

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G907403

JIMMY E. KEY III, EMPLOYEE CLAIMANT

MCDONALD'S RESTAURANT,  
EMPLOYER RESPONDENT

AR MCDONALD'S SELF INSURED TRUST/  
RISK MANAGEMENT RESOURCES,  
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED AUGUST 2, 2022

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

Claimant represented by the HONORABLE KATHLEEN K. TALBOTT, Attorney at Law, Wynne, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed March 9, 2022. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.

3. Claimant's Proffered Exhibit No. 2 will not be admitted into evidence.
4. Claimant has proven by a preponderance of the evidence that he is entitled to additional treatment of his stipulated compensable lower back injury, including the surgery recommended by Dr. Ted Shields. Moreover, Claimant has proven by a preponderance of the evidence that all of the treatment of his stipulated compensable lower back injury that is in evidence was reasonable and necessary.
5. Claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits from the date last paid to a date yet to be determined.
6. Claimant has proven by a preponderance of the evidence that he is entitled to a controverted attorney's fee at the expense of Respondents on the indemnity benefits awarded herein, pursuant to Ark. Code Ann. §11-9- 715 (Repl. 2012).

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's March 9, 2022 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2012).

For prevailing on this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(Repl. 2012). For prevailing on appeal to the Full Commission, 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.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents

DISSENTING OPINION

I respectfully dissent from the majority finding that the claimant is entitled additional medical treatment for his compensable lower-back strain, that Claimant proved he is entitled to temporary total disability benefits, and that Claimant is entitled to attorney's fees. I find that the

additional medical treatment is not reasonable and necessary in connection with the workplace injury, that Claimant is not entitled to temporary total disability benefits, and, therefore, is not entitled to attorney's fees.

It is without question that Claimant's credibility is an issue. During the hearing, Claimant was being asked about his prior back injuries when the following conversation took place that highlights Claimant's credibility issue:

A. No. Never had a—let me go on record, go on and say this so you don't have to keep repeating yourself. I have never had an injury to my back. Does that help?

Q. Well, you went to the emergency room for your back.

A. Yes, I did. But I've never had an injury . . . to my back.

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Q. Before November 1, 2019, did you ever call in at McDonald's because of back problems?

A. Yeah, that's when I had that sprain . . .

Claimant eventually admitted that he had an injury but insisted that it was an upper-back injury. The medical records from CrossRidge Community Hospital from October 6, 2019 indicate that he presented with lower-back pain and radiation to the right leg as a result of working on a house remodel. The medical records also indicate that Claimant was treated for lower-back pain by Dr. Michael McAllister in December 2017. Claimant testified he could not recall this.

Claimant also testified during his deposition that the woman whom he helped up, thereby causing the injury at issue, weighed over 400 pounds. He denied this testimony at the hearing, and only stated that she weighed more than the 225 he weighed. In his medical records, Claimant reported that the woman weighed over 300 pounds. The assistant manager at the restaurant testified that she weighed less than 200 pounds. Regardless of how much she weighed, it is undisputed that Claimant helped her up, and that an hour or so later, he asked to go home because his back hurt.

Following this incident, Claimant was initially treated by Dr. Lavell. Dr. Lavell ordered an MRI, which revealed degenerative changes at L4-5 and L5-S1 with mild midline disc bulges and “the appearance of bilateral pars defects.” Dr. Lavell and the radiologist recommended a CT scan for confirmation of this, but before Dr. Lavell could order the CT scan, Claimant got irate with Dr. Lavell’s nurse upon finding that Dr. Lavell was only placing Claimant on light-duty work. Dr. Lavell refused to treat Claimant further after Claimant cussed at his nurse. Dr. Lavell recommended a course of physical therapy, which Claimant did not finish.

Six months later, Claimant found his way to Pain Treatment Centers of America, where Dr. Shields noted that Claimant stated “that the onset of pain was gradual with no known reason. The pain began following

an injury/accident that occurred on 11/01/2019 . . . the patient has been experiencing this pain for a few years.”

Claimant underwent another MRI in January 2021, which showed no significant changes, degenerative disc disease at L4-L5 and L5-S1, no significant spinal canal stenosis, mild bilateral foraminal narrowing at L5-S1, and bilateral spondylosis at L5. Because of these findings, Dr. Shields recommends surgery.

The law requires an employer to provide medical services that are reasonably necessary in connection with the compensable injury received by an employee. Ark. Code Ann. §11-9-508(a). The burden of proving entitlement to additional treatment rests on the claimant; however, a claimant who has sustained a compensable injury is not required to offer objective medical evidence to prove entitlement to additional medical treatment. *Ark. Health Ctr. & Ark. Ins. Dep’t v. Burnett*, 2018 Ark. App. 427, at 9-10, 558 S.W.3d 408, 414 (*citing Chamber Door Indus., Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997); *Ark. Dep’t of Cmty. Corr. v. Moore*, 2018 Ark. App. 60).

What constitutes reasonably necessary treatment is a question of fact for the Arkansas Workers’ Compensation Commission. The Commission has authority to accept or reject a medical opinion and to determine its medical soundness and probative force. Likewise, the

Commission has the duty to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008). Lastly, it is the Commission's duty to use its experience and expertise in translating the testimony of medical experts into findings of fact and to draw inferences when testimony is open to more than a single interpretation.

The surgery recommended by Dr. Shields might well provide Claimant with some relief from his back pain. But it would require impermissible speculation and conjecture to conclude that this workplace injury is the cause of the pain, rather than the degenerative disc disease from which Claimant has long suffered. There is nothing in the record to indicate that Claimant helping the woman up aggravated his preexisting condition – other than his self-serving complaints of increased pain. As noted above, Claimant's credibility is highly questionable. I also find that Dr. Lavell's findings that Claimant has reached MMI and has no work restrictions to be credible. Nothing in the record contradicts this opinion and nothing in the record supports a finding that Claimant's need for treatment is causally related to his workplace incident. Accordingly, for the reasons set forth above, I must dissent.

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CHRISTOPHER L. PALMER, Commissioner