, then we don't have any way to mitigate the risk to other team members….
> Q. And if Mr. Wise had called in that day in Texas and told you he had been hurt, I take it that –
> A. That is correct, he could have got pulled off the job, brought back to restricted duty, and we would have gotten him the medical treatment he needed, more than likely….
> Q. And in terms of his employment, you heard him testify today that he left it looks like September 1st. Is that correct?
> A. That is correct, according to the termination paperwork, voluntarily.

The claimant agreed on cross-examination that he began working for another employer, Multi-Craft Contractors, on September 13, 2021. The claimant testified that a blister on his foot ruptured while he was performing work for Multi-Craft Contractors.

According to the record, the claimant treated at Mercy Hospital Northwest Arkansas on October 3, 2021:

> Patient presents with pain and swelling of his great toes. Patient is diabetic. He states that he was working on a hot roofs (sic) with still (sic) toed shoes approximately 1 month ago and obtained burns to both toes. He has continued to work daily 10-hour days. He has been self treating and states that it has improved. He is home now and with the encouragement of his family he comes in today.

It was noted on October 3, 2021 with regard to the claimant's right foot, "1. Skin breakdown with callus and erythema." It was noted with regard to the claimant's left foot, "2. Skin breakdown with moderate erythema and mild smell."

An x-ray of the claimant's left foot was taken on October 3, 2021 with the impression, "Radiographic findings consistent with osteomyelitis of the 1st toe distal phalanx base. 1st toe plantar soft tissue ulcer."

Dr. Tyler Worth Troutman attested to the following on October 3, 2021:

> Agree w/ the note by Rachel Reynolds. This is a 60-year-old man with a history of diabetes hypertension hyperlipidemia and obesity. Presents from home with day left great toe ulceration. About a month ago he was working in Texas on a construction job on the roof of the building and developed burns in bilateral great toes. He has been managing this at home with soaking his feet in Epson salt and keeping toes wrapped and using triple antibiotic ointment. He has baseline neuropathy but still has been having some mild pain on the medial aspect of the great toe. Denies any fevers or chills. On presentation inflammatory markers are moderately elevated and x-ray of the foot does reveal some bony destruction indicative of osteomyelitis….
> Large ulceration on inferolateral aspect of L great toe with exposed muscle and purulent drainage.
> Much smaller laceration on r great toe.

> We discussed the x-ray findings of osteomyelitis and my recommendation for an amputation of the toe as antibiotics alone cannot cure OM. This came as a shock to him. He is unsure if he would agree to an amputation at this point. He agreed to have orthopedics and infectious disease weigh in tomorrow and get an MRI of the foot to better describe the extent of the osteo….
> States he was working on a roof in 115 degree weather in TX about a month ago. Developed burns that blistered to both big toes. Was wearing steel toe boots at the time. States the blisters opened up a few days later. He has been managing his own wound care at home and soaking in Epsom salt and applying Neosporin. Has still been working 10 hour days on his feet in steel toe boots. He does keep his feet wrapped. States the side of his callous on left great toe is the most painful and blistered areas only mildly painful. Denies prior occurrence. Has neuropathy….

An MRI of the claimant's left foot was taken on October 4, 2021 with the following impression:

1. Osteomyelitis of the 1st toe distal phalanx. Soft tissue ulceration of the 1st toe.
2. Probable reactive bone marrow edema and/or osteitis at the 1st toe middle phalanx head. Probable reactive marrow edema the 1st metatarsal neck.
3. Foot soft tissue edema.

The claimant testified that he reported the alleged injury to David Rook on or about October 4, 2021.

The assessment and plan of Dr. Michael Andrew Ebers on or about October 5, 2021 included "Diabetic foot ulcer complicated by left first toe osteomyelitis: Obtain blood cultures. Appreciate orthopedic surgery assessment." The claimant received extended treatment visits at Mercy medical center related to the diabetic condition in his left lower extremity.

The respondents' attorney examined David Rook:

> Q. And you didn't hear anything about this until October it sounds like?
> A. October the 6th I think it was, the first of October.
> Q. All right. And as far as you are aware, did he tell anyone at Midland about his foot injured before October?
> A. Not that I know of, no….
> Q. And if somebody called the company and reported an injury, would they have referred it to you at that point?
> A. It would go straight to me. I get all of them….
> Q. Once again, the first time you learned about it was roughly October 6th after he had been to the hospital?
> A. That is correct.

The record includes an "Appendix D – Accident Investigation Report." It was written on the Accident Investigation Report that the Date of Accident/Injury/Illness was August 26, 2021, "Vernon, Tx Job." The Date Investigation Began was October 6, 2021. It was handwritten on the Accident Investigation Report, "Team Member (TM) reported on 10/3/21 that he worked on the roof in Vernon, Tx. While there it was hot and he burned his feet through his boots. T/M continued to work without any treatment." The Part(s) of Body Affected were "Both feet – Big toe on each foot blistered." It was written on the Report, "No medical treatment was administered when aledged (sic) injury occured (sic). T/M stated he added creams & salts to his feet for self treatment." The Accident Investigation Report identified a witness as Tyler Haden: "Tyler stated that T/M told him it was hot working on the roof. Tyler agreed, but at no time did the T/M state he was injured or had any issues with his feet." A second witness

identified was Kanoe O'Neil, and it was written, "Kanoe stated he had no knowledge of David Wise having any foot issues….Safety manager took statement over phone."

