

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004236

WESLEY MILLER, EMPLOYEE CLAIMANT

SIMPLEXGRINNELL LP (JOHNSON CONTROLS),
EMPLOYER RESPONDENT

SEDGWICK CLAIMS MANAGEMENT,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED JULY 28, 2022

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

Claimant represented by the HONORABLE MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE LEE J. MULDROW, 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 February 11, 2022. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 8, 2021, and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence that he is entitled to the surgical intervention

recommended by Dr. Gannon Randolph for his admittedly compensable low back injury.

3. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from August 7, 2021 to a date yet to be determined.
4. The claimant's attorney is entitled to an attorney's fee on all indemnity benefits awarded herein.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's February 11, 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.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents

DISSENTING OPINION

I respectfully dissent from the majority finding that the claimant is entitled additional medical treatment in the form of back surgery as recommended by his treating physician, Dr. Gannon Randolph. As set out below, I would find that Claimant failed to prove by a preponderance of the admissible evidence that his surgery was causally related to his compensable low-back injury.

Respondent accepted Claimant’s low-back injury as compensable. The Arkansas Workers’ Compensation Law requires an employer to provide medical services that are “reasonably necessary in connection with [a compensable] injury received by an employee.” Ark. Code Ann. §11-9-

508(a)(1). The burden of proving entitlement to additional treatment rests on a 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). "When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts." *Macsteel v. Hindmarsh*, 2019 Ark. App. 458, at 6-7, 588 S.W.3d 53, 57 (citing *Kroger Ltd. P'ship I v. Bess*, 2018 Ark. App. 404, at 6, 555 S.W.3d 417, 421; *Neal v. Sparks Reg'l Med. Ctr.*, 104 Ark. App. 97, 289 S.W.3d 163 (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. “It is well settled that the Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force.” *Ark. Health Ctr. & Ark. Ins. Dep’t v. Burnett*, 2018 Ark. App. 427, at 10, 558 S.W.3d 408, 414.

Two weeks before the hearing on this issue, Claimant underwent the surgery recommended by Dr. Randolph. Claimant testified that it has improved his condition. Accordingly, the issue of whether the surgery was reasonable and necessary appears to be moot. Because Respondent accepted the lower-back claim as compensable, the only issue remaining is whether the need for the lower-back surgery was “in connection with Claimant’s compensable lower-back injury.”

As mentioned above, Claimant is not required to present objective medical evidence to prove entitlement to additional medical treatment for a compensable injury. But this case is not about whether Claimant presented objective medical evidence, or whether he is required to do so. It is about how we resolve the conflicting medical evidence. Dr. Randolph (Claimant’s treating physician) is of the opinion that the surgery was in connection with his compensable back injury. Dr. Knox and Dr. Bruffett are of the opinion that the surgery was not in connection with the compensable back injury. We must employ our own experience and expertise at translating the

testimony of medical experts into findings of fact. I would assign more credibility to the opinions of Dr. Knox and Dr. Bruffett than the opinion of Dr. Randolph because his opinion was unduly colored by Claimant's self-reported, yet inaccurate, history of his back problems. Therefore, I would find that Claimant's need for treatment was not causally related to his workplace incident. Accordingly, for the reasons set forth above, I must dissent from the majority opinion.

CHRISTOPHER L. PALMER, Commissioner