On October 13, 2021, the claimant underwent a debridement performed for "Wound #1 Left Toe Great." Dr. Douglas Friesen reported on October 13, 2021, "60 y/o diabetic male with a hx of foot deformity and osteo of the L gr toe. He was in the hosp and had an art duplex that revealed monophasic flow. He has no pulse on the L side. He had an A1C that was elevated. He chews and is trying to stop. He is getting the bs under control. The x-ray and MRI revealed osteo. Script for AFO given, discussed hbot and how that works. Script for diabetic shoes and custom insoles given."

The claimant continued to follow up with medical providers for his diabetic condition and abnormalities in his lower extremities. The claimant returned to Dr. Brummett on April 27, 2022:

> *Patient burned his big toe on left foot a few months ago, he has recently went back to work and now the skin is peeling off and bleeding.*
> *Would like to go back to wound care if possible.*
> Patient here for follow up on his wound on his left great toe. The wound improved after wound care treatments earlier this year.
> About 1 week ago a callus over the area of the previous wound came of (sic) and now he has an open wound there. It bleeds some and is painful if he is on his feet….
> Skin: 1.5 x 2cm ulcer on inferior-medial aspect of the left great toe. No surrounding erythema or swelling.

Dr. Brummett assessed "Type 2 diabetes mellitus with foot ulcer, without long-term current use of insulin. Diabetic ulcer of left great toe….Ulcer – Referral back to wound care. Today it does not appear infected. Encouraged him to keep the wound covered with a dressing like he has been until he sees wound care. He will also watch for signs of infection and follow up if this happens."

A pre-hearing order was filed on May 19, 2022. According to the text of the pre-hearing order, the claimant contended that he was "entitled to medical treatment for his injury and to repayment for medical expenses he has incurred. He contends he is entitled to temporary total disability benefits from October 3, 2021, to the end of January 2022. The claimant reserves all other issues."

The parties stipulated that the respondents "have controverted the claim in its entirety." The respondents contended, "1. The respondents contend that the claimant did not sustain specific incident injuries to his great toes during the course and in the scope of his employment on August 26, 2021. In that regard, the respondents contend that the claimant had no objective medical findings to support compensability until what appears to be more than a month later and that his condition is a result of his diabetic preexisting conditions and not a result of the work-related activities for the respondent/employer herein. 2. The respondents contend that the

claimant's subsequent work activities after his resignation from the respondent/employer herein and his failure to properly maintain his diabetic medical condition led to his ultimate need for treatment and surgical intervention, and not the alleged exposure to heat with the respondent/employer herein. Furthermore, the respondents contend that the claimant's subsequent activities would be considered an independent intervening event, and his failure to maintain control of his diabetic condition and preexisting conditions led to his ultimate need for surgery. 3. The respondents contend that the claimant's temporary total disability benefits would be limited to what appears to be on or about October 6, 2021 through January 2022 (the parties are trying to narrow down the dates for potential temporary total disability benefits). 4. The respondents contend that the claimant would not be entitled to any type of permanent partial disability ratings as the 'major cause' of any impairment would be a result of his preexisting condition, not a result of the work-related injury alleged herein. 5. The respondents contend that they would be entitled to an offset for any unemployment benefits paid to the claimant should the claimant have applied for and received said benefits. 6. The respondents would reserve the right to amend and supplement their contentions after the discovery as been completed."

The parties agreed to litigate the following issues:

1. Compensability.
2. If compensable, whether claimant is entitled to temporary total disability benefits and medical benefits.
3. Compensation rate.
4. Attorney fee.
5. Respondents raise lack of notice as a defense.
6. Whether respondents are entitled to appropriate setoffs, should benefits be awarded.

After a hearing, an administrative law judge filed an opinion on November 10, 2022 and found that the claimant did not prove he sustained a compensable injury. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

> (A) "Compensable injury" means:
> (i) An accidental injury causing internal or external physical harm to the body … arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(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).

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). 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). When deciding any issue, the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. Ark. Code Ann. §11-9-704(c)(2)(Repl. 2012). 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).

An administrative law judge found in the present matter, "2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury on August 26, 2021." The Full Commission has the duty to adjudicate the case *de novo* and we are not bound by the characterization of evidence adopted by an administrative law judge. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990). An

administrative law judge's findings with regard to credibility are not binding on the Full Commission. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

In the present matter, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury on August 26, 2021. As we have discussed, the claimant testified that he has suffered from a pre-existing diabetic condition for approximately 20 years. Dr. Brummett diagnosed "Diabetes mellitus" on June 30, 2020. The claimant became employed with the respondents, Midland Industrial Services, LLC on or about August 18, 2021. The parties stipulated that the employment relationship existed on August 26, 2021. The claimant testified that he walked on the surface of a roof that day, and that the surface of the roof was extremely hot as a result of the temperature. The claimant testified that he was wearing low-top, steel-toed boots. The claimant testified that he eventually "scalded" both feet while working on the roof. The claimant testified that he reported the alleged injury to at least two co-workers.

There was no evidence of record from August 26, 2021 which corroborated the claimant's testimony. The Full Commission finds that the claimant was not a credible witness with regard to the claimant's testimony that he scalded his feet on August 26, 2021 while performing employment

services. We find that David Rook, a Division Manager for the respondents, was a credible witness based on the record. David Rook credibly testified that the claimant did not report a workplace injury to him or any other individual on August 26, 2021. Mr. Rook testified that the claimant voluntarily resigned his employment with the respondents effective September 1, 2021. The claimant agreed that he began working for another employer on September 13, 2021.

The claimant did not seek medical treatment for the alleged August 26, 2021 injury until October 3, 2021. The claimant informed the medical providers at that time that he had had sustained burns to his great toes "approximately 1 month ago." The claimant's reporting on October 3, 2021 would place the injury as occurring approximately September 3, 2021 after the claimant had already resigned his employment with the respondents. The Full Commission recognizes that the claimant is not required to identify the precise time and numerical date upon which the alleged "scalding" occurred. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). Nevertheless, in the present matter, the claimant's lengthy delay in seeking medical treatment and his failure to timely report the alleged scalding injury is a detriment to the claimant's credibility. The weight of the evidence does not corroborate the claimant's testimony that he scalded his feet or great toes on August 26, 2021. The Full Commission reiterates our

finding that David Rook was a credible witness. Mr. Rook credibly testified that the claimant did not timely report an injury to him. Mr. Rook also testified that there were no corroborating eyewitnesses to the alleged August 26, 2021 injury.

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). The claimant did not prove that he sustained an accidental injury causing physical harm to the body. The claimant did not prove that he sustained an injury which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that he sustained an injury as the result of a specific incident identifiable by time and place of occurrence on August 26, 2021. Additionally, the claimant did not establish an injury by medical evidence supported by objective findings. The evidence does not demonstrate that the abnormalities in the claimant's lower extremities shown on and after October 3, 2021 were causally connected to a scalding injury which allegedly occurred on August 26, 2021. *See Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

After reviewing the entire record *de novo*, therefore, the Full Commission finds that the claimant did not prove by a preponderance of the

evidence that he sustained a compensable injury on August 26, 2021. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

_____
O. MILTON FINE II, Special Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my de novo review of the record in this claim, I dissent from the majority opinion finding that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury.

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102 (4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was

caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

It is undisputed that the claimant suffered from diabetes prior to his workplace accident. However, a pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as he finds him. *Murphree*, *supra*. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition.

The claimant's injuries meet the requirements for compensability. The claimant provided credible testimony that he was involved in a workplace incident on August 26, 2021. The claimant testified that he was working on a rooftop in 100-degree weather cutting brackets for approximately ten hours. The claimant testified further that he was wearing a pair of leather steel-toe shoes while performing these duties. According

to the claimant, by the end of the workday, he knew he had scalded his feet so he went to Walmart and bought some ice packs and Aloe vera for his feet. The next day the claimant reported to the foreman, Tyler Hayden, that he "scalded and burnt" his feet the previous day at work.

The claimant took time off from work for thirteen (13) days and "doctored [his] feet". When the claimant returned to work (working for Multi-Craft), he worked approximately ten (10) to twelve (12) days before the sore on his foot burst.

There were objective findings of the injury in the form of a diabetic ulcer of the left great toe and "osteomyelitis of the first toe distal phalanx base" as noted in the October 3, 2021, medical records from Mercy Hospital Northwest Arkansas. In addition, this injury required medical treatment in the form of prescription medications and debridement of the left great toe.

I recognize that in general foot ulcers are common for diabetic patients; however, the claimant testified that he had not had trouble with his feet prior to his workplace accident. There is nothing in the record to contradict the claimant's testimony regarding whether he had trouble with his feet in the past; therefore, I credit the claimant's testimony as being credible.

Despite having diabetes prior to the work accident, the claimant was able to perform his job duties without limitations or restrictions. It was not

until after the workplace incident that the claimant developed a diabetic ulcer and osteomyelitis which ultimately resulted in the above-referenced treatments to his left great toe.

Therefore, based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that he sustained a compensable left foot injury. In light of this finding, this matter should be remanded to the ALJ for a finding regarding the claimant's entitlement to medical and temporary total disability benefits.

For the foregoing reasons, I dissent from the majority opinion.

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M. SCOTT WILLHITE, Commissioner